



W.P.No.17896 of 2023 and W.M.P.No.17016 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
31~08~2023	11~09~2023

CORAM:
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.17896 of 2023 and
W.M.P.No.17016 of 2023

P. Selvan

... Petitioner

vs.

1. The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai-600 002.
2. The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai-600 002.
3. The Chief Engineer/Distribution,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Erode Electricity Distribution Circle,
Erode.
4. The Executive Engineer,
Operation and Maintenance
TANGEDCO, Mettur,
Salem District.

... Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India to issue
a Writ of Certiorarified Mandamus to call for the entire records relating to the



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order passed by the second respondent in Memo No.052615/G11/G.111/2023-24 dated 22.05.2023, quash the same and consequently direct the respondents to confer all consequential service and monetary benefits to the petitioner.

For Petitioner : Mr. S. Doraisamy for
Mr.M. Elumalai

For Respondents : Mr. K. Raj Kumar
[for R1 to R4]

ORDER

This Writ Petition has been filed to quash the order passed by the second respondent in Memo No.052615/G11/G.111/2023-24 dated 22.05.2023 and to direct the respondents to confer all consequential service and monetary benefits to the petitioner.

2. The Petitioner was appointed as Contract Labourer in the Respondents Board and was absorbed as Mazdoor (Trainee) during the year 2012 and thereafter appointed as Mazdoor during the year 2014. In the year 2016 he was appointed as Assistant Engineer (Electrical) and posted in Mecheri O & M Section. After completion of three year he was transferred to Kunjandaiyur O & M Section as Assistant Engineer, where he joined on 28.08.2020. However, he has been



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transferred on 07.08.2021 to North Chennai. He has challenged the said transfer order in W.P.No.26329 of 2021. This Court has granted interim order on 13.12.2021. Since the petitioner has filed the writ petition against his superiors, they have vengeance against him. The Petitioner, in fact had given a complaint to the Vigilance Department alleging corrupt practices of superior officers. Therefore, the superior officers continued to have a grudge against the Petitioner. Therefore, once again he was served with an transfer order dated 24.06.2022. However the said transfer order dated 24.06.2022 was cancelled on 30.06.2022. From 01.07.2022 the petitioner is continuously working in Kunjandaiyur O & M Section. However, the Petitioner has been once again transferred to North Chennai Thermal Power Station on 02.05.2023. Hence it is the contention that the entire transfer is punitive with motive.

3. The 4th Respondent filed a Counter denying the entire allegation. The Petitioner is in the habit of harassing the consumers and several complaint have been received against him. Therefore, the Superintending Engineer, Mettur EDC has posted the petitioner from Kunjandiyur to Poolampatti which is just 20 km. away due to the harassment of consumers. But the Petitioner instead of joining



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the said place has brought pressure on the superiors and got the same cancelled and continue to remain at Kunjandiyur. Since the consumers did not satisfy with the action taken by the superiors against the petitioner, they have started filing complaints before the Vigilance cell of the TANGEDCO. The Vigilance Department of the TANGEDCO conducted discreet enquiry on the complaints and found that the allegation against the Petitioner as true and sent a report to the transferring authority viz., the 2nd Respondent. Hence, as per the serious allegations and recommendations of the Vigilance Department, the Petitioner has been transferred. Several departmental proceedings have also already initiated against the Petitioner. Hence, opposed the writ petition.

4. It is the main contention of the learned counsel for the Writ Petitioner that the Petitioner was originally posted at Kunjandiyur in the year 2020. However, within 11 months he was transferred to North Chennai. It is his contention that while working at Kunjandiyur the senior officials pressurised the petitioner to demand illegal gratification from the consumers. Therefore he has given a complaint against the superior officials before the DVAC. Besides, he has also challenged the order dated 07.08.2021 in W.P.No.26329 of 2021. This



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Court has also granted interim stay on 13.12.2021. Thereafter, he has joined duty at Kunjandiyur on 14.12.2021. Once again he was transferred to Poolampatti on 24.06.2022, the same was subsequently cancelled on 30.06.2022. When the matter stood thus, once again the petitioner has been transferred to North Chennai on 23.05.2023. Hence it is his contention that the entire transfer has not made on administrative reasons, it only malafide and punitive nature, since the petitioner has made serious allegations against the superior officials. In support of his contention the learned counsel for the petitioner relied upon the following judgments:

- 1. Dr.A. Jayachitra vs. The Principal Secretary/Member Secretary, Sports Development Authority of Tamilnadu [W.P.No.12252 of 2020 dated 11.12.2020 Madras High Court]***
- 2. I.C.Manohar Yadav vs. The Director of Agriculture and others [W.P.No.13598 of 2022 dated 11.08.2022]***

5. Whereas the learned counsel appearing for the Respondents would submit that the allegations made by the Writ Petitioner is only to prevent the superior officials from taking any action against him. Several disciplinary



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proceedings are already pending against him. That apart the public and consumers are agitated and have given complaint to the Vigilance and the Vigilance in fact enquired and found that petitioner cannot be retained in the said place. Hence it is his contention that the entire allegations are malafide and they are only made to safeguard the petitioner. Hence opposed the Writ Petition.

6. I have perused the entire materials. Though the allegation of malafide has been raised in the Writ Petition, on the perusal of the same, makes it very clear that except the general allegation of corrupt practices and malice no specific instances was brought on record and no evidences whatsoever placed on record to substantiate the allegations. It is the person making the allegation of malafide, the onus lies on him to prove it. The law imposes upon the person levelling allegation of malafide to discharge the burden of proving such malafide action by producing the requisite materials. [**vide State of UP v. Gobardhan Lal [(2004) 11 SCC 402]**]. In the instant case, the petitioner has failed to discharge his burden to prove such allegations of malafide by producing requisite materials or to demonstrate the same either by admitted or proved facts.



7. On the other hand, the reason assigned by the respondents for the transfer of the petitioner has justification. Therefore, the contention of the petitioner that the impugned order of transfer and posting was malafide and punitive cannot be countenanced. A Government servant has no vested right to remain posted at a place of his choice or nor can he insist that he must be posted at one place or the other unless such a transfer is vitiated by violation of any statutory provision or suffers from malafides. Transfer of an employee is not only an incident inherent in terms of the appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. I take support to the above observations from the judgments of the Supreme *Court in Rajendra Singh and others v. State of Uttar Pradesh and others [(2009) 15 SCC 178]* and *U.P. v. Gobardhan Lal [(2004) 11 SCC 402]*.

8. The counter filed by the 4th Respondent makes it very clear that there are several criminal complaints and disciplinary proceedings are pending against the Petitioner. The materials also brought on record that the Additional Director General of Police (Vigilance) has conducted enquiry over the allegations levelled against the Petitioner. The Enquiry Report is also placed before this Court. After



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concluding the enquiry the Additional Director General of Police (Vigilance) by letter dated 15.05.2023 recommended to initiate Disciplinary proceedings against Mr.P. Selvan, the Petitioner herein, and also recommended to transfer from the present station to avoid untoward incidents. After this letter only the present transfer order has been passed on 05.07.2023.

9. The allegation of malafide has been specifically made against one Shanthi and also contractor one P.K. Kalaichelvan and Perumal. It is well settled that the persons against whom the allegations are raised, ought to have been made as the parties to the proceedings, which has not been done by the Petitioner. The transfer has already been passed based on the recommendations of the Additional Director General of Police (Vigilance) to avoid untoward incidents. The same cannot be held to be a malafide or punishment. In this regard, it is useful to refer the Apex Court Judgment reported in *Shilpi Bose and others vs. State of Bihar [1991 Suppl.(2) SCC 659]* wherein it is held as follows:

“3. If the competent authority issued transfer Orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the Court merely because the



transfer Order were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other.

4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest.”

10. The very allegation of the Petitioner is that he has been transferred since



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he has made complaint against the superior officer. On perusal of the same, this Court also directed the Vigilance Department to file a status report. The Inspector of Police Vigilance and Anti Corruption, Salem filed a status report, which clearly reveals the fact that the allegation made by the Petitioner has not been established in the vigilance side enquiry. This fact itself clearly indicate that only in order to continue in the same post the Petitioner is adopting these type of tactics by giving a false complaint against the superior officers.

11. Annexure I to the G.O.Ms.No.10 P & AR Department dated 07.01.1994 set out the instructions to be followed in the matter of transfers of Government Servants in Groups A, B and C. Clause (iv) of Para II to Annexure I. However, in Para III of Annexure I sets out exception to the General Guidelines. Sub-Clause (f) indicate that in cases where severe allegations are pending enquiry, when it is considered necessary in the public interest, and sufficient in lieu of suspension, that the officer may be transferred. In that case, transfer shall be effected to a vacant post in other station or to the post where the junior most person of the same category is working.

12. Subsequently by Government Letter dated 09.08.1994 clarified



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G.O.(Ms) No.10 P & AR Department, dated 07.01.1994. The relevant portion of

the said letter is extracted hereunder for ready reference

*“(III). In the said G.O. In sub-clause (f) of para III (vii), the following shall be added at the end:
“Transfers shall not be effected on the basis of allegations, unless the allegations are prima facie found to be true by a preliminary enquiry and it is decided by the transferring authority that the continuance of the officer in the same station is injurious to public interest and that he can be transferred rather than suspended from service. When such transfers on complaints / allegations are made after preliminary enquiry, it should be followed up by a detailed investigation and disciplinary action instituted on allegations finally found to be substantiated.”*

13. Though in the order it is stated as 'administrative reasons' it cannot be held to be a punitive one. The transfer in the nature of the allegation against the petitioner is quite in fact, warranted. The petitioner, as a matter of right cannot continue in the same post. Once the petitioner is entered into the Government service he has no choice of posting. He is at the disposal of the Government. The



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competent authority has a power to decide the transfer based on various other circumstances, even to avoid untoward incidents or untoward hardship for smooth functioning of the office. When the officer in the rank of Additional Director General of Police (Vigilance) after thorough enquiry has recommended certain measures to avoid untoward incident and the competent authority merely transfer the person against whom such severe allegations are pending, cannot be said that such transfer is always punitive with motive. Such transfers are warranted for effective administration. I do not find any merits in the Writ Petition. The judgments relied upon by the learned counsel for the Petitioner is not relevant to the facts of the present writ petition.

14. In such a view of the matter, the Writ Petition is dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

11.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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copy to:

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N. SATHISH KUMAR, J.
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