



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)No.12264 of 2021

and

W.M.P(MD)Nos.9650 and 9651 of 2021

P.Muthuramalingam

... Petitioner

Vs

1.The Director of Municipal Administration,
Office of the Municipal Administration,
Chennai - 600 028.

2.The Regional Director of Municipal Administration,
Tirunelveli Region,
Tirunelveli.

3.The Commissioner,
Rajapalayam Municipality,
Rajapalayam,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records relating to the impugned order passed by the second respondent vide his proceedings in Na.Ka.No.2298/2021/A2, dated 14.07.2021 and quash the same as illegal.

For Petitioner : Mr.Mohammed Imran,
for Mr.Ajmal Associates
For Respondent : Mr.P.T.Thiraviam
Nos.1 and 2
For Respondent : Mr.N.Dilip Kumar
No.3

ORDER

This writ petition is filed as against the order of transfer passed by the second respondent in Na.Ka.No.2298/2021/A2, dated 14.07.2021.



2.Vide impugned transfer order, the writ petitioner, who was working as Revenue Assistant, Rajapalayam Municipality was transferred to Sattur Municipality.

3.Mr.Mohammed Imran, learned Counsel for the petitioner submits that the petitioner was transferred vide impugned order on 14.07.2021 by the second respondent based on the recommendation of the third respondent dated 12.07.2021. According to him, the third respondent himself was transferred from the post of the Commissioner, Rajapalayam Municipality to other place on 09.07.2021. Thereafter, the third respondent, levelling certain allegations against the petitioner, made a recommendation on 12.07.2021 to the second respondent, the Regional Director of Municipal Administration, Tirunelveli Region, to transfer the petitioner to some other place and based on such recommendation the petitioner was transferred by the second respondent on 14.07.2021.

4.According to the learned Counsel for the petitioner, the entire scenario would reveal that the impugned order of transfer is punitive in nature and therefore, the impugned transfer order is liable to be quashed based on the law laid down by the Hon'ble Apex Court in Somesh Tiwari Vs Union of India and Ors, reported in ILR [2006]MP 1390. Further he has also relied on the following judgments in support of this contention

1.P.Karunakaran Vs Union of India and others, reported in 2013 SCC OnLine Mad 3958;

2.Dr.A.Jayachitra Vs the Principal Secretary / Member, Sports Development Authority of Tamil Nadu, Chennai in W.P.No.12552 of 2020, dated 11.12.2020;

3.Narasingaraja Vs The Director General of Police, in W.P(MD)Nos.10759 of 2021, etc., batch, dated 28.10.2021.

5.Mr.Dilip Kumar, learned Counsel appearing for the third respondent, the Commissioner, Rajapalayam Municipality, submits that the transfer of the petitioner is purely on administrative reasons and in the absence of any material it cannot be alleged that transfer of the petitioner is punitive in nature.

6.Insofar as the recommendation of the third respondent dated 12.07.2021, he has circulated the files pertaining to the same. He also submits that when the transfer order had been effected on administrative grounds, there is no necessity for providing the documents mentioned in the reference. The order of transfer is not a punishment and it is passed only based on administrative grounds. The power available under the statutory provisions for an officer of the municipality to be transferred from one place to another place, on administrative reasons has been upheld in a recent judgment of the first bench of this Court in **State of Tamil Nadu vs P.Subbuthai**,

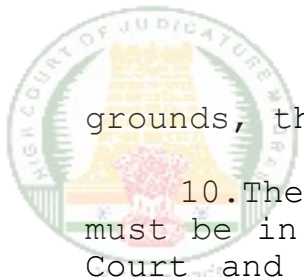


reported in 2021-1-WLR-1.

7.This Court paid its anxious consideration to the rival submissions and perused the materials placed on record.

8.By the order impugned in this writ petition, the petitioner has been transferred from Rajapalayam Municipality to Sattur Municipality on administrative grounds. Transfer is incidental to service and also a condition to service. The authority is empowered to transfer any employee from one place to another place on administrative grounds. However, if such transfer is punitive in nature, then the Court can interfere with the same as per the dictum laid down by the Hon'ble Apex Court in **Somesh Tiwari Vs Union of India and Ors.**

9.In this case, the petitioner who was working as Revenue Assistant, has been transferred from Rajapalamayam Municipality to Sattur Municipality during the non transferable period. The respondents claim that not only the petitioner has been transferred, but several other staff have also been transferred during the said period. Though the impugned transfer order refers that the order of transfer has been passed on administrative grounds, the order has been passed based on the letter of the third respondent in Na.Ka.No.C1/4687/2020, dated 12.07.2021. Admittedly, the third respondent Commissioner, Rajapalyam Municipality, made recommendation to the second respondent the Regional Director of Municipal Administration on 12.07.2021 and based on the recommendation, the second respondent passed the impugned order on 14.07.2021. The learned Counsel for the petitioner has made out a case that the recommendation dated 12.07.2021 itself has been made by the third respondent, after he has been transferred from the said place on 09.07.2021. The fact remains that the second respondent, Regional Director has also been transferred on 12.07.2021. No doubt the impugned order refers that the order of transfer has been passed only on administrative grounds. The respondents even in the counter affidavit filed by them, are not in a position to state on what administrative ground the petitioner has been transferred. However, on the directions of this Court, the files pertaining to Na.Ka.No.C1/4687/2020, dated 12.07.2021 is placed before this Court. Perusal of the same shows that the third respondent has reported that the petitioner has failed to collect tax to the tune of Rs.20,56,952/-. Averments are found in the proceedings dated 12.07.2021, attributing misconduct as against the petitioner that he has not discharged his duty diligently. In such case, instead of straightaway transferring the petitioner from his place, he must be provided with an opportunity of hearing and enquiry should have been conducted before transferring the petitioner. If an employee's performance is not satisfactory in one place, how can it be expected that his performance would be satisfactory in another place. This Court is not satisfied with the reason that on administrative



grounds, the petitioner was transferred.

10. The Employer should be a role model and the administration must be in a fair and transparent manner. Since the Hon'ble Supreme Court and the High Courts are not interfering with the transfer orders passed on administrative grounds, there cannot be transfers on *mala fide* or punitive transfers under the guise of administrative grounds and the employer cannot use the administrative grounds as shelter and shield, for the transfers passed on *malafide* or with an ulterior motive. It would be relevant to refer to the decision of this Court in W.P.No.12252 of 2020, dated 11.12.2020, which is as follows:

"33. In the absence of any administrative requirement or exigencies, any transfer order issued in such situation and terming the same as being issued on the ruse of administrative requirement, may have to ultimately pass the test of judicial review. Merely because the transfer order is couched in such hackneyed, oft repeated and routine administrative terminology, unless the reason set forth in the transfer order when questioned, is established factually to the satisfaction of this Court, a ritualistic and cliched expression "administrative reasons" in the transfer order, cannot be taken at its face value and the relief refused to the affected individuals. In this case, though the petitioner failed in other fronts of attack, ultimately, this Court finds that the transfer of the petitioner is not based on administrative requirement, but, for an extraneous reason and therefore, the transfer order is liable to be set aside only on that ground. As stated above, this Court perused the relevant files and did not discover a modicum of material supporting the respondent's plea of administrative requirement for transferring the petitioner to Tiruvannamalai. It is well within the power of the Court to pierce the veil of the fig leaf behind the transfer order and to hold that the impugned action of the respondent authority stemmed from a colourful exercise of power on his part and hence, liable to be interfered solely on the well established legal premise namely the transfer is hit by malice in law."

The above order has also been upheld by a Hon'ble Division Bench of this Court in W.A(MD)No.7 of 2021, dated 08.09.2021.



11. In the present case, the recommendation has been made by the third respondent on 12.07.2021, after he has been transferred from Rajapalayam Municipality on 09.12.2021, the transfer order was passed by the second respondent on 14.07.2021, wherein he has already been transferred from his place on 12.07.2021. The manner in which and the circumstances under which recommendation has been made and transfer order has been passed, clearly expos that it is a punitive transfer with an element of malafide and there is no administrative exigency as claimed.

12. It is reported that pending this writ petition, a third person has joined in the post of Revenue Assistant in Rajapalayam in the place of the petitioner. The impugned order was passed on 14.07.2021. This writ petitioner has approached this Court on 16.07.2021, this Court has granted an order of interim stay on 20.07.2021 itself and subsequently the third person has joined in the place. Instead of permitting this petitioner in the Rajapalayam Municipality, pursuant to the orders of this Court, a third person has been allowed to join in the said post in the place of the petitioner. Therefore, this Court deems it fit to set aside the order impugned in this writ petition.

13. This writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

dsk

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Director of Municipal Administration,
Office of the Director Municipal Administration,
Chennai - 600 028.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Regional Director of Municipal Administration,
Tirunelveli Region,
Tirunelveli.

3.The Commissioner,
Rajapalayam Municipality,
Rajapalayam,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-38601[F] dated 14/12/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-38662[F] dated 14/12/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-38720[F] dated
14/12/2021)

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