



W.A.No.2624 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 02.09.2024

CORAM :

THE HON'BLE MR.D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.2624 of 2024

Dr.V.Thiyagarajan

... Appellant

-VS-

1.The Director,
Animal Husbandry Department,
Nandhanam,
Chennai-600 035.

2.The Assistant Director,
Animal Husbandry Department,
Sankagiri,
Salem-637 301.

.. Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 12.7.2024 passed by the learned Single Judge in W.P.No.18942 of 2024.

For the Appellant

: Ms.Jasmine Padma
for Mr.D.Senthilkumar

For the Respondents

: Mr.S.Yashwanth
Addl. Government Pleader



W.A.No.2624 of 2024

J U D G M E N T

(Delivered by the Hon'ble Acting Chief Justice)

Challenging the order of the learned Single Judge dated 12.7.2024 passed in W.P.No.18942 of 2024 dismissing the writ petition, the original writ petitioner has filed the present appeal.

2. The appellant has filed the writ petition challenging the transfer order thereby transferring him from Sankagiri, Salem Region to Thiruchendur Division, Thoothukudi District. The writ petition was dismissed by the learned Single Judge holding that on the administrative reasons, the appellant was transferred and therefore there is no infirmity in the transfer order.

3. Learned counsel for the appellant submitted that no adequate reason is given by the respondent authorities for transferring the appellant from Sankagiri Division to Thiruchendur Division and the transfer order passed by the respondent authorities is punitive in nature. The punitive transfer cannot be made without giving an opportunity of hearing to the



W.A.No.2624 of 2024

appellant. The transfer order suffers from malice in law, as the same was not based on any factor germane for passing such transfer order. In fact, there is no valid reason stated in the transfer order. The learned Single Judge failed to examine the issue involved in the writ petition in proper manner and without assigning any reason dismissed the writ petition by holding that due to administrative reasons, the appellant has been transferred.

4. Learned counsel for the appellant further submitted that the transfer order is issued to accommodate Dr.E.Sampathkumar for extraneous consideration. That apart, the transfer order passed during the middle of the academic year is untenable and illegal. The reason assigned by the learned Single Judge for not interfering with the transfer order is not legally sustainable and is liable to be set aside.

5. Supporting the order of the learned Single Judge, learned Additional Government Pleader appearing for the respondents submitted that the order of transfer has been passed on administrative reasons and finding no mala fide or arbitrariness, the learned Single Judge dismissed the



W.A.No.2624 of 2024

writ petition. Such a well considered order cannot be interfered with by this

Court. He, therefore, prayed for dismissal of the writ appeal.

6. We have considered the rival submissions and also perused the materials available on record.

7. The appellant was originally appointed as Research Assistant at the Institute of Veterinary Preventive Medicine, Ranipet by way of direct recruitment through Tamil Nadu Public Service Commission and joined duty with effect from 30.1.2009. He was transferred from Ranipet to Veterinary Dispensary, Alagappalayampudur, Salem District vide order dated 20.12.2014. As per G.O.Ms.No.49, Animal Husbandry, Dairying and Fisheries Department, dated 28.2.2017, the petitioner has been re-designated as Veterinary Surgeon. The appellant was transferred from Alagappalayampudur, Salem District to Natthamur Veterinary Dispensary, Thirukovilur, Villupuram District on 29.4.2022. Challenging the said order of transfer, the appellant has filed W.P.No.13637 of 2022 and, by the order dated 10.8.2022, this Court quashed the said transfer order



W.A.No.2624 of 2024

holding that the same has been issued with a mala fide intention to accommodate Dr.A.Priyatharshini, the fifth respondent therein.

8. Admittedly, the appellant is facing disciplinary proceedings for the act committed by him and pending disciplinary proceedings, he has been transferred from Salem Region to Tiruchendur Region.

9. Learned counsel for the appellant strenuously contended that once the charge memo has been issued to the employee, he should not be transferred as he has to face the departmental enquiry. However, the learned Single Judge failed to appreciate the said aspect and erroneously dismissed the writ petition.

10. We have gone through the transfer order, wherefrom we find that the present transfer has been effected for administrative reasons. Though the appellant contended that the transfer order is punitive in nature and to accommodate Dr.E.Sampathkumar, nothing has been produced to establish the same. On the administrative ground to ensure purity and to maintain



W.A.No.2624 of 2024

probity in the functioning of the department, the second respondent has power to transfer the appellant.

11. Earlier, when the appellant has challenged his transfer from Salem District to Villupuram District in W.P.No.13637 of 2022, this Court, after referring to the decision in the case of *K.M.Elumalai v. The Superintendent of Prisons, Central Prison-II and another*, CDJ 2009 MHC 4819, interfered with the said transfer order.

12. In *K.M.Elumalai*, supra, the learned Single Judge of this Court [*M.M.Sundresh, J. – as His Lordship then was*], after taking note of catena of decisions of the Apex Court, held as follows:

“12.The above said principles of law evolved by the English Courts would clearly lead to the conclusion that while acting upon a fact the person who exercises the power treating the said fact as conclusive will have to satisfy himself about the due proof of the same before taking any action based upon the same. In other words when a power is vested upon an authority the said authority will have to exercise the said power only in the manner known to law which is by giving a sufficient opportunity to the person against whom the action is proposed. The basic requirement of the said principle is to inform the person concerned about the charges levelled against him and



W.A.No.2624 of 2024

thereafter affording an opportunity to put forth his case followed by a further opportunity to peruse the materials placed against him and cross-examine the witnesses who deposed against him.

13.It is no doubt true that an order of transfer is incidental to the service but the question for consideration is as to whether such an order can be passed in total violation of principles of the natural justice and by dispensing with the enquiry.

.....

20.Therefore this Court is of the opinion that the impugned orders passed by the respondents will have to be set aside being punitive in nature and therefore bad in law in not following the principles of natural justice, by affording an opportunity to the petitioner and by conducting an enquiry.

21.The proceedings are also liable to be set aside since the respondents have come to the conclusion based upon a discreet enquiry which is again based upon the statement obtained from persons behind the back of the petitioner. Even in an enquiry a statement obtained in a preliminary enquiry prior to a full-fledged enquiry cannot be relied upon. Therefore in such a case an order passed based upon such an enquiry cannot be sustained. In the judgment reported in (2006) 2 MLJ 202 [T.Pitchai vs. Deputy Inspector General Of Police, Tirunelveli Range, Tirunelveli And Another] the Hon'ble High Court after considering the judgment of the Hon'ble Apex Court and the Division Bench judgment of the Hon'ble High Court was pleased to hold that the punishment based upon a statement given a preliminary enquiry cannot be sustained.



W.A.No.2624 of 2024

definitions of “*administrative ground*” and “*punitive in nature*”. It was also held in the said case that the Courts have to decide the issue as to whether the transfer is on administrative ground or it is punitive in nature on case to case basis depending upon the facts and circumstances of the case. For giving more clarity to the definitions “*administrative ground*” and “*punitive in nature*”, this Court directed the Government to issue clarificatory guidelines in transfer matters, where allegations / complaints are pending against the employees.

14. In *W.P.(MD) Nos.24247 and 24250 of 2019, L.M.Salim and another v. Principal Chief Security Commission, Railway Protection Force, Southern Railway, Chennai and three others*, reported in 2021 SCC OnLine Mad 13363, one of us (*Acting Chief Justice – sitting single*) had an occasion to deal with the similar issue in detail by relying upon various decisions of the Apex Court and held that in the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. The relevant portion is extracted hereunder:

“7. That apart, administrative transfers are the prerogative of the Department concerned and the competent



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W.A.No.2624 of 2024

authorities are the best persons to assess and act accordingly. However, those competent authorities should act in the interest of public and in the event of any illegality or some personal motive, then alone, the employee can approach the Court of law for appropriate remedy. In other words, if an order of transfer is issued with malafide intention or in violation of the statutory rules, then alone a writ petition can be entertained. Even in such cases, the allegation of malafide intention must be substantiated in the writ proceedings and the official concerned must be impleaded as party respondents in the writ proceedings. In the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. Transfer is an incidental to service, more so, a condition of service. Public servant is liable to work wherever he is posted in the interest of public administration. On accepting the offer of appointment, a person is agreeing for the conditions of service and transfer being incidental, he must be in a position to work, wherever he is posted.

.....

9. In *State of U.P. and others v. Siya Ram and others* [(2004) 7 SCC 405], the Honourable Supreme Court has held that unless the order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned.

10. Further, in *Airports Authority of India v. Rajeev Ratan Pandey and others* [(2009) 8 SCC 337], the



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W.A.No.2624 of 2024

Honourable Supreme Court has held that in the matter of transferring Government employees, the scope of judicial review is limited and the High Courts should not interfere with an order of transfer lightly.

11. In the instant case, on perusal of the materials available on records, this Court does not find any mala fide exercise or violation of any statutory provision on the part of the respondents and therefore, the impugned transfer orders and the consequential relieving orders do not warrant any interference of this Court and the writ petitions are therefore liable to be dismissed.”

15. In the case on hand, as could be seen from the records, several complaints have been made against the appellant qua availing subsidy loans in various schemes for construction of sheep and cattle sheds and charges were framed against the appellant under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. As stated supra, for the charges levelled against the appellant, disciplinary proceedings are pending.

16. In terms of the clarification made vide G.O.Ms.No.10 dated 07.01.1994, a transfer cannot be effected on the basis of allegations, unless the same is substantiated through suitable evidence in the preliminary enquiry and the transferring authority comes to the conclusion that continuance of the delinquent is detrimental to the public interest and he can be transferred rather than suspended from service.



W.A.No.2624 of 2024

17. The decision rendered by the Apex Court in **Somesh Tiwari vs.**

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18. Transfer is an incident of service and the same should not be interfered with, unless there is an element of mala fides. In the case on hand, nothing has been produced to prove that the authorities have acted mala fide.

19. A careful reading of the impugned order of transfer would disclose that the appellant has been transferred only on administrative



W.A.No.2624 of 2024

ground. Admittedly, the appellant has been working in the same station for several years and he has no right to continue in the said station for long years. Mere pendency of the disciplinary proceedings, it cannot be said that the impugned order of transfer has been passed on punitive ground. Having accepted the terms of appointment, which includes a transfer, the appellant cannot now say that he should not be transferred. In such circumstances, we are not inclined to interfere with the order passed by the writ court and finds no merit in the writ appeal.

20. In the result, *the writ appeal is dismissed*. There shall be no order as to costs. Consequently, C.M.P.No.18835 of 2024 is closed.

(D.K.K.,ACJ.) (P.B.B.,J.)
02.09.2024

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W.A.No.2624 of 2024

THE HON'BLE ACTING CHIEF JUSTICE
AND
P.B.BALAJI, J.

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To:

- 1.The Director,
Animal Husbandry Department,
Nandhanam,
Chennai-600 035.
- 2.The Assistant Director,
Animal Husbandry Department,
Sankagiri,
Salem-637 301.

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