

(2016) 01 MAD CK 0122

In the Madras High Court

Case No : W.P. Nos. 39861 to 39863 of 2015 and M.P. Nos. 1 & 2 of 2015

V. Narayanan and Others

APPELLANT

Vs

The Director and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2016) 01 MAD CK 0122

Hon'ble Judges : K. Kalyanasundaram, J.

Bench : Single Bench

Advocate : R. Dhinesh Kumar, for the Appellant; V. Jayaprakash Narayanan, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Kalyanasundaram, J.—1. By consent, the writ petition is taken up for final disposal.

2. The writ petitions are filed challenging the order of transfer passed by the second respondent dated 16.10.2015.

3. Since the issue involved in all these writ petitions is one and the same, the writ petitions are taken up together and disposed of by a common order.

4. The petitioners would state that while they were working at Thiruvannamalai Fire Station, one of their colleague viz., Manikandan, consumed poison on 09.10.2015. He was discharged from the hospital on 14.10.2015. In the meanwhile, the second respondent directed the petitioners to submit their statements with regard to the incident. Accordingly, the petitioners gave statements stating that due to continuous torture and abuse by the 2nd respondent, their colleague committed suicide. The petitioners would allege that aggrieved by the statements given by them, they were transferred to various stations by the impugned order dated 16.10.2015.

5. The petitioners have challenged the impugned order mainly contending that the transfer order came to be passed in the middle of the academic year, which is against the transfer policy. Further, it was made as punishment, so, they are entitled to be given an opportunity before passing the order.

6. The second respondent filed a counter affidavit stating that on 09.10.2015, Thiru P.Manikandan submitted an application to the District Officer, Thiruvannamalai stating that Thiru J.Samalavanan, Station Officer and Thiru Alexander, Station Officer (Transport) are showing some partiality against him in the station. Since the said Manikandan had taken the original file of the Thiruvannamalai Fire and Rescue Services Station, the District Officer informed him that for such illegalities, he will be sent to other station and with a view to harass the District Officer, he tried to consume poison. The said incident was enquired by the second respondent and a report was sent to the first respondent. Subsequently, as per the instructions of the first respondent vide Memorandum Rc. No. 19786/C3/2015 - 2 dated 14.10.2015, three officers have been transferred from Region to Region. The second respondent has transferred six personnel from Thiruvannamalai Fire and Rescue Services Station to different places on administrative grounds.

7. The second respondent has further stated that except Mr.V.Narayanan the writ petitioner in W.P. No. 39861/15, the other employees have joined duty in the transferred places. The second respondent has specifically denied that the transfer was made due to the statements given against him, but the transfer was made only to maintain the discipline in the department and prayed for dismissal of these writ petitions.

8. Mr.R.Dhinesh Kumar, learned counsel for the petitioners submitted that the respondents have undoubtedly got power to order transfer on administrative grounds, but, once if the transfer is made by way of punishment, based on the complaint, the employees cannot be transferred without giving an opportunity of personal hearing. The learned counsel has relied upon the judgments reported in , ((2009) 3 MLJ 727 (SC) Somesh Tiwari Vs. Union of India and others), (, (2010) 6 MLJ 63 (J.Alex Dorai Vetha Sam Vs. District Educational Officer (in-charge) Tirunelveli District, Tirunelveli and others), and (, (2014) 2 MLJ 425, S.Sivalingam Vs. Principal Commissioner and Commissioner of Survey and Settlement, Chennai - 600 005 and Others).

9. In (, 2009) 3 MLJ 727 (SC), the Hon"ble Supreme Court of India, in paragraphs 19 & 20, has observed as follows;

"19. 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 - one malice in fact and the second malice in law.

20. 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."

10. A similar view was taken by this Court in judgments reported in , (2010) 6 MLJ 63, J.Alex Dorai Vetha Sam Vs. District Educational Officer (in-charge) Tirunelveli District, Tirunelveli and others) and (, (2014) 2 MLJ 425, S.Sivalingam Vs. Principal Commissioner and Commissioner of Survey and Settlement, Chennai - 600 005 and Others).

11. Mr.V.Jayaprakash Narayanan, Special Government Pleader while reiterating the contentions made in the counter affidavit further submitted that the second respondent, based on the complaint received from the said Manikandan and District Officer, conducted an enquiry and submitted his report to the first respondent, The Director, Tamil Nadu Fire and Rescue Services dept., Chennai. It is further submitted that the respondents have to maintain discipline and decorum in order to render service to the general Public. If two groups are posted in the same Fire Service Station, it will cause indiscipline and ultimately, the sufferers would be the public.

12. The learned Special Government Pleader would further contend that the respondents have not initiated any departmental proceedings against the petitioners, so the transfer by no stretch of imagination described as punishment. Further, judicial interference in the case of transfers is in a narrow compass and the order of transfer cannot be interfered with unless the petitioners establish that the transfer order is vitiated by mala fides or in violation of any statutory provision and it has been passed by an incompetent authority.

13. The learned Special Government Pleader has relied upon the following judgments in support of his contentions. In , (2004) 7 Supreme Court Cases 405, State of U.P.and another Vs. Siya Ram and another, the Hon"ble Apex Court has held as follows;-

"5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public

administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan.

The above position was recently highlighted in Union of India v. Janardhan Debanath. It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest.

14. In , (2004) 11 Supreme Court Cases 402, (State of U.P. and others Vs. Gobardhan Lal and another case) the Hon'ble Apex Court had an occasion to consider the similar facts and the relevant paragraph No. 7 is extracted hereunder:

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

15. In , (2007) 8 Supreme Court Cases 150 (Mohd. Masood Ahmad Vs. State of U.P. and others), an employee was transferred on the recommendation of an MLA. The Hon'ble Apex Court, while dismissing the case has held that even if an employee was transferred on the recommendation of an MLA, that by itself, would not vitiate the transfer order. It is held that there can be no hard and fast

rule that every transfer, at the instance of an MP or an MLA, would be vitiated. It all depends on the facts and circumstances of an individual case.

16. In the instant case, the counter affidavit of the respondents reveals that in view of the complaints received from Thiruvannamalai Fire and Rescue Service Station, an enquiry was conducted and as per the instructions of the first respondent not only the petitioners, but the District Fire Officer, Thiruvannamalai and other personnel were transferred to different stations. Though in the impugned order reference is made about the statements lead to suicide committed by the said Manikandan, the impugned order categorically states that the transfer was effected only on administrative grounds.

17. It is also not in dispute that the respondents have not initiated any disciplinary proceedings against the petitioners nor a criminal complaint made against them. Therefore, I do not find any force in the contention of the petitioners that the transfer was effected by way of punishment. Further, the petitioners have not established that the impugned order is passed against any Statutory Rule and it is vitiated by malafides. In such view of the matter, this Court is of the opinion that the judgments relied on by the petitioners do not have any bearing on the facts of this case and in the light of the judgments cited by the Special Government Pleader, the order cannot not be interfered.

In the result, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.