

(2006) 08 MAD CK 0045

In the Madras High Court

Case No : Writ Petition (MD) No. 4511 of 2006 and M.P. No's. 1 and 2

Dr. T. Mytle Grace

APPELLANT

Vs

The Tamil Nadu Agricultural University and Others

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 08 MAD CK 0045

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : Issac Mohanlal, for the Appellant; A. Thirumurthy, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—By consent of the learned Counsels appearing for the petitioner as well as respondents, the writ petition is

taken up for final disposal.

2. Prayer in the writ petition is to quash the order of transfer dated 31.5.2006 transferring the petitioner from the post of Associate Professor

(Agronomy), Non-Plan, Department of Agronomy, Agricultural College & Research Institute at Madurai to the post of Assistant Professor

(Agronomy), Non-Plan, Sugarcane Research Station, Melalathur, Vellore District.

3. The brief facts necessary for disposal of the writ petition as stated in the affidavit in support of the writ petition are as follows.

(a) Petitioner joined as Assistant Professor on 15.7.1988 in the first respondent University and she was promoted as Associate Professor on

10.2.2003. Petitioner was posted in the Agricultural College & Research Institute, Madurai, on 9.4.2003. In April, 2006, the first respondent

University considered the claim of the Associate Professors for promotion to the next higher post of Professor under the Career Advancement

Scheme framed by the UGC, adopted by the State Government and the first respondent University, vide G.O.Ms. No. 270 Agricultural (AU)

Department, dated 8.10.2001.

(b) Petitioner states, she having completed 17 years of service and possessed doctoral qualification of Ph.D, she ought to have been given

promotion as Professor, but she was denied promotion without any reason. Therefore, petitioner submitted a memorandum on 22.5.2006 to the

second respondent through proper channel and complained of the procedure adopted in the matter of promotion and requested to reconsider the

matter and give promotion to her. Petitioner also represented the matter through the Tamil Nadu Agricultural University Teachers' Association,

which is a recognised Teachers' Association. Petitioner alleges that she was put under constant pressure by the officers of the third respondent to

withdraw the said memorandum dated 22.5.2006 and also the representation submitted through the association. According to the petitioner, she

was indirectly threatened that if she does not withdraw the memorandum, she will be taken out of the Academic and Research Institute and

transferred to any non-academic centre or sub-station in any remote place.

(c) It is further alleged in the affidavit that the petitioner refused to withdraw the memorandum and hence the impugned order dated 31.5.2006 was

passed, which was received by her on 5.6.2006. The said order of transfer is challenged by the petitioner on the ground that the petitioner's status

is reduced; she is transferred from the academic institution to non-academic institution; no reason is given in the impugned order of transfer; and

that the transfer order is effected by the Registrar, whereas the competent authority to pass the transfer order is only the Vice Chancellor.

(d) An allegation of mala fide is also made by stating that since the petitioner refused to withdraw the memorandum dated 22.5.2006 submitted

against the non-promotion of the petitioner as Professor by herself and through the Association, she was victimised. It is also averred in the

affidavit that another Associate Professor viz. Dr.V.K.Paul Pandi, was allowed to work in the Madurai Agricultural College for more than six years

and the petitioner is discriminated by effecting transfer within three years. On

the above said averments, petitioner has filed the present writ petition.

4. A counter affidavit has been filed by the first respondent on behalf of all the respondents with the following contentions.

(i) The first respondent University is not a single campus University and it has got 10 colleges functioning in seven campuses, one Diploma Institute,

32 Research Stations, 13 Krishi Vigyan Kendras and 5 Plant Clinic Centres, which are all situated in various districts of the State of Tamil Nadu.

There are about 1,100 teachers belonging to 35 disciplines, working in 60 constituent units of the first respondent University. In the colleges,

teachers are conducting 10 Under-graduate courses, 29 Post-graduate courses, 23 Ph.D courses, two Post-graduate diploma courses and one

Diploma course. Besides teaching, the teachers/Scientists are undertaking research projects and extension activities as part of their assignment of

employment in the respondent University.

(ii) It is stated that in Research Stations, the students are learning about the crops of the locality and their cultivation technologies. The

teachers/Scientists are undertaking research projects in various crops for invention of new crop varieties and also development of new and

improved cultivation technologies. The teachers/Scientists are rendering extension services to the farmers by laying "On farm trial" and giving

technical guidance to the farmers. Thus, the teachers are to function on multi-disciplinary basis and they are posted on various Research Stations to

meet the need of the Station for research and extension activities.

(iii) Regulation No. 9 (Chapter-III) of the Tamil Nadu Agricultural University Act contemplates that any employee of the University shall be liable

for transfer to any other post, in the interest of the University work, within the jurisdiction of the University. Thus, transfer is an incidence of service

of the first respondent University employees.

(iv) In the counter affidavit it is further stated that Sugarcane Research Station at Melalathur, Vellore District, is a constituent unit and undertaking

major research on sugarcane varieties and its cultivation technology suitable for the area besides breeder seed production in sugarcane, paddy,

cotton and pulses. The teacher/Scientist of Agronomy discipline is competent and qualified in Crop Management portfolio in all crop.

(v) According to the counter affidavit, one teaching assistant of the Agronomy

discipline working in the Sugarcane Research Station, Melalathur is not sufficient to cope up with the proposed research projects and therefore the head of the said station sought for one senior Scientist to be posted in that research station. Consequently, the petitioner, who is having research experience in various Agronomy aspects of sugarcane clones during 1997-2000 was transferred from Madurai to Melalathur by the impugned order and the said order is challenged by making false allegations. It is emphasised in the counter affidavit that the transfer order is passed solely to undertake the research projects for the welfare of the Farmer community as well as to enhance the petitioner's credit in research. Since the petitioner did not undertake any full research project during her entire service of 18 years and due to administrative exigency, the petitioner was transferred and there is no illegality or impropriety in the order of transfer.

(vi) The allegation that the petitioner was threatened by the officials of the Vice Chancellor's Office to withdraw the memorandum dated

22.5.2006 is denied. According to the counter affidavit, promotion to the post of professor is only on selection basis as ordered in G.O.Ms. No.

270 Agriculture (AU) Department, dated 8.10.2001 and the selection committee considered various accomplishments of the petitioner during her

service as Associate Professor and considered her proficiency for promotion to the post of Professor and various other factors and finally found

that the contribution of the petitioner in teaching is very poor and that there is no contribution in research and extension activities. Petitioner has

scored 17.50 out of 60 marks in the selection. The performance of the petitioner in viva-voce is also a very poor and therefore the petitioner was

not selected by the committee for the post of professor. The representation submitted by the petitioner on 22.5.2006 was considered and duly

replied on 6.6.2006.

(vii) It is further stated that out of 120 Associate Professors applied for the post of Professor, only 99 were selected and promoted as Professors

and 15 candidates were not selected on merit and that six candidates were found not eligible. In the discipline of Agronomy, out of 19 candidates

applied for the post of Professor, four candidates were selected by the Committee on merit basis and there is no substance in the allegation that the

petitioner was not selected on any other reason.

(viii) It is also stated in the counter affidavit that there is no reduction in the status and there is no monetary loss to the petitioner. No malice or

vindictiveness can be attributed and the petitioner's transfer is only on need basis to undertake research project and therefore the transfer order is

valid. So far as the allegation tht one Dr.V.K.Paul pandi is retained for six years, it is stated that the same is less than the petitioners total service at

Madurai.

5. The learned Counsel appearing for the petitioner emphasised the points raised in the affidavit and argued that merely because the petitioner had

submitted a memorandum on 22.5.2006 and she refused to withdraw the same, due to the instigation of the officials in the third respondent's

office, the petitioner was victimised. It is also contended that the malice alleged against the third respondent is not denied specifically by filing

sepearate counter affidavit and therefore prayed for allowing the writ petition.

6. The learned Counsel appearing for the respondents 1 to 5 submitted that the petitioner was relieved on 1.6.2006. However, pursuant to the

interim orders granted on 16.6.2006, petitioner was permitted to work in Madurai and out of the total 18 years of service, petitioner has served in

Madurai Station for 11 years. Insofar as the allegation of mala fide is concerned, it is contended that the same is vague and there is no direct

accusation against the third respondent or any specific officer and therefore no separate counter affidavit need be filed. Learned Counsel also

argued that there is no reduction in the salary or loss in status to the petitioner and hence the transfer order passed based on administrative

exigency is legally valid. The learned counsl also cited a decision of the Honourable Supreme court reported in E.P. Royappa Vs. State of Tamil

Nadu and Another, to show that the allegations of mala fide should be specifically pleaded and proved by the person alleging mala fide and mere

suspicion cannot take the place of proof.

7. I have considered the rival submissions of the learned Counsel appearing for the petitioner as well as respondents.

8. The main objection of the learned Counsel for the petitioner is that the transfer order is passed by the Registrar, whereas the competent

authority to pass the order of transfer is the second respondent/Vice chancellor.

The said contention is answered by the learned Counsel appearing for the respondents by stating that only on the approval of the Vice Chancellor, the transfer order was issued by the Registrar. The original order, granting approval by the Vice Chancellor was produced before this Court (a copy is retained in the bundle) and a copy of the same is also served on the learned counsel for the petitioner. Hence the said contention raised by the petitioner is disproved.

9. Insofar as the argument that the petitioner was transferred on mala fide reason, as rightly contended by the learned Counsel for the respondents, no specific mala fide is alleged against the third respondent nor against any specific officer in the second respondent's office. In the absence of any specific averment or pleading against any particular officer, the vague allegations of mala fide cannot be gone into as held by the Honourable supreme Court in various decisions.

(a) In the decision reported in E.P. Royappa Vs. State of Tamil Nadu and Another, , in paragraph 93 the Honourable Supreme Court held thus, ... proof needed here is high degree of proof. We cannot say that evidence generating judicial certitude in upholding the plea of mala fides has been placed before us in the present case. We must, therefore, reject this contention of the petitioner as well.

(b) In First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, it is held that the burden of establishing mala fide is very heavy on the person, who alleges it and mere allegation is not enough. It is further held that specific materials should be placed before the Court to prove mala fide.

(c) In Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, , at para 23 the Honourable Supreme Court held thus,

23. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been

acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established

only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which

preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from

proved facts. (See S. Pratap Singh Vs. The State of Punjab, It cannot be overlooked that the burden of establishing mala fides is very heavy on the

person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands

proof of a high order of credibility. As noted by this Court in E.P. Royappa Vs. State of Tamil Nadu and Another, , courts would be slow to draw

dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the

holder of an office which has a high responsibility in the administration.

The above decision is followed in a subsequent decision reported in Union of India (UOI) and Others Vs. Ashok Kumar and Others, . Hence the

ground of mala fide is not established.

10. The power of the Department in effecting transfer is emphasised by the Honourable Supreme Court in the decision reported in National

Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, , wherein at para 5, the Honourable Supreme Court held as follows,

5. ... It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right

to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts

from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration.

Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting

any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities

substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service

concerned....

Thus, the respondents are within their powers to effect transfer of the petitioner.

11. The power of the Court while dealing with the transfer order is explained by the Honourable Supreme Court in the following decisions.

(i) State of U.P. and Others Vs. Siya Ram and Another, , at para 5.

5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the

transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and

circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any

one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one

place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless

an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such

transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities

substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the

service concerned. This position was highlighted by this Court in National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, .

(ii) Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others, , in para 4.

4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or

infraction of any prescribed norms of principles governing the transfer (see Abani Kanta Ray Vs. State of Orissa and Others, . Unless the order of

transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see Union of India and Others Vs.

S.L. Abbas, . Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is

vitiating by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In Union of India

(UOI) and Others Vs. Sri Janardhan Debanath and Another, , it was observed as

follows (SCC p.250, para 9)

No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his

choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an

incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown

to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals

normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for

that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position

was highlighted by this Court in National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, .

12. From the analysis of above cited decisions of the Honourable Supreme Court, it has to be held that the petitioner cannot contend that she is

entitled to be retained in Madurai Agricultural College, particularly when the administrative exigency is cited as a reason for her transfer to the

Sugercane Research Station at Malalathur, Vellore District. It is not in dispute that there is no change in petitioner's status or emoluments. The

allegation of mala fide raised by the petitioner is also not proved. The allegation of the petitioner that the transfer order is passed by the

incompetent authority is also negated, in view of the fact that the transfer order is passed only with the approval of the Vice Chancellor, who is

the competent authority even according to the petitioner. In these circumstances, petitioner has no right to sustain the writ petition praying to quash

order of transfer dated 31.5.2006.

13. A similar order of transfer was challenged before me in the decision reported in A. Chinnasamy Vs. The District Collector, A. Sukumaran,

I.A.S., District Collector, A.K. Murugesan, M.L.A. and M. Arunachalam, Special Deputy Tahsildar (Election), , wherein also I have taken the

similar view.

14. I do not find any merit in the writ petition and consequently the writ petition is dismissed. No costs. Consequently, M.P. No. 1, the petition

filed for interim stay is also dismissed. M.P. No. 2, vacate stay petition is closed as unnecessary.