

(2015) 09 MAD CK 0248

In the Madras High Court

Case No : Writ Petition No. 25388 of 2015 and M.P. No. 1 of 2015

M. Sheela

APPELLANT

Vs

The Additional Chief Secretary, Commissioner of Revenue
Administration and Others

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Citation : (2015) 09 MAD CK 0248

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : L. Chandrakumar for S. Vijayakumar, for the Appellant; V. Subbiah,
Special Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J—The petitioner, who is working as a Tahsildar, aggrieved by frequent transfers on administrative grounds, has filed this writ petition. The petitioner would state that she joined as a Junior Assistant in the Revenue Department on compassionate ground appointment on 05.07.1984, on account of the demise of his father, who served as Hostel Warden in the Department of District Backward Class and Welfare Department, Erode. The petitioner got promotion to the post of Deputy Tahsildar and subsequently promoted to the post of Tahsildar during October, 2012 and was posted as Tahsildar [Cable TV] Erode. The petitioner would claim that she has discharged her duties honestly and sincerely to the satisfaction of her superior officers, without fear and she has not faced any disciplinary proceedings.

2. The petitioner, in para 5 of the affidavit, has given her list of transfers made within a period of three years and it is relevant to extract the same:

3. It is the specific stand of the petitioner that whenever any pressure is brought to accommodate a person in her place, it is the routine habit of the administration to disturb her in the post and transfer her to various places and

also due to political pressure. It is also the grievance of the petitioner that though she is one of the senior most Tahsildars in Erode District, she was not given Taluk In-Charge, despite the fact that she was promoted as early as on 29.09.2012 and only on 09.07.2015, she was posted as Revenue Tahsildar, Sathiyamangalam and within a short span of time, she was transferred and posted as Tahsildar, Anthiyur, vide proceedings dated 04.08.2015 and she is eligible to be promoted as Deputy Collector in the next year and for that promotion, it is also a mandate that one should serve as a Taluk Tahsildar for a minimum period of one year and on account of the present transfer, she is deprived of the said benefit. The petitioner would further state that after her transfer and posting as Tahsildar, Sathiyamangalam, she could not move into the quarters for the reason that her predecessor vacated the quarters on 16.07.2015 and she was asked to occupy quarters in as is where is condition. The petitioner, on inspection, found that some basic amenities such as electrical and cleaning works have to be done and it also happens to be Tamil month "Aadi" which, according to Hindus, is inauspicious and therefore, she stayed at Erode and used to come to Sathiyamangalam every day on time to discharge her duties. The grievance expressed by the petitioner is that within 21 days of her earlier transfer she was transferred and posted as Tahsildar Andhiyur [Drought Relief and Social Welfare Scheme] and challenging the same, he came forward to file this writ petition.

4. Mr. L. Chandrakumar, learned counsel appearing for the petitioner has drawn the attention of this Court to para 5 of the affidavit and would submit that the details of transfer and posting of the petitioner given in the said para would clearly indicate that she is subjected to frequent transfers on alleged administrative grounds and would submit that the series of transfers effected, though camouflaged as administrative grounds, are really punitive and the same is unsustainable in law and would further aver that the petitioner was promoted during October 2012 as Tahsildar; however she was not given posting as Taluk Tahsildar for nearly 3 years and only on 09.07.2015, she was transferred and posted as Tahsildar, Sathiyamangalam and within a period of 21 days, vide impugned proceedings dated 04.08.2015, she was transferred and posted as Tahsildar, Andhiyur and the same is unsustainable on facts and in law and since she is not allowed to function as Taluk Tahsildar for one year, there is some difficulty in inclusion of her name in the panel for promotion to the post of Deputy Collector and hence, prays for interference. The learned counsel appearing for the petitioner, in support his submissions, has placed reliance upon the following decisions:

"(i) S. Sevugan Vs. The Chief Educational Officer and Another, (2006) 109 FLR 926 : (2007) WritLR 1034

(ii) Order dated 04.10.2013 made in W.P. No. 12812/2013 [P. Karunakaran v. Union of India] [DB]."

5. Per contra, Mr. V. Subbiah, learned Special Government Pleader appearing for

the respondents 1 to 4 has drawn the attention of this Court to the counter affidavit as well as the typed set of documents and would contend that the Taluk Tahsildar is expected to stay in the headquarters, however even as per the petitioner's own admission, she did not stay in her quarters at Sathiyamangalam and instead stayed at Erode without permission and used to attend office. It is also the submission of the learned Special Government Pleader that on 03.08.2015, there was widespread rainfall all over Erode District and it is the primary duty of every Taluk Tahsildar, during such times, to watch the situation keenly throughout the Taluk by keeping the subordinates on alert and inform the respondents 2 and 3 as to the developments in their jurisdiction and since the petitioner was not in headquarters, she did not know about the incident which took place on 03.08.2015, which was declared as a local holiday in view of "Dheeran Chinnamalai Festival" and "Aadiperukku" and incidentally, a school student namely Ashraf, aged about 15 years, drowned in lower Bhavani River in Bhavanisagar on that day and the said fact was not informed by the petitioner even up to 10.30 a.m. on 04.08.2015 for the reason that she has not stayed in her headquarters. It is also the submission of the learned Special Government Pleader that the second respondent in the light of the facts and circumstances, in order to streamline the Taluk administration, has transferred the petitioner from Taluk Tahsildar post to Anthiyur Taluk as Social Security Scheme Tahsildar and she was also served with a show cause notice on 04.08.2015 by the second respondent calling for explanation as to why she stayed away from the headquarters and she has also submitted her explanation to the show cause notice and further proceedings are under contemplation and insofar as the submission made by the petitioner as to the non-completion of one year in Taluk posting, the second respondent has ordered transfer with a bonafide motive that her promotional opportunity should not be disturbed in whatever manner and though he is having ample powers even to suspend the petitioner by following the procedures and rules, he has not done so and effected transfer purely on administrative grounds and no mala fides involved.

6. The learned Special Government Pleader has invited the attention of this Court to the counter affidavit and would submit that the petitioner lacks ability and sincerity and not conscience to serve the needy people on time and on legal plea, he would submit that transfer is an incidence of service and the petitioner, being a public servant, is expected to perform her duty honestly and sincerely, keeping in mind the welfare of the people and since she stayed away from the headquarters on the crucial day and failed to inform the fact of the tragic demise of a boy, aged about 15 years, the second respondent took a conscious decision in public interest and in the best interest of the administration and hence prays for dismissal of this writ petition. The learned Special Government Pleader, in support of his submissions, relied on the decision in MTR. Tabasum Rashid v. State of J&K and Others [(2001) 1 J&K Law Reporter].

7. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

8. It is the specific case of the petitioner that she has been subjected to frequent transfers on the alleged ground of administrative decision and it is also alleged that whenever any pressure is brought to accommodate a person in her place, it is the routine habit of the administration to disturb her in the post and transfer her to various places and it is also done at the instance of political pressure.

9. The Hon"ble Supreme Court of India in the decision in State of U.P. and Others Vs. Gobardhan Lal, AIR 2004 SC 2165 : (2004) 101 FLR 586 : (2004) 5 JT 454 : (2004) 3 LLJ 749 : (2004) 3 SCALE 574 : (2004) 11 SCC 402 : (2005) SCC(L&S) 55 : (2004) 1 SCR 337 : (2004) 3 SLJ 244 : (2004) AIRSCW 4571 : (2004) AIRSCW 2082 : (2004) 3 Supreme 92 : (2004) 6 Supreme 161 has observed that allegations of mala fides must inspire confidence of the Court and ought not to be entertained on the mere asking of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference would ordinarily be made with an order of transfer and that the burden of proving mala fides is on a person levelling such allegations and the burden is heavy, admits of no legal ambiguity and mere assertion or bald statement is not enough to discharge the heavy burden that the law imposes upon the person levelling allegations of mala fides; it must be supported by requisite materials. Though the petitioner, in para 6 of the affidavit, has made such allegations, she has not produced any prima facie material to show that any pressure is being brought upon the concerned official to transfer her to accommodate a person of his choice or due to political pressure it was done.

10. Let this Court considers the judgments relied on by the learned counsel appearing for the petitioner.

11. In S. Sevugan Vs. The Chief Educational Officer and Another, (2006) 109 FLR 926 : (2007) WritLR 1034 , this Court has found that though the transfer was passed on administrative grounds, it appears that the order was passed by way of punishment and based on the complaint against the conduct of the petitioner and in that event, the petitioner is certainly entitled for proper opportunity to defend himself as to whether the complaints against him by the public or by the Headmaster is proper or not by way of an enquiry.

12. In the order dated 04.10.2013 made in W.P. No. 12812/2013 [P. Karunakaran v. Union of India and Others] [DB], this Court formulated a question as to whether the impugned order of transfer is a routine order made on administrative grounds or an order that has been made on collateral purpose as a punitive measure? The Division Bench, on the facts of the case, found that on the date of transfer, the petitioner therein was placed under suspension and it was in force and hence, found that though the order of transfer, styled as administrative measure, came to be passed only on collateral purpose as a punitive measure and the Court can lift the veil to find out as to whether it was made on administrative grounds as stated in the transfer order or as a punitive measure as contended by the affected party. The Division Bench has also held that once it is admitted by the authorities that the order of transfer was made

based on certain reasons of unbecoming attitude of the employee, more particularly based on certain incident said to have taken place on a particular date, then the authorities cannot exercise the power of transfer on that ground, without affording an opportunity of hearing and allowing the employee to defend his case. It further observed that the administrative grounds can be put as the reason for transfer so long as such administrative grounds do not affect the interest of the employee personally with civil consequences or such grounds do not attribute imputation on the character of the employee and if any of these elements are apparent based on admitted facts, then such grounds can no longer be termed as administrative grounds. The Division Bench, on the facts of the case, found that the order of transfer was passed only as a punishment measure for collateral purpose and therefore, quashed the order of transfer leaving to the authorities to proceed with the disciplinary proceedings initiated against him. The Division Bench, while reaching the said conclusion has also placed reliance upon the judgments rendered by the Hon"ble Supreme Court of India, more particularly the judgment reported in *The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others*, AIR 2012 SC 232 : (2011) 10 JT 505 : (2011) 10 SCALE 606 : (2011) 12 SCC 137 : (2011) 12 SCR 661 : (2011) 6 UJ 3849 .

13. The judgment in *MTR. Tabasum Rashid v. State of J&K and Others* [(2001) 1 J&K Law Reporter], relied on by the learned Special Government Pleader, lays down the proposition that in orders of transfer on administrative grounds, scope of interference is limited, unless it is vitiated either by mala fides or extraneous consideration without any factual background foundation and when the transfer order is issued on administrative grounds, the Court cannot go into the expediency of posting an officer at a particular place.

14. It is also relevant and useful to refer the judgment of the Hon"ble Supreme Court of India in *The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others*, AIR 2012 SC 232 : (2011) 10 JT 505 : (2011) 10 SCALE 606 : (2011) 12 SCC 137 : (2011) 12 SCR 661 : (2011) 6 UJ 3849 . The facts of the case would disclose that the respondent was holding the additional charge of Personal Assistant to District Judge, Thoothukudi and he was expecting regular promotion to the post of Personal Assistant to District Judge and he along with two other employees were transferred out of the District by the appellant on administrative grounds and it was put to challenge. The respondent took a stand that though the Registrar General is having ample power to transfer employees from one District to another District and there was no mala fide intention in transfer and the chance of getting promotion is getting affected on account of inter-district transfer. The Division Bench of this Court has found that the orders or transfers were effected on the basis of the report received from the Vigilance Cell of Madras High Court and found that the order of transfer came to be passed on an anonymous letter and thereafter on the basis of a report from the District Judge and after ordering for a vigilance enquiry. The Division Bench of this Court has decided the case in favour of the respondent/employee holding that the

employer is entitled to consider whether the particular employee is suitable to work in a particular place or to continue there and it is however to be seen that transfer has not affected the service conditions in any way and their chances of promotion were also not diluted. The Division Bench also observed that after obtaining the remarks of the District Judge, the appellant ought to have issued a notice and sought explanation from him and since such a course was not adopted, has set aside the transfer with a direction to restore him to the original place of posting. The Registrar General of High Court of Madras, aggrieved by the order passed by the Division Bench, has filed S.L.P.(C) No. 647 of 2009 and it was admitted and numbered as C.A. No. 7936 of 2011 and the Hon"ble Supreme Court of India has taken into consideration very many judgments rendered by it and allowed the appeal and thereby sustained the order of transfer.

15. No doubt, there may be some justification on the part of the petitioner to stay away from the headquarters, but the fact remains that on a particular day on 03.08.2015, a young boy drowned in lower Bavani river at Bhavanisagar and it is the specific stand of the second respondent that though the said incident took place at 3.30 p.m. on 03.08.2015, the said fact has not been reported by the petitioner till 10.30. a.m. on 04.08.2015 and it was on account of the fact that she was not available in the headquarters. It is also to be pointed out at this juncture that the second respondent took a stand that neither he nor the third respondent do not have any pleasure in transferring the subordinates like the petitioner, working under him and when a situation warrants, it was ordered only on administrative grounds and not on whims and fancies of the authorities and all the transfers effected in respect of the petitioner were purely on administrative grounds and not on individual interest.

16. It is also the contention of the second respondent that the petitioner lacks ability and sincerity and not conscientious to serve the needy people in time and she left the headquarters without informing the superiors and in the event of obtaining necessary permission, the district administration could have made alternative arrangement for smooth administration of the Taluk, in her absence and though power is available to place her under suspension, it was not resorted to for the reason that such an action affect the future career of the writ petitioner. It is also the submission of the learned Special Government Pleader that transfer would not affect her chance of being included in the panel for promotion to the post of Deputy Collector, subject to the fulfillment of other eligible norms.

17. The second respondent, subsequent to the filing of this writ petition, has issued a show cause notice dated 04.08.2015 as to the act of the petitioner leaving the headquarters without seeking prior permission for which, the petitioner has also submitted her explanation. Hence, the second respondent is directed to consider the reply submitted by the petitioner in proper perspective on merits and in accordance with law and pass orders as expeditiously as possible within a period of three weeks from the date of receipt of a copy of this

order and depending upon the orders to be passed, the petitioner may be given accommodation as a Zonal/Revenue Tahsildar to gain more experience.

18. This Court, on a thorough consideration of the rival submissions and on perusal of the materials placed before it, is of the considered view that the impugned order of transfer came to be passed on administrative grounds and also in public interest and therefore, it does not warrant interference.

19. In the result, this Writ Petition is dismissed subject to the above observations. No costs. Consequently, connected miscellaneous petition is closed.