

Central Administrative Tribunal
Madras Bench

OA/310/00461/2020

Dated 25th day of February Two Thousand Twenty One

PRESENT

Hon'ble Mr.S.N.Terdal, Member(J)

&

Hon'ble Mr.T.Jacob, Member(A)

D.Vidjeacoumary
D/o Dhanakodi,
No.11, Second Cross Street,
Aruthranagar,
Puducherry 605 009.

Applicant

By Advocate M/s.M.Gnanasekar

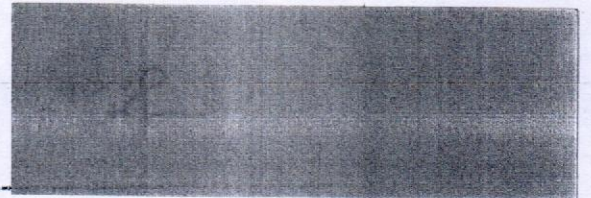
Vs.

1. Union of India, rep by the
Secretary to Government,
(Education),
Chief Secretariat,
Puducherry 605 001.
2. The Director,
O/o the Directorate of School Education,
Perunthalaivar Kamarajar Centenary
Educational Complex,
Anna Nagar,
Puducherry 605 005.
3. Thiru M.Nadanasabapathy,
Vice Principal,
Navalar Nedunchezian; Govt.
Hr. Sec. School,
Lawspet,
Puducherry 605 008.

4. Thiru M.Thanaselvan Nehru,
Vice Principal,
Ilango Adigal Government Higher
Secondary School,
Muthiraiarpalayam,
Puducherry 605 009.

.. Respondents

By Advocate **Mr.R.Syed Mustafa**



ORDER

[Pronounced by Hon'ble Mr.T.Jacob, Member(A)]

The applicant has filed this OA seeking the following relief:-

“(i) to set aside the order No.2177/DSE/Estt-1/D2/2020 dated 25.9.2020 passed by the 2nd respondent in so far as it assigning additional charge as Deputy Director (Adult Education), Directorate of School Education, Puducherry to the applicant and consequently direct the 2nd respondent to permit the applicant to continue to hold the additional charge arrangement as Deputy Director, (Women Education), Directorate of School Education, Puducherry until the post is filled on regular basis through the DPC as per the earlier Order No.2177/DSE/Estt-1/D2/2019, dated 04.7.2019

(ii) to pass such further orders as are necessary to meet the ends of justice, and

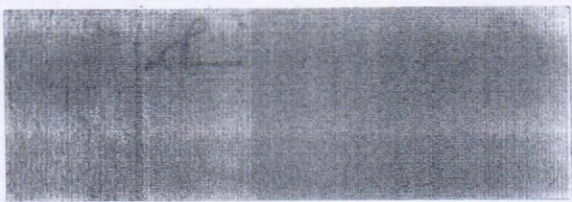
(iii) award costs and thus render justice.”

2. The facts of the case as stated by the applicant is that the applicant was initially appointed as School Assistant Grade-II, which is now re-designated as Trained Graduate Teacher (TGT), on 09.1.1987. She had served in various Government Higher Secondary Schools/High Schools and Middle Schools under the control of the Directorate of School Education. She had completed 17 years of service. It is submitted that the applicant was promoted as Headmistress Grade-II w.e.f. 18.9.2003 and had completed 12 years of service in the said capacity. Thereafter, she was promoted as Headmistress Grade-I in April 2015 and had completed 5½ years of service in the said post. She had put in 32 years of total service. Her next avenue of promotion is to the post of Deputy Director/Chief Educational Officer. As per the Recruitment Rules, the method of promotion to the post of Deputy Director/Chief

Educational Officer is by promotion, failing which by deputation. Promotion is made from the feeder category post of Vice-Principal of the Government Higher Secondary School with 6 years of regular service and Headmaster Grade-I with 6 years of regular service in the respective post in the ratio of 3:4 and persons who had opted for promotion alone will be considered.

3. While so, the 2nd respondent while assigning additional charges to Principal/Vice Principal/Headmaster Grade-I, posted the applicant against the vacant post of Deputy Director, (Women Education), Directorate of School Education, Puducherry, by order dated 04.7.2019. The said arrangement was done on the basis of the seniority and willingness. Thereafter, by order of the 2nd respondent dt. 25.9.2020, the applicant was given additional charge as Deputy Director, (Adult Education), Directorate of School Education, Puducherry, the third and fourth respondents were given additional charges of Women Education and Deputy Director, Elementary Education, respectively. Aggrieved by the above said order dt. 25.9.2020, the applicant has filed this OA seeking the above mentioned relief.

4. It has been contended that after assigning her additional charge of the Deputy Director (Women Education) by order dt. 04.7.2019 against the existing vacancy, the same cannot be altered without valid reasons. Therefore, the present order dt. 25.9.2020, was made without calling for her willingness. Moreover, the duties of the above said post involves frequent and long travel to New Delhi and staying at out stations for long duration. Whereas, the post granted to her juniors who are male employees, namely, the third and fourth respondents, relates to official work at office.



with the Directorate. Therefore, the respondents ought not to have disturbed the applicant who is a women employee aged about 57 years to perform the duties of Deputy Director, (Adult Education), Directorate of School Education, Puducherry.

5. It is further contended that , the applicant is at Sl. No.1 in the current seniority list and is the senior most. She was given additional charge of higher post after considering her eligibility, suitability, seniority and willingness to serve the higher post of additional charge without any additional remuneration and the applicant has been continuously holding the additional charge as Deputy Director (Women Education) from 04.7.2019. Therefore, the order dt. 04.7.2019 cannot be altered without any valid reasons until promotions are made on regular basis. Further, the order dt. 25.9.2020 was made without calling her willingness or option. It is submitted that in any event there is no need to disturb the arrangement of additional charge made on 04.07.2019 and the applicant has been already performing her duties sincerely without any complaint. Therefore, the order of the 2nd respondent dt. 25.9.2020 is liable to be set aside.

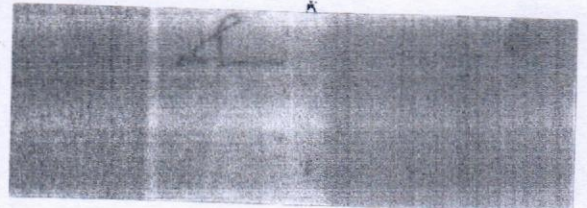
6. The respondents have filed the reply contesting the claim of the applicant on the ground that the impugned order is not a transfer order. It is only an internal administrative arrangement made in the exigencies of public service and the same is in consonance with the rules in this regard and, therefore, it does not create or extinguish any right whatsoever. If the applicant is not willing to perform the duties assigned to her as per the impugned order, she is at liberty to refuse the same and she will be permitted to perform the duties of Headmistress Grade-I, the post held by her



at present and the officer willing to take up the duties will be provided opportunity.

The applicant has not exhausted her departmental remedies by making representation and instead rushed to the Tribunal.

7. Further, it is submitted that as on the date of issue of order dt. 04.7.2019, four (4) posts namely, (i) Deputy Director (Women Education), (ii) Deputy Director (Adult Education), (iii) Officer on Special Duty (State Training Centre) and (iv) State Project Director (Sarva Shiksha Abhiyan)-(deputation posts) were vacant due to the retirement of the officials. Hence, these posts were filled on additional charge basis as there was no eligible incumbent in the feeder cadre posts of Vice-Principal/Head Master Grade-I. In the said order the applicant was given additional charge to the post of Deputy Director (Women education) and Thiru K.Meenakshi Sundaram, Head Master Grade-I was given additional charge to the post of Deputy Director (Adult Education). As this is neither promotion nor transfer, no option was necessary to be obtained as it is filled only on additional charge basis. Later due to the retirement of the Chief Educational Officer, Thiru K. Meenakshi Sundaram was given additional charge to the post of Chief Educational Officer and the 4th respondent Thiru M. Thanaselvan Nehru, Vice-Principal was given additional charge to the post of Deputy Director (Adult Education). In the meantime, as the Joint Director (Secondary Education), Directorate of School Education, Puducherry retired w.e.f. 31.7.2020, the post became vacant from 01.8.2020. In order to fill the post of Joint Director (Secondary Education), the senior most Principal, who was already working as Deputy Director (Elementary Education) was given additional charge of post of



Joint Director (Secondary Education). Thus the Deputy Director (Adult Education) post became vacant and, therefore, the applicant was given additional charge of the post of Deputy Director (Adult Education) in the exigencies of public service. The applicant being administrative officer, she is expected to perform the duties corresponding to the post which she is holding on additional charge. All the posts are treated as equal except the post of Joint Director for which the senior most official is given additional charges.

8. The respondents would draw attention to the order of this Tribunal in OA 1346/2013 dt. 09.6.2014 wherein it is observed as follows:-

"It has been cautioned by the Hon'ble Apex Court, time and again that courts/Tribunal should not interfere in the routine matter of transfer of the Government employees, that transfer being an incident of service, the authorities/employers are the best judge to decide who should be posted where and what point of time and that the wheels of the Administration should be allowed to run smoothly and the courts/Tribunals are not expected to interfere with the working of the Administration. It has further been held that transfer of an officer holding a transferable post cannot be objected to and that Government is the best judge to decide to distribute and utilize the services of an employee. If the transfer causes any hardship it is for the authority to decide."

Therefore, the respondents pray for dismissal of the OA.

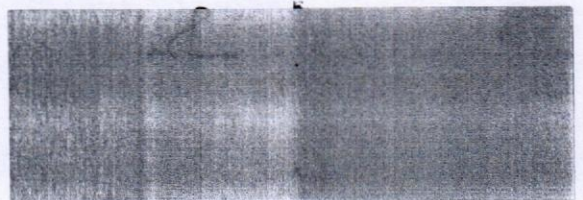
9. Heard both sides and perused the materials available on record.

10. Admittedly this is not a case of inter station transfer but, as rightly stated by the respondents, on account of administrative exigencies, this is an administrative arrangement. Facts are not in dispute. As on 04.07.2019 four posts namely (i) Deputy Director (Woman Education), (ii) Deputy Director (Adult Education), (iii) Officer on



special Duty (State Training Centre) and (iv) State Project Director (Sarva Shiksha Abhiyan)-(deputation post) were vacant due to the retirement of the officials. Hence these posts were filled on additional charge basis vide order dated 04.07.2019 as there was no eligible incumbent in the feeder cadre posts of Vice-Principal/ Headmaster Grade-I (not completed 6 years in the feeder cadre). In the said order the applicant herein was given additional charge to the post of Deputy Director (Women Education) and Thiru K. Meenakshi Sundaram, Headmaster Grade-I was given additional charge to the post of Deputy Director (Adult Education). Later, due to the retirement of the Chief Educational Officer, Thiru.K. Meenakshi Sundaram was given additional charge to the post of Chief Educational Officer and Thiru.M. Thanaselvam Nehru, Vice-Principal, respondent No.4 herein, was given additional charge to the post of Deputy Director (Adult Education). Consequent to the retirement of the Joint Director (Secondary Education), Directorate of School Education, Puducherry with effect from 31.07.2020, the senior most Principal, who was already working as Deputy Director (Elementary Education) was given additional charge of post of Joint Director (Secondary Education). Thus the Deputy Director (Adult Education) post became vacant and in the exigencies of public service, the applicant was given additional charge of the post of Deputy Director (Adult Education).

11. Learned Counsel appearing for the applicant contended that though the transfer was on administrative grounds, there was really no administrative ground and the second respondent had clearly flouted the various government guidelines that are issued in this regard from time to time. Further, the present arrangement granting her



additional charge of Dy. Director (Adult Education) was made without calling her willingness or option. In the present case, he submitted that the transfers have been effected contrary to the guidelines and inasmuch as it is stated on administrative grounds, the transfer was invalid as there are no complaints against the applicant.

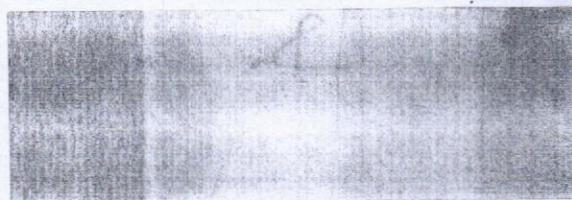
12. However, in the O.A filed the applicant has not averred any allegation of malafide against either the second respondent or any other authority. The entire exercise undertaken by the applicant was to contend that as the government guidelines have not been adhered to, the transfer cannot be effected. As to how far such guidelines can be made use of for the purpose of enforcement by this Tribunal came to be considered by the Supreme Court in the case of *Union of India and others v. S.L. Abbas*, [1993] 4 SCC 357, wherein it was held , -

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order to transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it."

Further, it has been held therein that the executive instructions regarding transfers are in the nature of guidelines and they do not have any statutory force and unless an order of transfer is vitiated by malafide or made in violation of the statutory provisions, the Court cannot interfere with it and the guidelines do not confer upon a government employee a legally enforceable right.

13. The Supreme Court in *Rajendra Singh and others v. State of Uttar Pradesh and others*, [2009] 15 SCC 178, in paragraphs [8] to [10], has observed as follows:

"8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at

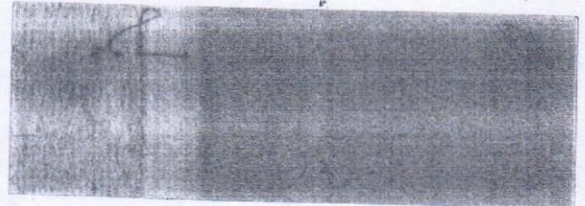


one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see *State of U.P. v. Gobardhan Lal*, [2004] 11 SCC 402, SCC p. 406, para 7).

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar*, 1991 Supp (2) SCC 659 this Court held: (SCC p. 661, para 4) . In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

10. In *N.K. Singh v. Union of India*, [1994] 6 SCC 98 this Court reiterated that: (SCC p. 103, para 6). the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision."

14. In this context, it is necessary to refer to the decision of the Supreme Court in *State of U.P. v. Siya Ram and another*, [2004] 7 SCC 405. In paragraph [5], it was



observed as follows:

"5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. 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. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan, [2001] 8 SCC 574.

15. Further, the Supreme Court in yet another decision reported in State of U.P. v. Gobardhan Lal, [2004] 11 SCC 402 in paragraph [7] observed as follows:-

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. 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

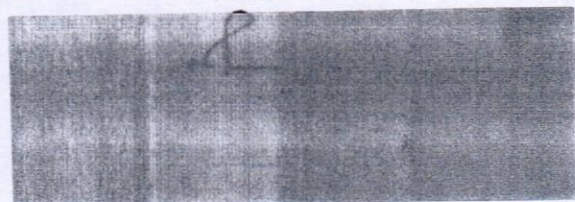


authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is 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.

16. The parameters for conducting judicial review of transfer order came to be considered by the Supreme Court in *Union of India and others v. H.N.Kirtania*, [1989] 3 SCC 445. It was held that unless a transfer order is mala fide, illegal or in violation of statutory rules, the High Court should not interfere with the order of transfer. In paragraph [5], it was held as follows:

"5. After hearing learned counsel for the parties we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was no valid justification for issuing injunction order against the Central Government. The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. There was no good ground for interfering with the respondent's transfer.

17. The Supreme Court, subsequently, in *Abani Kanta Ray v. State of Orissa*, 1995 Supp [4] SCC 169, has held that a transfer, which is an incident of service, is not to




be interfered with by Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. In paragraph [10], it was observed as follows:

"10. It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer (See N.K. Singh v. Union of India, [1994] 6 SCC 98)."

18. In the case of State of Bihar v. Kaushal Kishore Singh and Ors. reported in 1999(1) PLJR (SC) 5 wherein the Apex Court has held as under:

"Even if options were called for and given, it is not mandatory for the Government to accept options of the candidates and make appointment to the post. Asking for option of candidates is essentially a discretionary matter and the Government is not bound to select the candidate on the basis thereof. Under these circumstances the candidate who applied for, though opted for, have not acquired right, muchless indefeasible or absolute right for selection or appointment to a particular posts."

19. As to what is done is an interim arrangement of the government for smooth functioning of the department, we think that there is no justification in upsetting the interim arrangement which has got a rational and reasonable basis to avoid administrative hardship. All the posts are treated as equal and the respondents in their reply has given reasons for the posting and no ground of malafide or violation of any rule has been made out for the Tribunal to interfere in the matter. Further the applicant has not given any representation to the competent authority to redress her grievance.



20. Contention that other male members who are junior have been retained and the applicant being a female is being subjected to gender discrimination has to be outrightly rejected since the internal posting within the same station is, as stated by the respondent, an administrative decision due to exigencies of service. Visit outside the station as the services warrant cannot be avoided.

21. In view of the settled legal position, the petitioner having not made out any ground to interfere with the orders of transfer, the OA stands dismissed. No costs.