



W.P.(MD).No.20678 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.20678 of 2023

and

W.M.P(MD) Nos.17108 and 20194 of 2023

K.Krishnan

... Petitioner

Vs.

1. The Director of Collegiate Education (FAC)
Institute of Advanced Study in Education Campus,
577, Anna Salai,
Saidapet,
Chennai – 15.
 2. The Regional Joint Director of Collegiate Education,
Office of the Regional Joint Director of Collegiate Education,
Madurai Region,
Madurai District.
 3. The Principal,
Raja Doraisingam Government Arts College,
Sivagangai,
Sivagangai District.
 4. Mr.K.Duraiarasan
The Principal,
Raja Doraisingam Government Arts College,
Sivagangai,
Sivagangai District.
- ... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records pertaining to the impugned order in Na.Ka.No.1790/T2/2023, dated 21.08.2023 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.T.Aswin Rajasimman
For M/s.Lajapathi Roy and Associates

For Respondents : Mr.V.Omprakash
Government Advocate
For R1 and R2

ORDER

The present Writ Petition has been filed by the head of the Economic Department of the Government Arts College at Sivagangai challenging the order of transfer, dated 21.08.2023.

2. The said transfer order has been challenged on the ground that it is punitive in nature.

3. A perusal of the impugned order indicates that the writ petitioner has been transferred from Arts College at Sivagangai to another Arts College at Coodalore. The impugned order further points out that transfer has been



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effected due to the fact that the writ petitioner had induced caste division among the faculty members and the students and a complaint has been lodged by the Principal to the first respondent.

4. Therefore, it is clear that the order impugned in the writ petition makes a serious allegation as against the writ petitioner and it is punitive in nature.

5. On 18.10.2023, this Court had instructed the respondents herein to explore the possibility of recalling the present order and posted the matter today i.e., on 19.10.2023, at 2.15 p.m. On instructions, the learned Government Advocate appearing for the respondents 1 and 2 submits that orders may be passed on merits.

6. The judgment of the Hon'ble Supreme Court reported in **(2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India and others)** in paragraph No.16 has held as follows:

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt



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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. Mala fide is of two kinds - one malice in fact and the second 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. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

7. In view of the above said reasons, the impugned transfer order in the writ petition is hereby set aside. However, the authorities are at liberty to proceed further in accordance with law.



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8. With the above said observations, this writ petition stands allowed.

There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

19.10.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

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R.VIJAYAKUMAR,J.

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