

(1996) 01 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 9454 of 1995 and WMP. 15013 of 1995

M. Kandasami

APPELLANT

Vs

Tamil Nadu Electricity Board and Others

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 1 CTC 364

Hon'ble Judges : S.M. Ali Mohamed, J

Bench : Single Bench

Advocate : N.G.R. Prasad, for the Appellant; V. Radhakrishnan, Senior Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.M. Ali Mohamed, J.—The prayer of the petitioner is to issue a writ of certiorarified mandamus after calling for the concerned records from the first respondent relating to the order of transfer bearing Ref. No. 2527/Adm.2/A1/F.FM.GR.I/95 dated 30.6.1995 issued by the first respondent, quash the same and issue a consequential mandamus directing the first respondent to report the petitioner at Veppur.

2. The petitioner in his affidavit filed in support of the writ petition states that he joined the first respondent Board in the year 1965 as a Luscar and by dint of hard work, he was promoted as Line Inspector during the year 1992-93 and on 14.9.1993 he was transferred from Tholudur to Avinangudi. The joined duty at Avinangudi as a Line Inspector on 15.9.1993. While he was in Avinangudi he was promoted as a Grade I Foreman and on 6.4.1995 he was transferred to Veppur and joined duty at Veppur. Further he states that he gave a representation on 10.4.1995 to the first respondent requesting him to cancel the transfer order and retain him at Avinangudi itself. No reply was received from the first respondent. The first respondent again transferred the petitioner from Veppur to Cuddalore by an order dated 30.6.1995 which is the impugned order. It is further stated

that the petitioner was transferred four times during the last previous years. It is further stated that his wife is an handicapped person and she cannot look after his aged mother who is 70 years old and his younger son who is mentally retarded right from his birth. Aggrieved by the same the petitioner has filed this writ petition.

3. A counter-affidavit has been filed on behalf of respondents 1 and 2 wherein it is stated as follows: -

"I submit that the petitioner was transferred for four times in the last two years is denied. He was transferred from Tholudur to Avinangudi only on his specific request. He was working at Avinangudi from 15.9.1993 to 5.4.1995. Subsequently he was transferred to the Office of the Junior Engineer/Rural/South/Veppur during April, 1995 by the 2nd respondent (ie) the Executive Engineer /C & M/ Vridhachalam for the Administrative convenience and the petitioner joined duty on 6.4.1995 at Veppur accepting the transfer order issued. No representation regarding the transfer to Veppur Section has been preferred by the petitioner. The petitioner was transferred from Veppur to Cuddalore Special Maintenance Section on 30.6.1995 by the First respondent to fill up the existing vacancy where a Foreman was bare necessity. As the petitioner was relieved of his duty at Veppur on 10.7.1995 F.N. Thiru Veerasami, the 3rd respondent herein had joined at Veppur in the place of the petitioner."

4. Mr. N. G. R. Prasad, learned counsel for the petitioner contended that it is an accepted principle in public service that transfer is an incident of service. However, this power of transfer has to be exercised in a just and fair manner and frequent transfers without sufficient reasons to justify such transfers cannot but be dealt to be mala fide. In support of the said contention, the learned counsel referred to the ruling of Supreme Court reported in B. Varadha Rao Vs. State of Karnataka and Others, . On the other hand learned counsel for the respondents 1 and 2 referred to the Tamil Nadu Electricity Board Service Regulations and Leave Regulations Manual and Regulation 105 of the said Manual reads as follows:

"A member of a class of service may be required to serve in any post borne on the cadre of such class of service in any place of duty as the exigencies of the administration require."

and contended that transfer is incidental of service and just because there are personal inconvenience, the transfer cannot be held to be bad. Learned counsel further submitted that there are no mala fide alleged in the transfer. In support of the said contention, learned counsel for the respondents 1 and 2 referred to the ruling of the Supreme Court reported in Rajendra Roy Vs. Union of India (UOI) and Another, wherein the Supreme Court has observed as follows:

"It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employee but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without

any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

The learned counsel for the respondents 1 and 2 further contended that there is no infirmity in the order of transfer and the same is valid. Learned counsel for respondent also referred to a Judgment of a learned single Judge of this Court in W.P. No. 710/1995 dated 30.8.1995 wherein the learned Judge upon the facts and circumstances of the case has held that the impugned order of transfer was valid.

5. I have considered the contentions of the learned counsel for the petitioner and also the respondents 1 and 2. In the instant case it is clear that the petitioner has been transferred three times before the impugned order of transfer, viz., on 7.9.1993 the petitioner was transferred from Tholudur to Avinangudi; on 4.4.1995. Avinangudi to Veppur; he joined duty on 15.4.1995 and within 11/2 months he has been transferred to Cuddalore on 30.6.1995, From the above facts it is clear that there has been frequent transfers during the aforesaid period. In the case reported in B. Varadha Rao Vs. State of Karnataka and Others, , the Supreme Court has observed as follows and referred to E.P. Royappa Vs. State of Tamil Nadu and Another, .

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilise the services of its employees. However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous consideration or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to such transfers, cannot but be held as mala fide. A transfer in mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair." The observation that transfer is also an implied condition of service is just an observation is passing.

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"One cannot but deprecate that frequent unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government Servant and drive him to desperation. It disrupts the Education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally."

It is clear from the above ruling of the Supreme Court that it is accepted principle that transfer is an incident of service. But the said power of transfer should be exercised fairly and in a just manner and frequent transfers without sufficient cause to justify such transfers cannot but be held to be mala fide. In the instant case, the petitioner has pointed out the difficulties in his life faced by him, viz., that he has got 70 years old mother and his handicapped wife cannot look after herself his aged mother and his younger son who is mentally retarded and pointed out the hardships that he has to suffer by frequent transfers. Even if hardships of the petitioner are taken and considered as incidental to transfer, in the instant case there are frequent transfers from which it can be inferred that such transfers are not just and fair. As observed by the Supreme Court the transfer is an implied condition of service but such transfers should be just and fair. Upon the facts and circumstances of the instant case, I am of the view that the frequent transfers of the petitioner from one place to another during a short period is not just and fair. The rulings cited by the learned counsel for the respondents are not applicable to the peculiar facts and circumstances of the case. In view of the above, the impugned order is quashed and set aside.

6. In the result, the writ petition is allowed and the impugned order is set aside. No costs. Consequently, no order is necessary in CMP 15013 of 1995.