
(2014) 03 MAD CK 0164

In the Madras High Court

Case No : W.P. (MD) No. 2662 of 2014 and M.P. (MD) No. 1 of 2014

Y. Jeyakumar

APPELLANT

Vs

Additional Director of Police

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Citation : (2014) 2 LLN 767

Hon'ble Judges : K. Ravichandra Babu, J

Bench : Single Bench

Judgement

K. Ravichandra Baabu, J.—The challenge made in this Writ Petition is against the Order of Transfer dated 14.2.2014

The case of the Petitioner is as follows:

He joined the Police service as direct recruit Police Grade II on 15.4.1997 and was promoted as Sub-Inspector of Police on 4.9.2006. A Lady Constable by name Bharathi made a Complaint against him on 7.12.2013 stating that he pulled her hand. The Complaint was enquired by the "Welfare Committee" and a Report was submitted to the Fourth Respondent. The same was rejected by the Fourth Respondent on the ground that enquiry was not conducted properly. Thereafter, "Visaka and Women Welfare Committee" was formed to conduct the enquiry. The Enquiry Officer has not acted in a proper manner and did not conduct the enquiry as per the procedure to be followed by due process of law. Aggrieved against the enquiry conducted the Petitioner made a representation on 10.2.2014 to the First Respondent. But, without considering the said representation, the impugned Order of transfer came to be passed on 14.2.2014.

2. On Notice, the Respondents entered appearance through the Additional Government Pleader and the Fourth Respondent has filed a report before this Court wherein it is stated as follows:

3. On 30.12.2013 one M. Bharati, a Woman Police Constable has levelled an

allegation against the Petitioner that he misbehaved with her on 4.12.2013 while she was on guard duty during 21.00 hours to 23.00 hrs. An enquiry was conducted by the Vishaka and Women Welfare Committee. The said Committee submitted a Report on 10.1.2014, wherein the Enquiry Committee has found that the Petitioner has misbehaved with the said Woman Police Constable and failed to maintain discipline and spoiled the image of the Police force. The Committee has also recommended for taking Disciplinary action against the Petitioner. Based on the said Report, the Second Respondent ordered Disciplinary action against the Petitioner and another Sub-Inspector of Police by name A. Saleem through his Office Memorandum dated 31.1.2014. The said Woman Constable and her husband contacted the Fourth Respondent and informed that the Petitioner threatened them. The Fourth Respondent sent a Report to the Third Respondent, who is the Chairman of the Inter-Battalion Transfer Committee, to transfer the Petitioner. The said Transfer Committee also recommended the transfer of the Petitioner. Consequently, the impugned Order of transfer came to be passed. The transfer was essential to maintain the discipline and image of the Police force. The Petitioner was relieved from his duty on 14.2.2014.

4. Mr. G.R. Swaminathan learned Counsel appearing for the Petitioner submitted that the impugned Order of Transfer is punitive in nature and therefore the same, having been passed without giving an opportunity of hearing to the Petitioner, is unsustainable. It is a stigmatic order. Mere conducting of preliminary enquiry will not empower the Authorities to issue the Transfer Order. The materials relied on by the Authorities are not complete. In support of his submissions, the learned Counsel relied on the decisions reported in *S. Sevugan Vs. The Chief Educational Officer and Another*, ; and *Somesh Tiwari Vs. Union of India (UOI) and Others*, .

5. Per contra, the learned Additional Government Pleader appearing for the Respondents supported the Order of Transfer by stating that the same was passed based on the Enquiry Report submitted by the Vishaka and Women Welfare Committee, wherein the Petitioner was given adequate opportunity of hearing. Therefore, the impugned Order does not suffer on the Principles of Natural Justice. Further, the allegations made against the Petitioner are very serious and in order to maintain discipline in the Police force the impugned Order of Transfer came to be passed. The learned Counsel appearing for the Respondents produced the file containing the Report submitted by Vishaka and Women Welfare Committee.

6. Heard the learned Counsel appearing on either side.

7. In this case, the Order under challenge is transferring the Petitioner from TSP VI Bn. to TSP VII Bn. A perusal of the impugned Order would show that the same was passed in accordance with the Orders issued by the Additional Director General of Police dated 12.2.2014 and consensus of the Transfer Committee in its recommendations dated 7.2.2014 on adverse grounds. The impugned Order is challenged on the ground that the same was passed as a punitive measure

without affording any opportunity of hearing to the Petitioner. In support of such contention, the learned Counsel for the Petitioner relied on the decisions reported in *S. Sevugan Vs. The Chief Educational Officer and Another*, ; and *Somesh Tiwari Vs. Union of India (UOI) and Others*, .

8. Before going into the decisions relied on by the learned Counsel for the Petitioner, let me consider as to whether his submissions merit any acceptance based on the facts and circumstances of the present case.

9. In the case on hand, the Petitioner himself has admitted in the Affidavit that based on the Complaint given by the Woman Constable by name Bharathi, the Authorities have constituted the Vishaka and Women Welfare Committee and such Committee has conducted the enquiry. It is not his case that such enquiry was conducted behind his back. On the other hand, a perusal of the Report would show that the Petitioner was given adequate opportunity to give his explanation and he has also given his explanation. After examining 24 Witnesses, the Committee has given the report stating that the Complaint made against the Petitioner was found to be true and consequently, recommended for taking Disciplinary action against the Petitioner. The penultimate recommendation of the Committee is extracted hereunder:

(Omitted)

10. Consequent upon such Report submitted by the Vishaka Committee the Commandant viz., the Fourth Respondent herein proposed to take Departmental action against the Petitioner and requested the Second Respondent through his proceedings dated 3.2.2014 to transfer the Petitioner.

11. Considering the fact that the Petitioner has participated in the enquiry, it cannot be contended that the Transfer Order came to be passed without an opportunity. Needless to say that the nature of the transfer may be punitive but that itself is not a punishment. If the transfer is not made on administrative grounds and on the other hand if the same is made as a punitive measure, it has been repeatedly held that such transfers cannot be made without affording opportunity of hearing to the person concerned. Here, in this case, as already observed supra, the Petitioner was given adequate opportunity in the enquiry and therefore, the question of violation of Principles of Natural Justice does not arise in this case.

12. A perusal of the decision of the Hon"ble Supreme Court made in *Somesh Tiwari* case would show that the Order of Transfer in that case was complained as mala fide exercise of power made in total non-application of mind to the relevant facts. The Apex Court found at Paragraph 16 of the said decision that the Order impugned therein would attract the Principle of Malice in Law as it was not based on any factor germane for passing an Order of Transfer and that the same was passed based on an irrelevant ground.

13. Considering the facts and circumstances of the case on hand, I am of the

view that the above decision of the Hon''ble Supreme Court relied on by the learned Counsel for the Petitioner cannot be applied herein, especially when the present impugned Order is passed in pursuant to the report submitted by Vishaka and Women Welfare Committee. Therefore, there is no question of contending that the impugned Order was passed on any irrelevant factor. Therefore, the above said decision of the Apex Court is not applicable to the facts and circumstances of the present case.

14. The next decision relied on and reported in S. Sevugan Vs. The Chief Educational Officer and Another, , is passed by a learned Single Judge of this Court, wherein the Transfer Order therein was set aside only on the ground that the same was passed as punishment without any opportunity to the Petitioner therein. In my considered view, the above decision is also factually distinguishable while considering the facts and circumstances of the present case, which are already discussed supra.

15. Normally, the Transfer Orders, if made on administrative grounds, are not interfered with by this Court. However, if it is made as a punitive measure without affording an opportunity of hearing, this Court has interfered with the same only on the ground of violation of Principles of Natural Justice. The purpose of holding that the person must be put on Notice in respect of punitive transfers is only to ensure that the said person must be in a position to know for what purpose he is transferred, otherwise than on the administrative reasons. If the reason is very much known to the person concerned, which is obvious on the facts that he was given an opportunity of hearing, certainly, such Orders even though if it is punitive in nature cannot be interfered with in view of the fact that the transfer itself is not a punishment and on the other hand, it is only to keep the concerned person away from the place of occurrence. Considering all these facts and circumstances, I am of the view that the grounds raised in this Writ Petition challenging the impugned Order of Transfer cannot be sustained. Consequently, the Writ Petition fails and the same is dismissed as devoid of merits. Consequently, the connected M.P. is closed. No costs.