
(2014) 07 MAD CK 0094

In the Madras High Court

Case No : W.P. (MD) No. 8070 of 2014 and M.P. (MD) Nos. 1 to 5 of 2014

M. Jeeva Jeyarani

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Citation : (2014) 07 MAD CK 0094

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Judgement

K.K. Sasidharan, J.—This Writ Petition is directed against the order dated 23 April, 2014, whereby and whereunder, the petitioner was transferred from BHM Primary School, Tharangaivasam, Trichy, to TELC Primary School at Mettuppatti.

Facts In Nutshell:

2. The petitioner was appointed as a Secondary Grade Teacher in 1994. She was later promoted as Headmistress and posted at TELC Primary School, Ponmalaipatti, Trichy. There were proceedings between Thiru. Wilson Paulraj, Headmaster, TELC Primary School, Mettuppatti and the Chairman of the Educational Board, Tamil Evangelical Lutheran Church [hereinafter referred to as "TELC"], with regard to his transfer. Similarly, there were several litigations between two groups claiming right of management of TELC. While the petitioner was functioning as the Headmistress of BHM Primary School, Tranquebar House, Trichy, the eight respondent herein, who was not in good terms with her, was appointed as the Correspondent of the said School, on 04.07.2013. The eight respondent, to wreck vengeance on the petitioner, took up the issue with the third respondent and that resulted in passing the impugned order of transfer.

3. It is the contention of the petitioner that the impugned order of transfer is punitive in nature. The third respondent in the transfer order made series of allegations against the petitioner and the same would make it clear that it was only by way of punishment, the transfer was made. According to the petitioner,

transfer was not made on administrative exigencies. The order was issued by way of punishment and the transfer being punitive in nature, is liable to be quashed.

4. The Chairman of the Educational Board, the third respondent herein, who is personally arrayed as fourth respondent, filed a counter-affidavit in answer to the contentions raised in the affidavit filed in support of the Writ Petition. According to the third respondent, the writ petitioner committed various acts of indiscipline. She never responded to the direction given by the Management. The third respondent has gone to the extent of alleging that without informing the Correspondent, she declared holiday to the school and allowed strangers to enter the school campus during working hours. It was further contended that in case the writ petitioner is allowed to continue in BHM Primary School, there would be reduction in admission and the same would result in re-deployment of teachers. Accordingly, the third respondent justified the impugned order.

Summary of Submissions:-

5. The learned counsel for the petitioner made the following two substantial submissions:

(i) Each school is a separate unit. Therefore, the Educational Board of TELC has no authority to transfer teachers from one institution to another institution.

(ii) The transfer is punitive in nature.

6. The learned counsel for the petitioner placed reliance on the judgment of a Full Bench of this Court in the The Correspondent, Malankara Syrian Catholic School Vs. J. Rabinson Jacob and Others, , in support of his first contention that it is not permissible to transfer teachers from one unit to another unit.

7. The learned counsel for the petitioner placed heavy reliance on the judgment of the Supreme Court in Somesh Tiwari Vs. Union of India (UOI) and Others, , in support of his second contention that in case the transfer is punitive in nature, the same is liable to be quashed.

8. The learned counsel for the third respondent contended that the petitioner was initially appointed by the Educational Board, TELC. She was given promotion also by the Educational Board. She was transferred from one institution to another institution by the Educational Board on multiple occasions. Therefore, it is too late on the part of the writ petitioner to contend that the third respondent has no right to transfer teachers from one institution to another.

9. The learned counsel for the third respondent, with reference to the second ground of attack, contended that the transfer was not punitive in nature. According to the learned counsel, certain reasons are given in the order of transfer and the same would not show that by way of punishment, the petitioner was transferred from BHM Primary School to TELC Primary School at Mettupatti.

Discussion:

10. The petitioner was initially appointed as Secondary Grade Teacher in 1994. Even though the petitioner has taken up a contention that she was appointed at a particular institution and the same was considered as a separate unit, she has not produced the appointment order to substantiate the said contention. However, her statement in paragraph No. 4 of the affidavit filed in support of the Writ Petition itself would show that she was appointed only by the third respondent. The petitioner has no case at all that she was appointed to a particular institution, which was considered as a unit. She was appointed as a teacher by the Educational Board, TELC. She was given promotion by TELC and posted at TELC Primary School, Ponmalaipatti, Trichy. Thereafter, she was transferred to BHM Primary School again by the third respondent. Appointment, promotion, transfers, etc., were all, therefore, made only by the third respondent. Neither the schools, where the petitioner earlier worked nor the institution, where she is presently working, were, at any point of time, considered as separate units, so as to contend that transfer from one unit to another is not permissible. In fact, in the affidavit filed in support of the Writ Petition, the petitioner has not taken any contention with regard to the authority of the third respondent to transfer her from Tharangaivasam to Mettuppatti. It was only during the course of arguments, the learned counsel for the petitioner has taken up such a contention.

11. The judgment in *The Correspondent, Malankara Syrian Catholic School Vs. J. Robinson Jacob and Others*, relied on by the learned counsel for the petitioner in support of his contention that each institution is a separate unit and as such, the Educational Board has no right to transfer, has no application to the facts of the present case.

12. In *Malankara Syrian Catholic School's* case, the Full Bench found that the concerned teacher was appointed in a particular institution and more particularly, in the vacancy caused by the retirement of another teacher. The Full Bench also found that each individual school was an independent entity, with its own seniority list of teachers and staff. The teachers and other employees were appointed in a particular school or unit or establishment and no transfer from one unit to another or from one establishment to another was provided either under the statutory rules or in the conditions of service or by the Act or by the Rules framed thereunder. It was only under such circumstances, the Full Bench declared that transfer from one unit to another would not be permissible. However, that is not the case here. The petitioner has no case that the institution where she was appointed originally was a separate unit. Even if the petitioner has taken up such a contention, the same is liable to be rejected for the simple reason that she was transferred from one institution to another institution on several occasions. She was also given promotion by the third respondent and after such promotion, she was posted at a different location. Therefore, no reliance could be placed on the judgment of the Full Bench in *Malankara Syrian Catholic School's* case, to decide the present case.

13. Therefore, I answer the first point against the petitioner by holding that the third respondent is having every authority to transfer teachers from one institution to another.

14. The petitioner has taken up a substantial contention that the transfer in question is punitive in nature. In order to decide as to whether the transfer was made on the ground of administrative exigencies or it was one of punitive in nature, the very order of transfer should be looked into.

15. The impugned order of transfer contained various acts of misconduct alleged against the petitioner. The third respondent alleged that the petitioner indulged in various activities, which would be prejudicial to the interest of the institution. The contention taken by the petitioner that the transfer is punitive in nature and the same is evident by the allegations levelled against her in the impugned order, is fortified by the counter-affidavit filed by the third respondent.

16. The third respondent in his counter-affidavit, has given details of the misconduct committed by the writ petitioner. The same reads thus:

4. It is submitted that since 25.10.2012 the first respondent/petitioner was employed as a Headmistress of B.H.M. Elementary School. With reference to regularize the service of the first respondent/petitioner on 19.07.2013 the Secretary of TELC and the third respondent herein called on the first respondent/petitioner for an enquiry. Whereas the first respondent/petitioner not turned up. On 23.07.2013 once again the first respondent/petitioner was called on to meet the Secretary the TELC and third respondent in respect of regularization of her services in respect of her service, increment and salary etc. But the first respondent/petitioner not turned up. The first respondent/petitioner never respond the management or Government institutions.

5. It is submitted that in respect of the earlier transfer of the first respondent/petitioner from TELC Ponmalaipatti Elementary School to BHM Elementary School, Melaputhur, Trichy, the legal proceedings stood against her, considering the request of the first respondent/petitioner, on 25.10.2012, the management promoted first respondent/petitioner as a Headmistress BHM School, Elementary School, Melaputhur, Trichy and the same was approved by the Government.

6. It is submitted that after the promotion of first respondent/petitioner as Head Mistress, BHM Elementary School, Melaputhur, Trichy, she protest with Management and never respond to the direction of the management and educational department.

7. It is submitted that vide CC proceedings No. 1237 dated 23.07.2013 the Executive Committee of TELC resolved to initiate necessary steps to regularize the service of the first respondent/petitioner and 8th respondent.

8. It is submitted that the payment of Rs. 1,37,942/- received by first respondent/petitioner towards salary and DA for the period 01.08.2011 and 31.01.2012 has been divided into three; one portion will be paid by the eight

respondent herein; other portion will be paid by first respondent/petitioner and another portion will be paid by the third respondent to the Government.

9. It is submitted that the resolution passed the Executive Committee of TELC vide CC Proceeding No. 1237 dated 23.07.2013 has not accepted by first respondent/petitioner.

10. It is submitted that first respondent/petitioner the Head Mistress of BHM Elementary School not permitted the Correspondent/8th respondent and the Chairman, Education Board TELC/3rd respondent and the Assistant Elementary Educational Officer, West Region, Trichy to peruse the records of the school.

11. It is submitted that first respondent/petitioner obtaining signature from the then Correspondent of the school namely Rev. Jeeva Jothi Martin on the pay bill instead of the existing correspondent namely D. Suganthi Daisyrani/8th respondent herein and forward the same to Assistant Elementary Educational Officer, West Region, Trichy and degrade the Correspondent of the school.

12. It is submitted that without informing the Correspondent of the school/8th respondent and the sixth respondent, 1st respondent/petitioner declared holiday to the school. On enquiry in respect of the same by the sixth respondent, the petitioner obtained necessary signature from Correspondent and forward the same to sixth respondent.

13. It is submitted that first respondent/petitioner was directed to prepare the pay bill and forward the same to educational department with the signature of the Correspondent/7th respondent but the above said direction was not complied with by the first respondent/petitioner.

14. It is submitted that first respondent/petitioner allowed strangers in the school hours in the school campus and disturb the educational atmosphere. If the first respondent/petitioner is allowed to continue in the BHM Elementary School the new admission of the students may reduce which may cause deployment of teachers, the payment of salary to the other teaching staff may be delayed which may cause mental agony to the other teaching staff. It is submitted further that prior to the end of academic year, the first respondent/petitioner delivered the Transfer Certificate to the students. Since 25.10.2012 the first respondent/petitioner causing much problems in the administration of the school. Several charges stood against her. With the sole intention to minimize the problems prevailed in the school, pending enquiry the third respondent in his proceedings in Cr. No. 14/2014, dated 23.04.2014 transferred the first respondent/petitioner to TELC Elementary School, Mettupatty, Lalgudi, Tiruchirappalli District at a distance of 20 Kms.

17. The challenge made to the transfer order that it was not issued on administrative ground, is now proved by the contention taken by the third respondent in his counter-affidavit that it was only to minimize the problems prevailed in the school, the petitioner was transferred to TELC Primary School at

Mettuppatti. In case the third respondent is of the view that the writ petitioner indulged in various acts of indiscipline, the best course open is to initiate disciplinary proceedings. It is not in dispute that the third respondent has not initiated any such proceedings so far against the petitioner. In fact, the learned counsel for the third respondent, during the course of his arguments, made it clear that the third respondent has no intention to initiate disciplinary proceedings against the petitioner with reference to the misconduct alleged against her and indicated in the impugned order.

18. The Supreme Court in *Somesh Tiwari Vs. Union of India (UOI) and Others*, considered the extent of judicial review in matters relating to transfer and observed that in case the transfer is passed in lieu of punishment, the same is liable to be quashed. The Supreme Court observed:

16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where *inter alia* mala fide on the part of the authority is proved. Mala fide is of two kinds-one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

Conclusion:-

19. The order impugned in this Writ Petition, if considered, in the light of the counter-affidavit filed by the third respondent, would make the position very clear that the transfer of the petitioner from BHM Primary School to TELC Primary School was passed only in lieu of punishment. In view of the said finding, the transfer order is liable to be set aside. In the result, the impugned order of transfer dated 23.04.2014 is set aside.

Result:-

20. In the upshot, I allow the Writ Petition. Consequently, the connected miscellaneous petitions are closed. No costs.