



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

**WP(MD)No.7798 of 2023
and
WMP(MD)No.7228 of 2023**

I.Shanmugasundari

... Petitioner

v.

1.The Inspector General of Police,
South Zone, Madurai.

2.The Commissioner of Police,
Tirunelveli City, Tirunelveli.

3.The Assistant Commissioner of Police,
Palayamkottai Range (CCRB & IS),
Tirunelveli City, Tirunelveli.

4.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in connection with the impugned transfer and relieving order passed by him vide his proceedings in R.C No.A1/6961/2023 and in C.P.O.No.300 of 2023 dated 28.03.2023 and quash the same as illegal, arbitrary and punitive in nature and thereby direct the first and second respondents to permit the petitioner to continue her service as Special Sub-Inspector of Police in the Prohibition and Enforcement Wing



(PEW), Tirunelveli City or any other police station within the Tirunelveli City Police limit within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.Veera kathiravan
Additional Advocate General,
assisted by Mr.K.Balasubramani,
Special Government Pleader

ORDER

The petitioner joined the police department as Police Constable Grade – II in the year 1997. She became Police Constable Grade-I ten years later. She was promoted as Head Constable in the year 2012 and then as Special Sub-Inspector of Police in the year 2022. When serving in the Prohibition and Enforcement Wing (PEW) in Tirunelveli City, she was visited with the impugned order of transfer and posted in Dindigul Range. A police officer in the rank of the petitioner can be transferred from one District to another only pursuant to the proceedings of the jurisdictional Inspector General of Police. In this case, the I.G (South Zone) issued such proceedings on 28.03.2023. Questioning the same, the present writ petition came to be filed.

2.The learned counsel appearing for the petitioner contended that the impugned order of transfer is punitive in nature and hence liable to be set aside. He relied on the decision reported in **(2009) 2 SCC 592 (Somesh Tiwari v. UOI)**.



3.The respondents have filed counter affidavit and the learned Additional Advocate General took me through its contents. His primary argument is that the petitioner has failed to adhere to the proper standard of conduct expected of a police officer. When an order of this nature has been passed on administrative grounds, there is no scope for interference. He pressed for dismissal of the writ petition.

4.I carefully considered the rival contentions and went through the materials on record.

5.In case after case, it has been held that transfer is an incident of service. In ***Nagorao Shivaji Ganesan v. Sunil Purushottam Bhamre (2019) 13 SCC 788***, it was held that even where it is provided statutorily that ordinarily tenure in a given Station is three years, in exceptional circumstances in a given case, or in the case of administrative exigencies, transfer is permissible and there can be no absolute bar. In ***B.Varadha Rao v. State of Karnataka (1986) 4 SCC 131***, it was held that no government servant can claim to remain in a particular place or in a particular post unless the appointment itself is to a specified, non-transferable post. It was further held that the norms enunciated by government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to



the officers who order transfers in the exigencies of administration that vesting of any immunity from transfer in the government servants. In

J.K.Bansal v. UOI (2005) 7 SCC 227, it was held that the scope of interference of Courts under Article 226 of the Constitution of India in matters of transfer in regard to members of the armed forces is far more limited and narrow ; they are best left to the discretion of the competent authority and should not be tinkered with, in the absence of a demonstrable violation of statutory rules, or an instance of mala fides on the part of the competent authority. This principle was reiterated in ***Amod Kumar v. UOI (2018) 18 SCC 478***. The approach adopted by the Hon'ble Apex Court in the case of armed forces is equally applicable in the case of uniformed forces such as Police. One such decision of the Madras High Court is ***P. Samraj v. Commissioner of Police, Chennai (2007 SCC OnLine Mad 266)***. It was held therein that a Police Officer has no right to insist that he will work only in a particular police station.

6.It is customary to cite ***Somesh Tiwari v. UOI (2009) 2 SCC 592*** while assailing a transfer order as punitive. In many a case, Judges have been holding that where an employee is visited with an order of transfer following receipt of a complaint, that the order passed in lieu of punishment is illegal and liable to be set aside. But there has been a march of law and



several subsequent decisions of the Hon'ble Supreme Court have held that an employee cannot make a grievance if transfer is made on administrative grounds and without attaching any stigma (***Registrar General, High Court of Judicature of Madras v. R.Perachi and ors [(2011) 12 SCC 137]***).

7. When it comes to a disciplined force such as the State Police, the approach of the writ court will have to be one of restraint. Chapter XI of T.N Police Standing Orders deals with the personal conduct of officers. As per Section 22 of the Police Act, 1861, every police officer shall be considered to be always on duty. PSO 110 (11) states that the police must keep their private lives scrupulously clean, develop self restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens. Integrity of the highest order is the fundamental basis of the prestige of the police. In this case, the house warming ceremony of the petitioner was done on 03.02.2023. A flex board had been erected and it contained the photos of some anti-social elements. They had also attended the house warming ceremony. The petitioner contends that she had no knowledge about the erection of the flex board as the same had been done by the contractor. But the fact remains that such a flex board was indeed erected. There is an unimpeachable material in this regard.



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8.The I.G of Police (South Zone) rightly took a very serious view of the same. Tirunelveli is a sensitive District. It had witnessed caste and communal disturbances. If a flex board erected in connection with a police officer's family function contains the photographs of anti-social elements, certainly, it would dent the image of the police. The perception of the general public and their faith in administration is important in a democracy. If the image of the government and the police is sullied on account of the acts of the employees, there has to be an intervention. The act or inaction of the employee may not amount to a punishable misconduct. But it can certainly furnish ground for effecting transfer. Such an order cannot be characterised as punitive. The proposition laid down in *Somesh Tiwari* cannot be applied in such cases.

9.It is relevant at this juncture to refer to the judgment of the Hon'ble High Court of Gujarat in ***Special Civil Application No.8463 of 2015 (Bharatsinh Himmatsinh Champavat and Ors. Vs State of Gujarat and Ors)*** rendered by Hon'ble Mr.Justice J.B.Pardiwala (As His Lordship Then Was). The writ petitioners therein were police constables. They had attended the marriage reception of a bootlegger. That led to passing of transfer orders. The challenge mounted by the aggrieved constables was repelled in stinging terms. It was held that public interest demands that an officer



posted at a particular post must inspire confidence not only among his fellow employees and superior authorities but also among the members of the public. If a police constable is found in the company of criminals or persons accused of having committed any offence, then, his transfer from that place must be held to be in the public interest. Para 36 of the order is as follows :

“36. 'Public interest' in this context would be justiciable only to this extent that the order should not be based on any extraneous considerations or malafide reasons. The use of the word 'public interest' in a particular order would prima facie be sufficient to raise presumption that the order has been passed in public interest.”

The above decision is an authority for the proposition that where transfer order is made in public interest, it should not be construed as punitive warranting interference. Though sealed cover jurisprudence is frowned upon, in matters relating to transfer of police personnel, the intelligence inputs relied on by the competent authority can be confidentially received by the courts and taken note of to satisfy judicial conscience that there has been no arbitrariness.



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10. In this view of the matter, the order impugned in this writ petition is sustained and the writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

11. However, taking into account the fact that the petitioner is a widow and that she complied with the order of transfer by joining the transferred place, the I.G of Police (South Zone) has graciously revisited the issue. He considered the representation made by the petitioner and had modified the earlier order by transferring her to Thoothukudi District. The petitioner has to report before the Superintendent of Police, Thoothukudi District who will issue an appropriate posting order.

02.06.2023

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To

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- 2.The Commissioner of Police, Tirunelveli City, Tirunelveli.
- 3.The Assistant Commissioner of Police, Palayamkottai Range (CCRB&IS),
Tirunelveli City, Tirunelveli.
- 4.The Deputy Inspector General of Police, Dindigul Range, Dindigul.
- 5.The Superintendent of Police, Thoothukudi District.



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G.R.SWAMINATHAN, J.

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