



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.21436 of 2021

W.M.P(MD).Nos.18003, 18004 & 18006 of 2021

1.K.Mathi

State Tax Officer (CIW-1),
O/o.The Joint Commissioner, (ST) (INT),
Tirunelveli,
Tirunelveli District.

2.C.Duraiappa

State Tax Officer (Inspection),
O/o.The Deputy Commissioner, (ST),
Tirunelveli,
Tirunelveli District.

3.G.Rajadurai

State Tax Officer (Inspection),
O/o.The Deputy Commissioner, (ST),
Tirunelveli,
Tirunelveli District.

... Petitioners

Vs.

1.The State of Tamil Nadu

Rep.by its Principal Secretary/Commissioner of
Commerical Taxes,
Chepauk,
Chennai-600 005.

2.The Joint Commissioner, (ST) and (Intelligence),

O/o.The Joint Commissioner (ST) and (Intelligence),
A.R.Line,
Palayamkottai,
Tirunelveli District.

... Respondents

Prayer:-Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Ceritorari, calling for the records relating to the impugned order passed by the first respondent vide his proceedings in P1/01-17/55/2021 dated 15.11.2021 and quash the same as illegal.



For Petitioner : Mr.M.Ajmal Khan
Senior Counsel for
M/s.Ajmal Associates
For Respondents : Mr.A.K.Manikkam,
Special Government Pleader

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O R D E R

The order of administrative transfer dated 15.11.2021 is under challenge in the present writ petition.

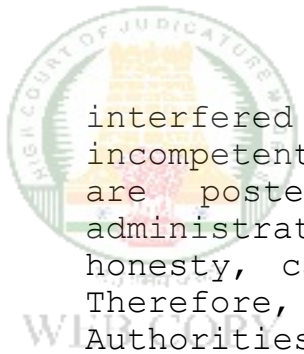
2. The petitioners are working as State Tax Officers and a general transfer order has been issued to 71 officers on administrative grounds.

3. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that the order of transfer is punitive in nature, in view of the fact that the petitioners are directed to be posted in non-sensitive post in their Division. When there is a specific remark that the petitioners must be posted in non-sensitive post, it is to be construed as punitive.

4. The learned Special Government Pleader appearing for the respondents made a submission that the order of administrative transfer has been issued based on the assessment made by Superior Officials and therefore, it is not punitive. This apart, routine administrative transfers are issued based on administrative exigencies and therefore, the petitioner cannot have any grievance in this regard.

5. The learned Senior Counsel reiterated that the counter filed by the respondent reveals that they are prepared to consider the cases of genuine officers, who are thriving heart for the welfare of the department and two such cases were considered by the Department itself and they were transferred. Therefore, the petitioner may be provided with an opportunity to approach the Competent Authorities.

6. A perusal of the order reveals that the general transfer and posting are issued on administrative reasons and in public interest. When the administrative reason and the public interest has been stated, the Courts cannot interfere with such orders of transfer in routine manner. The petitioners state that a direction to post them in non-sensitive post has been issued. The said direction is also having a meaning, in view of the fact that the Higher Officials post the officials, considering their antecedents, complaints or capacity etc., That exactly is the reason why the administrative reasons are held to be the prerogative of the Competent Authorities. The Competent Authorities are the best persons to assess who must be placed in a particular post. Court cannot interfere with such day-to-day administration of the Government. An order of transfer can be



interfered with only if it is tainted with malafides or issued by incompetent Authority, but not otherwise. Therefore, the officials are posted in sensitive post or non-sensitive post. Such administrative decision is taken, considering the integrity, honesty, capacity and other abilities of the Officials concerned. Therefore, such administrative reasons assessed by the Competent Authorities are the prerogative and the scope of judicial review under Article 226 of the Constitution of India is undoubtedly limited. Though the Authorities have stated that they shall be given posting in non-sensitive posts, that does not mean that all the seventy one transfers are to be given in non-sensitive posts, which may not be possible and relevant. Therefore, an assessment is to be made by the Competent Authorities with reference to the character, honesty, integrity and the capacity of the Officials to deal with the cases in sensitive post. The Commercial Tax Department is a sensitive department wherein men of integrity and honesty are posted in key post. That exactly is the reason why the Officials are mentioning that if there is any complaint against any officials or their performances are not to the satisfaction of the superior officials, then such persons are to be posted in non-sensitive post.

7. The principles governing the transfers are to be considered by this Court, at the first instance.

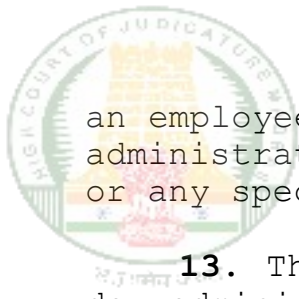
8. Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Act No.14 of 2016) governs the powers of authorities to transfer government employees.

9. Section 48 stipulates 'posting and transfer'. Sub-section (1) contemplates that 'a member of a service or class of service may be required to serve in any post both on the cadre of such service or class for which he is qualified'.

10. Sub-section (3) contemplates 'notwithstanding anything contained in this Act or any special rules or adhoc rules, the Government may transfer any Government servant from one revenue district to another revenue district within the State, on administrative grounds.'

11. The power of transfer conferred on the Government under Section 48 of the Act is absolute. Even sub-section (3) contemplates, on administrative grounds, the Government, notwithstanding the provisions of the Act or any special rules or adhoc rules, may issue orders of transfer on administrative grounds.

12. Let us consider the spirit of this provision. Transfers are issued on administrative grounds for efficient and effective public administration. Efficient public administration is the constitutional mandate and under those circumstances, the act intended to provide an absolute power to the Government to transfer



an employee from one revenue district to another revenue district on administrative grounds notwithstanding anything contained in the act or any special rules or adhoc rules.

13. Thus, this Court is of the considered opinion that day-to-day administration of the Government vests with the executives. The day-to-day administration are to be effectively monitored and regulated by the competent authorities. Courts are not expected to interfere with the day-to-day administration of the Government departments. No doubt, on exceptional circumstances, the Court can entertain writ petitions, where an order of transfer is under challenge on certain limited grounds. If any order of transfer has been passed without jurisdiction or allegations of mala fides are raised or in certain exceptional circumstances, where materials are available to establish that the transfer is punitive, then the Courts can interfere, in order to mitigate the exceptional circumstances advanced. However, the scope of interference is undoubtedly limited and in the event of frequent interference by the Constitutional Courts in the matter of administrative transfer, the executives may not be in a position to run the administration in a smooth manner.

14. The next question arises, whether transfer gives a right to a government employee. The answer would be that transfer would not 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.

15. 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.

16. 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 itself. 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



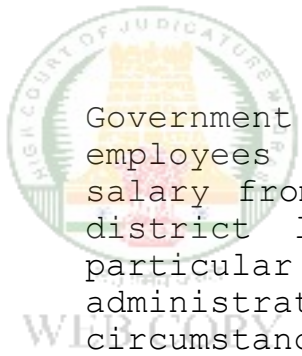
administrative reason need not be interfered with by the Courts in a writ proceedings.

17. 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.

18. 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.

19. 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.

20. 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.

21. In view of the facts and circumstances, this Court is not inclined to interfere with the order of administrative transfer issued. If at all the petitioners are aggrieved or having any personal grievance or otherwise, it is always left open to them to approach the Competent Authorities for re-dressal of their grievances. Right of representation is always available to the persons who are having certain grievances.

22. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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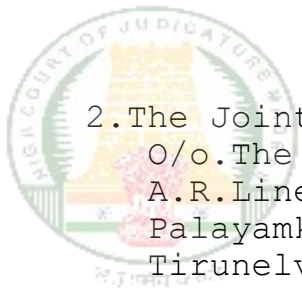
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Sub Assistant Registrar(CS)

ssb

To

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Commerical Taxes,
Chepauk,
Chennai-600 005.



2.The Joint Commissioner, (ST) and (Intelligence),
O/o.The Joint Commissioner (ST) and (Intelligence),
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Palayamkottai,
Tirunelveli District.

+1 CC to M/s.Ajmal Khan (AJMAL ASSOCIATES), Advocate (SR-14775[F]
dated 28/03/2022)

+1 CC to M/s.SPL GP (SR-14898[F] dated 28/03/2022)

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