



WEB COPY

W.P(MD)No.442 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.442 of 2022

and

W.M.P. (MD)No.344, 346 and 906 of 2022

T.Tamilselvan

... Petitioner

versus

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary
to Government,
Home (Prison-I) Department,
Secretariat, Chennai - 9.
2. The Director General of Police
Director General of Prisons and
Correctional Service,
Chennai - 8.
3. The Deputy Inspector General of Prisons,
Deputy Inspector General of Prisons and
Correctional Service,
Arasaradi, Madurai,
Madurai District.

... Respondents

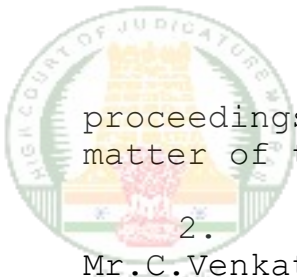
Prayer:-Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records relating to the impugned transfer order passed by the first respondent in his proceedings in G.O.(Rt).No.652, Home (Prison-I) Department dated 28.12.2021 and consequential order passed by the second respondent in his proceedings in No.33526/CS2/2021, dated 29.12.2021 and quash the same as illegal.

For Petitioner : Mr.M.AJMAL KHAN,
Senior Counsel
assisted by Mr.C.VENKATESH KUMAR, Advocate

For Respondents : Mr.VEERA KATHIRAVAN,
Additional Advocate General
assisted by MR.J.ASHOK
Additional Government Pleader

ORDER

The petitioner, who is working as a Superintendent of Prison, was transferred from Central Prison, Madurai to Central Prison, Cuddalore, vide G.O.(Rt).No.652, Home (Prison-I) Department, dated 28.12.2021. This Government Order dated 28.12.2021 and the consequential order passed by the second respondent in his

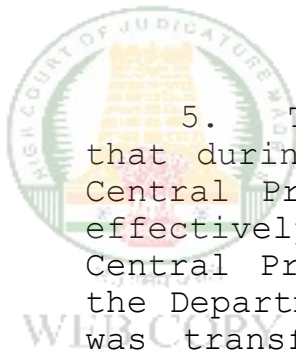


proceedings in No.33526/CS2/2021 dated 29.12.2021 are the subject matter of this writ petition.

2. Mr.M.Ajmal Khan, learned Senior Counsel, assisted by Mr.C.Venkatesh Kumar, learned counsel appearing for the petitioner submits that the petitioner, who is aged about 59 years, in his verge of retirement, was transferred from Central Prison, Salem to Central Prison, Madurai, only on 24.06.2021. However, within six months, the petitioner is again transferred from Central Prison, Madurai to Central Prison, Cuddalore, by the orders impugned in this writ petition. The petitioner is also taking care of his aged parents and he is now transferred to a far away place, which is approximately 300 kms, from the present station. This order is passed without any reason for such transfer and also in violation of the transfer policy as enunciated in G.O.Ms.No.10, Personnel and Administrative Reforms (PER S) Department, dated 07.01.1994. Though the transfer is an incident of service, the petitioner is transferred indiscriminately twice within six months. Considering the age of the petitioner, his dependents and the frequent transfer made within six months, this Court, at the time entertaining this writ petition, granted an order of interim stay on 11.01.2022.

3. The learned Additional Advocate General, assisted by Mr.J.Ashok, learned Additional Government Pleader, objects the order of interim stay and submits that due to his mismanagement, maladministration, the administration in the Central Prison is very much affected and a riot had also taken place in the Central Prison and therefore, in order to ensure an effective administration in a prison, like, the Central Prison, Madurai, the petitioner has been transferred from Madurai to Cuddalore. He requested for a short accommodation and also filed counter affidavit on behalf of the respondents on 19.01.2022. Apart from the counter affidavit, the report of Deputy Inspector General of Prisons, Madurai, to the Director General of Prisons is also placed before this Court in a sealed cover.

4. The learned Additional Advocate General, by referring the counter affidavit filed by the respondents, submits that the Central Prison, Madurai, is one of the oldest prison lying in the middle of the city and it is prone to the communal clashes. Though the capacity of prison is to hold upto 1252 prisoners, there are more than 1800 inmates inside the Central Prison, Madurai, which requires vigilant supervision. But, the same is lacked in Madurai Central Prison, due to the lethargic attitude of the petitioner. The third respondent has received more than ten individual complaints as against the petitioner on his activities and performance and the third respondent has also submitted a report to the first respondent. In order to avoid security / administrative lapses, the petitioner was transferred from Madurai to Cuddalore.



5. The learned Additional Advocate General further submits that during his administration, a riot had taken place inside the Central Prison and the petitioner has failed to prevent the same effectively. In order to avoid any major untoward incidents in the Central Prison, Madurai and to avoid any further embarrassment to the Department of Prison, as a precautionary measure, the petitioner was transferred from the Central Prison, Madurai. The learned Additional Advocate General has also relied upon the following Judgments of the Hon'ble Supreme Court and this Court in support of his submissions:

(i) **Registrar General, High Court of Judicature of Madras vs. R.Perachi and others**, reported in (2011) 12 SCC 137, and

(ii) **R.Anitha vs. Commissioner of Police and others**, reported in 2019 SCC Online Mad 19061.

6. In response to the counter and the submissions of the learned Additional Advocate General, Mr.M.Ajmal Khan, learned Senior Counsel submits that the order of transfer is made without any reason and it must be either on administrative reasons or on public grounds. By the counter affidavit, the respondents are attempting to attribute certain reasons, which would expose that the impugned order of transfer is passed only as an order of punishment and therefore, the impugned order is liable to be set aside. The learned Senior Counsel has also relied upon the Judgment of the Hon'ble Supreme Court in **Somesh Tiwari vs. Union of India and others**, reported in (2009) 2 SCC 592, in support of his submissions.

7. This Court paid its anxious consideration to the rival submissions made and also perused the materials available on record.

8. Transfer is an incident of service and the scope of Judicial review is very limited. If the transfer is made on administrative grounds, the Courts are not supposed to substitute their own decision, without knowing the exact requirement of particular Department. Before deciding the issue involved in this case, it is useful to refer the ratio laid down by the Hon'ble Supreme Court on the scope of judicial review by the Courts on transfer.

9. In **N.K.Singh vs. Union of India**, reported in 1994 6 SCC 98, the Hon'ble Supreme Court has held as follows:

"23. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which



alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

10. In ***State of M.P. vs. S.S.Kowrav*** reported in **(1995) 3 SCC 270**, the Hon'ble Supreme Court has held as follows:

"4. The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

11. In ***Airports Authority of India vs. Rajeev Ratan Pandey*** reported in **(2009) 8 SCC 336**, the Hon'ble Supreme Court has held as follows:

"10. In a matter of transfer of a government employee, [the] scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer."

12. In ***Somesh Tiwari vs. Union of India and others***, reported in **(2009) 2 SCC 592**, the Hon'ble Supreme Court has held as follows:

"16. 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."

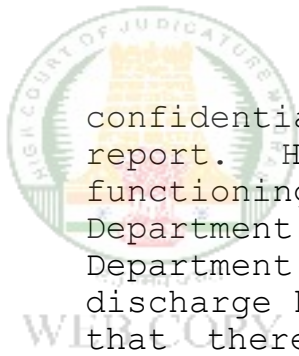
13. In **Registrar General, High Court of Judicature of Madras vs. R.Perachi and others**, reported in (2011) 12 SCC 137, the Hon'ble Supreme Court has held as follows:

"As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the unit concerned. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the decision of the then Chief Justice to transfer him outside that district could not be faulted."

14. This writ petition is filed as against the order of transfer. The scope of judicial review is very limited as stated supra. The grievance of the petitioner is that within six months, he was transferred twice. The petitioner, who is working as Superintendent of Prison, was transferred from Central Prison, Salem, to Central Prison, Madurai, only on 24.06.2021 and by the order impugned in this writ petition, he is again transferred from Madurai to Cuddalore. The petitioner, who is taking care of his parents, is now posted approximately 300 kms. away from the present station.

15. The respondents take a stand that serious complaints were received against the petitioner and due to the lethargic attitude in performing his duties and certain incident had taken place in Madurai Prison and in order to avoid security /administrative lapses and to avoid any major untoward incident, as a precautionary measure, the petitioner was transferred from Central Prison, Madurai to Central Prison, Cuddalore in the interest of Prison administration.

16. Apart from the counter affidavit, the report of Deputy Inspector General of Prison, Madurai, to the Director General of Prison is also placed before this Court in a sealed cover. The incidents referred in the report are very shocking and it is the duty of the respondents to rectify those incidents mentioned in the report. Since the report is submitted in a sealed cover as a



confidential document, this Court is not elaborating more on the report. However, it exposes the manner in which the Department is functioning and it is the responsibility of the Head of the Department to ensure that the majesty and the integrity of the Department is upheld. Every Government servant is expected to discharge his duty diligently and effectively and to ensure the same that there is a hierarchy in the administration. The higher officials are expected to extract work from their subordinates and to ensure that they are discharging their duty diligently and efficiently. While ensuring so, it is also the responsibility of the higher officials that their subordinates are working in a comfortable zone.

17. Keeping this in mind, the Government has also framed certain guidelines for transfer. If Government servants are transferred in the middle of the Academic year, they have to search for suitable schools or colleges to their wards and they have to find out suitable hospitals for treatment, if any required for their family members. Transfer is not the only way for an effective administration and it can also be extracted by proper supervision.

18. The petitioner is working as Superintendent of Prison. The Superintendent is the officer-in-charge of a prison. Under Rules 20 and 21 of the Tamil Nadu Prison Rules 1983, certain duties and responsibilities are imposed on the Superintendent of Prison. It is also the duty of the higher officials, namely, the respondents 1 and 2 to ensure that the Superintendent of Prison is discharging his duty diligently. As rightly pointed out by the learned Additional Advocate General, the Madurai Central Prison is a sensitive place, where there are more than 1800 inmates and it requires effective administration and the petitioner was transferred in the process of administration.

19. In view of decision rendered by the Hon'ble Apex Court, in **Registrar General, High Court of Judicature of Madras vs. R.Perachi and others**, reported in **(2011) 12 SCC 137**, this Court is not inclined to interfere with the orders impugned in this writ petition.

20. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (A.D.II)

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23/02/2022
Sub Assistant Registrar(CS)



To

1. The Additional Chief Secretary
to Government,
State of Tamil Nadu,
Home (Prison-I) Department,
Secretariat, Chennai - 9.
2. The Director General of Police
Director General of Prisons and
Correctional Service,
Chennai - 8.
3. The Deputy Inspector General of Prisons,
Deputy Inspector General of Prisons and
Correctional Service,
Arasaradi, Madurai,
Madurai District.

+1 cc to M/s.AJMAL ASSOCIATES, SR.No.2295

+1CC to Special Government Pleader SR.No.2390

W.P(MD)No.442 of 2022

and

W.M.P. (MD)No.344, 346 and 906 of 2022

24.01.2022

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