



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2022

CORAM :

WEB COPY

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) Nos.719 & 963 of 2022

K.Ephram ...Petitioner in both WPs
Vs.

1.The District Collector,
Collectorate, Thoothukudi,
Thoothukudi District.

2.The Chief Educational Officer,
O/o, the Chief Educational Officer,
Thoothukudi,
Thoothukudi District.

...Respondents in both WPs

PRAYER in W.P(MD) No.719 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order in Na.Ka.No.7323/A2/2021, dated 10.01.2022, on the file of the respondent No.2 and quash the same as illegal.

PRAYER in W.P(MD) No.963 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondents from showing the post of the Headmaster at Arulmigu Senthilandavar Government Boys Higher Secondary School, Tiruchendur, Thoothukudi District as vacant and filling it up in the forthcoming general transfer counselling.

For Petitioner :Mr.S.Louis for Mr.K.Thirumalsamy
For Respondent :Mr.S.Saji Bino,
Special Government Pleader
(in both WPs)

C O M M O N O R D E R

Writ Petition in W.P.(MD) No.719 of 2022 is filed, as against the order of transfer.

2.Writ Petition in W.P.(MD) No.963 of 2022 is filed for a Mandamus, to direct the respondents, to keep one post of Headmaster as vacant till the disposal of these writ petitions.

3.Since the issues involved in these Writ Petitions are interlinked and filed by the same petitioner, these Writ Petitions are heard together and disposed of by way of this common order.



4.The case of the petitioner is that the petitioner is working as Headmaster of Arulmigu Senthilandavar Government Boys Higher Secondary School, Tiruchendur. Based on the complaint given by one Jeyabal, Post Graduate Assistant, who is visually challenged person, the District Educational Officer along with the Social Welfare Officer conducted an enquiry and made recommendation, as if the petitioner's attitude is against the said Jeyabal, thereby the petitioner has been transferred from Tiruchendur to Kovilpatti.

5.Mr.Louis, learned counsel appearing for the petitioner, by referring the Judgment of the Hon'ble Supreme Court in **Somesh Tiwari vs. Union of India and others**, reported in (2009) 2 SCC 592 submits that the impugned order of transfer is passed only as an order of punishment. He further submits that the petitioner is going to retire on his attaining superannuation during July 2022, he has been transferred far away from the existing place i.e, more than 100 kms. Therefore, he prays to set aside the order of transfer.

6.Mr.S.Saji Bino, learned Special Government Pleader appearing for the respondents submits that the transfer is not only an incident of service, but also a condition of service. He further submits that the ratio laid down by the Hon'ble Supreme Court in **Somesh Tiwari vs. Union of India and others**, reported in (2009) 2 SCC 592 will not applicable to the present case on hand. He further submits that after conducting enquiry, by affording an opportunity to the petitioner, recommendation for transfer of the petitioner was made. More over, in order to maintain the conducive atmosphere in the School, the petitioner, who is working as Headmaster, was transferred from Tiruchendur to Kovilpatti. Hence, there is no need to interfere with the order of transfer.

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

8.The petitioner, who is working as Headmaster of Arulmigu Senthilandavar Government Boys Higher Secondary School, Tiruchendur has been transferred to V.O.C. Government Boys Higher Secondary School, Kovilpatti. On perusal of the impugned order itself shows that there was some dispute between the petitioner and one visually challenged Teacher and on account of which, an enquiry was conducted by the District Educational Officer along with the Social Welfare Officer and they have recommended for transfer of the petitioner, in order to maintain conducive atmosphere in the School. As rightly pointed out by the learned Special Government Pleader that the transfer is an incident of service and also a condition of service. The scope of Judicial review with regard to transfer is very limited. At this juncture, this Court wants to refer the following judgments for better appreciation.



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."



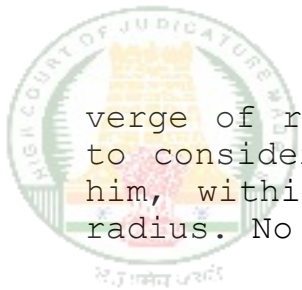
12. In **Somesh Tiwari vs. Union of India and others**, reported in (2009) 2 SCC 592, the Hon'ble Supreme Court has held as follows:

"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. In view of the foregoing discussions with the aforesaid citations, W.P.(MD) No.719 of 2022 is dismissed. In view of the order passed in W.P.(MD) No.719 of 2022, W.P.(MD) No.963 of 2022 is closed. However, considering the submission made by the learned counsel appearing for the petitioner that the petitioner is at the



verge of retirement, there shall be a direction to the respondents to consider the case of the petitioner sympathetically, by posting him, within any of the vacancy, which is available within 50 kms radius. No costs.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn

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 District Collector,
Collectorate,
Thoothukudi,
Thoothukudi District.

2.The Chief Educational Officer,
O/o, the Chief Educational Officer,
Thoothukudi,
Thoothukudi District.

+1 CC to M/s.SPL.GP (SR-3146[F] dated 31/01/2022)

+1 CC to M/s.K.THIRUMALASAMY, Advocate (SR-3004[F] dated 31/01/2022

+1 CC to Mr.S.LOUIS, Advocate SR.3002

Common Order made in
W.P(MD) Nos.719 & 963 of 2022
28.01.2022

SK (CO)

TR(22.02.2022) 5P 6C