

(2014) 10 MAD CK 0300

In the Madras High Court

Case No : Writ Petition No. 22682 of 2014 and M.P. Nos. 1 and 2 of 2014

A. Saravanan

APPELLANT

Vs

The Director of Art and Culture

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 MAD CK 0300

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Judgement

R.S. Ramanathan, J.—The petitioner is a Mridangam Artiste and was appointed as Lecturer in the Tamil Nadu Government Music College, Chennai, on 06.07.1998. On 14.8.2014, a memo was issued to him by the second respondent calling for explanation why disciplinary proceedings should not be initiated against him for his alleged misconduct and he submitted his reply on 18.8.2014 to the second respondent explaining the factual position. However, without considering his explanation dated 18.8.2014, by order dated 18.8.2014, the second respondent requested the first respondent to transfer the petitioner to some other music college and on the basis of the letter of the second respondent dated 18.8.2014, the first respondent, by his proceedings dated 18.8.2014 passed orders transferring the petitioner to the Tamil Nadu Music College, Madurai, and consequently, on the basis of the proceedings of the first respondent, the second respondent by his proceedings dated 19.8.2014, relieved the petitioner from the Music College at Chennai. Aggrieved over the impugned proceedings of the first and second respondents, the petitioner filed the Writ Petition challenging the transfer on the ground that the transfer is vitiated by mala fide and the transfer is also punitive in nature and therefore, the impugned proceedings of the respondents are liable to be set aside.

2. The learned counsel for the petitioner submitted that though the petitioner was appointed in the year 1998, till 14.8.2014, no charge memo has been issued

against the petitioner and even as per the show cause notice, the petitioner along with another teacher C. David went to the Bursar and requested the Bursar to rectify certain defects in his room and on that ground, he was transferred and when the transfer is punitive in nature, it has to be set aside. He relied upon the judgment rendered in *Somesh Tiwari Vs. Union of India (UOI) and Others*, ; and *R. Mohanasundaram Vs. The Principal Chief Conservator of Forests, Conservator of Forests and District Forest Officer, Kallakurichi Division*, , in support of his contention.

3. On the other hand, the learned Additional Advocate General reiterated the averments made in the counter affidavit filed along with the Miscellaneous Petition to vacate the interim stay and contended that the transfer order is not punitive in nature and taking into consideration the interest of the institution and the students, the transfer order was made and there is no mala fide. He submitted that the petitioner along with another teacher Mr. C. David and the students of Mridangam Department went to the Bursar Room and gheraoed her to fulfil certain demands in respect of his class room, for which a memo was served on him by the Principal of the College. It is further stated in the memo that various complaints were received against the petitioner and from those complaints, it was brought out that the petitioner was not performing his duties diligently and therefore, show cause notice was given and the second respondent also sent a letter dated 18.8.2014 to the first respondent wherein it was stated that the interest of the students would be affected if the petitioner was allowed to continue in the same College and therefore, on the basis of the request of the Principal, the transfer was effected and there is no mala fide and the transfer order cannot be termed as punishment as it has nothing to do with disciplinary proceedings. He further submitted that even assuming that the transfer order was effected pursuant to the disciplinary proceedings, it cannot be termed as bad in law since the petitioner is unable to prove mala fide on the part of the respondents in effecting transfer. He submitted that the petitioner has been working in the Tamil Nadu Music College, Chennai for the past 16 years and having regard to the interest of the students in the music College, Chennai, the petitioner was transferred to Madurai and there is no mala fide. He also relied upon the judgment rendered in *Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another*, and *State of U.P. and Others Vs. Siya Ram and Another*, , in support of his contention.

4. It is settled law that transfer orders can be challenged on the ground of mala fide or passed violation of statutory rules. It is the case of the petitioner that the transfer is punitive in nature as the show cause notice was issued prior to the transfer order and on the basis of the complaint made by the Principal, the transfer order was made.

5. I had an occasion to consider this aspect in the judgment rendered in *C. Sengottuvel Vs. The Principal Secretary/Commissioner of Technical Education, Directorate of Technical Education and Others* . In that judgment, I considered

the judgment of a Division Bench of this Court rendered in W.A. No. 1138 of 2008 dated 24.4.2009 between S. Sevugan Vs. The Chief Educational Officer and Another, in the matter of Sevugan S. v. The Chief Educational Officer, Virudhunagar District and another I also relied upon the judgment reported in Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, , wherein the Hon''ble Supreme Court held that the order of transfer cannot be said to be punitive in nature when the petitioner was transferred due to exigency of administration, to enforce decorum and ensure probity.

6. In the judgment reported in Somesh Tiwari Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court held as follows:-

16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds-one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. In the said judgment, the Hon''ble Supreme Court dealt with different kinds of mala fide, namely, malice in fact and malice in law and when the order in question would attract the principle of malice in law and was passed on any factor not germane to the passing of the order and based on irrelevant ground, the same is liable to be set aside.

7. In this connection, it has to be seen whether the present transfer is a mala fide and actuated by malice. In the judgment reported in State of Punjab and Another Vs. Gurdial Singh and Others, , it has been held as follows:-

The question is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not logical. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: I

repeat... that all power is a trust that the Court is accountable for its exercise that from the people, and for the people, all springs, and all must exist. Fraud on power voids the order it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad.

If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.

8. In the judgment reported in *M. Sankaranarayanan, IAS Vs. State of Karnataka and others*, , it is held as follows:-

It may not always be possible to demonstrate malice in fact with full and deliberate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture.

9. In the judgment rendered in *State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others*, , it is held as follows:-

The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case, it is seen that on the administrative grounds the transfer orders came to be issued. Therefore, one cannot go into the expediency of posting an officer at a particular place.

10. In the judgment reported in *Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another*, , it is held as follows:-

The manner, nature and extent of exercise to be undertaken by Courts/Tribunals in a case to adjudge whether the use of the word undesirable casts a stigma or constitutes a punishment would depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions-status, service prospects financially and same yardstick, norms or standards cannot be applied to all category 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.

The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for the Supreme Court to direct one way or the other.

11. In the judgment reported in K.B. Shukla and Others Vs. Union of India (UOI) and Others, , it is held as follows:-

The responsibility for good administration is that of the government. The maintenance of an efficient, honest and experienced administrative service is a must for the due discharge of that responsibility. Therefore, the government alone is best suited to judge as to the existence of exigencies of such a Service, requiring appointments by transfer. The term exigency being understood in its widest and pragmatic sense.

12. In the judgment reported in State of U.P. and Others Vs. Gobardhan Lal, , it is held as follows:-

Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with.

13. Bearing in mind the law laid down by the Hon''ble Supreme Court in all these decisions and having regard to the submissions of the learned counsel for the petitioner as well as the learned Additional Advocate General for the respondents, in my opinion, the transfer order cannot be said to be punitive in nature nor can be characterised as mala fide one. No doubt, it is true that four days prior to the issuance of the transfer order, show cause notice was issued against the petitioner calling for explanation of the petitioner and the petitioner submitted his explanation on 18.08.2014. It is the case of the petitioner that without considering his explanation, the transfer order was passed. Further, it is seen from the order of transfer, the transfer order was not passed on the basis of show cause notice and it was passed on the basis of the recommendation of the

College Principal wherein the College Principal recommended the transfer stating that in interest of the institution and in the interest of the students, the petitioner may be transferred, and that was taken into consideration for transferring the petitioner. Therefore, when the transfer order was passed taking into consideration of the exigencies of the institution and in order to maintain decorum, the same cannot be challenged on the ground of mala fide as laid by the Hon''ble Supreme Court in the judgment reported in Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, .

14. In the judgment reported in Somesh Tiwari Vs. Union of India (UOI) and Others, , it has been held that where mala fide on the part of the authority is proved, the same can be set aside. In this case, it cannot be said that the first respondent has acted with mala fide and the respondent has acted on the basis of the recommendation of the Principal of the College in the interest of the institution and the first respondent is the competent authority to pass an order of transfer and there is no violation of any statutory rules and the transfer order was passed in the interest of administration and in the welfare of the students and hence, the same cannot be interfered with by the Court by exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

15. For the reasons stated above, I do not find any merit in the Writ Petition and the same is dismissed. No costs. The connected Miscellaneous Petitions are closed.