
(2010) 03 MAD CK 0121

In the Madras High Court

Case No : Writ Petition No. 4330 of 2010 and M.P. No. 1 of 2010

V. Rajendran

APPELLANT

Vs

Bharathiar University

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2010) 03 MAD CK 0121

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Singaravelan, for the Appellant;

Judgement

K. Chandru, J.—The petitioner has filed the present writ petition, seeking to challenge the order, dated 24.2.2010, transferring him from

Bharathiar School of Management and Entrepreneur Development, Coimbatore to Bharathiyar University College of Arts and Science, Gudalur,

Nilgiris District. The petitioner was employed as an Assistant Librarian in the said University. The petitioner has served in the Central Library. In

the last 1-1/2 years, he was working in the library attached to the Bharathiar School of Management and Entrepreneur Development, Coimbatore.

By the impugned order, the petitioner was posted to Bharathiar University College of Arts and Science, Gudalur, which is a constituent college of the University.

2. The ground taken by the petitioner was that because he came to this Court earlier in W.P. No. 27148 of 2009 questioning the appointment of

Librarians, the present order has been passed as a counter blast. He also stated that his children are studying in the school and he has aged

parents. The climate at Nilgiris will not suit him. The order is violative of Articles 14 and 16 of the Constitution.

3. Mr. R. Singaravelan, learned Counsel for the petitioner also added that the petitioner being an employee of the University cannot be transferred

to a College even though it might be the constituent college of the University. This Court is unable to agree with any one of the submission. The

order impugned is passed under administrative reasons. There is no suffering in terms of emoluments or designation .

4. In this context, it is relevant to refer to two decisions of the Supreme Court. The first relates to E.P. Royappa Vs. State of Tamil Nadu and

Another, . The relevant passages found in paras 91 and 92 are reproduced below:

91. ...The only question before us is whether the action taken by the respondents includes any component of mala fides; whether hostility and

malus animus against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of

mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here

the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself

a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political

custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context

it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their

duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding

circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party,

particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.

Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special

status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up?these considerations are wholly

irrelevant in judicial approach but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that

we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent.

5. The second decision relates to M. Sankaranarayanan, IAS Vs. State of Karnataka and others, . The following passage found in para 12 is

worthy of reproduction here:

12. After considering the respective contentions of the learned Counsels appearing for the parties, it appears to us that the appellant has not been

able to lay any firm foundation warranting a finding that the impugned order of transfer was passed mala fide and/or for an oblique purpose in order

to punish the appellant and/or to humiliate him. The pleadings of the appellant before the Central Administrative Tribunal only indicate that some of

his suggestions in the matter of posting of senior bureaucratic officers of the State had not been accepted by the present Chief Minister of the State.

Such facts alone do not constitute any foundation for a finding that because the appellant was not agreeable to oblige the Chief Minister by

accepting all his suggestions and putting up notes to that effect, he had incurred the displeasure of the Chief Minister and the impugned orders had

been passed not on administrative exigencies but only to malign the appellant and to humiliate him. It may not always be possible to demonstrate

malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the

facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation,

surmise or conjecture. In the instance case, we are unable to find that there are sufficient materials from which a reasonable inference of malice in

fact for passing the impugned order of transfer can be drawn. It is an admitted position that the Chief Secretary and the Chief Minister had

differences of opinion on a number of sensitive matters. If on that score, the Cabinet and the Chief Minister had taken a decision to relieve the

appellant from the post of Chief Secretary and post a very senior officer of their confidence to the post of Chief Secretary, it cannot be held that

such decision is per se illegal or beyond the administrative authority. The position in this regard has been well explained in Royappa case¹ by this

Court.

6. In both the cases, the issue related to transfer orders of the highest officials of the State Government i.e. Chief Secretary to the Government.

7. Since the transfer was made on administrative grounds, the Court cannot go behind the said reason so long as the power has been exercised

properly by the authorities. Even following of the guidelines are not required when transfer is made on administrative grounds.

8. In this context, it is necessary to refer to the decision of the Hon^{ble} Supreme Court reported in State of U.P. and Others Vs. Siya Ram and

Another, . In paragraph 5 observed 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. v. Shri Bhagwan.

9. Further, the Hon^{ble} Supreme Court in yet another decision reported in State of U.P. and Others Vs. Gobardhan Lal, , in paragraph 7

observed as follows:

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.

10. With reference to the last argument that there is no power to transfer a person from the University to a constituent college, cannot also be accepted so long as there was no reduction of his status or emoluments. In this context, it is necessary to refer to a judgment of the Supreme Court in Vice-Chancellor, L.N. Mithila University Vs. Dayanand Jha, . The following passages found in paragraphs 7 and 8 of the said judgment may be usefully extracted below:

7. We have no hesitation in repelling the contention of learned Counsel for the respondent that the words "any equivalent post" used in Section 10(14) of the Act cannot bear the meaning of the expression "other equivalent post" as defined in Section 2(ka, chh). It must be remembered that both the provisions were inserted by the Amendment Act and the expression "other equivalent post" was defined in Section 2(ka, chh) to give effect to the power of the Vice-Chancellor to transfer any teacher of any

department or college maintained by the university to any equivalent post in any other department or college maintained by it. To remove any doubt or difficulty as to construction, and to make the conferral of power of transfer on the Vice-Chancellor u/s 10(14) of the Act meaningful and effective, the legislature thought it expedient to provide the definition of the expression "other equivalent post" in Section 2(ka, chh). The definition clause must be read in the context of the phrase which it defines as the function of a definition clause is to give precision and certainty to a word or phrase which would otherwise be vague and uncertain. If the contention of learned Counsel for the respondent were to be accepted, it would reduce the definition of the expression "other equivalent post" as contained in Section 2(ka, chh) a mere superfluity.

8. The prerequisite of the power of the Vice-Chancellor u/s 10(14) of the Act to transfer any teacher occupying a post in any department or college maintained by the University to any equivalent post in another department or college maintained by it is that they must, broadly, bear the same characteristics. The mere circumstance that the two posts are carried on the same scale of pay is not enough. That is because in the original text of the Amendment Act the words used in Section 10(14) as well as in the expression "other equivalent post" as defined in Section 2(ka, chh) are samakaksh pad. Learned Counsel for the respondent is therefore right in contending that equivalence of the pay scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility. The term "teacher" is defined in Section 2(ka, chh) to include Principal, University Professor, College Professor, Reader, Lecturer etc. Professors of the university like head of the department, College Professors, Readers, Lecturers belong to different grades and discharge different duties and responsibilities The power of the Vice-Chancellor to transfer any teacher u/s 10(14) is controlled by the use of the word samakaksh and he cannot transfer any teacher from one post to another in a department of the university or a college unless they belong to the same class. In that view, there can be no doubt that the two posts of Principal and Reader cannot be regarded as of equal status and responsibility. The true criterion for

equivalence is the status and the nature and responsibility of the duties attached to the two posts. Although the two posts of Principal and Reader are carried on the same scale of pay, the post of Principal undoubtedly has higher duties and responsibilities. Apart from the fact that there are certain privileges and allowances attached to it, the Principal being the head of the college has many statutory rights, such as: (i) He is the ex officio member of the Senate. (ii) He has the right to be nominated as the member of the Syndicate. (iii) As head of the institution, he has administrative control over the college Professors, Readers, Lecturers and other teaching and non-teaching staff. (iv) The Principal of a constituent college is also the ex officio member of the Academic Council of the university. (v) He has the right to act as Centre Superintendent in the university examinations. It is thus evident that the High Court was right in holding that the post of Reader could not be regarded as an equivalent post as that of Principal in the legal sense. Maybe, when the affairs of a college maintained by the university are mismanaged, the Vice-Chancellor may, for administrative reasons, transfer a Professor or Reader of any department or college maintained by it to the post of the Principal of such college, but the converse may not be true. While the Professors and Readers by reason of their learning and erudition may enjoy much greater respect in society than the Dean or Principal of a college, it does not follow that the post of Principal must be treated as equivalent to that of a Reader for purposes of Section 10(14) of the Bihar State Universities Act, 1976, as amended.

11. In the aforesaid case, the Supreme Court held that the transfer from the post of Principal of a College to that of a Professor will result in loss of status. In that context, it held that such a transfer was impermissible. In other respects, the petitioner being an employee of the University is liable to be transferred to any one of the institutions run by the University. The present college is only in the neighbouring District. The other grounds raised i.e. that the transfer will cause inconvenience cannot be taken into account and that issue cannot decide the validity of the transfer order.

12. In the light of the above, the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petition stands closed.