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Rev.APLW.No.24 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Rev.APLW.No.24 of 2021
in
W.P.No.10698 of 2020

K.Djeacandane

... Petitioner

Vs.

1.The Secretary to Government,
Department of Personnel and Administrative
Reforms (Personnel Wing)
Chief Secretariat, Beach Road,
Government of Puducherry,
Puducherry – 605 001.

2.The Programme Officer,
Directorate of Women and Child Development,
Government of Puducherry.

... Respondents

Prayer: Review Application filed under Order 47 Rule 1 r/w. Section 114 of
CPC to review the order dated 07.09.2020 passed in W.P.No.10698 of 2020



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For Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.R.Syed Mustafa
Special Public Prosecutor (Puducherry)

ORDER

[Order of the Court is made by S.M.SUBRAMANIAM, J.]

The review application on hand has been instituted to review the order of this Court dated 07.09.2020 in W.P.No.10698 of 2020.

2.The review petitioner is working as Multi Task Staff (MTS). He was transferred from Puducherry to Mahe on administrative grounds. He has not joined in the transferred place. Initially, the petitioner filed O.A.No.309 of 2020 challenging the order of transfer dated 27.02.2020. The Tribunal permitted the petitioner to submit a representation to the competent authority and a direction was issued to dispose of the said representation, if any filed. Pursuant to the direction issued by the Central Administrative Tribunal, the representation was considered and rejected. Thus the petitioner once again filed O.A.No.353 of 2020 challenging the rejection order along with the transfer order. The Tribunal elaborately considered the



issues on merits and dismissed the original application. Pertinently the Tribunal issued a direction for the transfer order dated 27.02.2020 and 29.05.2020 shall be given effect to only when the public transport facilities are available to Mahe. The public transport facility was opened after Covid-19 lockdown period and even thereafter the petitioner has not joined in the transferred place at Mahe. He remained unauthorisedly absent and till today, the petitioner has not joined in the transferred place. The grounds raised by Mr.M.Gnansekar, learned counsel appearing on behalf of the review petitioner is that the review petition instituted before this Court is pending for the past three years and therefore, the petitioner has not joined in the transferred place. Such a ground is untenable since in the absence of any interim order by the Courts, the public servants are expected to join in the transferred place and pursue their remedy before the Court of law.

3.Transfer is incidental to service, more so, conditions to service. Transfer *per se* would not provide a cause for the public servant to file a writ petition or original application unless such transfer has been issued by an incompetent authority having no jurisdiction or an allegation of malafide is



raised against the authority concerned. Even in such case, the authority against whom an allegation of malafide has been raised must be impleaded as party respondent in his personal capacity.

4.Any transfer guidelines or policy would not confer any enforceable right on the employees. In respect of any statute if there is a specific provision for transfer, then alone the transfers issued in violation of statute can be interfered with but not otherwise.

5.Guidelines and transfer policies are issued only for the convenience of the competent authorities and to develop transparency in the matters of transfers. However, such transfer guidelines meant for the authorities would not confer any right to the employee seeking enforcement of the guidelines. When transfer is a conditions of service, guidelines are issued only for the purpose of regulating the transfers and therefore, such guidelines would confer no enforceable right to the employees.

6.Courts are not expected to interfere with the day-to-day administration of the Department. Place and post can never be claimed as a



choice of the public servants. Status cannot be claimed by the public servants. The competent authority is the best person to decide regarding the place and posting of an employee. In the event of frequent interference in public administration by the Court, it would result in causing prejudice to the interest of public administration and more so, the officials may not in a position to regulate their administrative affairs. This exactly is the reason why the Constitutional Courts time and again reiterated that the power of judicial review against the order of transfer is limited and the Courts cannot decide certain administrative decisions taken in good faith or in order to regulate the public administration in an efficient manner.

7.Regarding the grounds raised by the petitioner that the review petition was filed and during the pendency of the review petition, the petitioner has not joined in the transferred place, the issues are elaborately considered by the Hon'ble Supreme Court in a recent case in the case of ***The Tamil Nadu Agricultural University and another etc. vs. R.Agila etc., Civil Appeal (C).Nos.13070-13075 of 2022 dated 20.08.2024.*** The case before the Hon'ble Supreme Court was similar where an employee filed a



case but not joined in the transferred place and there was no interim order.

The Apex Court held that he is not entitled for salary beyond the disciplinary proceedings which may be initiated by the competent authority for unauthorised absence.

8.The issue has been further considered in the case of ***Tusha D.Bhatt vs. State of Gujarat*** reported in **2009 (11) SCC 678**, as follows:

16.The legal position has been crystallized in number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies.

17.In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as mala fide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11.10.1999 to 27.4.2000 i.e. more than six months. In the interest of discipline of any institution or organization such an approach and attitude of the employees cannot be countenanced.

18.In Gujarat Electricity Board and another v. Atmaram Sungomal Poshani [(1989) 2 SCC 602 : 1989



SCC (L&S) 393: (1989) 10 ATC 396 : AIR 1989 SC 1433, this court had an occasion to examine the case of almost similar nature. This court observed as under: (SCC p.607, para4)

"4.Transfer from one place to another is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his



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service as he refused to comply with the order of his transfer from one place to the other."

9.As far as the present review petition is concerned, there is no error apparent on record warranting further interference. Thus the present review petition is devoid of merits and stands dismissed. No costs.

[S.M.S., J.] [M.J.R., J.]
10.12.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking order / Non-speaking order

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