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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.2593 OF 2022
AND WMP.NO2734 OF 2022

K.Raja

...Petitioner

vs.

- 1.The Director of Town Panchayat,
M.R.C.Nagar, Santhome,
Chennai-600 028.
- 2.The District Collector,
Tiruppur District, Tiruppur.
- 3.The Assistant Director of Town Panchayat,
Erode, Erode District.
- 4.The Assistant Director of Town Panchayat,
Tirunelveli,
Tirunelveli District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the entire records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.No.18010-5/2021/P2 dated 06.01.2022 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.A.M.Ayyadurai,
Government Advocate for R1 to R4

O R D E R

By consent, this Writ Petition is taken up for final disposal. The petitioner, challenging the impugned order of transfer passed by the second respondent dated 06.01.2022, transferring the petitioner from Kannivadi Town Panchayat Executive Officer (temporary) to Tirunelveli Division Assistant Director of Town Panchayats, has filed the present writ petition.



2. The grievance of the petitioner is that he has been frequently transferred from one station to another and the reason stated in the present impugned order is on administrative ground. According to the petitioner, though the copy of the impugned order of transfer has been marked to the petitioner, the same has not been communicated to the petitioner.

3. The third respondent has filed a counter affidavit stating that while the petitioner was working in Kannivadi at Tiruppur District, the first respondent has received a complaint from public of Kannivadi on the allegation of demanding bribe for property tax assessments and therefore, the first respondent was constrained to transfer the petitioner from Kannivadi Town Panchayat to the office of the Assistant Director of Town Panchayat, Tirunelveli Division, as Executive Officer Selection Grade (Admin- Adhoc). It is further stated in the counter affidavit that during the year 2019, sanitary workers of Uthukuli Town Panchayat abstained and boycotted their duty complaining that the petitioner used to ill treat them with abusive words and therefore he was transferred to Uthankarai Town Panchayat and while he was working as Uthankarai, he was placed under suspension, vide order dated 29.06.2020 and thereafter, he was reinstated into service in pursuant to the order passed by this Court on 23.03.2021, directing that the petitioner may be posted in a non-sensitive post. It is stated that the petitioner did not join duty at Tirunelveli as per the impugned order and without joining duty, he has applied for medical leave and not reported to duty and therefore, there is no lapse on the part of the respondents.

4. The primordial contention of the learned counsel for the petitioner is that the impugned transfer order has not been served to the petitioner, but in the counter affidavit it is stated by the third respondent that the impugned order has been served to the petitioner. A perusal of the impugned order would disclose that it has been passed on administrative grounds, based on the complaint received from public on the allegation of demanding bribe for property tax assessments. If that being so, the respondents ought to have afforded opportunity to the petitioner and thereafter should have passed appropriate orders.

5. 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, in a matter challenging the transfer order, 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



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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 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



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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 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,



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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 MacDermot 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:

"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:



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"Each case depends on its own facts and a close similarity between one 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:

"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



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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 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



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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."

6. In the case on hand, though it is stated in the impugned order that the order of transfer has been passed on administrative grounds, a reading of the counter affidavit would disclose that the same has been passed as a punitive measure. In view of the decision of this Court cited supra, this Court is of the view that the impugned order of transfer passed against the petitioner on administrative reasons is liable to be quashed.

7. Accordingly the impugned order of the second respondent in Na.Ka.No.18010-5/2021/P2 dated 06.01.2022 is quashed. 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 it really desires. Consequently, connected miscellaneous petition is closed.

8. The Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

Jvm

To

1.The Director of Town Panchayat,
M.R.C.Nagar, Santhome,
Chennai-600 028.

2.The District Collector,
Tiruppur District,
Tiruppur.



3.The Assistant Director of Town Panchayat,
Erode, Erode District.

4.The Assistant Director of Town Panchayat,
Tirunelveli,
Tirunelveli District.

+1cc to Mr.C.Prakasam, Advocate, Sr.No.18313

+1cc to the Government Pleader, Sr.No.18791

W.P.No.2593 of 2022

MT(CO)
RVM(08/04/2022)