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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.1217 OF 2022

A.Rajeswari

... Petitioner

.Vs.

1. The Chief Educational Officer,
Namakkal District,
Namakkal.

2. The District Educational Officer,
Namakkal District,
Namakkal.

3. The Block Educational Officer,
Namakkal District,
Namakkal.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the issued by the 2nd Respondent in Na.Ka.No.10974/A7/2021 dated 05.01.2022 and consequential order of the 3rd Respondent issued in Na.Ka.02/A4/2021 dated 05.01.2022 and quash the same and to issue consequential directions to the Respondent to allow the petitioner to serve as secondary Grade Teacher at Panchayat Inion Elementary School, Perumapatty.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.V.Nanmaran
Additional Government Pleader

O R D E R

Challenging the impugned order passed by the 2nd Respondent in Na.Ka.No.10974/A7/2021 dated 05.01.2022 and consequential order of the 3rd Respondent issued in Na.Ka.02/A4/2021 dated 05.01.2022, the present writ petition has been filed.



2. The petitioner is presently working as secondary grade teacher in Panchayat Union Elementary School, Perumapatty from the year 2014 and she has been consistently rendering sincere and efficient service, earning appreciation from all quarters without giving room to any complaint, whatsoever. Based on the complaint received against the Headmistress of the school namely A.Jothi, enquiry was conducted by the 2nd & 3rd respondents only as against the said headmistress and submitted their report. But no such enquiry was conducted involving the petitioner neither by the 2nd respondent/Block Educational Officer nor by the 3rd respondent/District Educational Officer. That being the position, the respondent has passed the impugned transfer order in proceedings in Na.Ka.No.10974/A7/2021 dated 05.01.2022, transferring the petitioner and the Headmistress of the school to Panchayat Union Primary School, Pudukottai in the guise of Administrative Transfer. Hence the impugned order is liable to be quashed.

3. The learned Additional Government Pleader has filed counter affidavit, wherein it is stated that at the time of enquiry, the 2nd respondent found that the petitioner incited the parent not to send their children and casual road block. Hence it was decided that her continuance would harm to the development of the school, hence transferred on administrative grounds. It is also stated in the counter affidavit that both the petitioner and the headmistress had brought disrepute to the school administration, the impugned transfer came to be passed by the respondents, therefore there is no violation on the part of the respondents in passing the impugned transfer order.

4. Heard both sides and perused the materials available on record.

5. The contention of the learned counsel for the petitioner is that when it is specifically stated in the complaint that action to be taken only against the Headmistress of the school and the respondent have also conducted an enquiry as against the headmistress alleging certain misconduct, the action of the respondents, transferring the petitioner along with the said headmistress on administrative grounds without affording any opportunity, is liable to be set aside as against the petitioner as the same is punitive in nature. It is also contended that the School Management Committee also passed resolution to retain the petitioner in the same place.



6. At this juncture, it is pertinent to refer the decision of this Court made in W.P.(MD) Nos.10759 & etc., batch, dated 28.10.2021, wherein this Court by relying upon the various decisions of the Hon'ble Division Bench of this Court and following the decision of the Hon'ble Supreme Court, has held as follows;

"19. In K.M.Elumalai vs. The Superintendent of Prisons, Central Prison-II and another [CDJ 2009 MHC 4819], this Court, by taking note of catena of decisions of the Honourable Apex Court, has held as follows:

"12.The above said principles of law evolved by the English Courts would clearly lead to the conclusion that while acting upon a fact the person who exercises the power treating the said fact as conclusive will have to satisfy himself about the due proof of the same before taking any action based upon the same. In other words when a power is vested upon an authority the said authority will have to exercise the said power only in the manner known to law which is by giving a sufficient opportunity to the person against whom the action is proposed. The basic requirement of the said principle is to inform the person concerned about the charges levelled against him and thereafter affording an opportunity to put forth his case followed by a further opportunity to peruse the materials placed against him and cross-examine the witnesses who deposed against him.

13.It is no doubt true that an order of transfer is incidental to the service but the question for consideration is as to whether such an order can be passed in total violation of principles of the natural justice and by dispensing with the enquiry.

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20.Therefore this Court is of the opinion that the impugned orders passed by the respondents will have to be set aside being punitive in nature and therefore bad in law in not following the principles of natural justice, by affording an opportunity to the petitioner and by conducting an enquiry.

21.The proceedings are also liable to be set aside since the respondents have come to the conclusion



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based upon a discreet enquiry which is again based upon the statement obtained from persons behind the back of the petitioner. Even in an enquiry a statement obtained in a preliminary enquiry prior to a full-fledged enquiry cannot be relied upon. Therefore in such a case an order passed based upon such an enquiry cannot be sustained. In the judgment reported in (2006) 2 MLJ 202 [T.PITCHAI vs. DEPUTY INSPECTOR GENERAL OF POLICE, TIRUNELVELI RANGE, TIRUNELVELI AND ANOTHER] the Hon'ble High Court after considering the judgment of the Hon'ble Apex Court and the Division Bench judgment of the Hon'ble High Court was pleased to hold that the punishment based upon a statement given a preliminary enquiry cannot be sustained. The Hon'ble High Court has observed as follows:

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22.The learned Government Advocate made strong reliance upon the judgment of the Hon'ble Apex Court reported in (2004) 4 SCC 245 [UNION OF INDIA AND OTHERS vs. JANARDHAN DEBANATH AND ANOTHER] and submitted that under Fundamental Rules 15 an order of transfer can be passed even in a case of misbehaviour or misconduct by the employee concerned. It is a well settled principle of law that a judgment will have to be applied to the facts of each case, in the said case the Hon'ble Apex Court was dealing with the case where based upon certain allegation an order of transfer was made by exercising the power under the Fundamental Rules. Therefore, the Hon'ble Supreme Court was considering the powers of the authorities under the said Rules. Moreover a reading of the said judgment would show that it was clearly observed that the question of misbehaviour can be gone into departmental proceedings whereas in the present case it has been clearly stated by the respondents that they have no intention to go with the departmental proceedings since they know very well that it is not possible to prove the factum of the alleged misconduct by the petitioner.

23.Moreover the interpretation of Fundamental Rules 15 is not in question in the present case since the power has been exercised by the first respondent under the Tamil Nadu Jail Subordinate Rules. Further a reading of the Fundamental Rules would



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show that the power has to be exercised by the Government whereas in the present case on hand the said power has been exercised under the Tamil Nadu Jail Subordinate Rules by the first respondent herein. In this connection, it is useful to refer the judgment of the Division Bench reported in 2009 (3) CTC 97 [D.Sivakumar v. The Government of Tamil Nadu] wherein the Hon'ble Division Bench has observed as follows:

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24. Similarly in the judgment reported in 2009 AIR SCW 942 [COMMISSIONER OF CENTRAL EXCISE, BANGALORE v. SRIKUMAR AGENCIES] the Hon'ble Supreme Court has observed as follows:

"4. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgements. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (1951 Apex Court 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge." In *Home Office v. Dorset Yacht Co.* (1970(2) All ER 294) Lord Reid said, "Lord Atkin's speech.... is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: One must not, of course, construe even a reserved judgment of



Russell L.J.as if it were an Act of Parliament."
And, in *Herrington v. British Railways*

Board(1972(2) WLR 537) Lord Morris said:

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"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

5.Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between on case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

"25.Therefore on a reading of the said judgments, this Court is of the opinion that the judgments relied upon by the learned Government Advocate do not apply to the present case on hand.

26.Thus on a consideration of the facts and circumstances and also on a consideration of the legal issues involved, this Court is of the considered view that the impugned orders passed by the respondents are liable to be set aside. Accordingly they are set aside and the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed."

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23. In *Somesh Tiwari's* case (supra), the Honourable Apex Court has held as follows:



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"19. 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.

20. 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.

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25. No vigilance enquiry was initiated against him. The order of transfer was passed on material which was not existent. The order, therefore, not only suffers from total non application of mind on the part of authorities of respondent No.1, but also suffers from malice in law.

26. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India must consider the fact of each case. Mechanical application of the normal rule "no work no pay" may in a case of this nature, be found to be wholly unjust. No absolute proposition of law in this behalf can be laid down."

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28. In view of the above settled legal position, this Court is of the opinion that when transfers are effected after preliminary enquiry on the complaints/allegations, it should necessarily be followed up by a detailed investigation and disciplinary proceedings initiated on the allegations resultantly found to be substantiated. However, in the present case, prima facie it is



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found that disciplinary proceedings were initiated and charge memos were issued only when the matter was taken up for hearing that too after the matter was being adjourned on several occasions, which is contrary to the aforesaid G.O.Ms.No.10, dated 07.01.1994 and the clarificatory letter dated 09.08.1994. Even on perusal of the impugned transfer orders, it is seen that the same were passed on the administrative grounds, however, in the counter affidavit filed by the respondents, it is stated that based on the discreet enquiry report, the impugned transfer orders were passed. Further, according to the respondents, the impugned transfer orders were passed to avoid more complications in the prison administration. That apart, the respondents have not initiated disciplinary proceedings immediately after the incident had taken place and only in the month of September, 2021, by way of filing additional counter affidavit, it was brought to the notice of this Court that disciplinary proceedings have been initiated against the petitioner for the incident alleged to have been taken place in the month of April, 2021 and in the counter affidavit filed in the month of August, 2021, there is no whisper about the disciplinary proceedings against the petitioners and only after the matter was taken up for hearing, disciplinary proceedings were initiated and charge memos were issued to the petitioner. Hence, this Court comes to a conclusion that the impugned transfer orders are punitive in nature and there is violation of the principles of natural justice on the part of the respondents and therefore, the respondents have not followed the clarification order issued by the Government and the decision in the case of Elumalai's case (supra) would therefore squarely apply to the facts and circumstances of the present case. Hence, the respondents have violated the principles of natural justice as observed in the aforesaid decision. Hence, for all these reasons, the impugned transfer orders are liable to be set aside.

7. On the facts of the present case on hand, in the counter affidavit, the respondent has specifically contended that there was a complaint against the Headmistress of the school, as a result parents stopped their children to attend the school. Further it is also stated that at the time of enquiry, the 2nd respondent found that the petitioner incited the parents not to



send their children, therefore, it was decided to transfer the petitioner to another Panchayat Union School on administrative reasons.

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8. It is also stated in the counter affidavit that at the time of enquiry by the 2nd respondent, it was proved that the petitioner has been the root cause for the parent agitation in front of the school and brought discredit to the administration of the school, therefore, the impugned order has been passed as against petitioner on administrative grounds.

9. The counter affidavit filed by the respondents clearly reveals that the impugned transfer has been passed against the petitioner based on the complaint. If such allegations are made against the petitioner and proved during the enquiry as against the petitioner, the impugned transfer order passed on the administrative reasons cannot be accepted as the same is punitive in nature.

10. In view of the decision of this Court cited supra and the submissions made by both the learned counsels as discussed above, this Court is of the view that the impugned order of transfer passed as against the petitioner on administrative reasons is liable to be quashed.

11. Accordingly the impugned order dated 05.01.2022 passed by the respondents is quashed. The writ petition is allowed to the above extent. No costs. Liberty is granted to the respondents, if necessary, to issue fresh orders in accordance with law. It is also open to the respondents to proceed with the disciplinary proceedings against the petitioner based on the complaint, if she really desires.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Chief Educational Officer,
Namakkal District,
Namakkal.



2. The District Educational Officer,
Namakkal District,
Namakkal.

3. The Block Educational Officer,
Namakkal District,
Namakkal.

+1cc to Mr.M.Ravi, Advocate, S.R.No.11385
+1cc to the Government Pleader, S.R.No.11576

W.P.NO.1217 OF 2022

SR(CO)
PBS/22/02/2022