

(2010) 02 MAD CK 0233

In the Madras High Court

Case No : Writ Petition (MD) No. 7890 of 2009 and M.P. (MD) No. 1 of 2009

C. Sengottuvel

APPELLANT

Vs

The Principal Secretary/Commissioner of Technical Education,
Directorate of Technical Education and Others

RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Citation : (2010) 02 MAD CK 0233

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

Bench : Single Bench

Advocate : G.R. Swaminathan, for the Appellant; K. Balasubramanian,
Additional Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—Heard both sides.

2. The petitioner is working as Senior Lecturer in the second respondent

institution and is also the captain for NCC 7th Battalion in Madurai. He was transferred by the proceedings of the 2nd respondent, dated 08.02.2008 to Central Polytechnic College, Chennai and the same was challenged by him, by filling W.P.(MD) No. 4414 of 2008 before this Court on the ground that the same was made without consulting the 5th respondent.

3. According to the petitioner, as per G.O.Ms. No. 239, Education and Science and Technology (V2) Department, dated 23.03.1995, the educational authorities are directed to consult the Director, NCC, while transferring the NCC part-time Officers employed in the Department from one institution to another and without consulting the 5th respondent, the order of transfer was passed and hence, it has to be quashed. This Honourable Court dismissed the said writ petition W.P.(MD) No. 4414 of 2008 holding that the petitioner was transferred on promotion and it was not a case of transfer simpliciter and therefore, the aforesaid G.O. was not applicable to the petitioner. This Court also granted liberty to the petitioner to

make representation to the authorities and on the basis of the representation given by the petitioner, the earlier order was modified and by order, dated 09.1.2008 he was reposted in Madurai as regular Senior Lecturer. Hence, the petitioner was employed as a regular Senior Lecturer in the Electrical and Electronic Department and continuing to function as captain of NCC 7th battalion in Madurai. It is stated by the petitioner that the 3rd respondent, who is the Head of Department of Electrical, is not qualified to hold that post and somebody has made a complaint about the same to the higher authorities and the 3rd respondent is under the impression that the persons working under her might have given such a complaint and therefore, she was having suspicion about the petitioner and other persons. The 4th respondent initially wanted to go to Chennai on transfer and he was also transferred to Chennai and now he wanted to come back to Madurai and taking advantage of the strained relationship between the 3rd respondent and the petitioner and other staff, he was able to influence the authorities to issue the order of transfer on 23.07.2009, transferring the petitioner to Government Polytechnic College at Tuticorin and got him posted in the place of the petitioner. This transfer order, transferring the petitioner to Tuticorin is challenged stating that the transfer was made in violation the G.O.Ms. No. 239, dated 23.03.1995 without consulting the 5th respondent and the person, who was transferred to his post does not have any training in NCC and in the earlier writ petition, this Court has held that but for the transfer of the petitioner on probation, the 5th respondent ought to have been consulted before the transfer and hence, the transfer is liable to be set aside.

4. The respondent filed a counter stating that the 3rd respondent made certain complaints against the petitioner and other teaching staff about the malpractices alleged to have been committed by them in the purchase of books for the students at subsidised prices, refusal to sign in the Attendance Registrar and also refusal to take part time courses in the evening and coming to the college in a drunken mood. Therefore, an inquiry Committee was appointed, consisting of Additional Director (Polytechnic) and Special Officer (Curriculum Development Centre) and the said Committee inquired into the complaints and also inquired the petitioner and other persons and after getting their explanations, submitted its report holding that all the charges levelled against the petitioner and other persons were proved. It is further stated that the impugned order was passed not with an intention to punish the petitioner, but due to administrative reasons and the petitioner was also relieved from his duty on 24.07.2009 and the petitioner was also posted in the vacant post of Senior Lecturer (Electrical and Electronics). It is further submitted that the 4th respondent was posted in the 2nd respondent institution for the vacant post of Senior Lecturer (Electrical) and not in the place the petitioner was holding, as contended by the petitioner. It is further stated that having regard to the report of the inquiry Committee and taking into consideration of the gravity of charges levelled against the petitioner, the first respondent thought it fit to transfer the petitioner and therefore, due to

administrative reasons the impugned order of transfer was passed.

5. It is further stated that G.O.Ms. No. 239, Education, Science and Technology (V2) Department, dated 23.3.1995 gave only guidelines and it is not necessary that the 5th respondent must be consulted before effecting transfer of the staff. The 5th respondent was requested to give training to the person, who was posted in the place of the petitioner and it is not as if the said person is not capable of acquiring the qualification and training. It is, therefore, submitted by the learned Additional Government Pleader that the transfer is only a transfer simpliciter on the basis of the administrative exigencies and it is not a punitive transfer and that cannot be challenged.

6. The petitioner filed the re-joinder affidavit stating that the inquiry report filed by the inquiry Committee would prove that it was created only for the purpose of transferring the petitioner and the persons, who conducted the enquiry had signed in the report as 17.06.2009 and in that report, they have stated that they conducted enquiry on 10.07.2009 and had the persons conducted the enquiry on 10.07.2009, how they could have submitted the report on 17.06.2009 and hence, it is a pre-planned conspiracy to transfer the petitioner. He further submitted that the counter filed by the first respondent would make it clear that it is a case of punitive transfer and he also denied the allegations made against him in the charges.

7. Mr. G.R. Swaminathan, the learned Counsel appearing for the petitioner submitted that in W.P.(MD) No. 4414 of 2008, it has been made clear that G.O.Ms. No. 239, dated 23.03.1995 is only applicable to the petitioner and the order of transfer in violation by of the aforesaid G.O. is not proper but however held that the petitioner was transferred on promotion and it was not a case of transfer simpliciter and therefore, the G.O. was not applicable to this case. He further submitted that now the petitioner was transferred to the same post and even according to the first respondent, the transfer is a transfer simpliciter based on administrative grounds and hence, as per the judgment of this Court, in the earlier writ petition, without consulting the 5th respondent, the petitioner should not have been transferred and hence, the transfer order is liable to be set aside.

8. He further submitted that the first respondent has admitted that the petitioner was transferred on the basis of the charges levelled against him and as a result of enquiry and hence, the order of transfer is by way of punishment and hence, without giving an opportunity to the petitioner, he ought not to have been transferred and therefore, the order of transfer is bad in law. In support of his contention, the learned Counsel appearing for the petitioner relied upon the unreported judgment of this Court rendered in W.P.(MD) No. 9171 of 2009, dated 17.11.2009, in the matter of C. Jeyammal v. The District Revenue Officer, Kallar Reclamation, Madurai and two Ors. and the facts of the case is similar to that facts of the case and following the judgment of the Honourable Supreme Court and our Honourable High Court, the learned Judge has held that though the order of transfer was stated to be on administrative grounds, it was passed by

way of punishment and hence, without giving opportunity to the petitioner, the order of transfer should not have been passed and hence, it is liable to be set aside. He further relied upon the judgment reported in 2006 (2) CTC 468 in Sevugan S. v. The Chief Educational Officer, Virudhunagar District and Anr. and submitted that when the transfer order is by way of punishment, it cannot be passed without conducting enquiry and hence, the impugned order is liable to be set aside.

9. Mr. K. Balasubramanian, the learned Additional Government Pleader submitted that in the judgment reported in JT 2009 (10) in the case of Rajendra Singh etc. v. State of U.P. Ors., the Honourable Supreme Court has held that when the transfer was not challenged on the ground of mala-fides or otherwise against the statutory rules, the transfer order cannot be challenged and even assuming that on the basis of the charges, the petitioner was transferred that cannot be treated as a punitive transfer. He further submitted that in the earlier writ petition, this Court has not held that the G.O.Ms. No. 239 dated 23.03.1995, is mandatory and without consulting the 5th respondent, the petitioner cannot be transferred. He further submitted that the said G.O. is only a guideline and it is not as if the petitioner cannot be transferred as he has obtained NCC training and the said training can be acquired by any other staff and the person, who has been transferred to the post of the petitioner was directed to get the training and the 5th respondent was also requested to give such training to that person and therefore, the order of transfer cannot be challenged on that ground. He further reiterated that it is not a case of punitive transfer and it is a case of transfer on administrative reasons, with a view to protect the interest of the institution.

10. I have given my anxious consideration to the submissions made by both the counsels.

11. In this case, the points for consideration are:

1. Whether the G.O.Ms. No. 239, dated 23.03.1995 is mandatory and without consulting the 5th respondent can be the petitioner transferred?

2. Whether the transfer is a transfer simpliciter on administrative grounds or a punitive transfer?

12. Point No. 1. As per G.O.Ms. No. 239, Education, Science and Technology (V2) Department, dated 23.03.1995, instructions were issued to the effect that the Educational Authorities may consult the Director, NCC while ordering departmental transfers of NCC part-time officers. The purpose of G.O. was made clear in para 3, wherein it has been stated that due to non-consultation with the officials of the 5th respondent, much time is wasted by giving training to the new person as it takes considerable time to select and post new Associate NCC Officers. Therefore, as a matter of convenience, the said G.O. was passed requesting the authorities to consult with the 5th respondent before effecting the transfer and those persons, who had already undergone training, the said G.O. did not say that under no circumstances, such persons cannot be transferred.

13. Further in para 4 of the said G.O. makes it clear that the Director of Technical Education is directed to consult the Deputy Director of General, NCC Directorate (TN, P & A), Madras, sufficiently in advance while ordering departmental transfers of Associate NCC Officers (NCC Part time Officers) so as to avoid any wastage of the NCC Special training acquired by those Associate, NCC Officers and in the interest of functioning of NCC troops. Therefore, it was only recommended that so as to avoid any wastage of time, they must be informed in advance, as as to give training to others persons and there is no total prohibition of transferring the persons without consulting them. Therefore, the contention of the petitioner that without consulting the 5th respondent, the order of transfer was made and it liable to be set aside cannot be accepted.

14. Further, in the earlier writ petition, this Court has not considered the scope of G.O.Ms. No. 239. Therefore, the transfer order cannot be quashed on the ground that the 5th respondent was not consulted as per G.O.Ms. No. 239.

15. Point No. 2: The next submission of the learned Counsel appearing for the petitioner is that the order of transfer is not a transfer simpliciter but a punitive transfer and it has been also admitted by the first respondent in the counter that on the basis of the charges levelled against the petitioner and having regard to the gravity of the charges, the order of transfer was made in the interest of the institution. He, therefore, contended that without conducting enquiry, the order was made and hence, it is liable to be set aside and he relied upon the judgment of this Court stated above. Therefore, we will have to find out whether the transfer is a transfer simpliciter or a punitive transfer.

16. In the impugned order, it has been stated that due to administrative reasons, the petitioner was transferred and posted as Senior Lecturer(Electrical and Electronic Engineering) in Government Polytechnic Tuticorin, in the existing vacancy. Therefore, as per the impugned order of transfer, it is only a transfer simpliciter and it cannot be stated that it is a punitive transfer. But, in the counter filed by the first respondent, it has been admitted that the 3rd respondent had levelled some charges against the petitioner and other staff about the alleged malpractices committed by them and an enquiry was conducted in to the charges levelled against the petitioner and the enquiry officials submitted the report holding that all the charges were proved against the petitioner and therefore, having regard to the gravity of the charges, the petitioner was transferred. Therefore, by the admission of the first respondent, it has been made clear that on the basis of the enquiry, charges were levelled against the petitioner and on the basis of the enquiry report, the petitioner was transferred and therefore, it may take the character of a punitive transfer. As submitted by the learned Counsel appearing for the petitioner, the Honourable Supreme Court has held in various cases that punitive transfer is bad in law, when it was made without giving opportunity to the petitioner. This Court has taken the similar view in the judgment reported in 2006 (2) CTC 468 in Sevugan S. v. The Chief Educational Officer, Virudhunagar District and Anr., wherein it has

been held as follows:

It is seen from the impugned order of transfer that it is passed on administrative ground, but it appears that the order was passed by way of punishment and based on the complaint against the conduct of the petitioner. If that be so, the petitioner is certainly entitled for proper opportunity to defend himself as to whether the complaints against him by the Public or by the Headmaster is proper or not by way of an enquiry.

In these circumstances, this Court is of the view that the transfer order passed by way of punishment is without any opportunity to the petitioner and on the face of it, the order of transfer is illegal and the same is liable to be set aside. Accordingly, the impugned order is set aside.

17. Further, in the Division Bench of this Court, in the unreported judgment, dated 24.04.2009 in W.A. No. 1138 of 2008, similar view was also taken by this Court. (A. Micheal Raj v. Director General of Police and Ors.) held thus:

Though in the impugned order of transfer it is stated as if the transfer has been effected on administrative grounds, the same has been given a go-by in the counter affidavit filed by the respondents as stated above. As per the averments contained in the counter affidavit the transfer was passed on some adverse remarks/complaints received against the appellant and also on the basis of the report sent by the Director General of Police to the Inspector General of Police, West zone, and in such circumstances we are of the considered view that the order of transfer passed against the appellant is by way of punishment and that too without giving any opportunity of hearing to the petitioner.

Therefore, from the above judgments, it is seen that when the transfer order was made on the basis of the report or on the basis of the charges levelled against the petitioner, the same is punitive one when the order was made without giving opportunity and the order is liable to be set aside. But in this case, it cannot be stated that no opportunity was given to the petitioner.

18. It is seen from the report of the enquiry officials that they enquired various persons, including the petitioner and he was questioned on 10.07.2009 about the charges levelled against him and the petitioner and other persons gave answers against the charges levelled against them and on the basis of the reply given by the petitioner, the Enquiry Committee found that the petitioner and other persons have misbehaved with the 3rd respondent. Therefore, on the basis of the charges levelled against the petitioner and other persons, the petitioner was given a chance to answer to the charges levelled against him and it was found by the Enquiry Committee that the petitioner has misbehaved with the 3rd respondent. Further the committee has also found fault with the 3rd respondent and no financial irregularities have been found against the petitioner.

Therefore, it is seen from the report of the Enquiry Committee that it was only a fact finding Committee and no financial irregularities were attributed towards the

petitioner. Under these circumstances, the order of transfer was passed in the interest of the institution. Therefore, it cannot be stated that it is a case of punitive transfer and without giving opportunity, the order was made.

19. In this respect the judgment of the Honourable Supreme Court reported in Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, , has to be considered. In that case also on the basis of the charges levelled against the employee and with a view to inquire the employee the employee was transferred and that order was challenged on the ground that it was a punitive in nature and the Honourable Supreme Court has 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 conditionsstatus, service prospects financiallyand the same yardstick, norms or standards cannot be applied to all categories 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 misbehaviour is a question which can be gone into in a departmental proceedings. For the purpose of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authorities concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by the respondents, of holding an elaborate enquiry is to be instated 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 the 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 others.

Therefore, the Honourable Supreme Court has held that the order of transfer cannot be said to be punitive in nature and the holding of an enquiry need not be insisted upon for the purpose of transferring an employee in public interest and due to exigencies of administration and to enforce decorum and ensure probity a transfer order can be passed.

20. According to me, the facts of that case squarely applies to the facts of this case and hence, the transfer order cannot be termed to a transfer by way of punishment. Further, as stated supra, in this case, enquiry was conducted and the petitioner was given opportunity to explain the charges levelled against him and on the basis of the enquiry report, the order was passed in the interest of the institution and the same cannot be questioned. Therefore, the judgments relied upon by the learned Counsel appearing for the petitioner cannot be applicable to the facts of this case and in these judgments, there was no enquiry and only on the basis of the charges levelled against the petitioner, the order of transfer was passed. But in this case, it is not so and enquiry was conducted and on the basis of the enquiry report, the order of transfer was passed. Hence, it is not a punitive transfer, but against the transfer due to administrative reasons and hence, the order of transfer cannot be challenged in this writ petition.

21. In the result, the writ petition deserves to be dismissed and accordingly, it is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.