(2010) 10 MAD CK 0210

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 3733 of 2010 and M.P. (MD) No"s. 2 and 3 of 2010

T. Selvaraj		APPELLANT
	Vs	
The Director of School Education and Others		RESPONDENT

Date of Decision: Oct. 27, 2010

Acts Referred:

- Tamil Nadu Civil Services (Discipline and Appeal) Act - Section 17

Citation: (2010) 10 MAD CK 0210

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: Issac Mohanlal, for the Appellant; K. Balasubramanian, Special Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
The petitioner challenges the order dated 17.03.2010 passed by the second respondent, Joint Director of School Education (Personnel), wherein by which, the petitioner was transferred from S.L.B. Government Higher Secondary School, Nagercoil, Kanyakumari District to the Government Higher Secondary School, Pasuvannapuram in Erode District.

2. This writ petition was admitted on 23.03.2010. Pending the writ petition, this Court granted an interim stay in M.P.(MD). No. 2 of 2010. The respondents on notice, filed vacate stay application in M.P.(MD). No. 3 of 2010 together with the counter affidavit, dated 19.04.2010.

3. It was claimed by the respondents that the fifth respondent Headmaster was charged with dereliction of duty by not maintaining accounts regarding the collection of school

developing funds and he is facing an enquiry u/s 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

4. No proper accounts were maintained for the scholarship amount and the parents of the children studying in the school have given a complaint to the Commissioner, Vigilance and Anti Corruption and based upon such complaint an enquiry was ordered to be conducted and the petitioner was cited as a witness P.W.18. During the enquiry, the petitioner had deposed about the role of the Headmaster, but in the disciplinary proceedings he had suppressed the facts and has deliberately given incorrect and misleading evidence. Because of the contrary statement given by the petitioner, the Government by letter dated 16.02.2010 has recommended departmental action against the petitioner and to transfer him to a far of place for having turned hostile in the departmental enquiry. It was claimed that the petitioner''s further continuance in the school will create administrative difficulties and therefore, the transfer order came to be passed.

5. When the petitioner was cited as a witness, he was bound to make a statement in the enquiry and merely because he did not stick to the earlier version that cannot be a ground for ordering transfer. The respondents themselves have stated that he has become hostile in the departmental enquiry and the Government had recommended action against him. Therefore, appropriate course open to the respondents is to conduct disciplinary action against the petitioner for either opining falsehood or having made a responsible statement reversing from the said statement subsequently. To that extent, the petitioner was bound by the directions issued by the Government vide its letter dated 16.02.2010 averred in paragraph 7.2. But, even without substantiating the allegations on the ground of gross misconduct, the petitioner cannot be transferred mechanically to get rid of their obligation to conduct enquiry.

6. In this context it is necessary to refer to the judgment of the Hon''ble Supreme Court reported in Somesh Tiwari Vs. Union of India (UOI) and Others, , wherein in paragraph 16 it has been held as follows;

16. 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 malafide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. 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 abased 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.

7. The ratio laid down by the Hon''ble Supreme Court squarely applies to the case on hand. In the light of the same, the writ petition stands allowed and the impugned order stands set aside. M.P.(MD). No. 2 of 2010 stands dismissed as infructuous. M.P.(MD). No. 3 of 2010 is dismissed as unnecessary in view of the order passed in the main writ petition. No costs.

8. In Contempt Petition No. 319 of 2010 the grievance of the petitioner is that an exparte interim stay order dated 23.03.2010 was not obeyed. Therefore, the respondents should be punished for the willful disobedience.

9. The stand of the learned Special Government Pleader is that since they have filed the vacate stay application, they want to know the out come of the same, before giving effect to the interim order and they have a right to seek for modification of the order and therefore, there is no willful disobedience. The contention of the learned Special Government Pleader, is well founded. Since in the main writ petition, the petitioner is succeeded, it is unnecessary to pursue the contempt petition. Besides there is no contempt, if there is a bonafide attempt to seek for variation of the exparte order, such an exercise cannot be labelled as willful disobedience. In the light of the same, the contempt petition is dismissed. If there was any disobedience of the order made in the writ petition, without their being any further challenge to the same, it is open to the petitioner to pursue fresh contempt proceedings.