

(2016) 07 MAD CK 0044
In the Madras High Court
Case No : Writ Petition No. 31431 of 2015

S. Ramasamy

APPELLANT

Vs

The Director of Town Panchayats

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 CWC 186 : (2016) 6 MLJ 42

Hon'ble Judges : B. Rajendran, J.

Bench : Single Bench

Advocate : :- Mr. Bharatha Chakravarthy for M/s. Sai, Bharath and Ilan, Advocates, for the Appellant; Mr. S. Gunasekaran Additional Government Pleader, Mr. M. Bala Muralikrishna, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Rajendran, J.—The petitioner calls in question the order dated 01.10.2015 passed by the first respondent by which he was transferred from Coimbatore to Cuddalore District.

2. Mr. Bharatha Chakravarthy, learned counsel for the petitioner attacked the impugned order on several grounds. At the outset, he would contend that before passing the impugned order of transfer, the petitioner was transferred on four occasion within a short period of two years from place to place and the details of which are as follows:-

(i) By proceedings dated 05.08.2013 of the Commissioner of Municipal Administration, Chennai, while the petitioner was working at Othakalmandapam Town Panchayat, Coimbatore District, he was transferred to Punjai Puliyampatti Municipality, Coimbatore

(ii) Subsequently, by proceedings dated 04.11.2013 of the Commissioner of Municipal Administration, he was transferred on his request to Udthagamandalam Municipality, The Nilgiris District

(iii) After 9 months of such transfer, by proceedings dated 26.08.2014 of the Director of Town Panchayat, the petitioner was transferred to Madukkarai Town Panchayat, Coimbatore District

(iv) Thereafter, by proceedings dated 01.10.2015 of the Director of Town Panchayat, Chennai, the petitioner was transferred to the office of Additional Director of Town Panchayat, Coimbatore District.

3. According to the learned counsel for the petitioner, the petitioner did not question the aforesaid orders of transfers and joined the place to which he was transferred. However, in spite of such frequent transfers, the petitioner was once again transferred to Cuddalore District by passing the impugned order. The learned counsel for the petitioner would further contend that his children are studying in a School at Coimbatore besides that his wife is also a Government servant working at Coimbatore. It is further stated that the impugned order of transfer dated 01.10.2015 has been passed during the middle of the academic year which is legally not permissible. In any event, by merely indicating that the impugned order of transfer has been passed on administrative grounds, the petitioner was sought to be disturbed. It is further contended by the learned counsel for the petitioner that the impugned order dated 01.10.2015 has been served on the petitioner on 02.10.2015 - a holiday on account of Gandhi Jayanthi and immediately, he filed the above writ petition and status quo has been granted on 05.10.2015. By reason of the order of status-quo, the petitioner is still continuing in service at Coimbatore.

4. Above all, the learned counsel for the petitioner brought to the notice of this Court the counter affidavit filed by the first respondent wherein it was mentioned that the petitioner did not maintain integrity and rapport with the technical staff working in Town Panchayat with a view to elude his responsibilities. By relying on such averments raised in the counter affidavit of the first respondent, the learned counsel for the petitioner would contend that the impugned order has not been passed on administrative grounds or administrative exigency, rather, it has been passed with an oblique and malafide intention. Therefore, the learned counsel for the petitioner prayed for allowing this writ petition.

5. The learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of (Somesh Tiwari v. Union of India) reported in (2009) 2 SCC 592 to contend that even though an order of transfer passed by the employer cannot be interfered with by this Court in normal circumstances, since the impugned order has been passed with a malafide intention, in lieu of punishment, the same partakes the character of an order of transfer in lieu of punishment and it is legally impermissible.

6. The learned counsel appearing for the respondents 1 and 4 would contend that out of the four orders of transfer cited by the petitioner, the petitioner was transferred from Coimbatore to Nilgiris District on his own request and therefore the petitioner is estopped from citing the same as a reason for his frequent

transfer from one place to place. The learned Additional Government Pleader would further contend that in the order of transfer dated 01.10.2015, it was clearly indicated that it has been passed due to administrative exigency. While so, merely because of certain averments made in the counter affidavit of the first respondent, it will not vitiate the impugned order of transfer. There was no malafide attached to the order of transfer passed by the first respondent and such allegations raised by the petitioner are untenable. The learned Additional Government Pleader would therefore pray for dismissal of the writ petition.

7. The learned counsel appearing for the respondents 2 and 3, relying on the counter affidavit, would contend that the respondents 2 and 3 have been unnecessarily arrayed as parties to this writ petition. The respondents 2 and 3 have got nothing to do with the order of transfer dated 01.10.2015 passed against the petitioner. It is further stated that the respondents 2 and 3 have also been frequently transferred and they did not question such order of transfers. In any event, the respondents 2 and 3 are not proper and necessary parties for adjudication of the dispute involved in this writ petition and he prayed for dismissal of the writ petition.

8. I heard the learned counsel on either side and perused the materials placed on record. At the outset, this Court is of the view that the respondents 2 and 3 are not proper and necessary parties to this writ petition which relates to the order of transfer passed by the first respondent and they were unnecessarily impleaded in this writ petition. When the counsel for the petitioner was asked as to why the respondents 2 and 3 were impleaded in this writ petition, he fairly submitted that the respondents 2 and 3 are not necessary parties to this writ petition and he is withdrawing the allegations levelled against them in the affidavit filed in support of the writ petition. The said submission made by the learned counsel for the petitioner is recorded.

9. As regards the impugned order dated 01.10.2015 passed by the first respondent, it is the submission of the counsel for the petitioner that prior to the passing of the order dated 01.10.2015, the petitioner was subjected to four transfers in a span of two years. It is an admitted fact that the petitioner has obeyed all the four orders of transfer passed against him. However, the present order dated 01.10.2015 has been passed by citing administrative exigency and it is questioned by the petitioner in this writ petition on several grounds.

10. It is seen from the records that even though the impugned order dated 01.10.2015 was passed by citing administrative reasons, as rightly pointed out by the learned counsel for the petitioner, in the counter affidavit filed by the first respondent, it was stated that the petitioner did not cooperate with the technical staff of the department and he lacks integrity. To be precise, in para-7 of the counter affidavit of the first respondent, it was stated as under:-

"7.The petitioner is in the habit of returning the letters submitted by the Assistant Engineers and Junior Engineers for some or other reasons best known

to him. The petitioner has not maintained any integrity and rapport with the technical staff working in Town Panchayats, with a view to elude from his responsibilities, he has thrown the ball on the Court of 2nd and 3rd respondents. Hence, the contention of the petitioner is not maintainable."

11. It is evident from the above counter affidavit that one of the reasons for passing the impugned order of transfer dated 01.10.2015 is that the petitioner lacks coordination and cooperation with the other staff in the department. These averments in the counter affidavit, in my considered view, would only indicate that the impugned order of transfer dated 01.10.2015 has been passed by the first respondent not only on the basis of administrative exigency but as a measure of punishment or in lieu of punishment for the so-called misconduct attributable on the part of the petitioner. In this context, useful reference can be made to the order dated 02.03.2015 passed by this Court in WP No. 31396 of 2014 wherein this Court relied on the decision of the Honourable Supreme Court in (Somesh Tiwari v. Union of India) reported in (2009) 2 SCC 592 wherein in para No.16, it was held as follows:-

"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 - once 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."

12. In the very same order dated 02.03.2015 in WP No. 31396 of 2014, reference was also made to the decision of the Kerala High Court in the case of (P. Pushpakaran v. Coir Board and another) (1979) (1) LLJ 139 wherein it was observed that a transfer can uproot a family, cause irreparable harm to an employee and drive him to separation. In para No.24, it was observed as follows:-

"24. The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes, it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is extensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweat revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer".

13. Thus, it is evident from the decision of the Honourable Supreme Court as well as the decision of the Kerala High Court that if an order of transfer is passed with an intention to indirectly punish the employee for alleged misconduct, such an order of transfer is illegal. In this case, in the counter affidavit of the first respondent, reference has been made against the petitioner relating to his alleged misconduct and such misconduct would have weighed the first respondent to pass the impugned order of transfer as a measure of punishment or in lieu of punishment. Therefore, on this ground, the impugned order of transfer has to be set aside.

14. The learned counsel for the petitioner would further contend that the petitioner's wife is working as Headmistress in the Panchayat Union Primary School at Pudunallur. It is further submitted that the two female school going children of the petitioner are studying at Coimbatore. While so, the impugned order of transfer, which was passed during the middle of the academic year, is legally not sustainable. I find considerable force in the said submission of the learned Counsel for the petitioner. Admittedly, the impugned order of the first respondent has been passed during the middle of the academic year. It is also seen that the petitioner's wife is working in Coimbatore in a Panchayat Union Primary School and the impugned order of transfer would definitely prejudice the petitioner.

15. In normal circumstances, this Court, in exercise of powers conferred under Article 226 of The Constitution of India, will not ordinarily interfere with an order of transfer passed by the employer. It is well settled that an order of transfer is part and parcel of a service or it is an incident of service. However, in the present case, in the counter affidavit of the first respondent, certain averments have been made against the petitioner which would go to show that the impugned order of transfer has not been passed on administrative exigency, rather, it was passed as a measure of punishment against the petitioner or in lieu of punishment. Further, the impugned order has been passed during the middle of the academic year and on that ground also, it is liable to be set aside.

16. For all the above reasons, the impugned order of transfer dated 01.10.2015 passed by the first respondent is set aside. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition Nos. 1, 2 and 4 of 2015 are closed.