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W.P.No.33125 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

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

W.P.No.33125 of 2023
and WMP.No.31701 of 2023

E. Nixon

... Petitioner

-Vs-

1. The Principal Secretary to Government ,
Finance Department,
Fort George, Chennai 600 009.
2. The Joint Secretary to Government
Finance Department,
Fort St.George, Chennai 600 009.
3. The Under Secretary to Government
Finance (OP-III) Department,
Fort St.George, Chennai 600 009.
4. The Assistant Director
Co-operatives Audit Department,
46/1, Chinnakadai Street,
Thiruvannamalai 606 601.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of impugned order dated 19.09.2023 with reference Letter No.3491/a.na.mu.-2/2023-3 passed by the 1st respondent against the petitioner and quash the same.



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For Petitioner : Mr.S.M.Muralidharan

For Respondent : Mr.J.Ravindran
Additional Advocate General
Asst.by
Mr.Azizulla Khan
Government Advocate

ORDER

This writ petition is filed for issuance of Writ of Certiorari to call for the records of the impugned order dated 19.09.2023 with reference to Letter No.3491/a.Na.Mu.-2/2023-3 passed by the 1st respondent against the petitioner and quash the same.

2. The learned counsel for the petitioner submitted that the petitioner was involved as an accused in Crime No.10 of 2022 on the allegations that along with other accused they have collected money promising Government job. In view of the same, the petitioner was placed under suspension by an order dated 24.01.2022. In view of the prolonged suspension the petitioner approached this Court and this Court passed an order in W.P.No.11481 of 2023 on 10.08.2023 and the operative portion of the said order reads as follows:-

"6. Such view of the matter, taking note of the guidelines above, the respondents are directed to take a decision to review the suspension in light of the guidelines of the above referred Government Order and post the writ petitioner in a non



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sensitive post even out of the District. Such exercise shall be completed within a period of one month from the date of receipt of a copy of this order."

3. There upon, the respondents reviewed the suspension and revoked the suspension and passed an order of impugned transfer for posting the writ petitioner in an non sensitive place out of district. The petitioner's contention is that even though this Court has given an option to the respondent to even post him out of the district, the petitioner is only an Office Assistant and the respondents took it positively as if this Court had directed the respondents to transfer him outside the district, therefore there is non application of mind on the part of the respondents. The learned counsel further submitted that the petitioner is already in debt and his take home salary is Rs.4,899/- and with that meagre amount he is unable to sustain himself in Tiruvannamalai. If he is in Chennai district his daughter who is living at Chennai would take care of him. He further submitted that in the cadre of Office Assistant, the petitioner is not going to do any thing to undo any allegations in the criminal case. As far as the criminal case is concerned, the same is not relating to his seat of work or his job as such. The allegation is that the petitioner along with other persons collected money promising Government job. Already charge sheet has been filed and trial is also proceeding. The witnesses examined so far have not pointed any finger on the petitioner. In view of the matter for no fault on the



petitioner, the petitioner is being victimised and therefore it is a fit case for this Court to interfere in the order of transfer.

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4. Per contra, the learned Additional Advocate General would submit that even *de-hors* the criminal case, the respondents have power to transfer the petitioner from Chennai to Tiruvannamalai. Whenever an employee is involved in a criminal case, instead of suspending him, he can be shifted or shunted out of the district and that is held to be an administrative reason and therefore even in the absence of any direction by this Court, the respondents have power to shift the petitioner outside the district. In any event, this Court also while directing the respondents to consider the revocation of suspension, suggested that alternative can also be considered by the respondents and the respondents have considered the said alternative. According to him even in the revocation of suspension order 14.09.2023, the Government has specifically made that as a condition to revoke the suspension and post the petitioner in a non sensitive post out of the district and accordingly only the petitioner has been transferred.

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



6. As rightly contended by the learned Additional Advocate General, transfer is an incident of service. When the petitioner is facing a criminal case, instead of suspending him or at the time of revoking his suspension if the employer thinks that he can be shunted out of the district and posted in a non sensitive post, the same would not be punitive and it would only be administrative in nature and such an approach is as per law. Therefore, this Court cannot interfere with the order of transfer. As far as the hardship which is faced by the petitioner is concerned, it may be true that an order of transfer or the place of posting may cause hardship to an employee considering his personal nature, monetary aspects etc. But those are not grounds for this Court to interfere in the order of transfer.

7. In any event, the operative portion of the earlier order which was passed at the instance of the petitioner is also extracted above. This Court has also suggested the respondents to consider transferring the petitioner as an option instead of keeping him under suspension. When the petitioner's suspension has been revoked and alternatively he is transferred out of the district, this Court sees no case for interference. The learned counsel for the petitioner submitted that so far no witnesses have not pointed out any fingers against the petitioner. At this stage, this Court need not advert into the said



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averments. If the petitioner is exonerated by the criminal Court on merits thereafter it will be always open to the petitioner to approach the respondents and at that point of time it is for the respondents to consider the case of the petitioner on its own merits and in accordance with law.

8. With the above observation, the writ petition is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

25.04.2024

Index : Yes/No

Speaking order/Non-speaking order
dpq

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