



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.13789 of 2020

and W.M.P. (MD) No.11439 of 2020

(Through Video Conference)

A.Paulraj Pandian

Vs

... Petitioner

1. The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai 600 004
2. The Commissioner of Police,
Madurai City, Madurai.
3. The Assistant Commissioner of Police,
Thallakulam(L& O) Range,
Madurai City, Madurai.
4. The Inspector of Police,
D1 Thallakulam (L&O) Police Station,
Madurai City, Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned office order passed by the respondents 1 to 4 in C.No.566/37869/A3/2020 and CPO.No.1379/2020 order dated 24.09.2020 relieving the petitioner from 3rd respondent office and transferring him to the Superintendent of Police, Thiruvarur District, and quash the same.

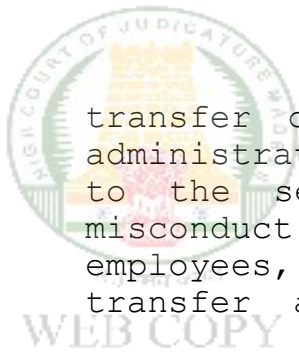
For Petitioner : Mr.Niranjana S.Kumar
For Mr.K.Gokul

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

O R D E R

The order of transfer, dated 24.09.2020 is put under challenge. It is the settled proposition that the transfer order cannot be interfered by the High Courts in exercise of its power under Article 226 of the Constitution of India except in cases of malafides or when the order is punitive in nature, etc.

2. By relying upon various incidents that had occurred in the petitioner's service, the learned counsel for the petitioner urged this Court that the order itself was punitive in nature. When the



transfer order is passed stating that the transfer is made on administrative grounds, a mere reference to some incidents relating to the service of the employees, which can be construed as misconduct on the part of the employees themselves or of the co-employees, may not be sufficient to term the consequential order of transfer as being punitive in nature.

3. When the concerned Authority is of the view that instead of initiating action for the misconduct or to avoid any further unpleasantness or to maintain a serene administration in the employment place, the decision to transfer the employee can be said to be an action taken on administrative exigencies. However, in case where the order of transfer itself reflects the delinquency and consequently the employee is transferred owing to such delinquency, such an order could be termed as punitive in nature and interference to such orders would be justifiable, since being punitive in nature.

4. The Hon'ble Supreme Court in the case of **Public Services Tribunal Bar Association vs. State of Uttar Pradesh and another** reported in (2003) 4 SCC 104 has reiterated this proposition and has held that a transfer order should not be normally interfered, except in the rarest of rare cases. Likewise, in the case of **State of Uttar Pradesh vs. Gobardhan Lal** reported in (2004) 11 SCC 402 and in **National Hydroelectric Power Corporation Ltd., vs. Shri Bhagwan and one another** reported in (2001) 8 SCC 574, it was held that the only exception in which the High Courts can interfere is on the ground of malafides or in violation of statutory powers.

5. The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in **Somesh Tiwari vs. Union of India** and others reported in (2009) 2 SCC 592. The decision is against the petitioner. The Hon'ble Supreme Court in **Somesh Tiwari's case** (cited supra) has held that it is one thing to say that the Employer is entitled to pass the order of transfer on administrative exigencies, but it is another thing to say that the order of transfer is passed, by way of or in lieu of punishment. The judgment made in **Somesh Tiwari's case** (cited supra) was to the effect that when the order of transfer is passed by lieu of punishment, the same is liable to be set aside and is also wholly illegal.

6. In the counter affidavit filed, the respondents have categorically come up with a case against that the petitioner, justifying the administrative transfer, in the following manner:

"4. With regard to paragraphs-3 & 4 of the affidavit, it is respectfully submitted that the petitioner has stated that he is serving in Armed Reserve from 22.05.2020 and made request on 22.06.2020 for home quarantine to concerned officers, but the request was rejected on 06.08.2020. On 06.08.2020 though



the petitioner was transferred to Special Juvenile Aid Police Unit, Madurai City, he intentionally quarreled with his seniors and not relieved from Armed Reserve. The petitioner has used the word "Home quarantine" as tool in order to evade from the duty. The petitioner has acknowledged the transfer order on 24.09.2020 and again he went on home quarantine from 26.09.2020 to 29.09.2020 and reported for duty on 30.09.2020. The petitioner did not submit any medical documents.

5. With regard to paragraphs-6 & 7 of the affidavit, it is respectfully submitted that due to misconduct of the petitioner, he was directed to report at Armed Reserve on 22.05.2020. As the petitioner does not mend his behaviour, he was transferred to Special Juvenile Aid Police Unit. On 01.09.2020, while the petitioner was attending check post duty at Chinthamani at 0750 hours, the petitioner contacted the Control Room through VHF and questioned the officers in a disorderly manner. His repeated misconduct in a disciplined force despite he was shown mercy many times he failed to mend his behaviour. Thus, the petitioner was transferred on administrative grounds and there is no vengeance or malafide intension."

7. Thus, it is seen that the petitioner had been indulging in various misconducts which, according to the respondents were unbecoming of a Police Head Constable. Since they were of the view that they have been given several opportunities to mend his character, he has not done so and it is in this background that he was transferred on administrative grounds. As such, the transfer order which was made on administrative grounds cannot be treated as punitive in nature.

8. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected W.M.P. (MD)No.11439 of 2020 stands closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 General of Police,
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Mylapore, Chennai 600 004
2. The Commissioner of Police,
Madurai City, Madurai.
3. The Assistant Commissioner of Police,
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Madurai City, Madurai.
4. The Inspector of Police,
D1 Thallakulam (L&O) Police Station,
Madurai City, Madurai.

+1 CC to M/s.SPL GP (SR-4672[F] dated 12/02/2021)

Order made in
W.P. (MD) No.13789 of 2020
Dated:
10.02.2021

SDS(10.05.2021) 4P 6C