



W.P.No.6314 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **V.LAKSHMINARAYANAN**

W.P.No.6314 of 2013

and

M.P.No.2 of 2013

V.Ramani

... Petitioner

Vs

The Secretary to Government,
School Education (A2) Department,
State of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the order of punishment passed in Government Order in G.O.(1D) No.23, School Education (A2) Department dated 18.01.2012 on the file of the respondent and quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.V.M.Ravichandran
Special Government Pleader



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ORDER

The petitioner was appointed as a District Educational Officer in the year 1977. He reached to the post of Director of Public Libraries in July 2007. He was to retire on 31.03.2009. A day before his retirement, he was placed under suspension on the ground that during his tenure as the Director of Public Libraries, he had passed twelve orders transferring subordinate officers. The Charge Memo alleged that it attracts Rule 20 (1) of the Tamil Nadu Government Servants Conduct Rules, 1973. The said rule reads as follows:-

“20 (1) Every member of the service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service”

2. The petitioner retired from his service on 31.03.2009.

On receipt of the Charge Memo dated 30.03.2009, he gave an explanation on 13.04.2009. Nearly a year later, the “Enquiry Officer” submitted a report that the charges of transfer had been proved. On 18.01.2012, the petitioner was awarded with a punishment of deduction of Rs.6220/- per month from his pension for a period of two years. Challenging the same, the present writ petition has been filed.



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3. Mr.S.Doraisamy, learned counsel appearing for the petitioner would submit that it is a violation of Rule 56(1)(c) of the Fundamental Rules, as no order was passed retaining the petitioner in service until the enquiry is conducted and a final order is passed thereon by the competent authority.

4. The learned counsel for the petitioner would rely upon the order of this Court in the case of **Kootha Pillai vs. The Commissioner, Municipal Administration**, reported in 2009 (1) MLJ 761. Following this order, two other decisions have held, an order is mandatory under Rule 56 (1) (c) of the Fundamental Rules.

5. Mr.U.M.Ravichandran, learned Special Government Pleader appearing on behalf of the respondent would submit that the petitioner passed frequent orders of transfers and appointment and yet again, re-transferred the said officials to their original places. Thus, he would submit that these acts of the petitioner is against Rule 20 (1) of the Tamil Nadu Government Servants Conduct Rules, 1973.



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6. He would further submit that Rule 9(2)(a) of the Tamil Nadu Pension Rules, permits continuance of disciplinary enquiry. He would point out that the rule would state that if the proceedings had been instituted while he was in service, it is deemed to continue under the said Rule.

7. He would also point out that an “Enquiry Officer” was appointed on 07.09.2009 and the response given by the writ petitioner was not satisfactory.

8. He would also point out that the question of retaining a person under Rule 56 (1) (c) of the Fundamental Rules will apply only, if it is proposed to impose a major punishment under Rule 8 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. Therefore, there is no necessity for the Government to pass a separate order.

9. I have heard the learned counsels on either side and perused the materials available on record.



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10. A perusal of the Tabular Column given in the counter affidavit would show that the transfers were on administrative grounds or on the grounds of request made by the concerned government servants to be re-transferred to their original place.

11. Factum that the transfers were made, is not disputed by either side. It is also not a dispute that the persons who were transferred were re-transferred to their original place on their request.

12. It is a settled position of law that transfer is an incident of service, which can be exercised by a superior authority, who is transferring the concerned person.

13. The fact that the writ petitioner as the Director of Public Libraries, had transferred the concerned individuals found in the Tabular Column in the counter affidavit is not disputed. It is also not the case of the respondent that the orders were malafide in nature or that there were any complaints from any quarter.



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14. The order which has been challenged in the writ petition merely concludes that Rule 20 (1) of the Tamil Nadu Government Servant Conduct Rules, 1973, has been violated. It does not state as to how and in what manner, the petitioner failed to maintain integrity and devotion to duty.

15. Rule 20 (1) of the Tamil Nadu Government Servant Conduct Rules, 1973, is a serious charge as against the concerned individual and exercising the powers of transfer which was vested in him cannot be said to be an act of failing to exercise duty.

16. Out of the 12 transfers, the petitioner had re-transferred few of the subordinates considering the request made by them which shows that he had complied with the laws and thereafter passed appropriate orders on re-transfer.

17. Further to state that Section 9 (2) (b) of the Tamil Nadu Pension Rules, is an exception under Rule 56 (1) (c) of the Fundamental Rules is contrary to the position laid down by this Court in the aforesaid judgement.



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18. Therefore, I am inclined to allow this writ petition by quashing the impugned order passed by the respondent. It is needless to state that the petitioner is also entitled to the amounts deducted from his pension pursuant to the impugned order.

19. With the above observations, the Writ Petition stands allowed.
No Cost. Consequently, connected miscellaneous petition is closed.

16.06.2023

Index : Yes/ No
Neutral Citation : Yes/No
Speaking/Non-speaking Order
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V.LAKSHMINARAYANAN, J.

rgm

To

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