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Court : Chennai

Decided On : Sep-10-2009

Reported in : (2009)8MLJ588

Judge : M.M. Sundresh, J.

Appeal No. : W.P. No. 10770 of 2009

Appellant : A. Kaliyamoorthy

Respondent : The District Collector/inspector of Panchayats and the Block Development Officer (Village Panchayats)

Advocate for Def. : Lita Srinivasan, Government Adv. for R-1

Advocate for Pet/Ap. : P. Rajendran, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M.M. Sundresh, J.

1. The petitioner herein was appointed on 01.11.1996 as a Panchayat Assistant. While he was working as a Panchayat Assistant at Thondamandurai Panchayat situated in Veppanthattai Taluk, Perambalur District an order of transfer was passed by the first respondent in Na.Ka.No.491/09/A3 in the month of May 2009 transferring the petitioner from Thondamandurai Panchayat to Kariyanur Panchayat. The said order of transfer has been made based upon the letter of the second respondent dated 15.04.2009. Challenging the said order on the ground that there was no enquiry that it is punitive in nature and on non application of mind, the present writ petition has been filed.

2. The learned Counsel for the petitioner submitted that the petitioner is only a Panchayat Assistant on a consolidated pay of Rs. 3,000/- per month. It is very difficult to work in some other Panchayat which is about 35metres away from his residence. The order of transfer has been passed on extraneous consideration based upon the recommendation of the president of the Panchayat which is impermissible in law. It is further stated that there is a misunderstanding between the President and the other members and in view of the same, the petitioner has been made as a scapegoat resulting the order of transfer. Hence, the learned Counsel for the petitioner submitted that there is no administrative reason for the transfer and therefore, the same has to be set aside.

3. A counter affidavit has been filed by the respondents stating that the petitioner did not co-operate with the Panchayat Council and there were many complaints against the petitioner from the general public as well as the President. Therefore, based upon the written complaint of the President dated 11.04.2009 requesting the transfer of the petitioner to any other Panchayat an order of transfer has been passed. It is further stated that the complaint dated 11.04.2009 was sent to the Assistant Director of Panchayats and Audit, who in turn placed the papers before the first respondent for passing necessary orders. The first respondent being the Inspector of Panchayats and also in accordance with G.O.Ms. No. 175, Rural Development and Panchayat Raj (E5) Department dated 05.12.2006 has passed the order of transfer, transferring the petitioner to Kariyanur Village Panchayat. Hence, it is submitted that the order of transfer is only on administrative grounds and the Panchayat Council has got nothing to do with the same.

4. The learned Counsel submitted that a reading of G.O.Ms. No. 175, Rural Development and Panchayat Raj (E5) Department dated 05.12.2006 would clearly show that the first respondent Panchayat, Inspector of Panchayats can take action against a Panchayat Assistant for misconduct such as negligence, wrong action and acting against the rules by imposing the punishment such as censure, penalty, reduction in rank etc. The learned Counsel submitted that however the said power conferred under the Government Order relied upon by the respondents will not authorise the first respondent to transfer an employee on the ground of not discharging his duty. Therefore, the learned Counsel for the petitioner submitted that in the absence of any enquiry the petitioner cannot be transferred more so at the instance of the President of the Panchayat.

5. In support of his contention, the learned Counsel relied upon the judgment reported in (2009) 3 MLJ 727 [Somesh Tiwari v. Union of India and Ors.] and submitted that the impugned order of transfer will have to be set aside on the ground of non application of mind as well as legal malice. The learned Counsel also relied upon of this Hon'ble High Court rendered in 2009 (1) CTC 322 [T. Jayapandi v. State Express Transport Corporation Limited] and submitted that as and when an employee of Clause III and below is transferred there must be justifiable reasons to be proved by the respondents in support of the said transfer. Hence, in the absence of the same, the learned Counsel for the petitioner submitted that the impugned order is liable to be set aside.

6. The learned Government Advocate submitted that the transfer is only a administrative one since the first respondent being the competent authority has taken into consideration of the fact that the petitioner has not discharging his duties properly. According to the learned Government Advocate in any case the transfer has been made only to near by place and therefore no interference needs to be called for by setting aside the impugned order.

7. As rightly contended by the learned Counsel for the petitioner in the present case the transfer order has been effected based upon a letter dated 11.04.2009 sent by the President of the Panchayat seeking to transfer the petitioner. If the conduct of the petitioner is not in accordance with the rules then nothing prevents

the respondents from conducting a proper enquiry against the petitioner. The first respondent being the Inspector of Panchayats cannot merely act upon the letter of the President in transferring the petitioner. In such a case the transfer order passed by the first respondent cannot be construed as the one passed on administrative grounds. In the judgment reported in (2009) 3 MLJ 727 [Somesh Tiwari v. Union of India and Ors.] the Hon'ble Supreme Court was pleased to observe 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.

Similarly, the Hon'ble Supreme Court has also observed as follows:

25. No vigilance enquiry was initiated against him. The order of transfer was passed on material which was not existent. The order, therefore, not only suffers from total non application of mind on the part of authorities of respondent No. 1, but also suffers from malice in law.

8. On a reading of the said judgment, this Court is of the opinion that the principle laid down by the Hon'ble Supreme Court applies to the present case on hand. The first respondent has transferred the petitioner relying upon certain letters and other materials behind the back of the petitioner in transferring the petitioner. No doubt it is true that the first respondent is the competent authority to transfer the petitioner

on an administrative ground. However, the order passed by the first respondent on facts cannot be termed as the one passed by the administrative one. Moreover as contended by the learned Counsel for the petitioner the Government Order relied upon by the learned Government Advocate also does not apply to the present case. The said Government Order provides power to the first respondent to take action whenever an employee commits any irregularity. However, the said Government Order cannot be construed to hold that without conducting an enquiry an order of transfer cannot be passed by the first respondent deriving the power from the said Government Order. It is a well settled principle of law that no one should be condemned without affording an opportunity of being heard. Admittedly, the petitioner is not in a position to know the basis upon which the order of transfer has been passed against him when not made on administrative reasons. Therefore, this Court is of the opinion that even though an order of transfer is incidental to the service the same cannot be passed based upon extraneous consideration and on non application of mind. The learned Counsel for the petitioner also relied upon the judgment reported in 2009 (1) CTC 322 [T. Jayapandi v. State Express Transport Corporation Limited] wherein this Hon'ble Court was pleased to hold that while transferring an employee who is below the cadre of Clause III, a duty is imposed upon the respondents to satisfy the Court that there are sufficient grounds for transferring such an employee. In the present case on hand, the reasons assigned by the respondents for transferring the petitioner on the ground of administrative necessity cannot be countenanced. Therefore, taking into consideration of the above said facts, this Court is of the opinion that the impugned order is liable to be set aside. Accordingly, the same is set aside.

9. With these observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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