

(2011) 05 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No's. 5834 of 2011

S. Rajagopal

APPELLANT

Vs

State of Tamil Nadu and K. Ramanathan

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 05 MAD CK 0008

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : AR.L. Sundaresan for A.L. Ganthimathi, in W.P.No. 5834 of 2011 and K. Parthasarathy, for Anand and Suryas, in W.P. No. 7360 of 2011, for the Appellant; S. Gopinathan, Addl. Govt. Pleader for R1 and N.G.R. Prasad, for K.C. Ramalingam, for R2 in W.P.No. 5834 of 2011 and S. Gopinathan, Addl. Govt. Pleader for R1 and R2, A. Thiyagarajan for G. Elanchezhiyan, for R3 in W.P. No. 7360 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—In W.P. No. 5834 of 2011, the Petitioner challenges the order of transfer passed by the first Respondent in G.O. (Rt)

No. 96, Public Works (A2) Department, dated 28.2.2011 and seeks to quash the same.

2. In W.P. No. 7360 of 2011, the Petitioner challenges the order of transfer passed by the first Respondent in G.O. (Rt) No. 96, Public Works

(A2) Department, dated 28.2.2011 and the consequential order passed by the second Respondent dated 18.03.2011 and seeks to quash the

same and prays for a consequential direction to allow him to continue in the same place.

3. Case of the Petitioner in W.P. No. 5834 of 2011 is that he joined the services in

the Public Works Department in the year 1978 and joined as an Executive Engineer in Public Works Department, Technical Education Division, Tirunelveli on 4.4.2007 and his job covers four districts, namely, Ramnad, Kanyakumari, Tirunelveli and his headquarters is at Tirunelveli.

4. It is further averred in the affidavit that the first Respondent passed the impugned Government Order dated 28.2.2011, wherein he had transferred the Petitioner from Tirunelveli to work as an Executive Engineer in HR & CE Department, Madurai in the place of the second Respondent and the second Respondent had been transferred to the Petitioner's place without assigning any reasons.

5. The Petitioner challenges the aforesaid impugned order on the grounds that the said order has been passed without assigning any reason and that too, in the middle of the academic year; that the said order has been passed only to suit the convenience of the second Respondent; that even though the order is dated 28.2.2011, the same has not been served on the Petitioner till 4.3.2011 and it has been served only after the issuance of Election Notification dated 1.3.2011 and hence the said order of transfer cannot be effected; that the order of transfer has been passed while he was carrying on several works under different contractors and that too after the issuance of the Election Notification and the same is arbitrary, unjust and unsustainable in law.

6. Case of the Petitioner in W.P. No. 7360 of 2011 is that he joined the services in the Public Works Department as an Assistant Engineer in the year 1980 on temporary basis and in the year 1982, a special recruitment test was conducted by the TNPSC and he was regularly absorbed as an Assistant Engineer and thereafter, he was promoted to the post of Assistant Executive Engineer in the year 2003 and further promoted to the post of Executive Engineer in the year 2007 and that he has been working in various places in the Department and his work has been appreciated by his superiors.

7. It is further stated that after the issuance of Election Notification, the first Respondent has passed the impugned order of transfer in G.O.(Rt) No. 96, Public Works Department, dated 28.2.2011. According to the Petitioner, though the order was passed on 28.2.2011, the Tamil month

date has been stated as Maasi 17, which clearly proves that the same has been passed after the date of Election Notification and it was

despatched to him only on 3.3.2011 and since he was on leave, the same was received by him only on 7.3.2011. In fact, without even

communicating the order to him, the third Respondent herein, who has been posted in his place, alleged to have taken charge on 2.3.2011.

8. It is further averred in the affidavit that though he brought to the knowledge of the second Respondent about the action of the third Respondent,

the same was not properly considered. However, the second Respondent as per his letter No. C1(1)/1708/2011 dated 18.3.2011 requested him

to obey the Government order, as the third Respondent has taken the charge on promotion as Executive Engineer. In the aforesaid circumstances,

having no other effective remedy, the Petitioner has filed the present writ petition.

9. The Petitioner challenges the aforesaid impugned order on the grounds that the said order has been passed after the Election Notification and

the Model Code of conduct come into force and to circumvent the Election Notification, the impugned order has been anti-dated and that the

Tamil date has been clearly stated as 17th Maasi and the corresponding English date was 1.3.2011 and not 28.2.2011; that the first Respondent

ought to have seen that the third Respondent was promoted and posted as per the order of the first Respondent in G.O.(D) No. 418, Pubic

Works (A2) Department dated 9.9.2010, but he failed to join in that place and now only to accommodate the third Respondent, the impugned

order has been passed; that the impugned order is passed in the middle of the academic year and the same is arbitrary and unjust.

10. The first Respondent has filed counter-affidavit in W.P. No. 5834 of 2011, wherein it is stated that the order of transfer is on the administrative

ground, which can be assailed only on well celebrated grounds available under Administrative Law; that the transfer is an incidence of service,

which cannot be normally invoked under Article 226 of the Constitution of India.

11. It is further stated that that the Petitioner has been working as Executive Engineer in Technical Education Division, Tirunelveli from 4.4.2007

and from his own averments, it could be established that he has been working in the above said Division more than three years, which itself would

go to prove that the transfer now ordered by the first Respondent was on valid

ground.

12. It is also stated that the transfer order issued to the Petitioner in G.O.(D) No. 96, Public Works (A2) Department, dated 28.2.2011 is before

the notification of the Election Commission; that generally after a certain prescribed period, transfers are made and this principle is allowed in order

to ensure that the Government servants by their long standing in a particular place do not gain undesirable local influence or gain such familiarity

with the local people as to put them in a delicate position of not refusing a favor even when it happens contrary to Rules; that the transferring of

employee even from one station to another is the inherent right of the employer and any civil servant is liable to be transferred from one place to

another and it is one of the conditions of service they accept when they become employees of the Government and the Petitioner is no exception to

this basic concept.

13. It is further stated that the Petitioner is working as Executive Engineer in the same Division for more than three years and due to administrative

reasons, he was transferred to Hindu Religious and Charitable Endowments Department, Madurai; that the impugned order dated 28.2.2011 sent

to concerned officials through fax in time, that a Government servant is liable to be transferred to a similar post in the same cadre is normal feature

and an incidence of Government service and no Government servant can claim to remain in a particular place or in a particular post unless his

appointment order specifically states that it is a non-transferable post and therefore, they prayed for the dismissal of the writ petition.

14. Similarly, in W.P. No. 7360 of 2011, Respondents 1 and 2 have filed counter-affidavit stating inter alia that the writ petition filed by the

Petitioner challenging the order of transfer is not maintainable, as it is an administrative order, which can be assailed only on well celebrated

grounds available under Administrative Law and the order of transfer is an incidence of service, which cannot be normally invoked under Article

226 of the Constitution of India.

15. According to the Respondents, the Petitioner has been working as Executive Engineer in Araniyar Basin Division, Chennai for more than 3=

years from 24.09.2007 and even prior to that, he was working in the same division in various capacities with effect from 30.6.1999 and totally the

Petitioner was working in the same division for more than eleven years and that due to administrative grounds, the Petitioner was transferred to

Project Division, Gudiyatham vide G.O.(Rt) No. 96, Public Works (A2) Department, dated 28.2.2011.

16. It is further stated that the said order was issued before the notification of the Election Commission, that the Tamil month date Masi 17, instead

of Masi 16, has been stated in the Government Order is a typographical error; that the impugned transfer order sent to the concerned Chief

Engineer through fax in time; that the Petitioner instead of joining in the new station, has represented to the Engineer-in-Chief, Water Resources

Department and the Chief Engineer (General), Public Works Department in his letter dated 8.3.2011; that the third Respondent herein has joined

duty himself in the Araniyar Basin Division, Chennai on 2.3.2011 by one side without following the official procedures and the Petitioner was

instructed to obey the transfer order issued in the Government Order dated 28.2.2011 vide Engineer-in-Chief, Water Resources Department and

Chief Engineer (General), Public Works Department Lr. No. C1(1)/1708/2011, dated 18.3.2011.

17. It is further averred in the counter that transferring of an employee even from one station to another is the inherent right of the employer and any

civil servant is liable to be transferred from one place to another and it is one of the conditions of service they accept when they become employees

of the Government and the Petitioner is no exception to this basic concept; and that they prayed for the dismissal of the writ petition.

18. The Petitioner in W.P. No. 7360 of 2011 filed a reply affidavit stating that the Respondents cannot contend that the mentioning of the Tamil

date, as Masi 17 instead of Masi 16, is a typographical error. It is further stated that the typographical error of date can be committed by the typist

only for the previous date and not for subsequent date and the said plea has been taken to justify their action.

19. Mr. AR.L. Sundaresan, learned senior counsel appearing for the Petitioner in W.P. No. 5834 of 2011, would submit that the impugned order

of transfer dated 28.2.2011 was issued only after the issuance of Election Notification i.e. on 01.03.2011. He further submits that the impugned

order of transfer was passed only to suit the convenience of the second Respondent herein. He also submits that the order was not on

administrative grounds and that it was passed in the middle of the academic year and hence, the same is liable to be quashed.

20. Mr. K. Parthasarathy, learned Counsel appearing for the Petitioner in W.P. No. 7360 of 2011, would submit that the impugned order was

made after the Election Notification and the Model Code of Conduct come into force, only to accommodate the third Respondent herein. He

would further submit that the third Respondent herein has not obeyed the earlier order passed by the first Respondent in G.O.(D) No. 418, Public

Works (A2) Department, dated 9.9.2010 and only to accommodate him the earlier order has been cancelled and now the impugned order has

been passed. According to him, the impugned order, which is passed in the middle of the academic year, is arbitrary, unjust and unsustainable in

law and hence, the same is liable to be quashed.

21. Mr. S. Gopinathan, learned Additional Government Pleader appearing for the first Respondent in W.P. No. 5834 of 2011 and Respondents 1

and 2 in W.P. No. 7360 of 2011 would contend that the impugned order of transfer was passed before the date of Election Notification and it is

made on administrative grounds. He would further contend that both the Petitioners have completed more than three years of service in the same

station and therefore, the order of transfer, which is an incidence of service, unless a mala fide established, cannot be interfered by this Court.

According to him, the mentioning of Tamil date as Masi 17 instead of Masi 16 in the impugned order, is a typographical error, which is not at all a

ground for quashing the impugned order of transfer.

22. Mr. N.G.R. Prasad, learned Counsel appearing for the second Respondent in W.P. No. 5834 of 2011, would contend that the impugned

order of transfer has been made on 28.2.2011 i.e. before the issuance of the Election Notification and the second Respondent has reported for

duty immediately to the transferred station and since the Petitioner has been transferred after completion of three years of service, it cannot be

questioned by him, as it will cause prejudice and affect the right of the second Respondent.

23. support of his contention, he relies upon the decision of a Division Bench of this Court reported in (2010) 1 MLJ 1393 (P. Gandhi v. R.

Velmurugan and Anr.). In the said decision, the Division Bench, following the

decision of the Supreme Court in State of U.P. and Others Vs. Siya

Ram and Another, , allowed the writ appeal, and the relevant portion is extracted hereunder:

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 Corporation. Ltd. v. Shri Bhagwan

24. A. Thiagarajan, learned senior counsel appearing for the third Respondent in W.P. No. 7360 of 2011, would submit that the impugned order

of transfer was passed before the issuance of Election Notification. He would further submit that the Petitioner worked in the same station for more

than eleven years and that the third Respondent has joined the present station in obedience to the impugned order and that after the promotion the

third Respondent has to be allowed to join the present station.

25. have heard the learned Counsel appearing on either side and perused the materials available on record.

26. The circumspection of the facts pleaded by the Petitioners would reveal that the Petitioners are working as Executive Engineers in Tirunelveli

and Chennai from 4.4.2007 and 24.9.2007 respectively and they have completed more than three years of service. The first Respondent,

considering that the Petitioners have completed three years of service, have now

passed the impugned order transferring the Petitioner in W.P. No.

5834 of 2011 from Tirunelveli to work as an Executive Engineer in HR & CE Department, Madurai and the Petitioner in W.P. No. 7360 of 2011

from Araniyar Basin Division, Chennai to Project Division, Gudiyatham. In both the cases, after taking into consideration the fact that the

Petitioners have completed three years of service, the impugned order of transfer has been passed.

27. From the facts pleaded by the Petitioners, it can be congregated that the Petitioner in W.P. No. 5834 of 2011 has been working as Executive

Engineer in Technical Education Division, Tirunelveli from 4.4.2007 and the Petitioner in W.P. No. 7360 of 2011 has been working as Executive

Engineer in Araniyar Basin Division, Chennai-5 for more than 3= years i.e. from 24.9.2007 and even prior to that he was working in the same

division in various capacities with effect from 30.6.1999. It is, therefore, clear that both the Petitioners have completed more than three years of

service in the respective stations.

28. It is substantially averred in the counter-affidavits that the impugned order has been made taking into account the circumstances which

necessitated for making such a transfer. Therefore, the contention of the learned Counsel for the Petitioners that the impugned order is issued only

to accommodate the second and third Respondents respectively, would not vindicate the stand for the reason that, except the statements made,

nothing is materially proved to substantiate the contention. Hence, the said contention cannot be countenanced.

29. Law is well settled that while exercising jurisdiction under Article 226 of the Constitution of India, as to whether, the transfer was in the interest

of public service, that would essentially require factual adjudication and invariably depend upon peculiar 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.

30. On the issue of transfer, the Supreme Court in *Mr. Rajangam, Secretary, District Beedi Workers' Union and K. Chandra Segaram Vs. State of Tamil Nadu and others*, held that unless it is shown that transfer order is imbued with malice, the question of quashing it does not arise. The

Supreme Court further held as follows:

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it....

31. On a similar issue, the Supreme Court in *State of Punjab and others Vs. Joginder Singh Dhatt*, held that it is entirely within the competency of the employer to transfer an employee and the Court should not ordinarily interfere with that. An excerpt from it would run thus:

3. We have heard learned Counsel for the parties. This Court has time and again expressed its disapproval of the Courts below interfering with the

order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a

public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High

Court grossly erred in quashing the order of transfer of the Respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending

its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused.

32. In fact, the Hon"ble Apex Court in both the aforesaid cases would highlight that simply because the transfer orders are not strictly in

accordance with the rules, the Courts are not justified in interfering with that unless mala fides could be attributed to such transfer.

33. On the point that transfer of an employee is an incidence of service, the Supreme Court in *State Bank of India Vs. Anjan Sanyal and Others*, ,

held as follows:

4. The order of transfer of an employee is a part of the service conditions and

such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order....

34. On the same issue, the Supreme Court in State of U.P. and Others Vs. Gobardhan Lal, held 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

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 of 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 prospectus 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 have been by mala fides or is made in

violation of any statutory provision.

35. A perusal of the impugned order would show that it has been made on 28.2.2011 in G.O.(Rt) No. 96, Public Works (A2) Department,

effecting the above said transfers. The Election Notification has come into force from 1.3.2011. The Election Commission of India, issued an

Election Notification dated 01.03.2011, which has been placed on record,

wherein the following Conduct of Officials and guidelines are given:

Conduct of Officials

The Commission expects all officials engaged in the conduct of elections to discharge their duties in an impartial manner without any fear or favor.

They are deemed to be on deputation to the Commission and shall be subject to its control, supervision and discipline. Several instructions have

been issued from time to time to ensure impartiality of officials who are engaged in the conduct of elections. The conduct of all Government

Officials who have been entrusted with election related responsibilities and duties would remain under constant scrutiny of the Commission and

strict action shall be taken against those officials who are found wanting on any account. The Commission has already given instructions that no

election related official or Police officer of the rank of Sub Inspector and above shall be allowed to continue in his home district. Besides,

instructions have also been issued that election related officials including police officials who have completed three years in a district during last four

years should be transferred out of that district. The State Governments and the UT Administration of Puducherry have also been asked to transfer

all those officers against whom the Commission has recommended disciplinary action or who have been charged for any lapse during previous

elections or for any election related work, from positions entailing any election work. The State Governments/UT Administration of Puducherry

have been instructed to ensure that those who stand transferred shall move out physically from their last place of posting and shall not remain there

on any pretext including leave. The Commission has also instructed the State Governments/UT Administration of Puducherry not to associate any

officer with the electoral process against whom charges have been framed in a court of law in any case.

36. From a perusal of both the impugned order and the Election Notification, it could be seen that the order of transfer has been made prior to the

issuance of Election Notification and the Model Code of Conduct came into force. Therefore, the contention raised by the Petitioners that the

impugned order is made only after the issuance of Election Notification has no substance. It is true that after the issuance of Notification of the

Election Commission, the Model Code of Conduct came into force and the State

Governments have been instructed to ensure that those who stand transferred, shall move out physically from their last place of posting and shall not remain there on any pretext including leave. If that is so, the impugned order issued prior to the Election Notification will have to be given effect to. On the contrary, it has been challenged by the Petitioners, instead of obeying the same, on the pretext that the impugned order has been given effect to only after the Election Notification. When the order of transfer of an employee is part of condition of service, the same need not be interfered by the Court of law, in exercise of its discretionary jurisdiction, unless mala fide is attributed to or there is any violation of statutory provisions of the Act or Rule or by an authority not competent to do so. In the absence of any such things, it is not proper for this Court to interfere in a matter of routine transfer.

37. A perusal of the impugned orders would give a clear impression to this Court that the order of transfer assailed by the Petitioner is not tainted with mala fide intention or colorable exercise of power. In the absence of any such ground available to the Petitioners, it is not open to this Court to interfere in the matter of routine transfer.

38. For the foregoing reasons and the discussions made, I am of the considered view that the impugned order of transfer dated 28.2.2011 passed by the first Respondent in G.O.(Rt) No. 96, Public Works (A2) Department, does not call for interference and therefore, the writ petitions deserve no merit consideration and they are liable to be dismissed. However, if the Petitioners are still aggrieved by the impugned order, it is for them to represent the same before the first Respondent after joining the transferred place and if any such representation is made, the first Respondent is directed to consider the same in accordance with law.

39. With the above observation, these writ petitions are dismissed. No costs. Consequently, interim stay already granted is vacated and the miscellaneous petitions are also dismissed.