



W.A.No.2246 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.2246 of 2022
and
C.M.P.No.17038 of 2022**

V.Sundarrajan

... Appellant

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat, Chennai - 600 009.

2.The Additional Chief Secretary/
Commissioner of Revenue Administration,
Commissionerate Revenue Administration
and Disaster Management,
Chepauk, Chennai - 600 005.

3.The District Collector,
Villupuram District,
Villupuram.

4.The District Collector,
Chengalpet District,
Chengalpet.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 12.07.2022 passed by the learned Judge in W.P.No.17143 of 2021.



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For Appellant : Mr.G.Sankaran
For Respondents : Mr.Stalin Abhimanyu
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was made by R. MAHADEVAN, J.)

This Appeal is filed by the appellant against the order of dismissal dated 12.07.2022 passed by the learned Judge in W.P.No.17143 of 2021 filed by him.

2. According to the appellant / writ petitioner, he was initially appointed as Junior Assistant in the year 1994 and was subsequently, promoted as Assistant in the year 1999 and further promoted as Deputy Tahsildar in the year 2012 and as Tahsildar in the year 2015. That apart, he is serving as a State General Secretary of the Tamil Nadu State Revenue Officials Association. While the appellant was working as Tahsildar at Villupuram, he was transferred to Chengalpet District, vide a proceedings of the second respondent dated 06.08.2021. Challenging the said transfer order, the appellant filed a writ petition bearing no.17143 of 2021, on the premise that the transfer order has been issued with *mala fide* intention and the second respondent has no jurisdiction to issue transfer order without TTA on administrative grounds. The writ petition was resisted by the respondent authorities by stating that as against the writ petitioner, disciplinary proceedings, criminal case as well as vigilance enquiry are pending. After considering the



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submissions made by the learned counsel on either side and placing reliance on various decisions of the Hon'ble Supreme Court, the learned Judge dismissed the writ petition by order dated 12.07.2022. Aggrieved by the same, the appellant / writ petitioner is before this court with the present writ appeal.

3. The learned counsel for the appellant would contend that the appellant, who is served as the State General Secretary of the Tamil Nadu State Revenue Officers Association, has been continuously targeted by a highly influential person by name C.Palaniappan who is a history charge sheeted and accused in several criminal cases, with the aid and assistance of certain office bearers of a rival association, by filing false complaints, but all such complaints after detailed enquiry, were closed as baseless and motivated. Continuing further, the learned counsel submitted that the appellant was facing six petition enquiries conducted by different officers and in all the enquiries, the allegations have been found to be false and that, in a penalty proceedings initiated by the District Collector on 02.08.2017, enquiry was completed and it is learnt that the charges against the appellant are held to be not proved, vide report dated 21.09.2020 and the final order is awaited from the disciplinary authority. The learned counsel also submitted that vigilance enquiry was initiated based on a false complaint given by the said C.Palaniappan, for the alleged irregularities in the appointment of Village Assistants in Vikrawandi Taluk, but after thorough enquiry, it was found that the appointments were made in accordance with the rules and that, there was no



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evidence of any malpractice. Thus, according to the learned counsel, all the proceedings initiated against the appellant, based on false complaints, ended in his favour as the charges levelled against him are held to be not proved. While so, the transfer of the appellant from Villupuram to Chengelpet District, even before completing three years of service, citing administrative grounds, is nothing but a punitive transfer. However, the learned Judge dismissed the writ petition filed by the appellant challenging the said transfer, by the order impugned herein, which is arbitrary, illegal and contrary to law and hence, the same will have to be set aside.

4. Per contra, the learned Special Government Pleader appearing for the respondents would contend that the claim of the appellant that he was targeted by filing false complaints, lacks substance. The learned counsel further submitted that the appellant was facing disciplinary proceedings, criminal cases and vigilance enquiry. It is also submitted that the transfer order passed against the appellant was purely on administrative grounds and the same cannot be treated as punitive in nature. Thus, according to the learned counsel, the appellant has no vested right to remain posted at a place of his choice and he can be transferred from one place to another due to administrative exigencies. Taking note of all these factors and also in the light of the settled legal position, the learned Judge rightly dismissed the writ petition, which does not call for any



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interference at the hands of this court.

5. Heard the rival submissions and also perused the materials available on record.

6. Concededly, the appellant / writ petitioner was subjected to disciplinary proceedings, criminal cases and vigilance enquiry, based on the complaints filed against him. According to the appellant, all the proceedings were initiated based on the false complaints and the charges framed against him, after enquiry, are held to be not proved. Earlier, the appellant preferred WP.No.4808 of 2021 praying for a writ of mandamus directing the respondent authorities to consider his claim that he shall not be subjected to any sort of further victimisation especially a punitive order of transfer outside the District, without examining all the relevant and connected records and providing an opportunity of being heard to the appellant. However, the said writ petition is pending without there being any interim order. In such circumstances, the appellant was transferred from Villupuram to Chengelpet District, by the order of the second respondent dated 06.08.2021, which was challenged by the appellant by filing WP.No.17143 of 2021. The learned Judge dismissed the said writ petition, by the order impugned in this writ appeal. For better appreciation, the relevant paragraphs of the order of the learned Judge are extracted hereunder:

"15. The factum as stated in Somesh Tiwari case supra, prima facie it is found that disciplinary proceedings were initiated and charge memos were issued



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only after the matter was taken up for hearing that too after the matter was being adjourned on several occasions. Whereas in the case in hand, departmental proceedings, Vigilance enquiry were already initiated against the petitioner and in one case enquiry report also filed and that apart, criminal case also pending against the petitioner. In Somesh Tiwari's case (supra), the Honourable Apex Court has held that, "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. Further, in the aforesaid case, it was held that, "No vigilance enquiry was initiated against him. The order of transfer was passed on material which was not existent. The order, therefore, not only suffers from total non application of mind on the part of authorities of respondent No.1, but also suffers from 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. In Somesh Tiwari's case (supra), it is further held that, "The High Court while exercising its jurisdiction under Article 226 of the Constitution of India must consider the fact of each case. Mechanical application of the normal rule "no work no pay" may in a case of this nature, be found to be wholly unjust. No absolute proposition of law in this behalf can be laid down." Therefore, the factual background in the instant case is entirely different from the decisions cited supra.

16. Taking note of catena of decisions of the Honourable Apex Court as well as this Court, this Court is of the view that Court must consider the facts and circumstance of each case and come to the conclusion that the impugned transfer order being passed with malafide intention or not. Unless it is proved that the impugned transfer order is passed with malafide intention or in violation of statutory provisions prohibiting any such transfer, the Court cannot interfere with the transfer order.

17. Therefore, taking note of the decisions cited supra, this Court cannot lost sight of the fact that disciplinary proceedings and vigilance enquiry are pending against the petitioner, that apart, criminal case also pending against the petitioner, which necessitated the respondent to pass the impugned transfer order to enable the Investigating authority to conduct free and fair enquiry, on the serious allegations levelled against the writ petitioner. Therefore, the impugned transfer order passed by the second respondent vide proceedings No.Ser7(1)/7478/2021 dated 06.08.2021 is not a punitive in nature and as such, there is no warrant to interfere with the impugned order.

18. Accordingly, the writ petition stands dismissed. No costs. W.M.P.No.505 of 2022 stands allowed and consequently, W.M.P.No.18164 of 2021 stands dismissed. W.M.P.No.19157 of 2021 and 8136 of 2022 are closed."



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7. The primordial contention of the learned counsel for the appellant is that the transfer order is punitive in nature without providing any opportunity to the appellant and without considering the fact that based on the enquiry, the proceedings initiated based on the false allegations raised by the third parties, have been concluded to the effect that the charges are held to be not proved. On the other hand, it is the specific stand of the respondent authorities that due to administrative exigencies, the appellant was transferred from Villupuram to Chengalpet District.

8. This Court is not inclined to accept the contention so raised on the side of the appellant. There is no material evidence available to show that the appellant was targeted by the authorities by slapping the punishment of transfer on him. It is an admitted fact that he was subjected to disciplinary proceedings, criminal cases and vigilance enquiry. Though the charges framed against him, are held to be not proved in the disciplinary proceedings, the criminal cases and vigilance enquiry are still pending. As such, the order of transfer passed by the second respondent on the administrative grounds, cannot be considered as a punitive action.

9.1. In this context, it is apropos to refer to the decision of the Hon'ble Supreme Court in ***Rajendra Singh & Ors. v State of Uttar Pradesh & Ors.*** [(2009) 15 Supreme Court Cases 178], wherein, it was held as under:



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"8. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see *State of U.P. v. Gobardhan Lal*; SCC P.406 para 7).

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar & Ors.*, this Court held : (SCC p.661, para 4)

"4. In our opinion, the courts should not interfere with a transfer order which is 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 mala fide. 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. The High Court overlooked these aspects in interfering with the transfer orders."

10. In *N.K. Singh v. Union of India*, this Court reiterated that : (SCC p. 103; para 6)

"6. ... the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision...."

9.2. In the judgment of the Hon'ble Supreme Court in ***Union of India and another v. Deepak Niranjan Pandit and another [(2020) 3 Supreme Court Cases 404]*** the High Court of Mumbai interfered with the order of transfer in favour of the employee and the Hon'ble Supreme Court disapproved



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such act of the High Court. In this connection, paragraphs 3 and 4 of the said judgment are usefully quoted below:

"3.The High Court, in interfering with the order of transfer, has relied on two circumstances. Firstly, the High Court has noted that as a result of the stay on the order of transfer, the headquarters of the respondent will remain at Mumbai and even if he is to be suspended, his headquarters will continue to remain at Mumbai. The second reason, which was weighed with the High Court, is that the spouse of the respondent suffers from a cardiac ailment and is obtaining medical treatment in Mumbai. In our view, neither of these reasons can furnish a valid justification for the High Court to take recourse to its extraordinary jurisdiction under Article 226 of the Constitution in passing an order of injunction of this nature. Significantly, the High Court has not even found a prima facie case to the effect that the order of transfer was either mala fide or in breach of law. The High Court could not have dictated to the employer as to where the respondent should be posted during the period of suspension. Individual hardships are matters for the Union of India, as an employer, to take a dispassionate view.

4.However, we are categorically of the view that the impugned order of the High Court interfering with the order of transfer was in excess of jurisdiction and an improper exercise of judicial power. We are constrained to observe that the impugned order has been passed in breach of the settled principles and precedents which have consistently been enunciated and followed by this Court. The manner in which judicial power has been exercised by the High Court to stall a lawful order of transfer is disquieting. We express our disapproval".

9.3. Thus, it is very clear that administrative transfers are a common practice in the realm of public service. They are typically carried out to meet the organizational needs of a department or agency. The power to transfer public servants is vested with the administrative authorities, who have expertise and knowledge to make decisions in the best interest of public administration and the public servants are expected to fulfill their duties diligently and professionally, regardless to their location of posting. Hence, the Constitutional Courts do not



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interfere in routine administrative transfers, unless there is a legal ground, such as, violation of fundamental rights, discrimination or abuse of power.

10. Applying the legal position as referred to above to the facts of the present case, wherein, there is no substantial evidence of malafide or irregularity in the appellant's transfer, this court is of the view that the learned Judge rightly dismissed the writ petition by the order impugned herein and the same does not call for any interference.

11. In fine, the Writ Appeal fails and is accordingly, dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J] [M.S.Q., J]
17.04.2023

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Speaking Order/ Non-speaking order

Internet : Yes.

Index : Yes/No



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To

- 1.The Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat,
Government of Tamil Nadu,
Chennai - 600 009.
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