

(1999) 12 MAD CK 0021

In the Madras High Court

Case No : W.P.Nos.12475 and 12476 of 1999 and W.M.P.Nos.17820, 17821, 20365, 20366 of 1999

P.W. Isenth and another

APPELLANT

Vs

The Atomic Energy Education Society and 2 others

RESPONDENT

Date of Decision : 16-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 CTC 566

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. D. Hariparanatham, for the Appellant; Mr. N. Jothi, for the Respondent

Judgement

1. In both the writ petitions, the petitioner respectively being husband and wife individually challenge the orders of transfer passed by the

respondent transferring them from Atomic Energy Central School, Kalpakkam to Atomic Energy Central School, Manuguru by order dated 11th

June 1999.

2. The separate orders impugned in both the writ petitions are identical in all respects. The petitioner in W.P.No.12475 of 1999 is P.W. Isenth,

while the petitioner in W.P.No.12476 of 1999 is Laly Michael, who is the wife of the said P.S.Isenth.

3. The challenge to the impugned orders is identical in both the writ petitions and it would be sufficient to set out the common case and contentions

to decide both the writ petitions.

4. The petitioner in the first writ petition is a trained graduate teacher in Art while the petitioner in the second writ petition is a primary teacher in

Maths/Science. The petitioner in the second writ petition was initially appointed as a primary teacher on 4.2.1995 at Tarapore while the petitioner

in the first writ petition was appointed as trained graduate teacher at Kalpakkam. At the request of the petitioners to post them in any one of the

four centre, the petitioner in the second writ petition came to be transferred and posted to the School at Kalpakkam on 6.5.1997.

5. The petitioner in the first writ petition was elected as the President for the Kalpakkam Branch of All India Atomic Energy Central School and

Junior College Teachers Welfare Association, a recognised Association and as Area President he had been evincing interest in the activities and

taken up the cause of teachers. Mr.B.P.Sharma became Principal of the 3rd respondent School during October, 1995 and his partisan attitude

towards Physical Education Teacher Ms. Vijaya led to confrontation and as the said partisan attitude was highlighted by the petitioner in his letters

dated 17.11.1997, 3.12.1997 and 15.12.1998. As a result of the petitioner taking up such issues, the petitioner had been transferred from

Kalpakkam in Tamil Nadu to Manuguru in Andhra Pradesh.

6. According to the petitioner, the said transfer is a measure of victimisation, it is a mala fide and vindictive action to get rid of the petitioner for his

Association activities that there is no public interest nor there is an interest of the institution and that the petitioners should not have been transferred

before the expiry of two years in respect of the petitioner in the second writ petition. It was also contended that the order of transfer has not been

passed by the competent authority and therefore it is illegal and without jurisdiction. Mr.Hariparanthaman learned counsel appearing for the writ

petitioner elaborated the said contentions.

7. Per contra, the respondents 2 and 3 have filed their counter separately stating that orders of transfer has been passed taking into consideration

of the interest of the institution, which is a public institution, that the order has been passed by the competent authority, that the petitioner in the

second writ petition being the wife of the first petitioner is also posted at Manuguru since the respondents decided to post them together and not to

separate the couple. The respondents also denied the allegations of mala fides, vindictiveness or malice. The respondent also denied all the

allegations set out in the affidavit filed in support of both the writ petitions.

8. Mr.N.Jothi, appearing for the respondents contended that no interference is called for in both the writ petitions and this Court will decline to

exercise powers of judicial review with respect to the impugned orders of transfer, in both the writ petitions. It was further contended that there

were no guidelines and that one of the petitioners, who had the benefit of transfer from one centre to another centre cannot be allowed to contend

that she cannot be transferred to another centre. A reply affidavit also has been filed. Mr.Hariparanthaman also referred to guidelines which is also

being disputed by Mr.N.Jothi. Mr.N.Jothi also contended that the writ petitions are not maintainable.

9. In both the writ petitions, the following points arise for consideration:-

1. Whether the writ petitions are maintainable?

2. Whether the orders of transfer has been passed by an incompetent authority?

3. Whether the petitioners are liable to be transferred from one Centre to another Centre ?

4. Whether the orders of transfer is vitiated by mala fides or vindictiveness, besides being arbitrary?

5. Whether the reasons assigned that there has been a fall in strength is true or correct and whether relevant?

10. Taking up the second first contention, whether the impugned order of transfer had been passed by incompetent authority, namely the second

respondent the Assistant Administrative Officer this Court called upon the respondents to substantiate that the orders of transfer has been passed

by the competent authority. The learned counsel for the respondents is able to sustain that the orders of transfer had been passed by the competent

authority by producing the file and that the second respondent had merely communicated the same. Hence it is clear that the orders of transfer had

been passed by the competent authority and the order is not vitiated on that score.

11. As regards the maintainability of the writ petitions though an objection had been raised in the counter affidavit, at the time of argument realising

the position Mr.Jothi did not advance any arguments. Atomic Energy Society is an autonomous body under the Department of Atomic Energy

Government of India has established the institutions and they are maintaining the institutions. It is clear from the affidavit filed in support of the writ

petition that the schools have been established by the Department of Atomic Energy and it is fully aided by the Central Government. As such the respondents will fall definitely within the ambit of the expression "other authority" under Article 12 of the Constitution. Hence the writ petitions are maintainable as the Educational institutions established by the said Society is an instrumentality of the Central Government.

12. As regards the 3rd contention it had been rightly pointed out by Mr.N.Jothi that the petitioners are liable to be transferred from one Centre to another centre namely from Kalpakkam to Manuguru, Manuguru to Mysore or Bombay wherever the respondent Society had established its schools. Earlier number of transfers were effected and infact the petitioner in the second writ petition had the advantage of the said policy otherwise she could not have been posted at Kalpakkam. There was some controversy as to the "guidelines" prescribed for transfer.

13. During the arguments is fairly stated by either side that the transfer from one centre to another centre of the schools established by the Atomic Energy Education Society which has got a central office at Mumbai and centres at various places is permissible. Therefore the petitioners are liable to be transferred.

14. As regards the 4th contention that the orders of transfer is vitiated by mala fides, besides being arbitrary. In this respect, the first petitioner claims that he is the active office bearer of the Association. It has to be pointed out that the allegations of malafides or vindictiveness have been made against the 3rd respondent Headmaster of the School and not against the competent authority who had passed the order of transfer. The order of transfer has not been passed by the 3rd respondent the Head Master of the School. Against the said authority, there are no allegations of mala fides. It is not as if the petitioners have made allegations of mala fides or vindictiveness against the authority who had passed the orders of transfer.

15. Further the allegations are not specific and they are vague. Except stating that the Headmaster of the School had an axe to grind as the petitioner had made a issue with respect to the Headmaster preferring one of the Physical Education Teachers it is not as if there is any direct confrontation or element of vindictiveness or enmity between the petitioners and

the 3rd respondent or for that matter against the authority who decided to transfer. The vague averments set out in the affidavit are not sufficient to go into those allegations. Further no materials have been placed before the Court to substantiate even those vague allegations. Incidentally it was contended that the orders of transfer has been passed without application of mind and the petitioners were not transferred in public interest.

16. It was contended by Mr.Hariparanthaman being School teachers no question of public interest arise. Per contra, Mr.Jothi learned counsel appearing for the respondents pointed out that as a surplus teacher in the school is being transferred from one school to another school the expression ""public interest"" has been added in addition to other reasons set out in the orders of transfer. It may be that the expression ""public interest"" has been used as a misnomer. On that score it cannot be said that the order is vitiated. As the school has been established by the Atomic Energy Education Society and as the entire expenses had been provided for by the Central Government and the schools have been established for the benefit of the staff and other employees of the Atomic Energy Centre, the expression ""public Interest!"" has been employed while passing the orders of transfer.

17. It cannot be said that the order of transfer is vitiated by non-application of mind nor it could be stated that the order of transfer has been made for collateral reasons. Mr.N.Jothi, rightly pointed out that the necessity to transfer the petitioner arose also due to the fact that there is a surplus staff at Kalpakkam, who have to be redeployed in anyone of other centres. The respondents have taken into consideration of all relevant aspects and materials and chosen to transfer both the petitioners together to one centre. In the circumstances, it is clear that the impugned order of transfer is not vitiated for non-application of mind nor it is liable to be interfered on any one of the grounds.

18. Mr.Hariparanthaman contended that the second petitioner in the second writ petition had not completed two years and therefore, she should not be shifted. There is no basis for such a contention. It cannot be said that the teacher employed in the respondent school cannot be transferred within a period of two years. There is no such guideline or stipulations nor there

is any agreement or clause in the appointment order or any such condition has been prescribed at any point of time.

19. Mr.Hariparanthaman also contended that merely because the petitioner in the first writ petition has to be transferred, there is no justification to transfer the petitioner in the second writ petition. This is a contention which has been raised out of frustration. In the first writ petition the petitioner is the husband, while the petitioner in the second writ petition is the wife, who had come on transfer to Kalpakkam after her marriage to join her husband.

20. The respondents have taken into consideration of the relationship between the two petitioners and with that object decided to post them together and they have shifted them together lest there will be a dislocation in the family of the petitioners in both the writ petitions. The object of posting them at one centre cannot be deprecated nor it is liable to be criticised but on the other hand it shows that the respondents were considerate and have no ill-will or mala fide intention but they have decided to transfer and post them to one centre as it was essential to shift the petitioner from Kalpakkam. In any view of the matter, it" cannot be said that the order of transfer is vitiated or illegal.

21. As regards the last of the contention this court has to accept the stand taken by the respondents and necessarily the writ petitioner in the first writ petition has been shifted from Kalpakkam and after taking into consideration of the strength of the staff and teacher who had been rendered surplus had to be necessarily transferred or redeployed to other centre, where his services are required and the said teacher could be accommodated. This is definitely a relevant consideration. Therefore, the last of the contentions also has to be answered in favour of the respondents.

22. Mr.Hariparanthaman, contended that the orders of transfer is vitiated and it suffers with illegality and it is liable to be quashed. The power of judicial review with respect to powers of transfer is limited. It is not as if this Court could interfere with every order of transfer as if it is an appellate authority as sought to be contended by Mr. Hariparanthaman.

23. The scope of judicial review with respect to orders of transfer is well settled and the Apex Court in State of Madhya Pradesh, and Another

Vs. S.S. Kourav and Others, held thus:-

The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should

be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the

officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by

mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds

the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place.

24. As regards the contention that the impugned proceedings are vitiated by mala fides, this Court will be justified in presuming-bona fides in

favour of an order of transfer by the employer, unless there is acceptable material to uphold the plea of mala fides or want of bona fides. In this

respect in State of U.P. v. Dr.V.N. Prasad, 1995 (2) SCC Supp 151 it has been held thus:-

2. The High Court at the interlocutory stage of writ petition moved by the respondent Dr.V.N.Prasad, B.R.D. Medical College, Gorakhpur

challenging an order of transfer, has stayed its operation. We are of the opinion that at the stage at which the matter was brought to engage the

attention of the High Court, there was no prima facie material to establish any mala fides which required strong and convincing evidence. The

presumption is in favour of the bona fides of the order unless contradicted by acceptable material. The interlocutory order of the High Court is, in

our opinion, unjustified- The order is set aside.

25. Mr.N.Jothi, learned counsel for the respondent referred to the decision of S.S.Subramani, J. in Velayutham v. Deputy Director (Training) CRP

Force etc., 1998 W.L.R 261 wherein the Learned Judge after referring to the various decisions of the Apex Court held that the jurisdiction to

interfere with respect to the orders of transfer under Article 226 is very limited. In that context, it has been held thus:-

15. In Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, . of the judgment, Their

Lordships have held that the transfer of a public servant made on administrative

grounds or in public interest should not be interfered with unless there are strong and compelling grounds rendering the transfer order improper and unjustifiable. In that case, against the delinquent employee, there were many complaints or certain irregularities were found out in his work. In spite of Guidelines, he was transferred. It was challenged before the Honourable Supreme Court. While discussing the same, in para 7, their Lordships held thus:-

It is needless to emphasise that a government employee or any servant of a Public Undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that the respondent holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting.....

In that case, their Lordships further said that since there were some complaints, or some irregularities, were found out, the Government servant was transferred, so- that he can work in a better atmosphere.

19. In *Laxmi Narain Mehar Vs. Union of India and others*, , it was a case of transfer of a Scheduled Caste employee. The Guidelines provided

that as far as possible the scheduled caste employees are to be posted near their home towns. In that case, the transfer of a scheduled caste

employee was challenged, alleging that the order was passed as a vindictive measure. Their Lordships held that in this case of administrative

exigency the power of transfer is not liable to be interfered with. Respondent-Government contended that in view of the necessity for getting

experienced staff, the concerned employee had to be transferred, and the reason was sheer administrative exigency, and was not by way of

punishment. Considering the case, Their Lordships held that the transfer was due to administrative exigencies and not punitive.

20. In this case, learned counsel for petitioner submitted that at the instance of the third respondent, the second respondent has transferred the

petitioner. He further submitted that it is averred by the respondents that they received some complaints against the petitioner, and therefore,

according to learned counsel, if that was the reason for the transfer, that will amount to punishment, and, if the transfer is by way of punishment, he

is entitled to be heard before the order is passed.

21. The said argument also has no force. Respondents have unequivocally

admitted in the counter that the transfer is only for administrative reasons, and the same is not by way of punishment..""

26. The first point is answered in favour of the writ petitioners and points 2 to 5 are answered in favour of the respondents.

27. In the foregoing circumstances and in the light of the above pronouncements this Court holds that there are no merits and both the writ petitions fail and they are dismissed but without costs. Consequently, the connected W.M.Ps are dismissed. The parties shall bear their respective costs.