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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.5880 of 2020

and

W.M.P.Nos. 6892, 6894, 8329 and 13896 of 2020

D.Sathiyaseelan

... Petitioner

vs.

1. The Joint Director (Personnel)
Directorate of School Education,
College Road,
Chennai - 600 006.
2. The District Educational Officer,
District Educational Office,
Chidambaram,
Cuddalore District.
3. The District Educational Officer,
District Educational Office,
Nagapattinam,
Nagapattinam District.
4. A.Kandasamy

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records pertaining to the order made in Na.Ka.No.0707/A3/E1/2020 dated 26.02.2020 issued by the 1st respondent and quash the same.

For Petitioner : Mr.G.Pugazhenth

For Respondents: Mr.V.Manoharan
Additional Government Pleader
(for R1 to R3)

: Mr.G.Sankaran (for R4)



O R D E R

This writ petition has been filed seeking to issue a Writ of Certiorari, calling for the records pertaining to the order made in Na.Ka.No.0707/A3/E1/2020 dated 26.02.2020 issued by the 1st respondent and quash the same.

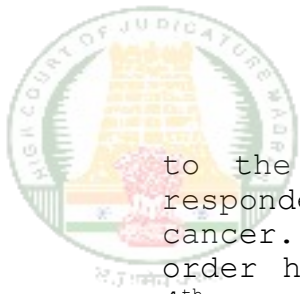
2. According to the petitioner, the petitioner was appointed as Junior Assistant in the year 1984 and thereafter, he was promoted to the post of Assistant in the year 2002 and posted at Assistant Elementary Educational Office, Melmalaiyanur, Villupuram District. Thereafter, he was promoted as Superintendent by the 1st respondent by an order dated 05.02.2005 and posted at Assistant Elementary Educational Office, Cuddalore. Thereafter, he was transferred to District Educational Office, Cuddalore on 15.04.2015. Thereafter, he was promoted as Personal Assistant to District Educational Officer, Thoothukudi by an order dated 28.02.2018 and thereafter, he was transferred to District Educational Office, Chidambaram by an order dated 10.08.2018.

3. According to the petitioner, there were some irregularities in the administration of the 2nd respondent office and thus, he made representations dated 04.12.2019, 09.12.2019, 11.12.2018 and 31.01.2020 to the District Educational Officer, Chidambaram to enquire into the allegations and irregularities committed by the office.

4. While that being so, the petitioner made a representation dated 05.12.2019 for transferring him from the 2nd respondent/office to District Educational Office, Cuddalore District, since the petitioner's wife viz., M.Vetriselvi has been working as a Secondary Grade Teacher in St.Saveriyor Middle School, Cuddalore District. The 4th respondent, who worked as Superintendent in the 2nd respondent/office, was promoted as Personal Assistant and transferred to the 3rd respondent/office by an order dated 17.02.2020 by the 1st respondent.

5. It is further stated that the petitioner was transferred from the 2nd respondent/office to 3rd respondent office by the 1st respondent by an order dated 26.02.2020. In order to take revenge against the petitioner, the petitioner has been transferred to the 3rd respondent/office, wherein the 4th respondent has now been promoted and working as a Personal Assistant in the 3rd respondent/office. Therefore, the petitioner has challenged the said impugned order before this Court by way of filing the instant writ petition.

6. The 1st to 3rd respondents have filed counter affidavit, wherein it has been stated that the 4th respondent made a request



to the official respondents for transferring him to the 3rd respondent/office on the ground that he was suffering from cancer. Considering the said request, the impugned transfer order has been passed by the 1st respondent by transferring the 4th respondent to the 3rd respondent/office. Therefore, there is no mala fide intention as alleged by the petitioner and it is baseless. Thus, the same is liable to be rejected.

7. The petitioner being a Government Servant has to abide the service conditions and the said impugned transfer order is a service condition for the employer to transfer the petitioner on administrative grounds. Such order cannot be challenged, unless it has been made in mala fide intention or any other consequence.

8. In such circumstances, the learned counsel appearing for the 4th respondent has also denied the aforesaid allegations of the petitioner and he has filed counter affidavit, wherein it has been stated that the 4th respondent has been suffering from cancer and hence, he was relieved and joined in the 3rd respondent/office for taking treatment in Chidambaram and Chennai. Only for the aforesaid reason, the said impugned transfer order has been passed by the 1st respondent.

9. In view of the aforesaid fact, the impugned transfer order has been passed by the 1st respondent only on the administrative grounds and the 1st to 3rd respondents also stated in the counter affidavit that due to illness of the 4th respondent, his request was considered and he was promoted and transferred from Chidambaram to Nagapattinam District. Therefore, the said allegation of the petitioner made against the 4th respondent is misconceived, baseless and does not warrant interference.

10. It is pertinent to rely upon the decision of the Hon'ble Supreme Court in the case of Mrs. Shilpi Bose Vs. State of Bihar reported in AIR 1991 SC 532 which held that, the Courts should not interfere with the transfer orders made on administrative reasons unless there is violation of any mandatory statutory rule or on the ground of mala fide intention. The relevant portion of the judgment is extracted below;

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to



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be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department...."

11. Further in W.P.(MD)Nos.24247 and 24250 of 2019 (LM.Salim & another Vs. Principal Chief Security Commissioner, Railway Protection Force, Southern Railway Chennai & 3 others), reported in (2021 SCC Online MAD 13363), wherein I had an occasion to deal with the similar issue in detail by relying upon various decisions of the Hon'ble Supreme Court and held that in the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. The relevant portion is extracted hereunder:-

"7. That apart, administrative transfers are the prerogative of the Department concerned and the competent authorities are the best persons to assess and act accordingly. However, those competent authorities should act in the interest of public and in the event of any illegality or some personal motive, then alone, the employee can approach the Court of law for appropriate remedy. In other words, if an order of transfer is issued with malafide intention or in violation of the statutory rules, then alone a writ petition can be entertained. Even in such cases, the allegation of malafide intention must be substantiated in the writ proceedings and the official concerned must be impleaded as party respondents in the writ proceedings. In the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. Transfer is an incidental to service, more so, a condition of service. Public servant is liable to work wherever he is posted in the interest of public administration. On accepting the offer of appointment, a person is agreeing for the conditions of service and transfer being incidental, he must be in a position to work, wherever he is posted.

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9. In State of U.P. and others vs. Siya Ram and others [(2004) 7 SCC 405], the Honourable Supreme



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Court has held that unless the order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer / management, as against such orders passed in the interest of administrative exigencies of the service concerned.

10. Further, in *Airports Authority of India vs. Rajeev Ratan Pandey and others* [(2009) 8 SCC 337], the Honourable Supreme Court has held that in the matter of transferring Government employees, the scope of judicial review is limited and the High Courts should not interfere with an order of transfer lightly.

11. In the instant case, on perusal of the materials available on records, this Court does not find any mala fide exercise or violation of any statutory provision on the part of the respondents and therefore, the impugned transfer orders and the consequential relieving orders do not warrant any interference of this Court and the writ petitions are therefore liable to be dismissed."

12. Considering the aforesaid submissions made by the parties and in the light of the decisions cited supra, there is no merit in the instant writ petition and it is liable to be dismissed.

13. Accordingly, the writ petition stands dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Director (Personnel)
Directorate of School Education,
College Road,
Chennai - 600 006.
2. The District Educational Officer,
District Educational Office,
Chidambaram,
Cuddalore District.
3. The District Educational Officer,
District Educational Office,
Nagapattinam,
Nagapattinam District.

+lcc to Mr.G.Pugazhenthii, Advocate, S.R.No.26926
+lcc to the Government Pleader, S.R.No.27326

W.P.No.5880 of 2020

RSI[co]
NSK 29/04/2022