

(2017) 04 MAD CK 0170

In the Madras High Court

Case No : 256 of 2017 & 266 of 2017

The Director of School Education? College Road Vs V.Suresh

Date of Decision : 03-04-2017

Acts Referred:

[Tamil Nadu Civil Services \(Discipline and Appeal\) Rules, 1973](#), Rule 17(b)

Citation : (2017) 04 MAD CK 0170

Hon'ble Judges : T.S.Sivagnanam, P.Velmurugan

Bench : DIVISION BENCH

Advocate : T.S.Sivagnanam, P.Velmurugan

Final Decision : Dismissed

Judgement

1. Since both the writ appeals have directed as against the very same order of the Writ Court, they have been clubbed together, heard together and are being disposed of by this common Judgment.

2. For the sake of convenience, the parties are referred to as per the ranking in W.A.(MD) No.256 of 2017.

3. Writ appeal, in W.A.(MD) No.256 of 2017, has been preferred by the Government against the order, dated 01.12.2016, passed in W.P.(MD) No.15190 of 2016, filed by the first respondent. Whereas, W.A.(MD) No.266 of 2017 has been preferred against the very same order, by the fourth respondent, who is the incumbent and who has been transferred to the place, where the first respondent / writ petitioner was working.

4. The first respondent challenged his order of transfer, dated 11.08.2016, which was quashed by the impugned order and aggrieved over which, the appellants and the fourth respondent in the writ petition are before this Court by way of the present appeals.

5. The facts, which are necessary for the disposal of the appeals are as follows:

(i) The first respondent, namely, Suresh was appointed as a B.T.Assistant in

History in a Private Aided School at Sankarankoil, Tirunelveli District and after which, he was transferred and posted as B.T.Assistant in History in Government Higher Secondary School at Sankarankoil, Tirunelveli District. He was promoted as Headmaster in the year 2013. The first appellant / Director of School Education appointed the first respondent as Personal Assistant to the second appellant / Chief Educational Officer (C.E.O.), which post is equivalent to that of the post of Headmaster of Higher Secondary School. The third appellant, namely, V.Jeyakumar, Chief Educational Officer, in his personal capacity, was impleaded as the third respondent in the writ petition.

(ii) A complaint was lodged by the third appellant against the first respondent regarding misplacement of a Certificate of Transfer of Charge (C.T.C.), which was signed by the third appellant, when he was transferred and joined as the Chief Educational Officer in the office of the second appellant. Pursuant to the said complaint, the first appellant issued a charge memo to the first respondent, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973. The first respondent submitted his explanation denying the charges levelled against him. An officer in the cadre of Joint Director of School Education was appointed as an Enquiry Officer, who submitted a report holding that the charges were proved. Though the said report was submitted on 26.04.2016, till date the first appellant / Disciplinary Authority has not taken further action in the disciplinary proceedings initiated against the first respondent. While so, an order of transfer was passed on 11.08.2016, which was challenged by the first respondent as being arbitrary and tainted with malice and with a view to unduly favour the second respondent, who was the incumbent and transferred to the place occupied by the first respondent.

6. The appellants resisted the writ petition contending that though the second respondent was posted as Personal Assistant to the Chief Educational Officer, on 13.08.2016, the first respondent did not sign the relieving register nor acknowledge the order of transfer. It was further stated that on 02.06.2015, one Mr.Radhakrishnan, who was working as Chief Educational Officer in Kanyakumari was transferred and a new Chief Educational Officer, Mr.Jayakumar took charge and signed the C.T.C. The said Radhakrishnan challenged the order of transfer before this Court by way of a writ petition, in W.P.No.8948 of 2015, in which an interim order was granted stating that there will an order of stay, if the petitioner therein has not already been relieved. The allegations made against the first respondent are that he had facilitated the said Officer by handing over the original C.T.C. register to him and suppressed the fact that he had already been relieved.

7. The said Radhakrishnan had filed two other writ petitions challenging the order of punishment and seeking for promotion. The writ petition challenging the punishment was allowed with a direction to grant him promotion, which order was confirmed by the Division Bench of this Court. However, the other writ petition challenging the order of transfer was dismissed along with contempt

application, which had filed alleging disobedience of the interim order of stay. Thus, the allegation made against the first respondent was that he had removed the official record from the Office of the Chief Educational Officer and handed it over to the erstwhile Chief Educational Officer, who had already been relieved.

8. With regard to the challenge to the impugned order of transfer is concerned, the appellants contended that the transfer was on the administrative grounds; the first respondent was not co-operating with the staff; he was quarrelling and threatening them and thereby interfering with the smooth administration and his continuance as Personal Assistant to the Chief Educational Officer would be detrimental to the establishment.

9. With regard to the allegation of the first respondent that the order of transfer was passed to accommodate the second respondent, the appellants contended that the second respondent was working at Nagapattinam and he made a request for transfer on spouse priority and to take care of his mentally challenged brother and he was accommodated in the post, which was occupied by the first respondent. Further, the place to which, the first respondent has been transferred is less than 15 kilometers from his native town and no prejudice would be caused as he has once again been posted as Headmaster. The appellants to support their contention that the order of transfer was on administrative grounds referred to G.O.(Ms) No.10, dated 07.01.1994.

10. The learned Single Judge, after taking note of the law laid down by the Hon"ble Supreme Court with regard to the scope of interference with the orders of transfer, namely, (1997) 6 SCC 169 [Shri Arvind Dattatraya Dhande v. State of Maharashtra and others], 1989 (1) LLJ 139 [P.Pushpakaran v. Coir Board and another], 2014 (1) CWC 867 [Y.Jeyakumar v. Additional Director of Police] and 1980 (1) LLJ 1 [C.Ramanathan v. Acting Zonal Manager, FCI, Madras and others] allowed the writ petition and quashed the order of transfer.

11. The learned Special Government Pleader appearing for the appellants contended that the order of transfer was on administrative grounds and this Court should not have been interfered with such an order in the facts and circumstances of the case and taking into consideration the interest of the administration of the Office of the Chief Educational Officer.

12. The second respondent, who is the incumbent and who has been posted in the place of the writ petitioner, with much vehemence contended that the writ petition ought to have been dismissed for the reason that the order of transfer cannot be interfered and the Honourable Supreme Court has laid down in several decisions that transfer orders can be issued to avoid hardship and such orders cannot be interfered merely on the ground that the incumbent sought for a request transfer. In support of his contention, the learned counsel for the second respondent referred to the decisions of the Honourable Supreme Court in T.D.Subramaniam v. Union of India, reported in (1981) 4 SCC 150; Shilpi Bose and others v. State of Bihar and others, reported in 1991 Supp (2) 659 and

N.K.Singh v. Union of India and others, reported in (1994) 6 SCC 98.

13. We have elaborately heard the learned counsel for the parties and carefully considered the materials placed on record.

14. It is a settled legal principle that under normal circumstances, the orders of transfer should not be interdicted by Courts. Yet, an exception has been carved out, wherein Courts have held that the orders of transfer, if vitiated by malice or mala fide, can be interfered. The learned Single Judge, in our opinion, has, after taking note of the legal principle, given a deep consideration to the factual position. The factual matrix, which has been culled out in the impugned order is from the order of transfer. As noticed above, though a charge memo was issued to the first respondent on 10.06.2015 and an Enquiry Officer was appointed to enquire into the charges, who submitted his report on 26.04.2016, the Disciplinary Authority is yet to take any action on the said enquiry report and for the reasons best known the same has been kept pending.

15. When we peruse the order of transfer, the first paragraph of the said order refers to the disciplinary action initiated against the first respondent and the fact that the enquiry officer has held that the charges are proved. But, we fail to understand as to why such a reference was made when it is a stand of the appellants that the order of transfer is an administrative order.

16. In the second paragraph of the said transfer order, it is seen that there is an allegation as against the first respondent about his behavior with his colleagues and subordinates in the office. Imputations have been made against him with regard to the manner in which he has conducted himself while at the office and as to how he had dealt with his subordinates.

17. The third paragraph of the order of transfer is dedicated to the second respondent and in fact, the first appellant has given encomiums to the second respondent, with regard to the nature of his functioning etc. What emerges from Paragraph No.3 of the transfer order is that the second respondent was transferred on a request made by him. If the order of transfer was an order of administration simpliciter, then there would be no necessity to refer to the conduct of the first respondent in the office nor would there be any necessity to pay encomiums to the second respondent, who himself had requested for transfer. Further, it is to be noted that the second respondent had been posted to Nagapattinam hardly three months back. In these factual backgrounds, the learned Single Judge has frowned upon the manner in which the order of transfer has been passed and rightly observed that the order of transfer was with an intention to punish the first respondent and it amounts to colourable exercise of power.

18. Furthermore, the learned Single Judge observed that if the first respondent was not found suitable to work as Personal Assistant to the Chief Educational Officer on account of his alleged conduct with his colleagues and superiors, it was doubted as to how he would be suitable to work as Headmaster in a Higher

Secondary School.

19. From Paragraph No.6 of the transfer order, we find that the learned Single Judge had suggested a solution to the problem presumably bearing in mind the interest of the administration as well as the students, which appears to have not appealed to the appellants. Further, we hold that the second respondent has absolutely no locus standi either to support the appellants or to argue on merits of the contentions raised by the first respondent in the writ petition. In any event, the order transferring the second respondent to the present place would obviously be subject to challenge by the first respondent.

20. Before the Writ Court, the first respondent had succeeded and the Writ Court has set aside the order of transfer on the ground that it suffers from malice in law. In such circumstances, we are of the opinion that the appeal in W.A.(MD) No.266 of 2011 preferred by the second respondent cannot be considered nor can he canvass the case of the appellants.

21. The decision in T.D.Subramaniam's case (cited supra) relied on by the learned counsel appearing for the second respondent is factually distinguishable and wherein the Court was considering the case of an Officer, who had been transferred and who had lacked tact.

22. In the case of Shilpi Bose (cited supra), the order of transfer was not interfered on the ground that it was with a view to accommodate a public servant to avoid hardship. However, in the case on hand, the transfer order has been challenged on the ground that it is tainted with mala fide.

23. In the case of N.K.Singh (cited supra), the facts are totally different, that pertaining to an Officer of C.B.I., and when it was put to challenge, the Honourable Supreme Court pointed out that there is not even mention about the appellant's successors in the C.B.I., or his credentials or even a whisper against him and he has neither been named nor impleaded as a party. Further, the Honourable Supreme Court observed that C.B.I., is competent and fit to conduct the sensitive investigation and his successor would stand automatically discredited without any such allegation being made or hearing given to him and that indeed is a tall order and impermissible in these proceedings, where the other officers are not even participants. The said decision of the Honourable Supreme Court is not applicable to the facts of the present case, more so when in the impugned order of transfer, the first appellant has paid encomiums to the second respondent.

24. Thus, we find that this is one of the rarest of rare cases, wherein the first respondent was able to establish before the Writ Court on facts that the order of transfer is vitiated on account of mala fide and made to appear as if it is an innocuous order of transfer. The order of transfer speaks for itself. We have in the preceding paragraphs stated about the contents of the order of transfer, which clearly would go to show that it has been made as a measure of punishment. The reasons assigned by the learned Single Judge are cogent and in accordance with

law laid down by the Honourable Supreme Court in the various decisions relied on.

25. We are in full agreement with the views expressed by the learned Single Judge that if, according to the appellants, the first respondent is not suitable to work in the Office of the Chief Educational Officer as Personal Assistant, then how would he be in a position to work as a Headmaster in the Higher Secondary School dealing with the young minds. Thus, the order of transfer is self-contradictory and passed with a view to punish the first respondent while putting on hold the further action in the disciplinary proceedings.

26. Thus, for the above reasons, we do not find any good ground to interfere with the order passed by the learned Single Judge and therefore, the appeals are liable to be dismissed.

27. In the result, the writ appeals fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.