

(2000) 02 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 19603 of 1999 and W.M.P. No's. 28755 and 30034 of 1999

Felisraj J.

APPELLANT

Vs

Indian Medical Practitioners Co-operative Pharmacy and
Stores Ltd.

RESPONDENT

Date of Decision : 10-02-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2000) 2 LLJ 683 : (2000) 2 MLJ 520

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : P. Selvaraj, for the Appellant; F.B. Benjamin George, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The petitioner, an employee of the respondent Co-operative Pharmacy, prays for the issue of a writ of certiorari

calling for the records pertaining to the order dated December 2, 1999 made in proceedings E/99-2000 of the respondent, by which order the

petitioner had been transferred from Chennai to Tadepalle in Andhra Pradesh.

2. Heard Mr. P. Selvaraj, learned counsel appearing for the writ petitioner and Mr. F.B. Benjamin, George, learned counsel appearing for the

respondent.

3. This Court granted interim stay on December 14, 1999 and to vacate the same, the respondent filed W.M.P. No. 30034 of 1999. The

respondent had also filed a detailed counter. With the consent of counsel for either side the writ petition itself is taken up for final disposal.

4. According to the petitioner the order of transfer is a mala fide and arbitrary exercise of power and that the petitioner, who is a last grade

employee is not liable to be transferred from Chennai to Tadepalle in Andhra Pradesh. The petitioner a Fitter in the respondent Co-operative

Pharmacy filed W.P. No. 17431 of 1999 for fixation of proper scale of pay to his cadre. The writ petition was disposed of with a direction the

petitioner may move the appropriate forum under the Central Cooperative Societies Act.

5. In view of the petitioner approaching this Court, it is alleged that the respondent had developed animosity and has an axe to grind, besides the

respondent has been waiting for an opportunity to take vendetta against him. It is alleged that on November 13, 1999 with respect to a particular

assignment of work for which he had sought for permission and requested the Assistant Secretary (Purchase) to sign the required papers, the said

officer used filthy language without any provocation or reasons in the presence of other staff members. On that the writ petitioner had given a

written complaint to the respondent, which has also been endorsed by his immediate superiors.

6. The Secretary of the respondent-society refused to receive the complaint and he had sent the same by registered post which reached the hands

of the Secretary on December 1, 1999. Closely following the same, the impugned order of transfer has been passed transferring the petitioner from

Chennai to Tadepalle in Andhra Pradesh for no obvious reasons, nor such a transfer is warranted, nor the petitioner is liable to be transferred. It is

further contended that the impugned order is neither a bona fide exercise of power nor it has been passed in the administrative interest of the

respondent society. It is further pointed out that the petitioner's take home salary is Rs. 1000 per month and if he is transferred to Andhra

Pradesh, the petitioner, his aged mother, a physically handicapped sister, his wife and his sons will be seriously prejudiced as it is not possible to

set up two establishments with a meagre salary.

7. A counter has been filed by the respondent denying the allegations of mala fides and animosity and also pointing out that the respondent is not

aware of the very institution of the writ petition itself. The respondent further contended that the writ petition is not maintainable and that the

petitioner has to raise a dispute u/s 74 of the Multi State Co-operative Societies Act and he cannot invoke the writ jurisdiction of this Court under

Article 226. In the alternative the petitioner should have raised an Industrial Dispute and agitated the same before the competent forum.

8. It was vehemently contended that no writ is maintainable against Co-operative Society. It is further contended that the petitioner had been transferred in the interest of the administration and one of the Fitters is required to be transferred from Chennai to Tadepalle and the petitioner being junior of the two Fitters he had been rightly transferred.

9. It is further stated that the respondent had received a written complaint from the Assistant Secretary on November 30, 1999 complaining that

the petitioner is not co-operating and had not completed the job of rectifying the inter-com connection entrusted to him. In that context the

petitioner had been called upon to explain and he came with a counter complaint against the Assistant Secretary alleging that he has used abusive

language against the petitioner. On receipt of the said complaint, the Secretary called upon the Assistant Secretary and the petitioner and advised

them not to precipitate the matter any further as the matter was closed.

10. It has been asserted that the order of transfer has nothing to do with the said incident and the decision to transfer the petitioner to Tadepalle

was taken much earlier to the said decision and only formal order was issued after the incident on December 2, 1999. According to the

respondent on the service of the order of the transfer he is deemed to have been relieved from the office at Chennai and he had to report at

Tadepalle. It is further reiterated that the alleged incident between the petitioner and the Assistant Secretary has no bearing at all, nor it had been

taken into consideration and that the decision to transfer the petitioner in the interest of the administration had been taken much prior to the alleged incident.

11. The respondent further contended that the petitioner is holding a transferable post and that he is liable to be transferred from any of the places

to any of the Centre where the respondent has got a branch or office or factory.

12. Mr. F.B. Benjamin George, learned counsel for the respondent raised a preliminary objection contending that the writ petition is not

maintainable against the respondent, a Multi State Co- operative Society as it is

not an "Other Authority" under Article 12 of the Constitution and it is not amenable to writ jurisdiction of this Court.

13. Mr. F.B. Benjamin George, learned counsel for the respondent also relied upon the Full Bench judgment of this Court reported in

Tamilarasan's case 1992 1 M.L.J. 54. Per Contra, Mr. P. Selvaraj, the learned counsel for the writ petitioner relied upon the recent

pronouncement of the Apex Court in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, and contended

that the writ petition is maintainable. By this pronouncement, it is clearly held that a writ petition is maintainable. In the latter pronouncement their

Lordships of the Apex Court held that availability of alternative remedy is not bar to invoke Article 226 of the Constitution and that it is only a self

imposed limitation subject to which the High Court would exercise jurisdiction and such guidelines are not mandatory in all circumstances. It has

been further held that the High Court will not interfere when an equally efficacious remedy is available or when there is an established procedure to

remedy a wrong or enforce a right and a party may not be allowed to by-pass the normal channel of civil and criminal litigation.

14. In the light of the latter pronouncement of the Apex Court, the contention that no writ is maintainable put forward by Mr. F.B. Benjamin

George learned counsel for the respondent cannot be sustained. Merely because the petitioner could move for adjudication of his claim u/s 74 of

the Multi State Co- operative Societies Act, the writ petition is not barred. Factually, the remedy suggested by the respondents is not efficacious

also and the said provision cannot be suggested against the writ petitioner nor it could be held that the writ petitioner has got an alternative remedy.

15. The petitioner who was appointed as Fitter-cum-semi skilled worker in the maintenance section at Head Office of the respondent-society at

Chennai had been posted to work at Manufacturing Unit, Tadepalle by the: impugned proceedings and he was appointed as Fitter-cum-semi

skilled worker by order dated June 7, 1995 on a basic pay of Rs. 700. The petitioner was put on probation for one year.

16. The learned counsel for the respondent relied upon the standard form of agreement and contended that the petitioner is liable to be transferred

and he holds a transferable post. But the agreement which was initially relied

upon as well as the Special Bye-Laws relating to the service conditions of the employees employed in the respondent-society do not provide for a transfer from one centre to another centre or transfer of an employee from the Head Office at Chennai to a Factory at Tadepalle. When this was pointed out, the learned counsel for the respondent took time and thereafter placed the file which contained a declaration by the Writ petitioner to the effect that he will work anywhere and in any one of the Branches situate anywhere in India. On the said declaration alone it is rightly pointed out that the petitioner had been appointed by the respondent-society. Hence it is clear that transfer is a term of employment with the society and the writ petitioner is liable to be transferred and he is holding a transferable post, otherwise there is no warrant for the petitioner to give a declaration that he is liable to be transferred anywhere and he will work anywhere and at any place to which the respondent has a factory. Hence the petitioner is holding a transferable post. The employer has got the power to transfer its employees and there is no quarrel that the petitioner is holding a transferable post.

17. It is also rightly pointed out that other employees like the petitioner had been transferred from Chennai to Tadepalle. The impugned order of transfer dated December 2, 1999 is being challenged as arbitrary, mala fide and had been passed to keep the petitioner away from Chennai Head Office from filing the writ petition. As rightly pointed out by the learned counsel for the respondent and also stated in the counter affidavit, the writ petition was disposed of at the admission stage and the respondent was actually not aware of the very institution of the writ petition before this Court. Therefore, it is clear that the respondent had not transferred the petitioner on the ground of filing of a writ petition. This contention put forward by the petitioner cannot be sustained.

18. Further it is also settled legal position, that when a competent authority passes an order of transfer, it is to be presumed that it has been passed in the interest of the administration and no mala fides could be presumed or inferred. Further there could be no such presumption as laid down in State of U. P. v. Dr. V.N. Prasad, 1995 2 S.C.C. (Suppl) 151. It is well settled that in the absence of mala fides or a violation of statutory rule, this Court will not interfere with the orders of transfer as has been held by the

Apex court in Union of India and Others Vs. S.L. Abbas, and N.K.

Singh Vs. Union of India and others, .

19. It is not the contention of the learned counsel for the petitioner that the order of transfer has been passed by an authority who is not competent

to pass. Further this Court would not be justified in interfering with the impugned proceedings as it is clear that the transfer impugned has nothing to

do with the alleged incident between the Assistant Secretary and the writ petitioner and the decision to transfer the petitioner has been taken much

prior to the alleged incident.

20. In the absence of mala fides and when the petitioner holds a transferable post, this Court would not be justified in interfering with the order of

transfer. This is not a fit case where this Court would be justified in interfering with the order of transfer, more so when the petitioner had given a

declaration that he will work in. any place to which he is posted and there are no malafides.

21. In the circumstances, this Court holds that no interference is called for with respect to the order of transfer and the writ petition is dismissed.

However, it is open to the petitioner to approach the respondent for reconsideration or for postponement of the transfer till the end of the

academic year, which the respondent shall consider on merits taking into consideration the petitioner's family condition and uninfluenced by the

allegations set out by the petitioner in his affidavit filed in support of the writ petition. The parties shall bear their respective costs.

22. Consequently, connected W.M. Ps. are also dismissed.