



W.A.(MD).No.1251 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.12.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD).No.1251 of 2022
and C.M.P.(MD).No.16994 of 2023

1.The Secretary to Government,
Department of Tamil Development and Information,
110, Anna Salai,
Chennai – 600 002.

2.The Commissioner,
Commissionerate of Stationary and Printing,
110, Anna Salai,
Chennai – 600 002.

3.The Deputy Works Manager,
Government Branch Press,
Madurai – 7.

.. Appellants/Respondents 1 to 3

Vs.

1.M.Kanmani

.. Respondent / Writ Petitioner

2.C.Mennakshi

3.A.Joseph

...Respondents 2 & 3/Respondents
4 & 5



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 20.09.2022 in W.P.(MD) No.15273 of 2020 on the file of this Court.

For Appellants : Mr.Veerakathiravan,
Additional Advocate General,
Assisted by Mr.S.Shanmugavel,
Additional Government Pleader

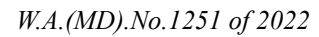
For Respondents : Mr.Isaac Mohanlal
Senior Counsel
for Mr.N.Dilip Kumar for R1

JUDGMENT

(Judgment of the Court was delivered by S.M.SUBRAMANIAM,J.)

The Writ Appeal has been instituted against the order dated 20.09.2022 in W.P.(MD) No.15273 of 2020.

2. The first respondent before us is the Writ Petitioner, who instituted a Writ challenging the order of transfer issued by the Commissioner of Stationary Printing in proceeding dated 22.10.2020, transferring the first respondent from Madurai to Chennai.



- (a) Transfer is an incidental to service more so condition of service.
- (b) Place or post can never be the choice of the public servant.
- (c) Status cannot be claimed in a public post.
- (d) The public servants are expected to serve wherever they are posted in the interest of public administration.

- i. If the transfer order is issued by an incompetent authority having no jurisdiction.

In case of allegations of malafides, the authority against whom such allegations are raised must be impleaded as party respondents in the writ proceedings in personal capacity.

Importantly, High Court in exercise of the powers of Judicial Review under the 226 of the Constitution of India is not expected to interfere with the day to day administration of the Government Departments.



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4. The authorities competent are the best persons to decide to post the employees in a place or post for efficient public administration. Frequent interference in the order of administrative transfer would cause inconvenience to the public administration. Thus, adjudication of transfer cases in a writ proceedings are permissible only on limited grounds and High Court is expected to exercise restraint while interfering with the transfer orders issued by the Government Departments.

5. In the present case, an order of transfer has been issued by the Commissioner of Stationary and Printing by proceedings dated 22.10.2020 transferring the writ petitioner Mrs.M.Kanmani from Madurai to Chennai. The petitioner challenged the said order before the Writ Court. Admittedly, the Writ Court granted an interim stay of the transfer order on 03.11.2020.

6. Learned Additional Advocate General brought to our notice that the second respondent Smt.Meenakshi, who was transferred from Chennai to Madurai joined in the place of first respondent at Madurai on 02.11.2020 prior to grant of interim stay by the Writ Court in W.P.(MD) No.15273 of



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2020. Therefore, the interim stay granted subsequently, become infructuous and not acted upon. More so, it was not brought to the notice of the Writ Court at the time of granting interim stay that the 2nd respondent Smt.Meenakshi joined in the place of the first respondent at Madurai on 02.11.202. Therefore, the Writ Court in the absence of knowledge about the joining of the 2nd respondent herein in the place of 1st respondent at Madurai granted the interim order. Therefore, the 1st respondent in the present Writ Appeal cannot take any undue advantage by otherwise interpreting the interim order granted by the Writ Court in the Writ Proceedings.

7. We agree with the contention of the learned Additional Advocate General in view of the fact that the joining of Smt.Meenakshi at Madurai on 02.11.2020 was not brought to the notice of the Writ Court. Therefore, the interim stay granted subsequently by the Writ Court was unable to be acted upon.

8. Learned Senior Counsel appearing on behalf of the first respondent contended that the interim order of the Writ Court ought to have been



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implemented despite the fact that the 2nd respondent Smt. Meenakshi joined in the place of the 1st respondent at Madurai.

9. Learned Additional Advocate General contended that large scale misappropriations are noticed in Government Printing Presses and charge memorandums have been issued against the employees concerned including the first respondent. However, the charge memorandums issued under the Tamil Nadu Civil Services (Discipline and Appeal) Rules are to be proceeded in accordance with the Rules by following the procedures. Therefore, we are not inclined to consider those issues, since it is beyond the scope of the writ proceedings.

10. Learned Additional Advocate General made a submission that one Mr.Rajesh, husband of the first respondent / Mrs.M.Kanmani, during the relevant point of time was serving as Deputy Superintendent of Police, Court Vigilance, Madurai Bench of Madras High Court and at that point of time, the first respondent was working as Assistant Works Manager in the Printing Press at Madurai Bench.



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11. No doubt the Government issued guidelines to consider the cases of spouse employed. However, such considerations are to be extended by the competent authority by accessing the situation and in the interest of public administration. Place or post cannot be claimed as an absolute right by the employees. Transferring an employee or considering the request to transfer is the prerogative of the public administration, taking note of various facts and circumstances. High Court is not expected to run the public administration, more specifically by entertaining Writ Petitions against the orders of administrative transfers.

12. As we have discussed above, an order of transfer can be challenged by way Writ Proceedings only on limited grounds i.e., ground of jurisdiction or the order of transfer is tainted with the allegations of malafides. In the present case, though certain allegations are broadly raised, none of the officials have been impleaded as respondents in their personal capacity in the Writ Proceedings. Learned Single Judge, in our opinion, has gone beyond the scope of the Writ Proceedings and made several observations and further appointed Advocate Commissioner to visit the



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Government Press at Madurai, which is absolutely unnecessary and unwarranted and it amounts to interference in the routine Government administration by the High Court, and beyond the scope of the power of judicial review under Article 226 of the Constitution of India.

13. The power of judicial review is to scrutinize the process through which a decision has been taken but not the decision itself. Therefore, the appointment of Advocate Commissioner to inspect the Government Offices to ascertain about allegations in the case of transfer and the further findings based on such advocate's report and direction to initiate disciplinary proceedings against the higher officials became highly improper, unnecessary and we are not inclined to uphold the same.

14. As far as the claim of the first respondent is concerned, any public servant is expected to join duty, whenever an order of transfer is issued. Even in cases, where they filed a Writ Petitions challenging the order of transfer and during pendency of Writ Petitions such public servants are expected to join duty in obedience of the order and fight before the Court, if



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there is any dispute exists. Contrarily, the public servants cannot distant herself / himself from joining duty, when the order of transfer has already been issued by the competent authorities. They are entitled to agitate the matter, but equally they are bound to join duty. Certain intentional or voluntary act of the employees would provide no protection to them under the service rules. However, the said claims are to be considered by the competent authority, while regulating the intervening period of absence in accordance with the service rules applicable and in force.

15. We are of the opinion that a matter of simple transfer has been unnecessarily complicated by venturing into an unrelated issues including the allegations of misappropriation and other aspects of the matter. The case is of simple administrative transfer, wherein a Writ Petition was filed and the learned Single Judge had undoubtedly gone beyond the scope of the Writ Proceedings and the findings made against the authorities became unnecessary and unwarranted.



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16. As far as the charge memo issued to the officials are concerned, regarding the allegations of misappropriation of Government funds, lapses, dereliction or otherwise, the competent authorities are bound to proceed independently by following the procedures contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The disciplinary proceedings are absolutely unconnected with the transfer orders and even during the pendency of the disciplinary proceedings, the competent authorities are empowered to transfer an employee in the interest of public administration. Regarding the intervening period from 03.11.2020 to 20.09.2023, the authorities have to initiate appropriate action in accordance with the rules.

17. In view of the facts and circumstances, the order impugned dated 20.09.2022 in W.P.(MD) No.15273 of 2020 is set aside and the Writ Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(S.M.S.,J.) (V.L.N.,J.)
15.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ



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