

S.Thomsson. Vs. the Director General of Police and ors.

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Court : Chennai

Decided On : Jul-19-2012

Judge : Vinod K.Sharma, J.

Acts : [Constitution of India](#) - Articles 226

Appeal No. : W.P.No.20274 of 2011 and MP.Nos.1 & 2 of 2011

Appellant : S.Thomsson

Respondent : The Director General of Police and ors.

Advocate for Def. : Mr.R.Vijayakumar. Adv

Advocate for Pet/Ap. : Mr.N.G.R.Prasad, Adv.

Judgement :

Prayer:- Writ Petition filed under Article 226 of the [Constitution of India](#) praying for the issuance of a Writ of Certiorari, to quash the order bearing Ref.No.Estt.1(2)/1207/2011, dated 25.06.2011 issued by the second respondent and order dated 19.08.2011 bearing Reg.No.Rc.No.888/MGB.V(1)/P-27/2011 issued by the first respondent in so far as Sl.No.5 in Ex.-A is concerned as being arbitrary and illegal with consequential prayer to direct the respondents to retain the petitioner in Chennai City Police.

ORDER

1. The petitioner has approached this court with a prayer for issuance of a writ in the nature of Certiorari, for quashing the order in Ref.No.Estt.1(2)/1207/2011, dated 25.06.2011, and also the consequential order dated 19.08.2011, vide which the petitioner has been transferred from Chennai to Trichy.

2. The petitioner joined Tamil Nadu Police Subordinate Services as Sub Inspector on 28.09.1987 and was posted at Trichy in the year 2002. The petitioner thereafter was posted in Special Protection Group of Prime Minister Security Wing, New Delhi on 19.02.2002 and promoted as Inspector of Police and posted to Ramnad. In the career of 24 years, the petitioner has suffered number of transfers.

3. It is the submission of the petitioner that after his promotion as Inspector of Police in the year 2002, the petitioner has been transferred 22 times to various places in Tamil Nadu, i.e. to Ramnad, Vellore, Chengalput, Kancheepuram and then again to Ramnad. Even at Chennai, the petitioner was posted to different ranges.

4. On 25.06.2011, the petitioner was transferred within from H8 Thiruvottiyur PS (Crime) and kept in compulsory wait, for further posting. The petitioner was under the impression that he will be posted within Chennai, considering his family difficulties, but vide impugned order, the petitioner has been transferred from Chief Office, Chennai to Central Zone, Trichy.

5. The petitioner submits that he has family problems, as his twelve years old son is physically handicapped suffering from no free movement of hands and legs for which, he is getting treatment at Chennai. The wife of the petitioner is bedridden, who is now stated to have died. The daughter of the petitioner is studying in XII standard at St. Johns Higher Secondary School, Chennai. It was on account of family circumstances that the petitioner filed a representation, for cancellation of his transfer but, no action was taken on the representations of the petitioner.

6. Learned counsel for the petitioner contends, that the impugned order of transfer, cannot be sustained as the petitioner has been transferred many times after his promotion as Inspector. In support of this contention, learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in

B.Varadha Rao vs. State of Karnataka and others, (1986(4) SCC 131) wherein, the Honourable Supreme Court observed that, if transfer order is malafide and not made in public interest but for collateral purpose, and oblique motives in colourable exercise of power then, it stands vitiated being abuse of power. In such a case, transfer is open to challenge before the Court being wholly illegal and void.

7. This judgment has no application to the facts of the present case as transfer order for the petitioner cannot said to be malafide, as there is no allegation of motive against any officer. The petitioner has not impleaded any officer against whom any malafide is alleged.

8. Learned counsel for the petitioner also placed reliance on the judgment of the Supreme Court in Director of School Education, Madras and Others vs. O.Karupa Thevan and another (1994 Supp(2) SCC 666) wherein, it is observed that in the absence of urgency, the transfer during academic year should normally not be adhered to. This judgment has been cited in support of the contention that the daughter of the petitioner has been studying in 12th standard and therefore, the mid-term transfer was not permissible.

9 Reliance from this judgment is also misconceived, as this judgment cannot be treated to be the precedent to hold no mid-term transfer can be ordered. On the other hand, the settled law is that instructions with regard to transfer only for the department to be followed, but do not give any enforceable legal right to the petitioner to challenge the order of transfer.

10. Finally, the reliance was placed on the judgment of this court in M.Kandasami vs. Tamil Nadu Electricity Board, and others (1996(I) CTC 364) wherein, it was held that frequent transfers, without sufficient cause amounts to malafide transfer which case inference can be drawn of malafide.

11. This judgment cannot advance the case of the petitioner, as admittedly, the petitioner was transferred after three years stay at Chennai therefore, it is not a case of frequent transfers.

12. On consideration, I find no force in this writ petition. In the affidavit or grounds, there is no whisper of any malafide against any officer. Even with reference to professed transfers, there were no specific details except wild allegations that the petitioner has been subjected to repeated transfers.

13. The pleadings in the writ petition shows, that the petitioner was posted to Chennai on 19.09.2008 and it is after three years, that he has been transferred out of Chennai. It is well settled law that transfer is incident of service, therefore, employee cannot have any grievance to the transfer.

14. The transfer can be challenged only on the ground of malafide or it being against the statutory provisions of law and not otherwise. There are no allegations of malafide, nor it is stated which statutory rule is violated on account of transfer.

15. The observation of the Supreme Court in the case of Director of School Education, Madras and Others vs. O.Karupa Thevan and another (supra) cannot said to be laid down that no mid-term transfer is permissible. It is well settled law that instructions regarding mid-term transfer do not give any enforceable right to an employee to challenge the transfer made in adumbrative reasons and public interest.

16. The contention of the learned counsel for the petitioner that similarly situated persons had been dealt with departmentally is also without merit as no particular details are forthcoming in support of this contention. Even otherwise, there cannot be similarity in transfer of employees, as it is employer to see as to what would be in public interest and administrative exigency of service as to where an employee can be transferred. This Court cannot go into the question of transfer in absence of allegation of malafide, violation of statutory rules or regulations.

No merit. Dismissed.

No costs. Consequently, connected Miscellaneous petitions are closed.

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