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W.P.No.10465 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

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THE HONOURABLE MR.JUSTICE **D. BHARATHA CHAKRAVARTHY**

W.P.No.10465 of 2024
and WMP.Nos.11462 & 11463 of 2024

P. Saranya

... Petitioner

-Vs-

1. The Director General of Police/
Director General of Prisons and
Correctional Services, Chennai 600 008.

2. The Superintendent
Central Prison-2, Puzhal (Remand),
Puzhal,
Chennai 600 066.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondents relating to the relieving order issued by the 2nd respondent to the petitioner in Proceedings No.0604/G1/2024, dated 06.04.2024 and quash the same.

For Petitioner : Mrs.Ramapriya Gopalakrishnan

For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader



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ORDER

This writ petition is filed for issuance of a Writ of Certiorari calling for the records of the respondents relating to the relieving order issued by the 2nd respondent to the petitioner in Proceedings No.0604/G1/2024, dated 06.04.2024 and quash the same.

2. The case of the writ petitioner is that she was appointed as Assistant Jailor on 22.06.2018. She was transferred to Sub Jail, Mannargudi in the year 2020. After that, on 26.12.2023 upon being promoted as Deputy Jailor she was posted to Central Prison – 2, Puzhal, Chennai. Even when taking charge, the proper charge was not handed over. She has already made representation to the higher authorities regarding the same. While so, within three months of her joining duty, a relieving order was served on her on 06.04.2024 at around 8:45 p.m. No transfer order was served on her. There was no necessity for transferring the petitioner within three months from the date of joining the duty. The petitioner also has one son studying in class IX and upon her posting in Chennai, she shifted her son's education and enrolled him in a School in Chennai. Therefore, the immediate transfer is arbitrary and punitive. If the petitioner has committed any wrong, the respondents ought to have



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initiated Disciplinary Proceedings and the transfer cannot be imposed as a punishment without due opportunity to the petitioner.

3. The case of the respondents is that the petitioner herein was promoted as Deputy Jailor and has been working as Deputy Jailor in Central Prison-2, Puzhal from 26.12.2023. Rule 45 of Tamil Nadu Prison Rules, 1983 enumerates the duties of the Deputy Jailor. It can be seen that placing indent and getting supplies of all articles of diet and articles required for the prisoners and maintaining stock register etc. are all the duties of the Deputy Jailor. The Director General of Prisons made a surprise visit to the Central Prison – 2, Puzhal on 14.03.2024. While checking the in/out register with invoices he noticed malpractices regarding the procuring of Gas cylinders and found that on 29.02.2024, 10.03.2024 and 14.03.2024 there were entries in the main gate in / out register the number of gas cylinders received as 80, 90 and 90. But in the actual invoices, it was mentioned as 130, 135 and 130 respectively. Therefore, the Deputy Inspector General of Prisons, Coimbatore Range was directed to conduct a special audit and preliminary enquiry in this regard. Meanwhile, again on 05.04.2024, an entry was made as if 140 cylinders were procured but while checking the CCTV footage only 95 Gas cylinders were received. In view



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thereof, since there was a high preponderance of involvement of the petitioner in malpractices leading to grave financial implications, to facilitate a fair enquiry, the petitioner was transferred and posted to Central Prison, Palayamkottai by proceedings No.1484/ES3/2024, dated 06.04.2024 of the first respondent. Based on the above orders, she was relieved on 06.04.2024 A.N. from Central Prison-2, Puzhal. The petitioner has not joined duty at Central Prison, Palayamkottai to date.

5. To the counter affidavit filed, the petitioner also filed a rejoinder affidavit. The petitioner accepts that after the 1st date of enquiry, she was called by the respondents. During the same, the petitioner was orally informed about the discrepancies in the stock register. But she was not confronted with any malpractice. The petitioner contends that the alleged scam was an ongoing one. From the date of joining of the petitioner in December 2023, the persons who are perpetrating the malpractice were finding the petitioner as inconvenient. However, they have turned the tables on the petitioner and the petitioner has been shunted out of the place, even without an opportunity.

6. *Ms. Ramapriya Gopalakrishnan*, learned counsel for the petitioner



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submitted that firstly in this case the order of transfer itself has not been served on the petitioner. Secondly, the order of transfer which is now produced before this Court causes stigma on the petitioner. Therefore, once the transfer order causes stigma on the petitioner then it becomes punitive in nature. Once it is punitive it cannot be passed without affording an opportunity to the petitioner. Thirdly, even to decide to shift the petitioner, there must be some concrete preliminary enquiry into the matter. A mere inspection on a particular day by itself would not point out the involvement of the petitioner. Though the petitioner as a Deputy Jailor is in charge of the stores, the entire aspect of receiving the Gas cylinders and making entries both at the gate as well as in the register involves the duties and responsibilities of other officials also and it is illogical to blame the petitioner alone for the entire misconduct. In the instant case, it is only the petitioner alone who was shunted out and no action whatsoever so far been taken against any other person.

7. The learned counsel in respect of her submission relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Somesh Tiwari Vs Union of India and others** reported in [(2009) 2 SCC 592] more specifically relied at paragraph No.16 for the proposition that if



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there is malice in law, the Court can interfere. The learned counsel further relied upon another judgment of the Hon'ble Supreme Court of India in the case of ***Nirmala J.Jhala Vs State of Gujarat and another*** reported in [2013 4SCC 301], more specifically paragraphs Nos.42 & 43 to contend that the preliminary enquiry should also be on some basis and unless some preliminary findings are recorded in enquiry, on a basis of a mere inspection, in a spur of the moment allegations cannot be levelled against the petitioner. She further submitted that the Court has to consider the allegation in the wake of the period of service of the petitioner at the Central Prison, Puzhal, which is only from 26th December, 2023.

7. Per contra, *Mr Stalin Abhimanyu* learned Additional Government Pleader while admitting the fact that the order of transfer has not been served on the petitioner, however, he submitted that now the copy of the same has been served on the learned counsel for the petitioner before this Court. It is only a procedural error on the part of the authorities. He further submitted that the impugned order of transfer to the petitioner only mentions a high preponderance of involvement in malpractices having financial implications. That does not cause any stigma as there is no conclusive finding. The order of



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transfer itself was passed only on administrative grounds. When the order of transfer merely states that it is on administrative grounds, it cannot be termed as punitive. It can be seen that on a preliminary enquiry, there is enough materials on the file of the respondents that actually less numbers of gas cylinders were only supplied to the kitchen in Prison. But, however, entries are made in respect of more numbers of gas cylinders. When such malpractice is going on and when the petitioner is the appropriate authority who is in charge as per Rule 45, then naturally, the petitioner is the first person to answer the serious malpractice. The authority has two options, it can suspend the petitioner and proceed further with enquiry. Instead of suspending the petitioner, if the petitioner is moved away from the scene to ensure free and fair enquiry so that the evidence cannot be tampered with, no exception can be taken for such a course adopted by the authority. The authority proposes to complete the enquiry and take action including Disciplinary action the transfer is not punitive but it is only an ad-hoc measure to avoid suspension.

8. *Mr Stalin Abhimanyu*, learned Additional Government Pleader relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India Vs Janardhan Debanath***, reported in (2004) 4



SCC 245 to contend that the petitioner cannot insist upon right to continue in the same post. When the transfer has been effected in the interest of public administration and furtherance of public interest, this Court under Article 226 cannot interfere in the matter. The learned Additional Government Pleader also relied upon the judgment in the case of ***S.C.Saxena Vs Union of India***, [2006 (9) SCC 583] to contend that the petitioner so far has been disobeying the order of transfer. The learned Additional Government Pleader further relied upon the judgment of this Court in the case of ***Registrar, High Court Vs. Vasudevan*** and also in another case in ***A.K in Chief Engineer (Personnel) TNEB, Madras Vs K.Raman*** [(1985) 1 LLJ 164 MAD] to contend that in the nature of the allegations, resorting to transfer would not be punitive but only in the public interest based on administrative exigencies.

9. Heard both sides and perused the materials available on record.

10. Firstly, in this case, by the impugned order the petitioner has been relieved from service. The same ought to have been done only after the transfer order being served on the petitioner. Therefore, the respondents without even



serving the transfer order ought not to have relieved the petitioner on duty on 06.04.2024. That is the first violation of the procedure. Even assuming that it is only a violation of procedure, now the order of transfer has been produced before this Court. The learned Additional Government Pleader has rightly relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India Vs Janardhan Debanath***, reported in [(2004) 4 SCC 245. In the said judgment, the Hon'ble Supreme Court has stated that an order of transfer can be resorted to for enforcement of discipline and in the public interest. Such an order of transfer cannot be interfered with in the exercise of power under Article 226 of the Constitution of India. The relevant paragraphs are extracted as hereunder:-

“9.No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration...”

12. That brings us to the other question as to whether the use of the expression "undesirable" warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this



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Court in Jagdish Mitter Vs Union of India [AIR 1964 SC 449] (AIR P.456, para 21) to contend that whenever there is a use of the word "undesirable" it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression "undesirable" in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by Courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions - status, service prospects financially and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration."

11. Thus, per se, the action resorted to in shifting the employee from



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the seat to facilitate fair and free enquiry cannot be found fault with. As a matter of fact in the case of **Janardhan Debanath's case** (cited supra) the use of the word "undesirable" in the transfer order is held to be not stigmatic.

12. In that background if the present case is considered, the transfer order reads thus:-

"P. Saranya, Deputy Jailor, Central Prison-2, Puzhal is hereby transferred on administrative grounds as there is a high preponderance of involvement in malpractices having financial implications".

12. Therefore it would be a little far-fetched to extend the same principle to the present transfer order as it is mentioned that there is a high preponderance of involvement of malpractices having financial implications. It is one thing to state that the transfer order is made on administrative grounds so as to facilitate an enquiry but it is another thing to state that there is a high preponderance of petitioner's involvement of malpractices having financial implications. The petitioner has to carry this order of transfer and has to join duty in the transferred place. That exactly is stigma, where the employee faces



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the prospect of being termed as guilty of allegations, which are not proven, thus has an adverse impact on the petitioner. Therefore while this Court acknowledges the power of the respondents in resorting to such a course of administrative transfer, the order of transfer should not expressly contain allegations that may cause stigma. To that limited extent, the impugned order of transfer as well as the order of relieving cannot stand.

13. This Court is also concerned with the serious allegations which are made. As rightly pointed out by both sides learned counsels firstly it can be seen that it is an ongoing scam. Every time higher numbers of gas cylinders were entered in the appropriate ledgers, whereas, only lower numbers of gas cylinders were actually supplied. I agree with the learned counsel for the petitioner that this cannot be accomplished singularly by the petitioner and that the petitioner has joined duty only recently. But at the same time when the petitioner joined duty in December 2023, she had not made any representation in writing that such malpractice was going on or that she had taken any steps to check the same. The inquiry is at a very nascent stage for the truth to emerge. The allegations point out a serious and continuous scam in the matter of procurement of gas cylinders. On the face of the allegations, it is very clear that



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the officials of the department are involved in this matter. It prima facie also discloses conspiracy with the suppliers. Therefore, as rightly contended by the learned Additional Government Pleader a detailed enquiry is necessary. The allegations also point out Criminal Offences and depending on the outcome of the preliminary enquiry, the respondents shall also lodge a police complaint so that an investigation can be carried out and whoever is involved in the scam is brought to books.

14. In that view of the matter, this writ petition is allowed on the following terms.

(i) The transfer order dated 06.04.2024 transferring the petitioner from Central Prison-2, Puzhal to Central Prison, Palayamkottai shall stand quashed and consequently the impugned relieving order dated 06.04.2024 bearing Proceedings No.0604/Pol/2024 also shall stand quashed;

(ii) However, the respondents will be at liberty to pass appropriate orders afresh to facilitate free and fair enquiry in the manner known to law.

(iii) No costs. Consequently, connected miscellaneous petitions are also closed.

29.04.2024



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Index : Yes/No

Speaking order/Non-speaking order
dpq

Issue order copy on 02.05.2024

To

1. The Director General of Police/
Director General of Prisons and
Correctional Services, Chennai 600 008.
2. The Superintendent
Central Prison-2, Puzhal (Remand),
Puzhal,
Chennai 600 066.

D. BHARATHA CHAKRAVARTHY, J.

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