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W.A.(MD)Nos.2225 to 2229 of 2021 and
CONT P(MD)Nos.739 to 742 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.12.2023

PROUNOUNCED ON : 02.02.2024

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)Nos.2225 to 2229 of 2021
and
CONT P(MD)Nos.739 to 742 of 2022
and
C.M.P.(MD)Nos.11089, 11091, 11093, 11095,
11096 of 2021, 1204, 1207, 1215, 1216, 1227, 1229,
1236, 1237, 1740 to 1743 and 6221 of 2022

W.A.(MD)No.2225 of 2021:

- 1.The Director General of Police/
Inspector General of Prisons,
Department of Prison,
Chennai-600 008.
- 2.The Deputy Inspector General of Prisons,
Department of Prisons,
Madurai Region/Chennai Region.



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3.The Superintendent of Prisons,
Central Prison, Palayamkottai,
Tirunelveli District.

4.The Superintendent of Prisons,
Central Prison-1, Puzhal,
Chennai.

... Appellants

Vs.

Narasingaraja

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.10759 of 2021, dated 28.10.2021.

In Cont.P.(MD)Nos.739 to 742 of 2022:

For Petitioner	: Mr.Henri Tiphagne
For Respondents	: Mr.Veera Kathiravan Additional Advocate General assisted by Mr.J.Ashok Additional Government Pleader

In W.A.(MD)Nos.2225 to 2229 of 2021:

For Appellants	:Mr.Veera Kathiravan Additional Advocate General assisted by Mr.J.Ashok Additional Government Pleader
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In W.A.(MD)No.2225 of 2021:

For Respondent	: Mr.M.Pandian
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In W.A.(MD)Nos.2226 to 2229 of 2021:

For Respondent :Mr.Henri Tiphagne

COMMON JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The Writ Appeal in W.A.(MD)No.2225 of 2021 is filed against Narasingaraja challenging the order passed in W.P.(MD)No.10759 of 2021, dated 28.10.2021. The W.A.(MD)No.2226 of 2021 is filed against K.Raja challenging the order passed in W.P.(MD)No.11259 of 2021. The W.A.(MD)No.2227 of 2021 is filed against Kumara Dhas challenging the order passed in W.P.(MD)No.11269 of 2021. The W.A.(MD)No.2228 of 2021 is filed against Dharmeswaran challenging the order passed in W.P.(MD)No.11279 of 2021. The W.A.(MD)No.2229 of 2021 is filed against Jeya Manohar challenging the order passed in W.P.(MD)No.11298 of 2021. The facts stated in writ petitions filed in W.P.(MD)No. 11259, 11269, 11279 and 11298 of 2021



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are similar, but the facts stated in writ petition filed in W.P.(MD)No.10759 of 2021 is slightly different.

2. The prayer in the writ petition filed by one Narasingaraja in W.P. (MD)No.10759 of 2021 is for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the 3rd appellant herein in No.100/G1/2021, dated 19.06.2021 and to direct the appellants 1 to 3 herein to permit the writ petitioner to continue his duty as Grade I Warder Central Prison, Palayamkottai. The brief facts as stated in the affidavit filed in W.P.(MD)No.10759 of 2021 are as follows. On 09.06.2006 the petitioner was appointed as Grade I Constable in Central Prison, Cuddalore and he was transferred on eight times to different places. While he was working in Central Prison, Palayamkottai from 24.02.2020 to the shock and surprise of the petitioner, based on the order dated 16.06.2021 in order No. 21/E.W.3/2021 of the 1st respondent, the 3rd respondent has relived the petitioner from Central Prison, Palayamkottai and informed the petitioner that he has been transferred to Central Prison, Puzhal-1, Chennai, by



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the impugned order in No.100/P1/2021, dated 19.06.2021. The case of the petitioner is that he is married and has three children in the age of 15, 13 and 11, and his son is suffering from Seizure Disorder, Visual Impairment and urinary problem and he is taking treatment at Tuticorin and Tirunelveli. He is studying 10th standard in Muthukaruppan Higher Secondary School at Sillankulam Village. Except this school, no other school was ready to admit the petitioner's son in view of his health issues. Due to the above said transfer order, the petitioner has to shift his entire family to Chennai and his son's treatment would be affected. Moreover, the said transfer order is passed as a punitive measure. Since, from the date of appointment, he was transferred eight times to various places, pointing out the family situation and other circumstances the petitioner has challenged the transfer order in W.P.(MD)No. 10759 of 2021.

3. The respondents have filed counter affidavit in W.P.(MD)No.10759 of 2021, wherein it is stated that the petitioner Narasingaraja was transferred on



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his own will from Central Prison Cuddalore to Central Prison, Trichy on 31.07.2007, then to Central Prison, Madurai on 03.10.2009. Again, on his own request transferred to Central Prison, Palayamkottai on 31.10.2012. Then promoted as Grade-I Warder and transferred to Central Prison-1 Puzhul, again on his own will transferred to Borstal School, Pudukottai 30.09.2017. While working in Pudukottai he was deputed to Special Sub Jail, Poonamalle on “Other Duty” for 15 days. But the petitioner refused to receive the order of deputation, hence he was placed under suspension and disciplinary action was initiated. Subsequently his suspension was revoked and posted to Special Sub Jail, Trichy. Then on humanitarian grounds his transfer request was considered and posted near his native place Palayamkottai on 24.02.2020. It is pertinent to state herein that the petitioner had faced disciplinary proceedings and punished was awarded on five different occasions. As far as the averments stated in paragraph 3, the respondents submitted that the said Narasingaraja was transferred from Palayamkottai to Puzhal Prison as per the orders of the 1st respondent / Director General of Prisons, vide Proceedings, dated 16.06.2021,



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since the petitioner has a habit of forming group with his community Warders and sending false complaint against the Prison Administration. The petitioner sneaked into the legal proceedings of remand Prisoner P.Muthumano murder case and had given information to their community prisoners as well as Ex-prisoner. Hence, based on the above said reliable inputs, the petitioner was transferred to Central Prison-1, Puzhal. Most of the transfers were ordered based on the petitioner's request only, except the last one, which was on administrative ground, that too in view of threat to the security of prisoners and prison staff. Generally, the respondent would not transfer any individuals, unless or otherwise serious allegations or complaints or reliable inputs found against the individual. The present transfer orders were issued by the 1st respondent is within the guidelines issued by the Government in G.O.(D)No. 822, Home (Prison-2) Department, dated 15.07.2008 and hence the transfer orders are legally valid. Under Rule 76 of the Tamil Nadu Prison Rules, the petitioner ought to carry on the following duties:

“(i) to prevent unnecessary talking, laughing, singing, playing, quarrelling and other unseenly behaviour and to report the offender;



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- (ii) to see that the prisoners keep order in moving about, and do not loiter about the prison*
- (iii) to see that no prisoner leaves his own enclosures or communicates in any way with any prisoner in a different enclosures with any person outside the prison;*
- (iv) to abstain from all familiarities and un-necessary communication with prisoners;*
- (v) to see that there is no dirt or litter in any part of the prison of which they are in charge and that the drains are kept properly clean;*
- (vi) to examine the wards, cells bedding and clothing of the prisoners personally and to report at once any prohibited articles found therein.*
- (vii) to see that the care and welfare of the prisoners are ensured;”*

But the petitioner failed to carry some of the duties. Further the Hon’ble Supreme Court in ***E.P.Royappa Vs. State Government of Tamil Nadu***, reported in **1974 (4) SCC 3** has observed that it is for the Executive Authority to decide who is to be posted and where to be posted and this is within the realm of the executive function to take decision for transfer and posting of its employees and no government servant has any legal right seeking to be posted



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forever at any one particular place of his choice. The transfer of any government employee is incidence of service and condition to any service which is necessary in public interest and for efficiency in public administration and the wheels of administration should be allowed to run smoothly. Further the government servant cannot disobey the transfer order or deputation order, hence the respondents prayed to dismiss the writ petition.

4. Likewise, W.P.(MD)Nos.11259, 11269, 11279 and 11298 of 2021 are filed by K.Raja, A.Kumar Dhas, P.Dharmeshwaran and A.jeya Manohar for issuance of writ of Certiorari to quash the transfer orders dated 01.07.2021. The writ petitioners had stated in their affidavits that they were appointed as Police Constable on various dates. On 22.04.2021 one P.Muthumano who was lodged in the Central Prison, Palayamkottai was beaten to death by inmates in an alleged caste clash among the prisoners. The respondents have arrested seven prisoners and placed the prison authorities who were on duty on the day of incident under suspension. The allegation against the writ petitioners is that



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they had instigated the inmates and prison authorities belonging to their caste and induced the agitation. However, the claim of the writ petitioners is that on the day of incident they were not in prison duty. The writ petitioner K. Raja was working as Guard In-charge at Tirunelveli Medical College since 03.09.2020. The writ petitioner A. Kumaradas was working in Special Team in Quick Reaction Team since 25.02.2020. The writ petitioner P. Dharmeshwaran was working as Prison Ambulance Driver since 13.01.2015. The writ petitioner A. Jeya Manohar was working as Arms Room outside the Prison since 15.03.2021. Hence, they claim they never indulged in the alleged act, but with a malafide intention the petitioners were made to suffer punitive transfer. In the transfer order it is mentioned that the petitioners were transferred as per the instruction of the 1st respondent. The 1st respondent had directed the appropriate authority to post the petitioners in non-sensitive place since their “integrity is doubtful”. According to the petitioner though the impugned transfer order states the transfer is on administrative grounds but it came to be passed as punitive and the phrase “integrity is doubtful” would indicate the transfer is stigmatic as



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well. The transfer order by way of punishment can be passed only when the charges are proved. Further the order was passed without affording opportunity to the petitioners. The appellants instead of transferring or proceeding against the persons responsible for the clash inside jail, have transferred the writ petitioners, which is arbitrary. The further contention of the petitioners is that they were suspended for the reason that enquiry is contemplated on grave charges. But till now, the respondents have not initiated any disciplinary proceedings, no charge memo was issued for the alleged charges. In the above said circumstances, the act of the 1st respondent in transferring the petitioners to faraway place, that too by citing administrative reasons is illegal besides punitive. Therefore, the petitioners had challenged the transfer order in the writ petitions.

5. The 2nd respondent has filed common counter affidavit wherein it is stated due to the murder of the remand prisoner P.Muthumano at Central Prison, Palayamkottai, the Deputy Inspector General of Prisons and Correctional



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Services, Madurai Range, vide Proceedings, dated 22.04.2021 had suspended Mr.Sam Albert, Mr.S.Anantharaj, Mr.A.Vadivel Murugaiah, Mr.P.Sivam, Mr.S.Sankar Subbu, Mr.Gangarajan and Mr.S.Shanmuga Sundaram. Further the following Executive Personnel namely Mr.S.Senthoorpandi, Mr.Kombiah, Mr.K.Selvaraj, Mr.A.Jayamanohar, Mr.V.Esakki, Mr.P.Dharmeswarn, Mr.A.Kumardas, Mr.K.Raja, Mr.S.Velram, Mr.V.Narasingaraja were transferred from Central Prison, Palayamkottai, to other Prisons on administrative grounds. The reason for such transfer is that they are having a habit of forming group and helping their community prisoners illegally. Further the writ petitioners had passed unwanted information to the prisoners and to their family members and making group rivalry/tension between the prisoners. The transferred staffs have gathered information about the actions and the next move of the Department and passed the information to the prisoners lodged in Central Prison, Palayamkottai. Based on the information passed by the executive staff, the prisoners mustered and shouted slogans against the administration and also raised slogans not to lodge other caste prisoners in their cell. The prisoners



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climbed on the top of the prison buildings as well as in trees and threatened the administration that they will commit suicide by jumping from the building. Due to this act of the prisoners, the Palayamkottai Central Prison complex became a mess and a tensed area. The District Collector had come to prison to diffuse the situation. In this regard based on the report of the Jailor, Central Prison, Palayamkottal, the Superintendent of Prisons, Central Prison, Palayamkottai, has initiated disciplinary action by issuing charge memo under Rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules on 27.09.2021, against S. Senthoorpandi, Kombiah K. Selvaraj, A.Jeyamanohar, V.Esakki, P.Dharmaswaran, A.Kumaradhas, K.Raja and S.Veiram, V.Narasingaraja. The action initiated to punish the erring officials is as per law. If such action is not taken then there will not be any control on the erring officials. Therefore, the 2nd respondent prayed to dismiss the writ petitions.

6. The Learned Single Judge has allowed the writ petitions by relying on the judgment rendered in the case of **K.M.Elumalai Vs. The**



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Superintendent of Prisons Central Prison-II and another (CDJ 2009 MHC 4819) and has held that the impugned orders are passed by violating the principles of natural justice besides punitive in nature and quashed the impugned transfer orders, dated 19.06.2021 and 01.07.2021, passed by the Superintendent of Police, Central Prison and allowed the writ petitions. However, the respondents in the writ petitions were given liberty to pass fresh orders uninfluenced by the order passed in the writ petition, if so advised. Also granted liberty to proceed with the disciplinary proceedings as per law. Aggrieved over the said order, the present writ appeals are filed by the respondents in the writ petitions.

7. The contention of the appellants / respondents before this Court is that on 22.04.2021, one P.Muthumano, a remand prisoner belonging to Scheduled Caste community was assaulted by co-prisoners belonging to different communities causing head injury and the said P.Muthumano succumbed to the injury. There was community clash inside the prison. From



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22.04.2021 to 24.06.2021, the prisoners belonging to Scheduled Caste community conducted various agitations against the administration and threatened to commit suicide inside the prison. The family members of the deceased P.Muthumano along with other community people conducted various agitations against the administration and refused to receive the dead body for more than two months. In the meanwhile, a writ petition was filed before the Hon'ble Court and the Hon'ble Court in order to ensure law or order and to diffuse the tension had passed series of orders. The Court monitored investigation was carried out. It is only thereafter the family of the deceased, received the dead body on 02.07.2021, that too only after orders were passed by this Hon'ble Court. In such tension circumstances which prevailed due to the death of the P.Muthumano, there was an en-masse transfer and in that the writ petitioners were also included. The writ petitioners had challenged the transfer orders, but the other persons have not challenged the said transfer orders. The appellants submitted that the writ petitioners were providing false information to the persons inside and outside the prison, which has led to the chaos in the



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administration. Hence, the appellants were forced to pass transfer orders and hence, on 19.06.2021 and 25.06.2021 the transfer orders were passed on the administrative ground.

8. The contention of the individual writ petitioners is that they are not involved in the alleged act of transmitting the information to the agitating persons. Further they were not inside the prison to instigate the agitating persons. For which the writ petitioners submitted that writ petitioner namely K.Raja was working in the Medical College, A. Kumaradas was working in a special team in quick reaction, P.Dharmeshwarn was working as a prison ambulance Driver and A. Jeya Manohar was working in Arms Room outside the prison. Hence, they are not involved at all, but the respondents are biased against the writ petitioners. The specific contention of the writ petitioners / respondents is that the transfer order is stigmatic wherein it states that the employees should be transferred to a non-sensitive post, since their integrity is doubtful. Moreover, the transfer is punitive since the respondents have not



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framed any charge and had not granted any opportunity to the writ petitioners before passing the transfer order.

9. After hearing the rival submissions and after perusing the records this Court had given its anxious consideration. It is seen that the situation prevailing then was tensed and there was law and order problem. Hence the appellants / respondents being the employer is having every power to transfer the employees to diffuse tension and on administrative ground. In such circumstances, the appellants are absolutely right in taking action. But in the present case the transfer orders were passed after two months of the said incident and the reasons stated amounts to punitive and stigmatic. If the respondents had not stated any reasons, then the Courts would not have interfered. But the reasons stated in the present case definitely amounts to punitive and stigmatic.

10. But the specific stand of the appellants / respondents is that the



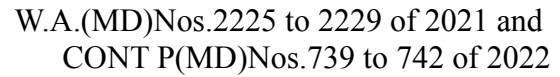
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impugned order states the reason for transferring the writ petitioners and the same would not affect the writ petitioners service. Hence this Court directed the appellants / respondents to produce the service records of the individual writ petitioners. On perusal of the service registers, the appellants have entered that the writ petitioners were transferred but there is no phrase “their integrity is doubtful”. Therefore, the service records are not reflecting the stigmatic phrase as stated in the impugned order.

11. Further the appellants / respondents submitted that due to intelligence report, the said persons were transferred. But such report was not placed before this Court in order to ascertain the claim of the appellants. The counter affidavits had not stated the exact role of the individual writ petitioners except Narasingaraja. Even in the case of writ petitioner Narasingaraja, the earlier charges are unauthorized absence, quarrel with Assistant Jailor etc. When there is no material placed before this Court, this Court is of the considered opinion that the transfer order is stigmatic and the Learned Single



12. It is seen that pending writ petitions, the respondents had initiated disciplinary proceedings and issued charge memo dated 27.09.2021 under 17(b) of TNSC (D & A) Rules. After taking note of the same the Learned Single Judge had granted liberty to the appellants to proceed with the disciplinary proceedings. Pending writ appeal the appellants had concluded the disciplinary proceedings and the same was pending to impose punishment.

13. The writ petitioners on receiving the transfer order had challenged the same before this Court. Initially the writ petitioners were on suspension and thereafter they were on leave for brief period and joined duty subsequently. But the appellants have regularised the said period as leave period. Now the only issue for consideration is whether the period ought to be regularized as duty period. When this Court had held that the transfer in



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punitive and stigmatic, then they are entitled for regularizing the period as duty period. Therefore, this Court is directing the appellants to regularise the period as duty period, without further complicating the issue.

14. The writ petitioners have filed contempt petitions and the same is taken up for hearing along with the writ appeals. At the stage of admission of writ appeal, there was an order interim stay whereby the Learned Single Judge's order was stayed. Thereafter, the writ petitioners had filed vacate stay petitions and after hearing the same this Court has vacated the interim order. Even after the vacation of the interim order, the appellants have not implemented the order passed in the writ petitions. Therefore, the writ petitioners had filed contempt petitions. Since the writ appeals are dismissed, this Court is inclined to close the contempt petitions. The appellants in the writ appeal / the respondents in the contempt petitions are directed to regularizing the period of suspension and the period during the pendency of litigations as duty period. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy



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of this judgment.

15. With the above said observations, the writ appeals are dismissed and the contempt petitions are closed. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]

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To

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Inspector General of Prisons,
Department of Prison,
Chennai-600 008.
- 2.The Deputy Inspector General of Prisons,
Department of Prisons,
Madurai Region/Chennai Region.
- 3.The Superintendent of Prisons,
Central Prison, Palayamkottai,
Tirunelveli District.
- 4.The Superintendent of Prisons,
Central Prison-1, Puzhal,
Chennai.
- 5.The DGP of Prisons and Correctional Services,
The Office of Director General of Prisons Tamilnadu,
No.6, Whennals Road, Egmore,
Chennai-600 008.



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