

(2010) 10 MAD CK 0008

In the Madras High Court

Case No : Writ Petition (MD) No. 7984 of 2010 and M.P. (MD) No's. 1 to 3 of 2010

A. Sargunaraj

APPELLANT

Vs

The Joint Director (Higher Secondary), Directorate of School Education, The Chief Educational Officer, The District Educational Officer and The Headmaster, Government Higher Secondary School

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2010) 10 MAD CK 0008

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Kannan, in M.P. MD No. 3/2010 and M. Ajmalkhan, for the Appellant; R. Janakiramulu, Special Government Pleader for R1 to R3 in W.P. (MD) No. 7984 of 2010 and M.P. (MD) Nos. 1 to 3 of 2010 and R. Janakiramulu, Special Government Pleader in Contempt Petition (MD) No. 601 of 2010, for the Respondent

Judgement

K. Chandru, J.—The petitioner is working as P.G. Assistant in Chemistry in the Government Higher Secondary School at Sivagnanapuram,

Thoothukudi District. The petitioner has filed the present writ petition seeking to challenge the order of transfer, dated 03.06.2010. By the

impugned order, the petitioner was transferred from the Government Higher Secondary School, Sivagnanapuram, Thoothukudi District, to

Kaliarayan Viduthi, Government Higher Secondary School, Pudukottai District as Post Graduate Assistant (Chemistry) on administrative grounds.

2. The writ petition was admitted on 29.06.2010. Pending the writ petition, in M.P. (MD). No. 1 of 2010 an interim stay was granted and this was

on the basis that the transfer was made on the basis of a complaint given by some third parties and the petitioner was not heard on that complaint.

M.P.(MD). No. 2 of 2010 was filed by the official respondents to vacate the interim order. A third party has also filed a impleading petition in

M.P.(MD) No. 3 of 2010.

3. In the meanwhile, since the interim order was not given effect to, a contempt petition in Cont.P.(MD). No. 601 of 2010 was filed by the

petitioner and when the contempt petition came up for hearing on 27.09.2010, this Court directed that the main writ petition to be listed along with

the contempt petition.

4. By the consent of both parties main writ petition was taken up for hearing.

5. Heard the arguments of Mr. M. Ajmal Khan, learned Counsel appearing for the petitioner, Mr. V. Rajasekaran, learned Special Government

Pleader appearing for the official respondents and Mr. V. Kannan, learned Counsel appearing for the impleading petitioner in M.P.(MD). No. 3 of

2010.

6. The case of the petitioner was that he has been working as Post Graduate Teacher at Government Higher Secondary School, Sivagnanapuram,

Thoothukudi District. Having been joined to the post at Sivagnanapuram on 03.06.2002, he was transferred to Ramanathapuram District in the

year 2004 and re-transferred to Thoothukudu District in the year 2008. It is claimed by the petitioner that the impugned order dated 03.06.2010

transferring him came to be passed on the basis of some unanimous complaint and the transfer was done by way of punishment. In the impugned

order it was stated that because of the petitioner not taking proper lessons, pass percentage got reduced and there was no proper income-

expenditure statement furnished for the commission amounts received in view of purchase of exercise books. The Chief Educational Officer,

Thoothukudi, asked the District Educational Officer, Kovilpatti to conduct an enquiry on the complaint made against the petitioner and to found

that there was any prima facie case on the complaint. The Chief Educational Officer, Thoothukudi recommended action against the petitioner. It is

on the basis of the report and in the interest of the students the petitioner was directed to be transferred to another far away place in the revenue

district.

7. A counter affidavit dated 29.07.2010 was filed together with the vacate stay application. it is claimed that a group of right thinking elders of

petitioner's village and the adjacent village gave a complaint and the transfer was done on the investigation. Transfer is not on punitive measures,

but on administrative grounds.

8. In paragraphs 6, 5, and 11 of the counter, in justification of the transfer, it was averred as follows;

5. It is submitted that the transfer order passed by the first respondent is not in middle of the academic year. This is the time that transfer counseling

is going on for teachers. So the transfer passed by the first respondent is correct. Apart from the above there are so many irregularities and

indifferences actions are done by the petitioner which will prove that he is having unbecoming conduct for a teacher and he has no teacher life

quality also.

6. It is submitted that the period of June 2009 to 2010 he was on other duties for 36 days earned leave two days casual leave 12 days restricted

holidays 2 days medical leave 11 days, out of 210 working days he was away from the school, for 63 days. When the fact is like this how can he

produce 90% of results. He has spoiled the name of the school by not producing 100% result.

11. The delinquent petitioner has misappropriated the Govt. Money of Rs. 2,000/- and for which evidence are there on record. It is a criminal

offence to be punished under India Penal Code. The misappropriate of Govt. money by the delinquent petitioner is proved beyond the shadow of

doubt. He is guilty to be punished under the provisions of 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules.

9. In response to the counter affidavit, the petitioner has filed rejoinder dated 19.10.2010, wherein the petitioner claimed that he belonged to the

Schedule Caste community and the majority of the village population are Hindu caste community. Since he was also acting as incharge headmaster

for some time, the vested interest of the villagers deliberately made a false complaint.

10. With reference to the pass percentage, he claimed that no body can assure for 100% pass and though his students are coming from rural

atmosphere, they assured 98% pass in Chemistry. On the question of

misappropriation, the petitioner has stated that the allegation is totally baseless and that he was ready and willing to face any proceedings initiated in this regard.

11. With reference to the allegation that he is being away for 63 days, in para 5 of the rejoinder the petitioner has stated as follows;

I respectfully state that as regards the other averment that I had been away from school for 63 days out of 210 working days, it is true that I have

availed 12 days casual leave and 11 days medical leave to which I am legally entitled to. However, only because of the respondents who has

assigned various duties to me, I had been away from the school for 36 days, for which I cannot be blamed in any manner. The details of other

duties given to me are detailed below;

(1) Headmaster meeting conducted by Chief Educational Officer & District Educational Officer:

5 days (12.06.2009, 25.06.2009, 07.07.2009, 12.08.2009 & 19.09.2009)

(b) N.S.S. meeting and NSS camp report submit to D.L.O.: 3 days (30.07.2009, 31.08.2009)

(c) For registering mark sheets certificate of 10th standard students to the District Employment Office:-1 day

(d) As per orders of Chief Educational Officer, I functioned as Assistant Superintendent for +2 Public Examination: - 11 days

(e) As per orders of Chief Educational Officer, I was engaged in +2 paper correction: - 13 days

(f) Election Duty: - 3 days.

12. Before proceeding with the rival contentions, the locus standi of the intervenor in M.P.(MD). No. 3 of 2010 must be decided first. The

petitioner/intervenor claimed that he was the resident of Sivagnanapuram, beyond that, he has not stated any thing about his locus standi in

interfering with the activities of the school. He did not even say that any of the wards in the School or he was connected with any parents and

teachers association. He also does not say that whether he was an elected representative of the local authority. Curiously, the petitioner has come

forward to say that the writ petitioner was a Christian and he was distributing bible to the Students and though he was a Christian, he was

masquerade as a Hindu Schedule Caste and secured appointment on that basis.

13. It has been time and again held that in the service matter third party cannot be allowed to intervene and dictate terms especially regarding

posting, transfer etc., If the allegation of the intervenor is accepted that the transfer was made on the basis of the complaint made by the villagers

and the complaint includes the petitioner distributing religious literature of a particular religion, when it requires a full enquiry, the transfer cannot be

used as a lever to punish the petitioner, who is otherwise not being heard on that complaint, especially when the respondents are filing counter and

justifying the order of the transfer

14. In a writ of certiorari, reasons cannot be supported from outside. The impugned order must stand or fall by the reasons found in the order

itself. In this context, it is necessary to refer to the judgment of the Honourable Supreme Court in (2009) 9 SCC 313 (Rajnit Prasad v. Union of

India), wherein in paragraph 9 it has been observed as follows;

In respect of departmental proceedings which are initiated or sought to be initiated by the Government against its employees, a person who is not

even remotely connected with those proceedings cannot challenge any aspect of the departmental proceedings or action by filing a writ petition in

the High Court or in this Court. Disciplinary action against an employee is taken by the Government for various reasons principally for

misconduct" on the part of the employee. This action is taken after a "domestic" inquiry in which the employee is provided an opportunity of

hearing as required by the constitutional mandate. It is essentially a matter between the employer and the employee, and a stranger, much less a

practising advocate, cannot be said to have any interest in those proceedings. Public interest of general importance is not involved in disciplinary

proceedings. In fact, if such petitions are entertained at the instance of persons who are not connected with those proceedings, it would amount to

an abuse of the process of Court.

15. In the light of the rival contentions it has to be seen whether the impugned order of transfer is legal and proper. Even the impugned order

discloses that the transfer was effected on account of a complaint, which complaint enquired into and verified by the Chief Educational Officer.

However, the contentions that the petitioner was not heard on the complaint was not specifically denied by the respondents.

16. On the other hand, in the counter affidavit, it is stated that the petitioner was guilty of misconduct under Rule 17(b) of the Tamil Nadu Civil

Service (Discipline and Appeal) Rules. In so far as pass percentage is concerned, the petitioner has stated that he has produced 98% result in

Chemistry and the students are coming from the remote villagers and there was no condition that 100% result should be assured. This contention is well founded.

17. The second circumstance is that he was away for 63 days, out of 210 days. It is claimed by the petitioner that except for 12 days earned leave

and 11 days medical leave, in other circumstances, he was got away from the school, are set out in paragraph 5 of the rejoinder and it has to be

treated as other duty and these facts are not denied by the learned Special Government Pleader and hence the transfer could not have been made

on this ground without verifying the actual leave availed by the petitioner and the days on which he was deputed to go on other duty.

18. The third circumstances regarding there was no proper income- expenditure statement furnished for the commission amount received in view of

purchase of exercise books, the petitioner not only denies the same, he is also ready to face the probe on that. Even the respondents have stated

that if such an allegation is proved it would be a major misconduct, falling within the Rule 17(b) of the Tamil Nadu Civil Services (Appeal and

Discipline) Rules. Therefore, even before a show cause notice could be issued, the respondents cannot make that a ground for transfer the

petitioner. As the petitioner himself had asserted that he was willing to face the probe, it is open to the respondents to frame appropriate charge

sheet and conduct an enquiry and impose a punishment commensurate with the said misconduct.

19. Mr. M. Ajmalkhan, the learned Counsel in this context produces a copy of the judgment of the Hon"ble Supreme Court reported in Somesh

Tiwari Vs. Union of India (UOI) and Others, and placed reliance in paragraph 16 which is 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 abased 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.

20. The ratio laid down by the Hon"ble Supreme Court squarely applies to the case on hand. In the light of the same, the writ petition stands

allowed M.P.(MD). No. 2 of 2010 stands dismissed. M.P.(MD). No. 1 of 2010 is dismissed as unnecessary in view of the order passed in the

main writ petition. M.P.(MD). No. 3 of 2010 also dismissed for the reasons set out above. No costs.

21. In Contempt Petition No. 601 of 2010 the grievance of the petitioner is that an exparte interim stay order dated 29.06.2010 was not obeyed.

Therefore, the respondents should be punished for the willful disobedience.

22. The stand of the learned Special Government Pleader is that since they have filed the vacate stay application, they want to know the out come

of the same, before giving effect to the interim order and they have a right to seek for modification of the order and therefore, there is no willful

disobedience. The contention of the learned Special Government Pleader, is well founded. Since in the main writ petition, the petitioner is

succeeded, it is unnecessary to pursue the contempt petition. Besides there is no contempt, if there was a bonafide attempt to seek for variation of

the exparte order, such an exercise cannot be labelled as willful disobedience. In the light of the same, the contempt petition is dismissed. If there

was any disobedience of the order made in the writ petition, without their being any further challenge to the same, it is open to the petitioner to

pursue fresh contempt proceedings.