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G. Vijayamani Vs The General Manager

Writ Petition No. 25205 of 2014, M.P. Nos. 1, 2 and 4 of 2014

Court: Madras High Court

Date of Decision: Dec. 11, 2014

Hon'ble Judges: Satish K. Agnihotri, J; K.K. Sasidharan, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner, who was the applicant before the Tribunal, filed the Original Application, questioning the transfer order dated 13.02.2012 before

the Madras Bench of Central Administrative Tribunal, inter-alia, on the ground that the order is not reasoned or speaking order. The order is

based on certain allegations / complaints and also the place where the petitioner has been transferred is not having the mechanical department,

wherein the petitioner can be transferred.

2. The Tribunal, considering all the facts of the matter, held that the transfer order was passed in administrative exigency by the competent authority

and also the transfer guidelines have been followed. It was also held that the petitioner failed to establish the malafide either on facts or on law. The

Tribunal dismissed the original application, relying on a decision of the Supreme Court in Union of India (UOI) and Others Vs. Sri Janardhan

Debanath and Another, , wherein it was held as under :

14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any

misbehavior is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an

enquiry to find out whether there was misbehavior or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie

satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by

learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public

interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could

be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of

solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgement of the High Court is

clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are

allowed with no order as to costs.

3. The learned counsel appearing for the petitioner would contend before us that the transfer order was passed in exercise of malice in law, as the

Tribunal after holding that the petitioner was transferred on administrative exigency to enforce the decorum and ensure probity, has failed to lift the

veil in respect of malafide. The transfer order has been passed on account of the complaint against the petitioner, which ought to have been proved

before accepting the allegations and passing the transfer order to the prejudice of the petitioner. It was next contended that the petitioner was not

transferred to mechanical department, but only to the traffic station. Admittedly, the petitioner is working in the mechanical department. On that

account also, the transfer order is vitiated. In support of his contention, the learned counsel relies on a decision of the Supreme Court in Somesh

Tiwari Vs. Union of India (UOI) and Others, .

4. On the other hand, Mr.V.G.Sureshkumar, the learned counsel appearing for the respondents would submit that Tribunal has rightly held that the

officer passing the transfer order was competent to pass the order. The transfer guidelines provides that proposed transfer of an office bearer of a

recognized Trade Union including its branches should be advised to the Union concerned and the union should be allowed to bring to the notice of

the Divisional Officer and if necessary, later to the G.M. any objection that they may have to the proposed transfer. If there is no agreement at the

lower level, the decision of the G.M will be final. Sufficient notice should be given to the union of a proposed transfer to enable the union to make

alternative arrangements for carrying on the work or for making a representation against the proposed transfer. Accordingly, the proposal for

transfer of the petitioner, who happened to be the office bearer of the recognised trade union, was brought to the notice of the Divisional

Secretary, SRMU. The Divisional Secretary, SRMU vide letter dated 30.10.2012, informed the administration to take appropriate action.

Accordingly, the transfer order was passed to ensure administrative discipline in administrative exigency.

5. On the issue of the complaint, it was stated that no enquiry was instituted to take any punitive action as the complaint was not that of serious

nature requiring any enquiry. Therefore, the administration was of the view that the transfer of the petitioner, who has been posted at one place

right from the initial appointment, would ensure administrative efficiency and exigency. Thus, there was no malice in fact as well as in law.

6. We have considered the rival contentions advanced by the learned counsel appearing for parties.

7. It is not in dispute that the petitioner was posted at one place from the day he was appointed. Thereafter, on account of the fact that the

petitioner was not discharging his duty of Technician Grade-II and signing in a separate muster register, especially kept for the office bearers of the

trade union and he was not performing the work to the satisfaction of the administration, the administration/respondents were correct in taking a

decision to transfer the petitioner from Jolarpet to Chennai.

8. In Somesh Tiwari (Supra), it appears that the appellant therein was transferred on the basis of anonymous complaint and after transfer from

Bhopal to Shillong, an enquiry was instituted. In that context, the Supreme Court observed as under :

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 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. 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.

9. The facts in the case on hand are distinguishable and as such, the petitioner cannot get any assistance from the ratio laid down by the Supreme

Court in Somesh Tiwari (supra).

10. The law in respect of judicial intervention in case of transfer, is no longer res integra. Indisputably, transfer is an incidence of service and it is

made according to the administrative requirement and exigency. The Courts should not interfere with the administrative exigency of the employer,

unless it is tainted with mala fides.

11. In Rajendra Roy Vs. Union of India (UOI) and Another, . , the Supreme Court held as under:

7. x x x x x It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but

on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and

guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable

post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. x x x x x

12. Further, in State of U.P. and Others Vs. Siya Ram and Another, , the Supreme Court held as under:

5. x x x x x 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. x x x x

13. Besides, in State of U.P. and Others Vs. Gobardhan Lal, , the Supreme Court held as under:

7. x x x x x 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.

14. That apart, in Rajendra Singh Vs. State of U.P. and Others, , the Supreme Court held that transfer of an employee is not only an incident

inherent in terms of appointment, but also, implicit as an essential condition of service in the absence of any specific indication to the contrary.

15. For the reasons mentioned herein-above and on careful analysis of the case, we are of the view that there is no merit in the writ petition and the

same is, accordingly, dismissed. No costs. Consequently connected miscellaneous petitions are closed.