

(2012) 11 MAD CK 0204

In the Madras High Court

Case No : Writ Petition No. 16241 of 2012 and M.P. No's. 1,3,4 and 5 of 2012

K. Kavitha

APPELLANT

Vs

Commissioner of Adi Dravidar Welfare, Chepauk, Chennai-5,
District Adi Dravidar and Tribal Welfare Officer, Villupuram,
Villupuram District, Special Tahsildar (Adi Dravidar Welfare),
Gingee, Villupuram District and Vijaya

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 1 MLJ 119

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C. Selvaraj for M/s. C.S. Associates, for the Appellant; V. Subbiah, Spl. G.P. for RR 1 to 3, Mr. Pitty Parthasarathy and Mr. G. Ethirajulu for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. This writ petition is filed by the petitioner initially seeking for a direction to the respondents to allow her to continue as Matron in the Government Girls Hostel (ADW), Gingee, Villupuram District. When the matter came up on 27.6.2012, this court while ordering notice to the official respondents to be taken by the learned Government Advocate, in respect of the 4th respondent, private notice was permitted. Thereafter, on 1.8.2012, once again private notice was permitted to the 4th respondent returnable by one week. On 16.8.2012 when the matter came up, this court had directed the third respondent, i.e., the Special Tahsildar, Adi Dravidar Welfare, Gingee, to be present before this court on 23.8.2012. On 23.08.2012, the third respondent was present and he produced a file showing that an order of transfer was given to the petitioner on 6.7.2012, whereas according to the counter, the order was given as early as 4.6.2012. It was for the

respondents to explain as to how the petitioner was relieved on 4.6.2012 itself. Subsequently, on 03.09.2012, this court found that the information given by the third respondent was not satisfactory and hence it directed the Deputy Director, by name Chellaiah, to appear before the court on 04.09.2012. On 04.09.2012, the said officer was present before the court. It was informed that the petitioner never submitted any application during counselling. Therefore, the first respondent, i.e., the Commissioner for Adi Dravidar Welfare, Chennai, was directed to file an affidavit. On 11.09.2012, this court had recorded the statement of the learned Additional Advocate General that the petitioner had not complied with the transfer order and that on the statement made by the learned Senior Counsel appearing for the petitioner that she was prepared to join duty at the transferred place, she was allowed to join duty on 13.09.2012. The other allegations that similarly placed persons were retained were denied.

2. In this case, pursuant to various directions issued by this court, the first respondent Commissioner has filed the following counter affidavits :

- (a) Counter affidavit, dated 08.08.2012;
- (b) Counter affidavit, dated 30.08.2012;
- (c) Additional affidavit, dated 05.09.2012;
- d) Additional Affidavit, dated 18.09.2012; and
- (e) Additional Affidavit, dated 21.09.2012.

Likewise, the 4th respondent has filed counter affidavits, dated 26.08.2012 and 05.09.2012.

3. Though the petitioner initially filed the writ petition for a direction to allow her to continue in the same place, subsequently on finding that the 4th respondent has been posted in her station and that she was transferred as the Secondary Grade Teacher in the Government Adi Dravidar Welfare Primary School at Pulivandi, Villupuram District, by an order dated 4.7.2012, she filed an application in M.P.No. 2 of 2012 seeking to amend the prayer to set aside both the orders and for allowing her to continue as Matron in the old place. That application was allowed on 01.08.2012. The petitioner also filed 3 other applications in M.P.Nos. 3,4 and 5 of 2012, seeking to dispense with the production of the order dated 4.6.2012 and to grant stay of the orders dated 4.6.2012 and 4.7.2012 and to permit her to raise additional grounds. But no orders have been passed in those applications. Even along with the main writ petition, she filed M.P.No. 1 of 2012 seeking for an interim injunction, but no order has been passed.

4. The stand of the petitioner was that after the order dated 4.6.2012 was passed in favour of the 4th respondent posting her as Matron of the Government Adi Dravidar Welfare Girls Hostel at Gingee, she wrote a letter on 20.6.2012 stating that she has not received any transfer order. But, however she has been

orally insisted to hand over the charge. She further wrote a letter on 20.6.2012 reiterating the same contentions. Thereafter, the writ petition came to be filed. In the writ petition, the only ground was that she has not been served with the order of transfer while the posting order was given in favour of the 4th respondent.

5. After amending her prayer, in the application for raising additional grounds, she has stated that she joined in the present station on 18.12.2009 and had not completed 3 years. As per the order of the Government, she is entitled to continue for 3 years in the same station. Yielding to the request of the 4th respondent, issuing the posting order was illegal. The 4th respondent was posted in a place where there was no vacancy. Under G.O.Ms. No. 187, Adi Dravidar and Tribal Welfare Department, dated 21.5.2012, administrative transfers can be effected only after enquiring into the allegations received against the particular individual. It was only when she pointed out that there was no order of transfer given to her, the order dated 4.7.2012 came to be passed. It is admitted that by G.O.Ms. No. 187, Adi Dravidar and Tribal Welfare Department, dated 21.5.2012, the system of counselling for transfer has been provided both for teachers working in the welfare school as well as for the post of wardens in the welfare hostels.

6. In the counter affidavit filed by the first respondent, dated 8.8.2012, it was stated that the petitioner had worked for three years as a Matron of the hostel and she was transferred after a centralized counselling on 4.6.2012. In the counter affidavit, dated 30.8.2012, it was stated that she never applied for transfer and that her transfer was necessary only because she had completed 3 years. The petitioner has received the order on 18.7.2012. After relieving her from the old station, she did not report to the department and never asked the department to give her posting order. The petitioner did not hand over the charge and also did not attend duty in the old station. In the counter affidavit dated 5.9.2012, it was stated that the 4th respondent had applied for transfer to the post of Warden / Matron through proper channel. Apart from that, several other persons also opted for the same hostel. In the counter affidavit, dated 18.9.2012, it was stated that the petitioner had joined duty at the primary school at Pulivandhi on 13.09.2012. In order to comply with the instructions issued by this court on 11.9.2012, the three wardens, M/s. A. Dhanasekar, Shanthi and O. S. Vanmathi, were also transferred out of hostels and posted to various schools. The order to that effect dated 17.09.2012 was also produced.

7. Further, in the counter affidavit, dated 21.9.2012, the first respondent stated that the posts of Warden and teacher are interchangeable and that most of the teachers opt to work in the school and do not want to work as wardens. They were continuing as teachers in the school. Similarly, Wardens and Matrons are continuing in several hostels for want of substitutes. If any teacher has applied for transfer to a hostel, then the warden will have to be transferred outside the hostel and posted to the school and that number of wardens are continuing in

the same hostels for want of substitutes. There are more number of hostels forthcoming each year, but the strength of the school continues to be the same.

8. It was also brought to the notice of this court that the authorities have issued an order dated 17.9.2012 stating that since the petitioner joined duty at the new school, if any disciplinary action is taken up, that could be dropped, vide letter addressed to the District Adi Dravidar and Tribal Welfare Office, Villupuram.

9. In the counter affidavit filed by the 4th respondent, dated 26.08.2012, she had stated that the petitioner had worked as Matron in the Ladies Hostel of Govindasamy Government Arts College, Tindivanam for 3 years and she did not disclose the same. She had worked in the earlier station having second chance. She had also attended the counselling held on 4.6.2012 at Holy Agnel School, Chrompet, Chennai. The counselling was attended by 15 teachers including the 4th respondent. The petitioner asked for one year extension in the present station. Whereas the respondent had never worked in the hostel and she has also walking problem. She was forced to walk the distance in the earlier station. The other persons who opted for the same station were all juniors to her. When the 4th respondent joined, the petitioner was not available. Hence she took over charge after taking inventory and it was recorded. Otherwise 92 inmates in the hostel would have gone through grave hardship by not having food. In her further affidavit, dated 5.9.2012, she had reiterated the same contentions.

10. It must be noted that the posts of Matron and Warden in a welfare hostel carry the same scale of pay. Therefore, there is no vested right of any Government servant to work only in the hostel and not in the school. Ultimately, the person like the petitioner has been appointed basically as a school teacher. They were given the job to work as a teacher, which is a noble profession. On the other hand, the post of warden is merely an administrative post. The very fact that the person who wanted to skip the noble profession and wanted to be the administrator of the hostel, does not speak of the bona fide of such person, especially when the pay and status of the two posts are same.

11. In the present case, the petitioner had already completed three academic years of service. Therefore, she cannot get the benefit of the Government Order referred to above by her. Though the respondents could have done in a better way in dealing with the situation, but in the light of the subsequent order of transfer dated 4.7.2012, transferring the petitioner to work in a school, which post she had also joined, it is unnecessary to go into the controversy as to whether there was actually an order of transfer given to her on 4.6.2012 and that issue has pale into insignificance at this juncture. It is suffice that the present order of transfer which is the subject matter of the writ petition is completely justified by the respondents. In the matter of transfer, the petitioner cannot have a say, unless it is malafide or passed by an incompetent authority. It is not the case of the petitioner that it was passed by an incompetent authority or that she was not liable to be transferred from one station to another station nor from one post to another post, which are admittedly interchangeable. The

allegation of malafide has not been proved. The respondents have filed sufficient affidavits to justify their stand. The petitioner has been making much ado about nothing.

12. In this context, it is necessary to refer to the decision of the Supreme Court reported 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 Corpn. Ltd. v. Shri Bhagwan* 1.

13. Further, the Supreme Court in yet another decision reported in *State of U.P. and Others Vs. Gobardhan Lal*, had 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. In the light of the above, the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.