

(2017) 02 MAD CK 0025
In the Madras High Court
Case No : 1294 of 2016

S.Ganesan Vs The Commissioner of Adi Dravidar Welfare, Chepauk & ors.

Date of Decision : 24-02-2017

Acts Referred:

[Tamil Nadu Civil Services \(Discipline and Appeal\) Rules, 1955](#), Rule 17(b)

Citation : (2017) 02 MAD CK 0025

Hon'ble Judges : R.Subbiah, J.Nishabanu

Bench : SINGLE BENCH

Advocate : R.Subbiah, J.Nishabanu

Judgement

1. The appellant in W.A.No.1294 of 2016 namely S.Ganesan is the fifth respondent in W.P.(MD).No.12963 of 2016 filed by one

Mr.K.Kaliappan / writ petitioner. The official respondents in the said writ petition viz., the Commissioner of Adi Dravidar Welfare, Chepauk,

Chennai; the District Adi Dravidar Welfare Officer, Tirunelveli District and the Special Officer (ADW), Cheranmahadevi, have filed a separate

appeal in W.A.(MD).No.1305 of 2016 as against the order passed in W.P.(MD)No.12963 of 2016 in which the writ petitioner was shown as

first respondent.

2. Both the appeals have been filed against the order dated 24.08.2016 passed in W.P(MD).No.12963 of 2016, whereby and whereunder the

learned Single Judge has quashed the transfer order, dated 18.07.2016, passed by the District Adi Dravidar Welfare Officer, Tirunelveli District,

transferring the writ petitioner - Mr.K.Kaliappan to the place of the appellant in W.A.(MD).No. 1294 of 2016 viz., S.Ganesan and consequential

relieving order, dated 19.07.2016, passed by the Special Tahsildar (AWD),

Tenkasi Taluk.

3. Since both the appeals have been directed against the order passed in W.P. (MD).No.12963 of 2016, for the sake of convenience, the parties

would be referred as per their ranking in the writ petition.

4. The case of the writ petitioner K.Kaliappan before the learned Single Judge is as follows:

3-1.He (Kaliappan) was appointed as a Secondary Grade Teacher on 28.10.1999 and thereafter, by way of counselling-cum-transfer, he was

posted as Warden at Government Adi Dravider Welfare Boys Hostel, Mangalapuram, by the proceedings of the 1st respondent viz.,

Commissioner of Adi Dravider Welfare, Chennai issued in Na.Ka.No.O1/10119/2012, dated 06.06.2012. Right from the date of induction into

service, no adverse remarks were made against the writ petitioner in the Visitors Register, that was periodically inspected by the District Adi

Dravider Welfare Officer as well as by the Special Tahsildar (ADW) and occasionally by the RDO also. While so, during the inspection conducted

by the Special Tahsildar (ADW), Tenkasi Taluk, on 07.04.2015, the petitioner had informed that the septic tank in the Hostel has to be cleaned,

which was duly entered in Remarks Category in the Visitors Register. Thereafter also, the petitioner had been intimating the higher officials to take

necessary action to clean the septic tank, but no action was taken.

2-3.It is stated by the writ petitioner that out of the total expenses claimed for the Hostel, 4% was automatically deducted for the Special Tahsildar

as well as 1% for the Treasury, which is totally illegal and that too, the sum was deducted by taking into account the total strength of the student

without calculating the actual presence of the students. The writ petitioner made a request to the Special Tahsildar (3rd respondent) to rectify the

said wrong practice on 03.08.2015 as well as on 10.08.2015. Moreover, contrary to the Rules, students from the locality are admitted in the

hostel so as to create the strength which will have an adverse impact for needy students hailing from other places. The students hailing from 5 kms

from the hostel alone have to be admitted, but that is not strictly followed. Therefore, the writ petitioner made a detailed representation to the

District Adi Dravider Welfare Officer, Tirunelveli (2nd respondent), but 2nd

respondent failed to act upon it, which forced the writ petitioner to give a complaint on 10.12.2015 to the District Collector, who is the authority for administration of the Hostel. But, instead of taking action against the erring officials, the writ petitioner was issued with a charge-memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, by the 2nd respondent vide his proceedings in A3/43538/2015, dated 30.12.2015 alleging that without any record, the writ petitioner made baseless allegations against the superiors. In other words, the complaint which was given by the writ petitioner was turned against him as a charge without any proper enquiry on his complaint. The writ petitioner in order to substantiate his claim and to make effective defence to the charge levelled against him, on 06.01.2016 he sought certain documents by way of Right to Information Act to the 2nd respondent (District Adi Dravider Welfare Officer), who in turn directed the writ petitioner to approach the 3rd respondent (Special Tahsildar) vide his letter dated 20.01.2016. Since the same was not furnished, he made an appeal to the 2nd respondent on 24.02.2016, who in turn directed the 3rd respondent to furnish the document vide her letter dated 30.03.2016. Since there was a delaying tactics between the 2nd and 3rd respondents, the writ petitioner made further appeal to the State Information Commissioner on 29.06.2016.

3-3.While so, without furnishing him the documents and without considering the explanation submitted by him, the 2nd respondent (District Adi Dravider Welfare Officer) imposed the punishment of stoppage of increment for one year with cumulative effect vide her proceedings in Mu.Mu.A3/43538/2015, dated 10.06.2016. Apart from imposing the punishment, the writ petitioner has been transferred from Mangalapuram to Government Tribal Residential High School, Melanaipapanasam, as Secondary Grade Teacher by the proceedings of the 2nd respondent in Na.Ka.No.A3/43538/2015, dated 18.07.2016. Subsequently, the relieving order dated 19.07.2016 was passed by the 3rd respondent.

Consequently, the 5th respondent Ganesan was transferred to the place of the writ petitioner and he has taken charge as Warden at Government Adi Dravider Welfare Boys Hostel, Mangalapuram. According to the writ petitioner, the impugned transfer order reflects that he has been transferred on complaint and ineligibility to hold the post of Warden. Further, no

opportunity or notice was given to the writ petitioner before passing the transfer order and hence, it suffers in the eye of law. According to the writ petitioner, the 5th respondent Ganesan was posted at the place of the writ petitioner based on his request. Hence, the writ petitioner has filed the writ petition.

5. In the writ petition, notice was not given to the 5th respondent Ganesan. After hearing the submissions of the learned counsel who appeared for the writ petitioner as well as the learned Government Advocate, by relying upon the decision of the Hon'ble Supreme Court in *Somesh Tiwari Vs.*

Union of India [2009 (3) MLJ 727], wherein it has been held that if the transfer order is passed with mala fide intention, the same is liable to be

quashed, the learned Single Judge has quashed the impugned transfer order. Aggrieved over the same, the present writ appeals have been filed by the officials respondents 1 to 3 and the 5th respondent.

6. The learned Government Advocate appearing for the appellants in W.A.(MD).No.1305/2016 (official respondents 1 to 3 in the writ petition)

would submit that the writ petitioner has suffered a punishment for the proven delinquency and as such, he cannot claim to continue in the post of

Warden as a matter of right, since transfer is incidental to service. Moreover, the writ petitioner was working as Warden at the Government Adi

Deravidar Welfare Boys Hostel, Mangalapuam for more than 4 years. The learned Single Judge has set aside the impugned transfer order, stating

that in the impugned transfer order it has been stated that the writ petitioner is unfit to hold the post of Warden. According to the learned

Government Advocate, the said reference in the impugned transfer order is not an adverse finding against the writ petitioner and it is only a passing

reference and not a finding. The writ petitioner has been transferred only on the administrative ground as he was working in the said hostel as

Warden for more than 4 years. Thus, the learned Government Advocate sought for setting aside the impugned order passed by the learned Single

Judge.

7. The learned counsel appearing for the appellant in W.A.(MD).No. 1294 of 2016 (5th respondent in the writ petition) would submit that the 5th

respondent Ganesan was relieved and he had taken charge in the post of Warden at Government Adi Deravidar Welfare Boys Hostel,

Mangalapuam on 19.07.2016 itself and he has been working there and drawing monthly salary. The posts of Warden and Teacher are transferable

in nature and the writ petitioner cannot ask for a particular post or particular station for being there, that too for years together. The transfer is an

incident of service and no employee can have his prerogative and indefeasible right for claiming the same. Since in the impugned transfer order it

was stated that the writ petitioner is unfit to hold the post of Warden, it does not mean that the punishment is given in the form of transfer. On the

other words, it is the opinion of the transferring authority about the writ petitioner. The transfer order has been passed purely on the administrative

reasons.

8. Further, the learned counsel appearing for the 5th respondent Ganesan, by inviting the attention of this Court to the decision reported in 2004

SCC 245 [Union of India Vs. Janardhan Debanath], submitted that in that case, while dealing with the question as to whether the use of the

expression "undesirable" in the transfer order warranted an enquiry before the Transfer, the Hon"ble Supreme Court has held that whether an

employee could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the

extent of solution for the problems faced by the administration; thus, the Hon"ble Supreme Court allowed the writ appeal filed by the Government.

For the same proposition, the learned counsel appearing for the 5th respondent Ganesan has also relied upon the decision of this Court reported in

2014 (1) CWC 867 [Y.Jeyakumar Vs. Additional Director of Police], wherein this Court has held that if the delinquent officer was put on notice

and if he was aware of his reasons of transfer, then even if such transfer orders are punitive in nature the same cannot be interfered with, as such

transfer itself is not punishment, but on the other hand it is only to keep the delinquent office away from the place of occurrence.

9. That apart, the learned counsel for the 5th respondent-Ganesan has also submitted that it is incorrect to state that since the writ petitioner made

certain complaints against some officials pointing out irregularities, he was transferred. In fact, a complaint was received from more than 60

students as against the writ petitioner on earlier occasion. But, conveniently suppressing the said fact, the writ petitioner has filed the writ petition

before this Court. In this regard, the learned counsel appearing for the 5th respondent has also invited the attention of this Court to the copy of the complaint dated 11.09.2013 given by the students.

10. Countering the submissions made by the learned Government Advocate as well as the learned counsel for the 5th respondent, the learned

counsel for the writ petitioner would submit that the writ petitioner was working as Warden at Government Adi Dravidar Welfare Boys Hostel,

Mangalapuam and he is a whistle blower; that he brought to the notice of the higher officials about the irregularities committed by some officials;

that he has given complaint about certain irregularities committed by some officials to the higher officials and also the District Collector. But, instead

of taking action against the concerned officials, who committed the irregularities, charge-memo was issued against the petitioner under Rule 17(b) of

the Tamil Nadu Civil Services (Discipline and Appeal) Rule; that without conducting proper enquiry, the writ petitioner was imposed with the

punishment of stoppage of increment for one year with cumulative effect, with mala fide intention; thereafter, by alleging that the writ petitioner is

unfit for the post of warden, he was transferred to the post of Secondary Grade Teacher at Government Tribal Residential High School,

Mangalapuram, Tenkasi. The wordings in the transfer order would show that it is only a punitive transfer. Therefore, the transfer order is liable to

be quashed. That apart, it is the further submission of the learned counsel for the writ petitioner, only the first respondent viz., Commissioner of Adi

Dravidar Welfare is the competent authority to pass the transfer order and the 2nd respondent viz., District Adi Dravidar Welfare Officer is not a

competent person to pass the transfer order. Hence, on that ground also, the impugned order is liable to be set aside.

11. The learned counsel for the writ petitioner would also submit that the transfer order was passed based on the request made by the 5th

respondent-Ganesan. It is not a normal transfer. In this regard, the learned counsel for the writ petitioner has also invited the attention of this Court

to Clause II of the G.O.Ms.No.194, Adi Dravidar and Tribal Welfare (ADW7) Department, dated 07.06.2011 and submitted that as per the said

clause-II of the GO, for the purpose of accommodating one teacher in a particular post, another teacher should not be transferred; that if a request

is made by a teacher for transfer, he/she can be transferred only in a vacant post/ place that too after conducting general counselling. The learned counsel for the writ petitioner has also relied upon Sub-Clause (c) to Clause IX of the said GO and submitted that the transfer order could be passed only after forwarding necessary proposal to the Commissioner and after obtaining his permission. But, in the instant case, by violating all the Rules, only in order to accommodate the 5th respondent based on his request, the transfer order has been passed by the 2nd respondent, stating that the writ petitioner is unfit to hold the post of Warden. Under such circumstances, interference made by the learned Single Judge does not suffer from any infirmity.

12. With regard to the submission made by the learned counsel for the 5th respondent that a complaint was given by the students against the writ petitioner, it is replied by the learned counsel for the writ petitioner that the said complaint was given in the year 2013 and thereafter, an enquiry was conducted by the Special Tahsildar and subsequently, the said complaint was closed by the Special Tahsildar stating that the allegations in the said complaint are false. Whereas the impugned transfer order was issued after two years in the year 2016, therefore, the complaint given by the students in the year 2013 has no significance in this matter. Thus, the learned counsel for the writ petitioner sought for dismissal of the writ appeals

13. By way of reply, it is submitted by the learned counsel for the 5th respondent that the contentions made by the learned counsel for the writ petitioner by relying upon the G.O.Ms.No.194, Adi Dravidar and Tribal Welfare (ADW7) Department, dated 07.06.2011, cannot be countenanced, because the said GO is only a guideline and it does not have any statutory force. In support of his contention, the learned counsel for the 5th respondent has also relied upon the decision reported in 1993(5) SCC 357 [Union of India and others Vs. S.L.Abbas].

14. Keeping in view the submissions made on either side, We have carefully gone through the entire materials available on record.

15. It is settled legal principle that the transfer is not only an incident of service, but also a condition of service and no employee has indefeasible right to insist that he/she should be posted in a particular place. It is for the appointing/competent authority to decide as to whether an employee

has to be retained in a particular station. However, if the transfer order is passed with mala fide intention on the part of the authority concerned and

it is in violation of the statutory Rules, then only the same can be interfered with by the Court. In the instant case, it is specifically stated in the

transfer order that since he is unfit to hold the post of Warden, he was transferred to the post of Secondary Grade Teacher at Government Tribal

Residential High School, Mangalapuram. By attaching a stigma against the writ petitioner, the transfer order has been passed by the 2nd

respondent. Moreover, the said transfer has been made based on the request made by the 5th respondent, which was also not denied by the

respondents. This type of transfer is prohibited by the guidelines to be followed while effecting transfers of Government Servants in Groups A, B

and C, issued in Govt. Letter No. 23847/S/98-1, dated 05.08.1998.

16. It is the submission of the learned counsel for the 5th respondent that the said GOs are only guidelines, therefore, non-following of the

guidelines will not serve as a ground to quash the impugned transfer order. But, We are of the considered opinion that the wordings used in the

transfer order to the effect that the writ petitioner is unfit for holding the post of Warden, coupled with the fact that the transfer was made on the

request of the 5th respondent, would clearly show that only with mala fide intention, the transfer order has been passed by the 2nd respondent.

17. In this regard, a reference could be placed in the judgment reported in 2004 (7) SCC 405 [State of U.P and another Vs. SiyaRam and

another], wherein the Hon"ble Supreme Court has held that no Government servant or employee of the public undertaking has any legal right to be

posted for ever 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 male 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.

18. In the decision in the case of S.Sevugan Vs. Chief Educational Officer, Virudhunagar District, Virudhunagar and another reported in 2006(2)

CTC 468, it has been held as follows-

7.It is seen from the impugned order of transfer that it is passed on administrative ground, but it appears that the order was passed by way of

punishment and based on the complaint against the conduct of the petitioner. If that be so, 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.

8.In these circumstances, this Court is of the view that the transfer order passed by way of punishment is without any opportunity to the petitioner

and on the face of it, the order of transfer is illegal and the same is liable to be set aside. Accordingly, the impugned order is set aside.

A reading of the dictum laid down in the above cited decisions would show that if the transfer order is passed with mala fide intention, then the

same could be interfered with by the Court. In the instant case, the fact that the transfer order was passed by attaching stigma against the writ

petitioner, coupled with the fact that the transfer was made on the request of the 5th respondent, transferring the writ petitioner to the place of 5th

respondent vice versa transferring the 5th respondent to the place of the writ petitioner, would clearly show that there is mala fide intention on the

part of the transferring authority. Therefore, We are of the opinion that the learned Single Judge has rightly quashed the transfer order. This Court

does not find any compelling situation warranting to make interference with the impugned order passed by the learned Single Judge. In the result,

both the Writ Appeals fail and the same are dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. No costs.