



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.1104 of 2022

and

W.M.P. (MD) Nos.913, 915 & 1776 of 2022

WEB COPY

P.Ganesan

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep., by its Additional Chief Secretary,
Social Welfare and Women Empowerment Department,
Secretariat, Fort St. George, Chennai-600 009.

2.The Commissioner/Director,
Department of Social Defense,
New No.300, Purasawalkam High Road,
Kellys, Chennai-600 010.

3.R.Sundar

... Respondents

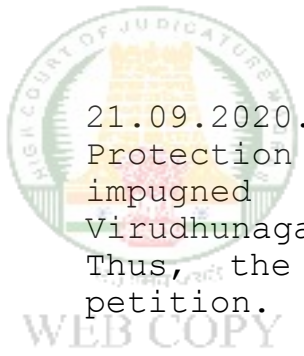
Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned orders of transfer issued by the 1st respondent in G.O.(pa) No.08 (Social Welfare and Women Rights (Sa.Na.8(2) Department) dated 19.01.2022 and the consequential order of the 2nd respondent in No.260/a1/2022 dated 19.01.2022, quash the same and direct the 1st and 2nd respondents herein to transfer the petitioner to Madurai District based on the request made by the petitioner on 07.11.2019 and 21.09.2020.

For Petitioner	:	Ms.A.Amala
For RR1 & 2	:	Mr.A.Veerakathiravan, Additional Advocate General assisted by Mr.A.K.Manikkam, Special Government Pleader
For R3	:	Mr.D.Shanmuga Raja Sethupathi

O R D E R

The *lis* on hand has been instituted questioning the validity of the order of transfer issued by the 1st respondent - Government in G.O.(pa) No.8 (Social Welfare and Women Rights [Sa.Na.8(2)] Department), dated 19.01.2022.

2.The petitioner seeks a direction to accommodate him in Madurai District based on his request dated 07.11.2019 and
<https://hcservices.ecourts.gov.in/hcservices/>



21.09.2020. The petitioner is presently working as District Child Protection Officer in Virudhunagar District. Pursuant to the impugned order, the petitioner has been transferred from Virudhunagar to Mayiladuthurai District on administrative grounds. Thus, the petitioner is constrained to move the present writ petition.

3.The learned counsel appearing on behalf of the petitioner strenuously contended that the petitioner has been incorrectly transferred to Mayiladuthurai on administrative grounds. The respondents have not substantiated the administrative grounds in their counter. The petitioner is having meritorious service throughout his career. The petitioner has already made a request to accommodate him in Madurai District. Thus, the impugned order of transfer is punitive and not in accordance with the established principles.

4.The learned counsel for the petitioner is of an opinion that administrative transfers can be issued only if the respondents could able to substantiate the ground. However, in the present case, there is no such proof to establish. Contrarily, in the counter affidavit, they have stated that there are complaints against the petitioner. However, the petitioner has not received any proceedings regarding the initiation of disciplinary proceedings. By stating that there are complaints against the petitioner, an order of transfer has been issued and therefore, it is punitive in nature and consequently, liable to be set aside.

5.In support of the contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of **Arvind Dattatraya Dhande vs. State of Maharashtra** reported in **(1997) 6 SCC 169** and the relevant portion reads as follows:-

"6.In view of the unimpeachable and eloquent testimony of the performance of the duties, it will be obvious that the transfer is not in public interest but is a case of victimisation of a honest officer at the behest of the aggrieved complainants carrying on the business in liquor and toddy. Under these circumstance, as stated earlier, the transfer of the appellant is nothing but mala fide exercise of the power to demoralise honest officers who would efficiently discharge the duties of a public office."

6.In the case of **R.Kalpana vs. State of Tamil Nadu [W.P.No.30092 of 2017 dated 30.01.2019]**, the learned Single Bench of this Court made an observation as follows:-

"15. Admittedly, in this case, no charge memo was issued to the petitioner and on the other hand, the suspension order issued on him was also revoked on

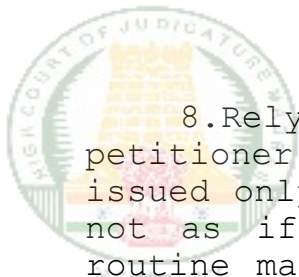


23.1.2013. No doubt, the transfer is not a punishment and it is only an incident of service. There is no quarrel about the said proposition. At the same time, if it is admitted that the employee was transferred as a punitive measure or preventive measure, then such transfer takes a different colour and shape in the eye of the employee not as an incident of service but as a punishment out of an untold charge levelled against him."

7. In the case of **P.Karunakaran vs. Union of India** reported in **2013 SCC OnLine Mad 3958**, the Hon'ble Division Bench of this Court made an observation as under:-

"13. Thus, it is crystal clear that on the date when the transfer order was issued, the suspension order was in force and therefore, there cannot be any doubt to hold that the transfer order, even though styled as an administrative measure, in fact came to be passed only on collateral purpose as a punitive measure. If the affected person challenges the transfer order by contending that it was made as a punitive measure by raising various grounds, the Court can lift the veil to find out as to whether it was made on administrative grounds as stated in the transfer order or as a punitive measure as contended by the affected party. But in this case such exercise of lifting the veil is also not warranted and the respondents have not given scope for such exercise, when they have specifically admitted in their counter that the transfer order came to be made taking note of the gravity of the incident that took place on 14.12.2012 and also to boost the morale of the public servants on duty. At this juncture, it is useful to extract the relevant averments made at paragraphs 10 of the counter affidavit as follows:-

"10. I submit that the petitioner, a professional Boxer appointed under the Sports Quota had a dubious history of various minor and major misconducts and imposed with penalties. The same had not improved his conduct and further, he had gone to the extent of assaulting the public servants on duty. In view of the gravity of the incident that took place on 14.12.12 and also to boost the morale of the public servants on duty, a proposal was sent to the Railway Board to transfer the petitioner out of Southern Railway with immediate effect in the interest of the administration. "



8.Relying the above judgments, the learned counsel for the petitioner reiterated that transfer on administrative grounds may be issued only if the administrative grounds are substantiated. It is not as if the authorities can issue an order of transfer in a routine manner affecting the normal life of the petitioner and his family. Though the learned counsel for the petitioner made a submission that the petitioner has rebutted the allegations made against him in his reply affidavit filed to the counter affidavit, this Court is of the considered opinion that those allegations are remaining only as complaints as per the department and no actions are initiated and thus, no adjudication is required in this writ petition. Further the writ petition is filed challenging the order of administrative transfer and thus, those allegations may not be required for the purpose of adjudication of the issues connected.

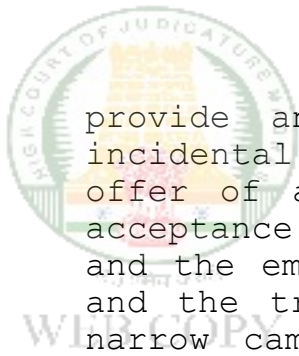
9.The learned Additional Advocate General appearing on behalf of the State objected the contentions of the petitioner by stating that the petitioner is working in the District Level Post, which is District Child Protection Officer. It is the responsible position and the duties attached to the post are onerous. District Level Officers are to be transferred on administrative grounds for the purpose of effective administration. The petitioner all along is working near by Madurai District and therefore, in the interest of public administration and considering the administrative necessity, the writ petitioner was transferred from Virudhunagar to Mayiladuthurai and it cannot be considered as a far of place.

10.The learned Additional Advocate General made a submission that no doubt complaints are received against the writ petitioner. However, they are in the process of enquiry and such complaints or allegations are no way connected with the administrative transfers. Accordingly, the writ petition is to be rejected.

11.The learned Additional Advocate General made a submission based on the counter affidavit that out of 30 years of service, the petitioner has served 24 years in Madurai District and remaining period, he served in Virudhunagr and Sivagangai.

12.The learned counsel for the 3rd respondent made a submission that the 3rd respondent was transferred to Madurai and he has joined at Madurai and is working. Therefore, he need not be unnecessarily disturbed at the instance of the writ petitioner. The petitioner, no doubt, made a request to transfer him to Madurai and as pointed out by the learned Additional Advocate General, the writ petitioner is working in and around Madurai District for about 30 years and therefore, the writ petition is to be rejected.

13.Considering the arguments as advanced by the learned counsel for the petitioner, the learned Additional Advocate General and the learned counsel for the 3rd respondent, the principles governing the



provide any right to a Government employee. Transfer is an incidental to service, more so a condition of service. When an offer of appointment is issued by the competent authorities, the acceptance of appointment is implied that the transfers are agreed and the employment is a contract between the employer and employee and the transfer being incidental, the scope for challenge is in narrow campus. Thus, when there is no right in the matter of transfer and transfers are not affecting the service conditions of an employee, then the entertainability of the writ petition is to be considered.

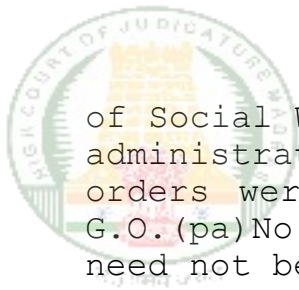
19.As stated above, entertainability rests on limited grounds viz., (i) without jurisdiction; (ii) mala fide; and (iii) punitive, if established with sufficient materials to the satisfaction of the Courts.

20.In this context, let us consider whether the order of transfer impugned in the present writ petition is to be interfered with. The order of transfer impugned in G.O.(pa).No.8 dated 19.01.2022 reveals that 13 officials working in the rank of District Child Protection Officers are transferred based on the proposal submitted by the Head of the Department, viz., Commissioner of Social Welfare. Some officers are transferred on administrative grounds and some officers are transferred on request. Therefore, perusal of the order reveals that certain routine transfer proceedings were undertaken by the authorities and they have effected transfers both on administrative grounds and also on the basis of the request made by the officials concerned, as the case may be.

21.As far as the petitioner is concerned, he is transferred from Virudhungar to Mayiladuthurai on administrative grounds.

22.The learned counsel for the petitioner though contended that the reasons for administrative transfer are not substantiated, this Court is of the considered opinion that such reasons need not be stated in the order of transfer. Administrative ground is the prerogative of the executives. Administrative grounds cannot be defined in a particular manner. When the constitution mandates efficient public administration, the authority concerned would be the best person to decide and post the employees in a particular place or post. The decision making power of the authorities in the matter of administrative reasons, if interfered, then no doubt, Courts are exceeding its jurisdiction of power of judicial under Article 226 of the Constitution of India.

23.The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which is decision is taken by the competent authority in consonance with the provisions of the statutes and rules, but not the decision
<https://hccres.courts.gov.in/reserve> Therefore, the processes adopted are that the Commissioner



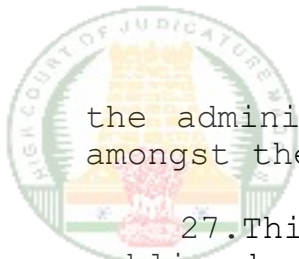
of Social Welfare sends proposal based on various reasons, including administrative reasons in certain cases and accordingly, transfer orders were issued transferring 13 officials by the Government in G.O.(pa)No.8 dated 19.01.2022. Thus, the said administrative reason need not be interfered with by the Courts in a writ proceedings.

WEB COPY

24.Regarding the judgments relied on by the petitioner, this Court is of the opinion that in the case of **Arvind Dattatraya Dhande** (supra), the Hon'ble Supreme Court made an observation that "it will be obvious that the transfer is not in public interest but is a case of victimisation of an honest officer at the behest of the aggrieved complainants". In the present case, no doubt, respondents 1 and 2 say that there are complaints against the petitioner, however, actions are yet to be initiated on that. It is contended that those complaints are under enquiry stage and in lieu of disciplinary proceedings, these officials are transferred on administrative ground in order to avoid further conflict in a particular place or post. Therefore, the impugned transfer order cannot be construed as punitive and the principles laid down in the above judgment are of no application in respect of the case on hand.

25.In the case of **R.Kalpana** (supra), the learned Single Bench of this Court made an observation that transfer is not a punishment and it is only an incident of service. If it is admitted that the employee was transferred as a punitive measure or preventive measure, then such transfer takes a different colour and shape in the eye of the employee. With reference to the above observations, it is reiterated by the Apex Court that punitive transfers if established, then it is to be interfered, but mere receipt of complaint from the public in general, an official is transferred on administrative grounds, such transfers cannot be construed as punitive in all circumstances. The nature of punitive and the manner in which the employee was treated for imposing transfer is to be considered by the Courts with reference to the materials available on record.

26.More precisely, there are many complaints against the public officials in common parlance. General public are giving complaints and some complaints are motivated and some complaints require enquiry. However, if the higher officials receive frequent complaints against an officer in a particular manner or regarding certain instances, then it is the subjective satisfaction of the competent authority concerned to take a decision and the Courts cannot play any role in such decision of the administrative authorities. In the process of administration, an executive takes a decision considering the nature of complaints and the seriousness involved and further enquiry to be conducted, if necessary. Such a process is an administrative process, which is the day-to-day administration and in the event of interference by the High Courts, it would be undoubtedly, a tedious affair for the executives to run



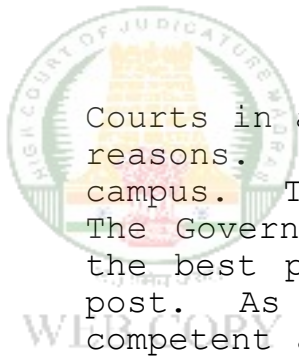
the administration in a peaceful manner and to enforce discipline amongst the employees, which is of paramount importance.

27. This Court cannot brush aside the general allegations in the public domain against the public servants. There are large scale corruption in Government Departments. People are not only lamenting, even for their rightful claims, bribes are demanded. Under these circumstances, administrative transfers are warranted and therefore, the Courts are expected to exercise restraint in exercise of the power of judicial review under Article 226 of the Constitution of India and the discipline to be maintained in public service is also to be considered by the Courts, while interfering with such administrative transfers.

28. One or two decades back, the working atmosphere in Government Offices are entirely different which cannot be compared with the present day administration. Therefore, those judgments delivered some years back, may not have much relevance with reference to the current day affairs in the Government departments and in the perspection of the public at large.

29. In respect of the judgment in the case of **P. Karunakaran** (supra), relied on by the writ petitioner, the Hon'ble Division Bench of this Court considered a particular fact that the petitioner in the writ appeal before the Division Bench was under suspension when the order of transfer was issued. Therefore, the Hon'ble Division Bench formed an opinion that the transfer was punitive. However, those facts are distinguishable with reference to the facts of the presence case on hand and thus, the decision taken by the Hon'ble Division Bench in that case is of no avail to the writ petitioner.

30. Government servants play a significant role in running the administration of our great nation. They are important constituents of the administrative set up of our nation. They are the pillars of the Government Departments on whose shoulders, the responsibility to implement the Government policies lies. They provide public services to the citizen at the grass root level and in the same way, they forward the grievances of the public, their representations and demands to the higher for their effective resolution. The Government employees have different work culture and responsibility as compared to the counterparts in private sectors. They are smartly paid and they have some kind of perquisites given to them but at the same time, they have heavy responsibility to the Government in particular and public in general. These Government employees enjoy a special status. They are receiving a decent salary from the taxpayers money. In the event of encouraging the district level officers, to choose the place and post in a particular manner, this Court is of the considered opinion that the administrative discipline will certainly parallelize and under those circumstances, the administrative reasons place a dominant role.



Courts in all circumstances cannot interfere with the administrative reasons. Administrative reasons cannot be defined in a narrow campus. There may be several instances of administrative reasons. The Government may have decided that a particular officer will be the best person to tackle certain issues in a particular place or post. As stated earlier, it is the subjective satisfaction of the competent authority and therefore, the power of judicial review and its scope are undoubtedly limited and under these circumstances, this Court is of the opinion that the petitioner has not established any exceptional or extraordinary circumstances for the purpose of interfering with the order of administrative transfer which is impugned in the present writ petition.

31. Further, the petitioner has already served 24 years in Madurai District and 6 years in and around Madurai District, viz., Virudhunagar and Sivagangai. This being the factum and considering the fact that the petitioner is working at District Level Post, this Court is not inclined to interfere with the order of transfer and accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

To

1. The Additional Chief Secretary,
The State of Tamil Nadu,
Social Welfare and Women Empowerment Department,
Secretariat, Fort St. George, Chennai-600 009.

2. The Commissioner/Director,
Department of Social Defense,
New No.300, Purasawalkam High Road,
Kellys, Chennai-600 010.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-6945[F] dated 18/02/2022)

+1 CC to M/s.A.AMALA, Advocate (SR-7000[F] dated 18/02/2022)

+1 CC to M/s.SPL GP (SR-7120 & 7623[F])

W.P. (MD) No.1104 of 2022

17.02.2022

KMV (CO)

<https://hccs7.courts.gov.in/services> 6C