



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.8231 of 2018
and W.M.P. (MD) Nos.11438, 7789 & 7790 of 2018
(Through Video Conference)

N.Kulothungan ... Petitioner

Vs

1. The Joint Director of School Education,
Chennai.

2. The Chief Educational Officer,
O/o the Chief Educational Office,
Pudhukottai.

3. The District Educational Officer,
Aranthangi, Pudhukottai District.

4. Mr.Samy Sathyamoorthy,
The District Educational Officer,
Pudukkottai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.15263/A4/E1/2018 dated 12.04.2018 and quash the same as illegal.

For Petitioner : Mr.Ajmal Khan,
Senior Counsel for
M/s. Ajmal Associates

For RR 1 to 3 : Mr.A.Thiyagarajan,
Government Advocate

O R D E R

The scope of Article 226 of the Constitution of India for interference in the transfer order, has been laid down in various decisions of the Hon'ble Apex Court as well as other High Courts. In the case of **State of Uttar Pradesh and others vs. Gobardhan Lal and others** reported in (2004) 11 SCC 402, the Hon'ble Supreme Court had held that the Courts should not normally interfere with Transfer Orders, unless it is mulcted with malafides or is violative of the



statutory provisions. Similar views have been taken in the case of

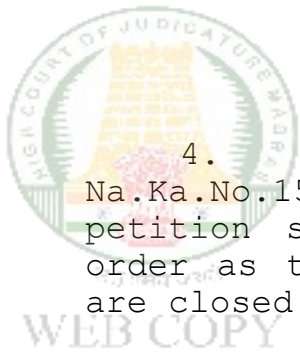
National Hydroelectric Power Corporation Ltd. Vs. Bhagwan and others reported in (2001) 8 SCC 574 and **State Bank of India vs. Anjan Sanyal** and others reported in (2001) 5SCC 508.

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2. Yet another exception where the High Court exercises its powers under Article 226 of the Constitution of India and interfere into the transfer order when it is found that the transfer order itself is punitive in nature. In the case of **Somesh Tiwari vs Union of India and others** reported in (2009) 2 SCC 592, it was held that when a transfer order is passed by way of punishment, the same is liable to be set aside. The relevant portion of the orders reads thus:-

"Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

3. In this legal background, the order impugned in the present writ petition was looked into. As per the order dated 12.04.2018, the petitioner was transferred from Manamelkudi Government Boys Higher Secondary School, Pudukkottai District to Thanjavur District. The first respondent herein, while passing the impugned order, had relied upon the enquiry report of the Chief Educational Officer and thus, effected the impugned transfer. As such, it cannot be said that the order was made on administrative exigencies, but rather punitive, since the first respondent had drawn an adverse interference from the Enquiry report against the petitioner and accordingly, transferred him. By applying the ratio held in **Somesh Tiwari's case** (cited supra), this impugned transfer order, which is punitive in nature, cannot be sustained.



4. Accordingly, the impugned order in Na.Ka.No.15263/A4/E1/2018 dated 12.04.2018 is quashed and the writ petition stands allowed accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Joint Director of School Education,
Chennai.
2. The Chief Educational Officer,
O/o the Chief Educational Office,
Pudhukottai.
3. The District Educational Officer,
Aranthangi, Pudhukottai District.

+1 CC to M/s.GP (SR-3988[F] dated 09/02/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-3901[F] dated 09/02/2021)

Order made in
W.P. (MD)No.8231 of 2018
Dated:08.02.2021

RM(07.05.2021) 3P 6C