
(1995) 11 MAD CK 0020
In the Madras High Court

The Registrar, High Court

APPELLANT

Vs

Vasudevan, A.K. and Others

RESPONDENT

Date of Decision : 23-11-1995

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1996) 1 MLJ 153

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Writ Appeal No. 1132 of 1995 is against the order passed in W.P. No. 16243 of 1992, Writ Appeal No. 1133 of

1995 is against the order passed in W.P. No. 16245 of 1992 and Writ Appeal No. 1134 of 1995 is against the order passed in W.P. No. 16244

of 1992.

2. These writ appeals are filed by the Registrar of the High Court of Judicature, Madras, against an Order passed in the above writ petitions by a

learned Judge of this Court, dated 29.11.1994.

3. For the sake of convenience, in these writ appeals, the array of parties will be referred to as per their rank in the writ petitions.

4. All the writ petitions raise a common question. The petitioners in the respective writ petitions were working as Bailiffs in the City Civil Court,

Madras, and, as per Official Memorandum of this Court, dated 8.10.1992, they were directed to be transferred to various courts outside Madras,

and the said order was implemented by communicating the same to the petitioners, by the Principal Judge, City Civil Court, Madras, who is the

first respondent in all the writ petitions.

5. Even though separate writ petitions have been filed, the averments are the same, and they may be stated briefly.

6. All the writ petitioners belong to Tamil Nadu Judicial Ministerial Service. They joined the Service as Process Writers in the Court of Small

Causes, Madras, and they were promoted as Junior Bailiffs and later they were promoted as Senior Bailiffs. It is stated that they were discharging

their duties without any blemish, and they have not suffered any punishment. It is further stated that they were surprised and shocked when they

received on 15.10.1992 an order from the Principal Judge, City Civil Court, Madras, transferring them to various courts, alleging that the transfer

was on administrative grounds and that they should be relieved on the forenoon of 15.10.1992 with instructions to join duty in the new station

forthwith. It is further said that the Order of transfer is liable to be set aside on various grounds. It is also stated that the petitioners have certain

domestic problems on account of the transfer. In the various grounds impeaching the transfer order, it is said that the order is illegal and violative of

the provisions of the Constitution. According to the petitioners, the post of Senior Bailiff is a non-transferable post, and service under the

respective district unit of each Civil Judicial District is separate and distinct. There is no common State-wide Seniority list for any of the cadres

coming under Tamil Nadu Judicial Ministerial Service. It is stated that an equivalent post of Senior Bailiff within the City of Madras is available only

in the Office of Court of Small Causes, Madras, and hence any transfer can be effected only as between City Civil Court, Madras, and Court of

Small Causes, Madras, and not outside the Madras District Unit. It is further stated that the order of transfer has affected the promotional

prospects of the petitioners. The petitioners would say that the transfer order is liable to be set aside on the ground of mala fides and other

illegalities. It is averred in the affidavits filed in support of the writ petitions that even though the Order of transfer is characterised as "on

administrative grounds", a perusal of the entire order would disclose that the impugned Order is punitive in nature and casts a stigma on the

services of the petitioners. It is further stated that this Court is entitled to pierce the veil and examine the real intent of the Order on a perusal of the

other portions of the order as well as connected records. According to the petitioners, a perusal of the order discloses that it has been issued at the

instance of a communication received from this Court on 8.10.1992 and that a copy of the order has also been marked to the Special Officer, Vigilance Cell, High Court, Madras, for information, and this leads to an obvious presumption that the Order is at the instance of a complaint or a report against the petitioners. The petitioners, therefore, would say that the order of transfer is punitive in nature and is liable to be set aside as being violative of Articles 14 and 309 of the Constitution. The petitioners have further stated that they should have been afforded an opportunity of hearing especially when the order of transfer is in the nature of punitive measure, and as such, the impugned order is violative of the principles of natural justice. According to the petitioners, the order has been described as one passed on "administrative grounds", deliberately, in order to dispense with the mandatory requirements which have to be complied with otherwise, and, therefore, the order of transfer is vitiated by legal malafides. It is further stated that the post of Senior Bailiff involves certain unenviable nature of duties, incurring the displeasure of one of the parties to the litigation and hence complaints against them is not uncommon by frustrated elements. According to the petitioners, whenever such complaints are received, the concerned Bailiff ought to be put on notice and enquired, and if the authorities find that there was any prima facie basis for the charge, then a proper enquiry has to be conducted. The petitioners would further say that they have been performing their duties throughout their career with utmost sincerity and devotion and they are prepared to face any specific charges rather than suffer a punitive punishment without a charge, muchless a proper enquiry and finding of guilt. According to them, a departmental enquiry is pending against atleast two of the Senior Bailiffs on complaints and they continue to be in service. It is stated that when substantial materials are available against individual officers, the petitioners alone have been transferred, while others have been allowed to continue in service.

7. It is stated that the petitioners have to face a punitive transfer in the name of "administrative grounds". It is also said that the respondents have not applied their mind and have passed the order casually. They also say that the respondents ought to have considered the humanitarian issues arising out of the transfer order. According to them, the impugned order of transfer, being one passed in the middle of the Academic Year, is

violative of the Instructions issued by Government.

8. For the above reasons, the petitioners want the Official Memorandum of this Court dated 8.10.1992 and the order communicated to them on

15.10.1992 be quashed by this Court, by issuing a writ of certiorari or any other appropriate direction or order.

9. A detailed counter-affidavit has been filed by the first respondent, who was then holding the post of Principal Judge, City Civil Court, Madras.

10. A common counter-affidavit has also been filed by the second respondent (appellant herein) stating that the vigilance cell of this Court,

received complaints against the petitioners, and, on discreet enquiries by the vigilance cell, it was found that no warrant executed without the

involvement of the aforesaid persons, and they used to collect bribes for execution of warrants. It was decided then that it would be better to

transfer the petitioners out of Madras and post them in a place beyond 150 kms. The registry considered the matter and placed the subject before

the Honourable Judges in charge of the portfolio. Then, as per the Orders of the Honourable Judges, the High Court, in its Official Memorandum

in Roc. No. 6509/92/C3 dated 8.10.1992, issued orders, transferring the petitioners, on administrative grounds. Based on the proceedings of the

High Court, the Principal Judge, City Civil Court, Madras (first respondent in the writ petitions) issued necessary Orders on 15.10.1992. It is

stated that it is futile to allege mala fides or bad faith when responsible Constitutional functionaries have applied their mind and considered the

transfer of the petitioners to distant places in the best interests of the Institution and in public interest. It is further said that as per Rule 40(a) of the

Tamil Nadu Judicial Ministerial Service Rules, this Court is empowered to transfer a member of the said service from one unit to another, in public

interest. It is said that the order of transfer was passed on administrative grounds, and there is absolutely no mala fide as alleged by the petitioners.

According to the second respondent, Article 226 of the Constitution has been misused by the petitioners. There is no ban to transfer one

Government servant from one District to another, on administrative grounds. Their seniority will not be affected as alleged by them. There is no

monetary loss or reduction in status. According to the second respondent, the petitioners cannot question the power of this Court to transfer them

on administrative grounds. The plea of violation of the principles of natural justice has no merits.

11. A reply affidavit has been filed by the petitioners, reiterating their case as stated in the affidavits filed in support of the writ petitions.

12. As per Order dated 29.11.1994, learned Judge of this Court held that the contention of the petitioners that they are not liable to be transferred

beyond the District cannot stand. Learned Judge further held that the contention of the petitioners that they were Senior Bailiffs and there is no

common seniority list is not a ground to bar a transfer. But the learned Judge upheld the contention of the petitioners that the impugned Order of

transfer is punitive in character and, therefore, liable to be set aside. While upholding the contention of the petitioners that the order of transfer is

punitive in character, the learned Judge was of the view that the Order was passed under instructions from this Court as per Official Memorandum

dated 8.10.1992. Learned Judge has also said that the vigilance cell of this Court received certain complaints against the petitioners that they are

not executing warrants without collecting bribe from parties. It was also taken note of by the learned Judge that discreet enquiries against the

petitioners by the vigilance cell revealed that the complaints were true, and it was pursuant to the same, this Court issued the official memorandum

dated 8.10.1992. On the said basis, learned Judge said that in the above background it surpasses his imagination as to how the respondents can

call the order of transfer as one based on administrative grounds. The learned Judge also said that there is a subtle difference between transfers

made in contemplation of a disciplinary enquiry and transfers made in substitution of or instead of a disciplinary enquiry. The learned Judge was of

the view that since no disciplinary action was taken against the petitioners, and at the same time, the respondents have acted on the complaints, in

transferring the petitioners to places far away from the City, it is an illustration of a transfer on punitive grounds. Taking that view, the learned Judge

said that since no opportunity was given to the petitioners, the order of transfer is bad and is liable to be quashed. The writ petitions were allowed

for that reason.

13. In the writ petitions, this Court was not originally made a party. An application for impleading the Registrar of this Court was filed in each of

the writ petitions only on 25.7.1994. The only reason that is mentioned in the affidavit filed in support of the petitions for impleading is that in the

counter-affidavit of the Principal Judge, City Civil Court, Madras, the proceedings of this Court have been made mention of, and hence the

Registrar of this Court is also to be made a party.

14. Consequent to the impleading, no additional averments have been made, nor was any additional relief claimed in the writ petitions.

15. In these writ appeals, the learned Special Government Pleader argued that the order of the learned single Judge cannot stand. According to

him, transfer being an incidence of service, the same cannot be questioned on the ground that it is punitive in character. It is also said that the order

of transfer is an innocuous one, without casting any stigma, and, therefore, cannot be questioned stating that it is punitive in character. It is also said

that the word "administrative ground" has a wide context, and the same has to be applied having regard to the various contingencies of the

administration.

16. Before going into the legal aspects of the case, it is better to incorporate the Official Memorandum issued by this Court on 8. 10.1992 and the

consequential Order of the Principal Judge, City Civil Court, Madras, transferring the petitioners. They read thus:

Roc. 6509/92/C3

OFFICIAL MEMORANDUM

Sub : Complaints - Complaint against Tvl.Vasu, Viswanathan and Gopal, Bailiffs, City Civil Court, Madras - Further action - Reg.

Ref : Copy of the Office Note in C.No.589/92 -VC, dated 6.8. 1992 from the Vigilance Cell, High Court, Madras.

The undermentioned members working as Bailiffs in the City Civil Court, Madras, are transferred on administrative grounds to the places shown

against their names.

Name of the individual Place to which the.

individual is transferred

1. Thiru Vasu, Nagapattinam (Civil

Unit of Quaid-e-Millet

District)

2. Thiru Viswanathan, Krishnagiri (Civil Unit of Dharmapuri District)

3. Thiru Gopal, Dindigul (Civil Unit of Anna District).

The Presiding Officers of the District Units, to which the individuals are transferred are required to send intimation regarding the date of joining duty of the individuals in the new station.

High Court,

Madras

Sd./S. Jayaraman,

Addl. Registrar (Admn.).

Dt.8.10.1992.

To

1. The Prl. District Judge, City Civil Court, Madras.
2. The Prl. District Judge, East Thanjavur at Nagapattinam.
3. The Prl. District Judge, Dindigul Anna District.
4. The Prl. District Judge, Dharmapuri at Krishnagiri.

Copy to : The Special Officer, Vigilance Cell, High Court, Madras.

Proceedings of the Principal Judge, City Civil Court, Madras.

Present : Thiru C.V. Govardhan, B.Sc, B.L., Principal Judge.

Dated this the 15th day of October, 1992.

Sub : PUBLIC SERVICES - Establishment - City Civil Court, Madras - Thiru A. K. Vasudevan, Thiru B.Viswanathan, Thiru V.R. Gopal, Sr.

Bailiffs, City Civil Court, Madras - Transferred on administrative grounds - Relieved - Orders - Issued.

Read : High Court's Roc.6519/92/C3, dated 8.10.1992.

ORDER : Roc. No. 408/92/A1 dated 15.10.1992. The following staff (senior Bailiffs) of this Court are transferred on Administrative grounds, as

per High Court's order cited in the reference, to the places shown against their names.

Name of the staff Place to which the staff

is transferred

1. Thiru Vasudevan, A.K. Nagapattinam (Civil
Unit of Senior Bailiff.
Quaid-e-Millet
District)

2. Thiru B Viswanathan, Krishnagiri (Civil Unit
of Senior Bailiff.
Dharmapuri District)

3. Thiru V.R. Gopal, Dindigul (Civil Unit of
Anna Senior Bailiff.
District).

The above Senior Bailiffs are relieved on the forenoon of 15.10.1992 with instructions to join duty in new station forthwith noted against their names.

Sd. C.V. Govardhan,
Principal Judge.

To

1. Thiru A.K. Vasudevan, Sr. Bailiff.
2. Thiru B. Viswanathan, Sr. Bailiff.
3. Thiru V.R. Gopal, Sr. Bailiff.

Copy to : xxx xxx xxx

17. It cannot be disputed that transfer of a Government servant is an incidence of service, and, under normal circumstances, the same will not be interfered with, unless a case of mala fide is alleged and substantiated.

18. In International Airports Authority of India and Others Vs. Grand Slam International and Others, , their Lordships have held that the nature of evidence to establish mala fides must be strong and convincing. In that case, their Lordships said; ""The presumption is in favour of the bona fides of the order unless contradicted by acceptable material"".

19. The scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the

service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision or guideline

regulating such transfers amounting to arbitrariness. It is also settled law that for the said purpose, no roving inquiry into the matter is called for or

justified within the scope of judicial review of a transfer scrutinised with reference to the private rights of an individual. In N.K. Singh Vs. Union of

India and others, at 108, their Lordships said:

...Assessment of worth must be left to the bona fide decision of the superiors in service and their honest assessment accepted as a part of service

discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men

is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of

administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic

approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infructuous

of any professed nor on any principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards

for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left,

in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

In the same decision, further down, in paragraph 24, they have said thus:

...Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be

eschewed and interference by courts should be rare....

20. In State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, (in paragraph 4 of the judgment) their Lordships said 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....

21. In Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, (in para 7) their

Lordships said 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....

22. In B. Varadha Rao Vs. State of Karnataka and Others, , their Lordships of the Supreme Court have held thus:

Transfer of a government servant who is appointed to as particular cadre of transferable posts from one place to another is an ordinary incident of

service. No government servant can claim to remain in a particular place or in a particular post unless his appointment itself is to a specified, non-

transferable post. Therefore, a transfer order per se made in the exigencies of service does not result in alteration of any of the conditions of

service, express or implied, to the disadvantage of the concerned government servant....

23. Transfer is a contingency of service. Any employer has full discretion to transfer his employees depending upon the administrative

contingencies. The court is not exercising administrative control over the affairs of various Departments. When a specific misconduct is alleged

against the petitioners, and if transfer is resorted to, in order to avoid embarrassment to the employer as well as the employee, the said approach

by the employer can never be stated as mala fide, especially when the misconduct alleged against the petitioners is not an issue before court. The

same may be a motive. But the same cannot be said to be the foundation for transfer. In the case of transfer, nothing more is done than to remove

the concerned officers from a particular place. Transfer is not a penalty. In every administration, day in and day out orders of transfer are passed

on account of exigencies of administration. As to what is that exigency, it is not for the court to decide, and it must be left to the Authority who

passes the order. By ordering a transfer, the service conditions of the officer

concerned are not in any way affected, nor is his chance of promotion

in any way diluted. If transfer is a condition of service, and service conditions are not in any way affected, under no circumstances, it could be treated as a punishment.

24. It is in this background, we have to consider the case of mala fides, as alleged by the petitioners.

25. "Mala fides" in law means "bad faith". De Smith in his book "Judicial Review of Administrative Action" - Fourth Edition - 1980, has defined

"bad faith" (at page 335) thus:

The concept of bad faith eludes precise definition, but in relation to the exercise of statutory powers it may be said to comprise dishonesty (or

fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to

have been conferred. For example, a local authority committee would exercise in bad faith its power to exclude interested members of the public if

it deliberately chose to hold the meeting in a small room. The intention may be to promote another public interest or private interests. A power is

exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise.

26. Justice C.K. Thakker, in his book "Administrative Law" - 1992 Edition, has stated (at page 351) thus:

The concept of bad faith eludes precise definition. In its popular sense, mala fides means ill-will, dishonest intention or corrupt motive, de Smith

states that ""in relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. A power is exercised

maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. A power is exercised

fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred.

The learned author says that mala fides or malice may be "express malice" or "malice in fact" and "legal malice" or "malice in law". While defining

"malice in law", the learned Author says at pages 353 and 354 of the same book thus:

Malice in law is different from malice in fact and may be assumed from the doing of a wrongful act intentionally without just cause or excuse, or for

want of reasonable or probable cause. The Supreme Court has defined malice in law in the following words: "Malice in its legal sense means a

such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable

care". Thus "malafide exercise of power only means that the statutory power is exercised for purposes foreign to those for which it is in law

intended". To quote Viscount Haldane, L.C. again:

A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is

taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is

concerned, he acts ignorantly and in that sense innocently.

In the leading case of *Barium Chemicals Limited v. Company Law Board*, it has been rightly observed that "though an order passed in the exercise

of powers under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides,

dishonesty and corrupt purpose". In the words of de Smith, "A power is exercised fraudulently if its repository intends to achieve an object other

than that for which he believes the power to have been conferred".

Thus, if a local authority were to use its power to erect urinals in order to place one "in front of any gentleman's house", it would be impossible to

hold that to be a bona fide exercise of the powers given by the statute. Similarly, if a liquor licence is cancelled for political reasons, the minister

who brought this about is guilty of "a departure from good faith".

27. On the basis of these propositions of law, let us now consider as to what are the allegations that have been made in the affidavits filed in

support of the writ petitions. The only allegation so far as mala fide is concerned, is stated in ground (j) of the affidavit. It reads thus:

The order of the respondent which is actually punitive in nature, has been deliberately described as "on administrative grounds" in order to dispense

with the mandatory requirements which have to be complied with otherwise. The order of transfer is therefore vitiated by legal mala fides.

28. We have already said that at the time when the writ petitions were filed, only the Principal Judge, City Civil Court, Madras, was the

respondent. It was as against him the said allegation was made. It was long

thereafter the Registrar of this Court was impleaded. Pursuant to the Official Memorandum of this Court, the Principal Judge, City Civil Court, Madras passed the Order transferring the petitioners. Even though the second respondent (appellant herein) was impleaded long thereafter, no specific allegations of mala fides were made thereafter.

29. The learned Author of "Administrative Law" Justice C.K. Thakker has stated at pages 355 and 356 of the said book, regarding the allegations

to be made when mala fides are attributed. The relevant portion reads thus:

Since the allegations of mala fides are of a serious nature, sufficient particulars and cogent materials making out a prima facie case must be given in

the petition. The petitioner who challenges any order or action of the authority must establish the charge of bad faith, bias or abuse of power by the

respondent. If sufficient averments have not been made in the petition the court would be justified in refusing to carry out investigation into those

those allegations. Vague and casual allegations suggesting that a particular action was taken with an ulterior motive cannot be accepted without

proper pleadings and adequate proof. A bald assertion that an order passed with a view to favouring some persons without disclosing even their

names and identifies cannot be accepted and allegations of mala fides cannot be said to be established. It is, however, not necessary that the

allegations must be made against a named official. Again, the court must consider the totality of the circumstances to decide whether the impugned

action is mala fide. In State of Haryana and Others Vs. Rajindra Sareen, , the Supreme Court has rightly observed:

Why we are saying that the approach made by the High Court in this regard in considering the allegation of mala fides is not proper is that the High

Court has taken each allegation by itself and has held that it is not sufficient to establish mala fides. The proper approach should have been to

consider all the allegations together and find out whether those allegations have been made out and whether those allegations when established, are

sufficient to prove malice or ill-will on the part of the official concerned, and whether impugned order is the result of such malice or ill-will. We are

emphasising this aspect because in certain cases even a single allegation, if established, will be so serious to lead to an inference of mala fides. But,

in certain cases an individual allegation, treated separately, may not lead to an

inference of mala fides; but when all the allegations are taken together and found to be established, then the inference to be drawn from those established facts may lead to the conclusion that an order has been passed mala fide, out of personal ill-will or malice.

[Italics supplied as in the original]

The learned author has relied on various decisions of the Supreme Court for the said purpose.

30. On the ground of lack of pleadings itself, the allegation regarding mala fides put forward by the petitioners cannot be sustained.

31. Even if we go to the merits of the case, we do not think that any ground has been made out to prove mala fides. The burden is entirely on the

petitioners to substantiate the same. It is averred in the counter-affidavit of the appellant herein that complaints were received against the petitioners

stating that they will not execute any warrant without accepting bribe. A discreet enquiry was also made and it was found to be true. As already

stated, transfer is an incidence of service.. When the complaint also came, it was only thought fit that it was time for the petitioners to be transferred

not as a punitive measure, but to avoid any further embarrassment both to the court and the staff.

32. In *S.P. Gupta Vs. President of India and Others*, , one of the parties to the litigation is a former Chief Justice of this Court Thiru K.B.N. Singh.

While functioning as Chief Justice of Patna High Court, the learned Judge was transferred to this Court. In the said decision of the Supreme Court,

the question whether the transfer of Thiru K.B.N. Singh was punitive in character, was considered. The relevant portion of the judgment reads

thus:

The main question that arises in the case is whether the impugned transfer, being a selective transfer, has been really made in public interest or by

way of punishment. In this behalf Counsel for Shri K.B.N. Singh has raised a two-fold contention which has to be squarely dealt with. In the first

place it has been urged that merely asserting that the said transfer has been made in public interest without categorising the public interest served

thereby would be of no avail; and secondly, it is clear on record that during his visit to Patna in February, 1980 the Chief Justice of India had

collected some data and information which showed that certain persons were

exploiting their proximity to Shri K.B.N. Singh and this had created considerable misunderstanding and dissatisfaction in the working of the High Court which seems to have necessitated or justified. Shri K.B.N.

Singh's transfer and this certainly implies some reflection on Shri K.B.N. Singh's behaviour and the inference is unescapable that the transfer is by

way of punishment and that too is made without disclosing the data or particulars to him amounting to unfair play.

The said contention was met by the Supreme Court thus:

It is not possible to accept either of these two contentions for the reasons which I will presently indicate. It is not correct to say that the contesting

respondents have been merely asserting baldly that the impugned transfer has been made in public interest without categorising the public interest

served thereby. Actually two categories of public interest have been indicated by the Chief Justice of India in his counter-affidavit; so far as the

shifting of Shri K.B.N. Singh from Patna High Court is concerned the reason indicated is that certain persons were exploiting their proximity to Shri

K.B.N. Singh which had created considerable misunderstanding and dissatisfaction in the working of the High Court and surely remedying

dissatisfactory working conditions in a High Court serves one kind of high public interest; and so far as his posting at Madras High Court is

concerned, the Chief Justice of India felt that it would be in fitness of things that an experienced and senior Chief Justice like Shri K.B.N. Singh be

posted as the Chief Justice of one of the premier High Courts in the country. It is difficult to countenance any suggestion that either of these

considerations which weighed with the Chief Justice of India does not serve public interest. The first contention, therefore, must be rejected.

Coming to the punishment aspect strenuously pressed by counsel for Shri K.B.N. Singh, I would like to observe that it will not be correct to draw

an inference of the concerned Judge's connivance or complicity in every case where persons close to him exploit their proximity to him while

handling their matters in the High Court and in the absence of any connivance or complicity on his part, such exploitation of close proximity would

not imply any reflection on the Judge concerned. It is conceivable that undesirable activities are indulged in without his knowledge or consent - may

even against his wishes and sometimes despite counter measures adopted by

him, and yet such exploitation of close proximity and the undesirable activities would spoil the atmosphere and lead to dissatisfactory working conditions in the High Court. In such a case if the atmosphere has to be improved and dissatisfactory working conditions have to be remedied it may become inevitable to transfer the concerned Judge without any blame attaching to him whatsoever; it is obvious that such a transfer will not carry any reflection on him....

[Italics supplied]

33. It was further argued by learned Senior counsel for the petitioners that the Order of transfer was made within a short time after the complaint and the so called Vigilance enquiry. According to him, the proximity of time also will imply that the Order of transfer is punitive in character. This

argument also has no basis. In *Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another*, in paragraph 6 of the judgment, their

Lordships have said thus:

...In a large democracy as ours, administration is bound to be impersonal and in regard to public officers, whether in government or public

corporations, assessments have got to be in writing for purposes of record. We do not think there is any justification in the contention of the

appellant that once such an assessment is recorded, the order of termination made soon thereafter must take the punitive character.

[Italics supplied]

That was a case where the service of a Government servant was terminated.

34. We have already stated that the order of transfer has not affected the service conditions of the petitioners in any way. Merely because an

enquiry was made by the Vigilance Cell, it cannot be said that the order of transfer is by way of punishment. In *Parshotam Lal Dhingra Vs. Union*

of India (UOI), , their Lordships said that merely because an enquiry was held before the order of discharge, it will not amount to punishment.

35. In *The State of Orissa and Another Vs. Ram Narayan Das*, , also, their Lordships said that "the fact of the holding of an enquiry is not decisive

of the question. What is decisive is whether the order is by way of punishment, in the light of the tests laid down in *Parshotam Lal Dhingra Vs.*

Union of India (UOI), . The said decisions were again followed by the Supreme Court in *Ravindra Kumar Misra Vs. U.P. State Handloom Corpn.*

Ltd. and Another, .

36. In this connection, it is also better to remember a decision of this Court reported in Dr. M. Krishnamoorthy Vs. The State of Madras and

Another, . That was a case where the petitioner therein challenged his dismissal. While considering the same, this Court held that the Government

or management is entitled to consider the question of inefficiency, insubordination and general reputation of corrupt conduct of a Government

servant. As stated earlier, the relationship of Master and Servant is being put an end to by the order of dismissal. When the Government is

competent to consider the efficiency and reputation of a Government servant, it is not only for the purpose of taking punitive action, but also to

consider whether he should be allowed to continue in a particular place of employment. In the said decision, it was stated thus:

It is however contended by learned Counsel for the petitioner that there is another implied requirement that civil servants in the position of the

petitioner can be dismissed or removed only for misconduct and at one stage of the argument he even went to the extent of contending that in the

case of a charge like corruption, the petitioner must have been convicted by a criminal court for that offence, or, in any event, that this Court must

be satisfied in the exercise of criminal appellate jurisdiction so to say, that there was evidence on which a conviction could be supported. We see

nothing of this sort laid down in Article 311 or in any other article of the Constitution. It is nowhere stated on what ground a civil servant might be

dismissed or removed. One can conceive of a dismissal or removal being justified on grounds of inefficiency, insubordination of (sic) general

reputation of corrupt conduct....

[Italics supplied]

An employee is expected to work with all devotion, honesty and integrity. The employer is also entitled to assess the performance of the employee.

It cannot be disputed that the employer is entitled to consider the suitability of the person to a post. Similarly the employer is also entitled to

consider whether his employee is suitable to work in a particular place or to continue there. If, during the assessment, the employer finds that the

work or the performance of the employee is not satisfactory, or in case where the employee, while discharging his duties, has to mingle with the

members of the public (in this case, the litigant public), which gives room for complaints in the nature of bad faith, corruption, etc., that will also be

an added reason for the employer to find that his staff can discharge his duties in a better way in another place. Such an assessment is not in the

nature of any punishment. It is only to avoid or minimise any future complaint or give the employee a better opportunity in a better atmosphere, he

is asked to work in a different place, under an order of transfer. Such an order cannot be considered as a punishment, nor can the same be

characterised as a stigma cast on him, as alleged by the petitioner in each one of these writ petitions under consideration.

37. Learned Counsel for the petitioners submitted that the order though purports to be a transfer, is a stigma against the petitioners, and hence the same can be questioned as lacking in good faith.

38. In Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, , (in paragraph 8) their Lordships have

considered what is meant by "stigma". Paragraph 8 reads thus:

According to Webster's New World Dictionary it is something that detracts from the character or reputation of a person, a mark, sign, etc.

indicating that something is not considered normal or standard. The Legal Thesaurus by Burton gives the meaning of the word to be blemish,

defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a

mark or label indicating a deviation from anorm. According to yet another dictionary "stigma" is a matter for moral reproach.

We do not think that the said contention can be accepted. The court did not arrive at a finding that the complaints are true. A discreet enquiry was

made, and it was found that there was some basis for those complaints. But that is not the foundation for the order of transfer. If that was the

foundation for the order of transfer, then that could be termed as "stigma", and not otherwise.

39. The learned judge quashed the order of transfer on the ground that it was in the nature of punishment, and before imposing the same, the

petitioners were not heard. According to the learned Judge, the provisions of Article 311 of the Constitution of India coupled with the principles of

natural justice have been violated. We cannot agree with the said finding. In

State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , a

similar question came for consideration. Of course that was a case of a temporary Government servant who was discharged from service without

holding any enquiry. Their Lordships considered the entire case-law on the point and also considered the scope of Article 311 of the Constitution

and held as to when it should be invoked. Their Lordships also said as to when an order can be said to be punitive. After following the decision

reported in Champaklal Chimanlal Shah Vs. The Union of India (UOI), , their Lordships held thus:

...A Government servant has no right to insist for affording him opportunity during such enquiry and such an ex parte enquiry is not vitiated in law in

view of the purpose and object of preliminary enquiry. On an elaborate discussion, the court observed as under: (S.C.R. PP.206-07)

In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may

or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary

under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it

is merely for the satisfaction of government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an

enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government, and it is only when the

government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the government

servant gets the protection of Article 311 and all the rights that that protection implies as already indicated above. There must therefore be no

confusion between the two enquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on

the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that

article. That is why this Court emphasised in Parshotam Lal Dhingra Vs. Union of India (UOI), and in Shyam Lal v. State of Uttar Pradesh, that

the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific

service rule is irrelevant....

[Italics supplied]

40. In Chief Engineer (Personnel) TNEB, Madras Vs. K. Raman, , a similar question came up for consideration before a Division Bench of this

Court. There also, an employee was transferred after a discreet enquiry. The order also made mention of the enquiry, and a learned Judge of this

Court held that the order of transfer was in the nature of punishment. Against the learned single Judge's Order, a writ appeal was filed, and

Division Bench of this Court set aside the order of the learned single Judge. In paragraph 9 of the judgment, the Division Bench has held thus:

...What is the punishment which the Electricity Board might have imposed by resorting to disciplinary proceedings, which proceedings are

circumvented by passing the order of transfer? As rightly pointed out by the learned Advocate General transfer is not one of the punishments

contemplated under the rules by resorting to disciplinary proceedings. As a matter of fact, in every administration, day in and day out orders of

transfer are passed on account of exigencies of administration. As to what such exigency is, we do not think that the authority passing the order

must be called upon to explain to this Court. However, that is not to be confused with the situation where the order of transfer is actuated by mala

fides. As to what would constitute mala fides we will deal with in the latter part of our judgment. For aught one knows, allegations or complaints

however baseless they may be, may constitute a cause for transfer, sometimes even the foundation for such transfer. After all, what is done by a

transfer, which as stated above, is part of a contingency of service? If the administration finds that having regard to the complaints or allegations it is

better a particular officer is removed from the particular workspot, transfer is ordered. Beyond that it does not visit the officer concerned with any

penalty whatever, penalty not in the sense of disciplinary proceedings but from the point of view of emoluments, rank or status. If that be the

position in law, where then is the necessity for the full exposure of the justifying factors for transfer before the court? For our part, we are unable to

see any necessity.

41. For the purpose of showing that even in the case of orders of transfer, this Court is competent to invoke the extraordinary jurisdiction, learned

Counsel for the petitioners relied on a Division Bench judgment of this Court reported in *C. Ramanathan v. Acting Zonal Manager, Food*

Corporation of India, Mount Road, Madras and Ors. (1980) 1 S.L.R. 309, and also the decision reported in *Biman Kumar Roy v. S.*

Lakshminarayanan and Ors. (1978) 2 S.L.R. 136 (Calcutta High Court). In the first case decided by this Court, the transfer was set aside on the

ground that it was found on facts that the same was motivated due to ill-feeling of the Officer concerned. It was a proved fact of mala fides. That

decision was also relied on in *Chief Engineer (Personnel) TNEB, Madras Vs. K. Raman*, and their Lordships also distinguished the same and said

that the same has to be confined to the facts of that case.

42. In the later case relied on by learned Counsel for the petitioners also, mala fide was found to be true. The decision in that case has also no

bearing to the facts of this case. On the basis of these two decisions, learned Counsel submitted that even though the order purports to be

innocuous, the veil has to be removed and the real colour of the order will have to be looked into. We do not find any ground to uphold the

contentions of the learned Counsel for the petitioners.

43. On the basis of the service conditions, learned Counsel for the petitioners also wanted to show that the Senior Bailiffs in Madras District and

Bailiffs outside are not equals. But the same could not be substantiated in view of the amendments incorporated in the service conditions. Hence

the argument on that aspect was not pursued thereafter.

44. We must also take note of the fact that the Registry considered the matter and placed the subject before the Honourable Judges in charge of

the portfolio. The Honourable Judges who are Constitutional authorities also took into account all the materials while recommending the transfer. It

is a proper exercise of power, and we do not think the respondents (including the appellant herein) have exceeded their powers. The Principal

Judge, City Civil Court, Madras (first respondent in the writ petitions) was within his powers in passing the Order of transfer. There is no question

of any violation of the principles of natural justice. Once we hold that the order of transfer has not affected any of the service conditions, nor the

same is punitive in character. We are of the view that the Order of transfer has not adversely affected the petitioners in any way.

45. For the reasons stated above, the writ appeals are allowed; the order of the learned single Judge is set aside, and the writ petitions are dismissed, with no order as to costs.