
(2011) 08 MAD CK 0314

In the Madras High Court

Case No : Writ Petition No"s. 18732 to 18740 of 2011

K. Kalvikarasan and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 08 MAD CK 0314

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Nalini Chidambaram, S.C. for C. Uma, for the Appellant; V. Subbiah, Special Government Pleader, for the Respondent

Judgement

K. Chandru, J.—The Petitioners in all these writ petitions are employees working under the control of the second Respondent, viz., Director of Public Health and Preventive Medicine. They have come forward to challenge the orders of transfer dated 29.7.2011. The following table will show the name of the employee, the writ petition number, the present working station and the place to which they are posted on transfer:

Name of the Employee

Writ petition number

Present working station

Place to which posted on transfer

K.Kalvikarasan

18732/2011

District Entomologist, Office of the Deputy Director of Health Service, Erode

District Entomologist, Office of Deputy Director of Health Services, Krishnagiri.

K.S.Kandasamy

18733/2011

Biologist, Urban Malaria Scheme, Tiruchengode Municipality

Senior Entomologist, Institute of Vector Control and Zoonoses, Hosur

C.Sivaraj

18734/2011

District Malaria Officer, Office of the Deputy Director of Health Services,
Dharmapuri

District Entomologist, Office of the Deputy Director of Health Services,
Perambalur.

K.Kamarasu

18735/2011

Senior Entomologist, Institute of Vector Control and Zoonoses, Hosur

Lecturer in Medical Entomology, Salem Medical College Salem.

LibbieMercylin David

18736/2011

Entomologist, Government Medical College, Kanyakumari

District Entomologist, Office of the Deputy

Director of Health Services, Virudhunagar.

C.Rani

18737/2011

District Malaria Officer, Office of the Deputy

District Entomologist, Office of the Deputy Director of Health Services, Karur.

N.Bharathi

18738/2011

District Entomologist, Office of the Deputy Director of Health Services, Theni

District Malaria Officer, Office of the Deputy Director of Health Services, Vellore.

J.Kiruba

18739/2011

Senior Entomologist, DEC Monitoring Unit, Office of the Deputy Director of Health
Services, Nagercoil

District Entomologist, Office of the Deputy Director of Health Services, Thiruvavur.

S. Mani

18740/2011

Lecturer in Medical Entomology, Salem Medical College, Salem.

Senior Entomologist, Institute of Vector Control and Zoonoses, Hosur.

2.1. Mrs. Nalini Chidambaram, learned Senior Counsel appearing for Ms. C.Uma, contended that though the orders of transfer had stated that it was on administrative grounds, there was really No. administrative ground and the second Respondent had clearly flouted the various government guidelines that are issued in this regard. She stated that the government guidelines are issued pursuant to the executive power vested on the State and they amount to a subordinate legislation. Even though No. rules have been framed, the government orders can hold the place of the rules and as long as they are not ultra vires to the statutory rules, they cannot be ignored, especially by a subordinate like the second Respondent. The second Respondent is bound to implement the orders of the government.

2.2. She also referred to G.O.(D) No. 508, Health and Family Welfare Department, dated 10.4.2002, wherein the Government had laid down the procedure for effecting general transfer. In that guidelines, it was stated that transfer shall be effected on administrative grounds, and on complaints only after conducting a detailed enquiry duly recording the reasons in the file. In other respects, the transfer should be effected by conducting counseling.

2.3. She also referred to a subsequent government order in G.O.(Rt.) No. 2143, Health and Family Welfare Department, dated 8.10.2002, wherein the guidelines have been issued for counseling for transfer and promotion. In that order, it is stated that No. transfer should be effected in between counseling periods, other than those required on administrative grounds based on allegations and charges, which should be recorded in writing.

2.4. She further referred to a government order in G.O.(2D) No. 131, Health and Family Welfare Department, dated 20.11.2007, once again giving guidelines for conducting counseling for transfer. In that order, the State Government had once again repeated the earlier guidelines regarding the transfer on administrative grounds.

2.5. In the present case, she submitted that the transfers have been effected contrary to the guidelines and inasmuch as it is stated on administrative grounds, the transfer was invalid as there are No. complaints against the Petitioners.

3. However, in the affidavits filed in support of the writ petitions, the Petitioners have not averred any allegation of mala fide against either the second Respondent or any other authority. The entire exercise undertaken by the

Petitioners was to contend that as the government guidelines have not been adhered to, the transfer cannot be effected. As to how far such guidelines can be made use of for the purpose of enforcement by this Court came to be considered by the Supreme Court in *Union of India and Others Vs. S.L. Abbas*, wherein it was held that the executive instructions regarding transfers are in the nature of guidelines and they do not have any statutory force and unless an order of transfer is vitiated by mala fides or made in violation of the statutory provisions, the Court cannot interfere with it and the guidelines do not confer upon a government employee a legally enforceable right.

4. The Supreme Court in *Rajendra Singh Vs. State of U.P. and Others*, in paragraphs [8] to [10], has observed as follows:

8. A government servant has No. vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No. Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see *State of U.P. and Others Vs. Gobardhan Lal*, .

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Mrs. Shilpi Bose and others Vs. State of Bihar and others*,

4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has No. vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

10. In *N.K. Singh Vs. Union of India and others*, this Court reiterated that: (SCC p. 103, para 6)

6. ...the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and

violation of any specific provision....

5. In this context, it is necessary to refer to the decision of the Supreme Court in *State of U.P. and Others Vs. Siya Ram and Another*, . In paragraph [5], it was observed as follows:

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*, .

6. Further, the Supreme Court in yet another decision reported in *State of U.P. and Others Vs. Gobardhan Lal*, in paragraph [7] observed as follows:

7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is No. infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by

mala fides or is made in violation of any statutory provision.

7. The parameters for conducting judicial review of transfer order came to be considered by the Supreme Court in *Union of India and Others Vs. H.N. Kirtania*, . It was held that unless a transfer order is mala fide, illegal or in violation of statutory rules, the High Court should not interfere with the order of transfer. In paragraph [5], it was held as follows:

5. After hearing learned Counsel for the parties we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was No. valid justification for issuing injunction order against the Central Government. The Respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has No. legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. There was No. good ground for interfering with the Respondent's transfer.

8. The Supreme Court, subsequently, in *Abani Kanta Ray Vs. State of Orissa and Others*, , has held that a transfer, which is an incident of service, is not to be interfered with by Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. In paragraph [10], it was observed as follows:

10. It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer (See *N.K. Singh v. Union of India* [1994] 6 SCC 98).

In view of the settled legal position, the Petitioners having not made out any ground to interfere with the orders of transfer, the writ petitions stand dismissed. No. costs. Consequently, M.P. Nos. 1 and 2 in W.P. No. 18732 of 2011, M.P. Nos. 1 and 2 in W.P. No. 18733 of 2011, M.P. Nos. 1 and 2 in W.P. No. 18734 of 2011, M.P. Nos. 1 and 2 in W.P. No. 18735 of 2011, M.P. Nos. 1 and 2 in W.P. No. 18736 of 2011, M.P. Nos. 1 and 2 in W.P. No. 18737 of 2011, M.P. Nos. 1 and 2 in W.P. No. 18738 of 2011, M.P. Nos. 1 and 2 in W.P. No. 18739 of 2011, and M.P. Nos. 1 and 2 in W.P. No. 18740 of 2011 are closed.