
(2014) 07 MAD CK 0188

In the Madras High Court

Case No : W.P. (MD) No. 12058 of 2013 and M.P. (MD) Nos. 2 to 4 of 2013

C. Jane Margret

APPELLANT

Vs

Bishop

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Citation : (2014) 07 MAD CK 0188

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Judgement

K.K. Sasidharan, J.—This Writ Petition is directed against the order dated 18.07.2013, whereby and whereunder, the petitioner was transferred from CSI Elementary School, Mulanur to CSI Elementary School, Avinasipalayam.

BACKGROUND FACTS:-

2. The petitioner was initially appointed as an Assistant Teacher on 29.07.1992 in Society for Propagation of Gospel Primary School, Thuraiyur, Trichy District. She was transferred to CSI Primary School, Venkatapuram, on 02.06.1993. She was, once again, transferred to CSI Primary School, Kundalam on 16.11.1995. The petitioner was promoted as Primary School Headmistress on 01.06.2005 and she continued at CSI Primary School, Kundalam. The petitioner was transferred to CSI Primary School, Mulanur, on 02.06.2006. Thereafter, by way of the impugned order dated 18.07.2013, she was transferred from CSI Primary School, Mulanur, Tirupur District to CSI Elementary School, Avinasipalayam, Tirupur District.

3. It is the contention of the petitioner that the transfer is punitive in nature. The husband of the petitioner, by name Arul Rajamanoharan initiated writ proceedings against the CSI Diocese. The Writ Petition was allowed on 17.07.2013. The first respondent, with a view to wreck vengeance, transferred the petitioner immediately on 18.07.2013. The petitioner, therefore, challenges the transfer order on the ground of jurisdiction, besides bias and mala fides.

4. The third respondent filed a detailed counter-affidavit in answer to the contentions raised in the affidavit filed in support of the Writ Petition. According to the third respondent, the petitioner continuously worked for seven years in the very same place. She was transferred along with others on administrative ground. It was a general transfer. The third respondent denied the act of mala fides and contended that the transfer was made only on account of administrative exigency. The petitioner has already been relieved on 22.07.2013.

RIVAL CONTENTIONS:

5. The learned counsel for the petitioner made the following three substantial submissions:

(i) Each school is a separate unit. Therefore, the first respondent has no authority to transfer teachers from one institution to another institution.

(ii) The transfer is punitive in nature. It was made only on account of the initiation of writ proceedings by the husband of the petitioner.

(iii) Church of South India is not a registered body and as such, it had no legal entity.

6. The learned counsel for the petitioner placed reliance on the judgment of a Full Bench of this Court in the *The Correspondent, Malankara Syrian Catholic School Vs. J. Rabinson Jacob and Others*, , in support of his first contention that it is not permissible to transfer teachers from one unit to another unit.

7. The learned counsel for the third respondent supported the impugned order. According to him, the third respondent is the authority to appoint and transfer teachers in all the Schools managed by CSI. The schools are not separate units. The writ proceedings initiated by the husband of the petitioner against the Management has nothing to do with the transfer, which was made in exercise of administrative powers.

DISCUSSION:

8. The petitioner was appointed as Assistant Teacher on 29.07.1992.

Even though the petitioner has taken up a contention that she was appointed at a particular institution and the same was considered as a separate unit, she has not produced the appointment order to substantiate her contention. However, her statement in paragraph No. 2 of the affidavit filed in support of the Writ Petition itself would prove that she was appointed only by the first respondent.

The petitioner has no case at all that she was appointed to a particular institution, which was considered as a separate unit. She was appointed as a teacher by the first respondent. She was given promotion by the first respondent through the third respondent and transferred to CSI Primary School, Mulanur, on 02.06.2006. Thereafter, she was transferred from CSI Primary School, Mulanur, Tirupur District to CSI Elementary School, Avinasipalayam, Tirupur District.

Appointment, promotion, transfers, etc., were all made only by the third respondent for and on behalf of the first respondent. Neither the schools, where the petitioner earlier worked nor the institution, where she is presently working, were, at any point of time, considered as separate units, so as to contend that transfer from one unit to another is not permissible.

9. The judgment in Malankara Syrian Catholic School's case relied on by the learned counsel for the petitioner in support of his contention that each institution is a separate unit and as such, the first respondent has no right to transfer, has no application to the facts of the present case.

10. In The Correspondent, Malankara Syrian Catholic School Vs. J. Rabinson Jacob and Others, , the Full Bench found that the concerned teacher was appointed in a particular institution and more particularly, in the vacancy caused by the retirement of another teacher. The Full Bench also found that each individual school was an independent entity, with its own seniority list of teachers and staff. The teachers and other employees were appointed in a particular school or unit or establishment and no transfer from one unit to another or from one establishment to another was provided either under the statutory rules or in the conditions of service or by the Act or by the Rules framed thereunder. It was only under such circumstances, the Full Bench declared that transfer from one unit to another would not be permissible. However, that is not the case here. The petitioner has no case that the institution where she was appointed was a separate unit. Even if the petitioner has taken up such a contention, the same is liable to be rejected for the simple reason that she was transferred from one institution to another institution on several occasions. She was also given promotion by the first respondent and after such promotion, she was posted at a different location. Therefore, no reliance could be placed on the judgment of the Full Bench in Malankara Syrian Catholic School's case, to decide the present case.

11. Therefore, I answer the first point against the petitioner by holding that the first respondent is having every authority to transfer teachers from one institution to another.

12. The petitioner has taken up a substantial contention that the transfer in question is punitive in nature. In order to decide as to whether the transfer was made on the ground of administrative exigencies or it was one of punitive in nature, the very order of transfer should be looked into, in the light of the background facts.

13. The transfer order dated 18.07.2013 indicates that the petitioner was transferred from CSI Elementary School, Mulanur, to CSI Elementary School, Avinasipalayam. The order contained an important statement that the person on transfer would be paid the salary only after the approval of transfer by the Educational Authority.

14. The petitioner alleged mala fides against the first respondent.

According to the petitioner, her husband filed a Writ Petition before the High Court in W.P. No. 17675 of 2012 on account of the refusal of the Management to permit him to work upto 31.05.2013 on re-employment. The order passed by the Correspondent of CSI Boys Higher Secondary School, Dharapuram, relieving her husband was stayed by the High Court, by order dated 10.07.2012. The Correspondent filed an application to vacate the stay and the matter came up for hearing on 17 July, 2013 before the High Court. The learned counsel for the petitioner, by placing reliance on the cause-list for the day 17 July, 2013, contended that the Writ Petition was allowed by the High Court on 17.07.2013.

It is a matter of record that on the very next day, i.e., on 18.07.2013, the petitioner was transferred from Munalur to Avinasipalayam.

15. The Supreme Court in *Somesh Tiwari Vs. Union of India (UOI) and Others*, considered the extent of judicial review in matters relating to transfer and observed that in case the transfer is passed in lieu of punishment, the same is liable to be quashed. The Supreme Court observed:

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.

16. Even though the first respondent wanted the transfer order to be considered as an ordinary order of transfer made on administrative exigency, the background facts speak otherwise. The petitioner has produced several documents to demonstrate that the first respondent was determined to transfer her from the present place. Even though the counter-affidavit proceeds as if it was a general transfer, nothing is on record to substantiate the said contention. There is one more aspect to be taken note of in this matter. The transfer order made it clear that the teachers would not receive salary until the transfer order is approved by the Educational Authority. The first respondent is not in a position to inform this Court as to how long it would take to obtain approval of transfer. In case the approval of the Government is necessary for effecting transfer, the first respondent should have obtained prior approval. The petitioner, who is transferred to the new place, by order dated 18.07.2013, would be denied of the salary till the said transfer order is approved by the Educational Authority. The move to transfer appears to be a novel method to punish the petitioner. The

stipulation with regard to disbursement of salary only after obtaining the approval of the Educational Authority, if considered, in the light of the mala fides alleged against the first respondent, would clearly show that the transfer was not on account of administrative exigency, but an act which is punitive in nature.

17. In view of the finding on the issue regarding punitive nature of transfer, it is unnecessary to consider the contention regarding the legal status of the Church of South India. The said issue is left open to be decided in an appropriate proceedings.

18. The background facts clearly proved that the power of transfer was exercised on extraneous reasons. Therefore, I am inclined to set aside the impugned order. Accordingly, the order of transfer dated 18.07.2013 is set aside.

19. In the upshot, I allow the Writ Petition. Consequently, the connected miscellaneous petitions are closed. No costs.