

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2024

(@ Petition(s) for Special Leave to Appeal (C) No(s).13070-13075/2022)

**THE TAMIL NADU AGRICULTURAL
UNIVERSITY & ANR.ETC. APPELLANT(S)**

VERSUS

R. AGILA ETC. RESPONDENT(S)

ORDER

1. Leave granted.
2. The instant matter is a typical case in an array of service law litigation where an employee gets transferred by the administrative authorities to another place, however instead of joining the new place of posting, they challenge the said order of transfer while also demanding the salary for the period they remained in unauthorised absence. At the outset, we deem it important to highlight that our chief condemnation in such matters is not to the said challenge to transfer orders, rather the act of refusing to join the new place of posting while the legal or administrative battle is underway.

3. It is established as a part of service law jurisprudence that transfer is an exigency of service. As such, when a person becomes an employee of the Government, the incidence of transfer becomes inherent in the terms of service unless it is specifically barred under certain provisions governing conditions of service.
4. Under such terms and conditions of service, an employee has no right to remain absent or refuse to join the new place of transfer once relieved from their current place of posting. The employee is entitled to avail all available remedies for redressal of grievances, but it does not entitle them to not comply with the transfer orders. The employee is well within his rights to join the transferred place of posting and still continue to avail the remedies available under the law for redressal of his grievances against the transfer.
5. The focal consideration behind it is that the intent of transfer is to fill up certain vacancies at the new place of posting and when the transferred employees fail to join such posts, the said vacancy would continue and the goal of providing optimal service at full capacity remains defeated. An even worse situation would arise when the

authorities, while the challenge to such transfer is underway, would have to employ other individuals to fill up such vacancies and has to ultimately spend from both the pockets by providing salary to the employee who is actually delivering such service as well as to the employee who has remained absent from service unauthorisedly. It cannot be ignored that such a situation would result in nothing but burning a hole in the pocket of public exchequer, lead to excessive financial burden on the Government institutions, and would fundamentally jeopardize public interest.

6. It is not uncommon to see employees who challenge such orders of transfer before various forums, extending the litigation to several years, while choosing to not join the service and still seeking full salary, and often citing medical conditions as a ground for such inability to join. It is of utmost importance that, while the legal challenge runs its course, the needs of administration are treated paramount in comparison to the inconvenience faced by the employees in cases of transfer. In this regard, the Government employers should also take stern measures against such employees who fail to join the new places

of posting without any rationale or an order of stay being in place.

7. We also find it relevant to quote here a judgment of this Court on the same subject in *Tushar D. Bhatt v. State of Gujarat*, (2009) 11 SCC 678

“16. The legal position has been crystallised in a number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies.

17. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as mala fide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11-10-1999 to 27-4-2000 i.e. more than six months. In the interest of discipline of any institution or organisation such an approach and attitude of the employees cannot be countenanced.

18. In *Gujarat Electricity Board v. Atmaram Sungomal Poshani* [(1989) 2 SCC 602 : 1989 SCC (L&S) 393 : (1989) 10 ATC 396 : AIR 1989 SC 1433] this Court had an occasion to examine the case of almost similar nature. This Court observed as under: (SCC p. 607, para 4)

“4. ... Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public

servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.””

8. In the above backdrop, we now proceed to deal with the facts of the present case and issue appropriate directions as are justified.
9. These six appeals have been filed by the Tamil Nadu Agricultural University assailing the correctness of the judgment and order dated 30.06.2022, passed by the High Court of Judicature at Madras in a group of six writ appeals preferred by the present appellant on 30.06.2022. By the impugned order, the Division Bench

of the High Court dismissed all six appeals. It would be relevant to note here that these writ appeals were preferred against the common judgment of the learned Single Judge dated 25.03.2021, allowing six writ petitions filed by respondent nos. 1 to 5 and 7, challenging their transfer orders. The learned Single Judge had allowed all six writ petitions and quashed the transfer orders.

10. We need not go into the details, as during the pendency of these appeals before this Court, all six private respondents, namely respondent nos. 1 to 5 and 7, have joined at their transferred place of posting and are drawing their salaries from their respective places of posting where they are currently working. It would also be relevant to mention here that the joining by the private respondents was pursuant to the order of this Court dated 10.02.2023, which is reproduced hereunder:

“Learned counsel for the petitioner submits that 90 out of the 96 people transferred joined but the six people who are respondents before this Court did not join.

Learned counsel for the respondents submits that the said respondents are willing to join the transferred post but that they wanted sympathetic consideration arising

during the COVID period when certain circulars were also issued by the State Government.

Let the respondents first go and join the transferred post within a week from today.

List after three weeks.

Interim arrangement to continue.”

11. When the matter came up again on 15.07.2024, it was informed that all the private respondents had joined at their respective place of transfer and, in such circumstances, the learned Senior Counsel for the appellant submitted that, in view of the above development, this Court may quash the impugned orders passed by the Division Bench and the learned Single Judge of the High Court. However, some issues were raised by the counsel for the private respondents that the appellant was not ready to regularise the period during which the private respondents had not joined the transferred place from the date of their relieving pursuant to the transfer order, for which this Court may have to issue necessary directions. Accordingly, on 15.07.2024, the following order was passed:

“The challenge in these petitions is to the orders passed by the learned Single Judge and the Division Bench, setting aside the transfer orders of the respondents.

During the pendency of these petitions, the respondent(s) have already joined at the transferred places.

According to the learned senior counsel appearing for the petitioners, as the respondents have already joined the transferred places, this Court may set aside the impugned orders and restore the transfer orders.

On the other hand, learned counsel for the respondents submits that there are some issues relating to arrears of salary for the period for which the respondents had not joined. It is also submitted by the learned counsel for the respondents that the period of absence of the respondents after the transfer orders and before joining has since been regularized by the petitioners, therefore, appropriate directions may be issued to the petitioners to make payment of the salary for the said period.

Learned senior counsel appearing for the petitioners prays for a week's time to obtain instructions in the matter.

As prayed, list these matters on 26.07.2024."

12. Later on, Ms. Haripriya Padmanabhan, learned Senior Counsel, placed a tabulated note giving details of the individual cases of the six private respondents, to which time was granted to the counsel for the private respondents to raise objection, if any. The matter has been heard today. The admitted position today is that

four out of the six private respondents, namely respondent nos. 1, 2, 3 and 5, had interim orders in their favour in their writ petitions from the learned Single Judge. Further upon instructions, it has been stated that insofar as the respondent nos. 1, 2, 3 and 5 are concerned, there is no issue with regard to the arrears of their salary and regularisation of their period when they had not joined at the place of posting after being relieved pursuant to the transfer orders. She also submitted that in case any amount is due and payable to these four respondents, namely respondent nos. 1, 2, 3 and 5, the same would be paid within a period of two months. The issue which now remains relates to respondent nos. 4 and 7, M. Rajakumar and D. Rajabaskar, respectively.

13. Coming to the facts related to respondent nos. 4 and 7, it is the admitted position that no interim order was granted in their petitions at any stage. However, their petitions were clubbed together with the other four petitions, in which stay order was granted, and all were decided by a common order by the learned Single Judge on 25.03.2021. The submission of the learned counsel for the appellant is that these two respondents

(respondent nos. 4 and 7) are not entitled to either regularisation for their period of absence or to any salary during the said period of absence. Briefly the facts with respect to respondent nos. 4 and 7 are noted hereunder:

Respondent No.4-M. Rajakumar:

Date of Transfer	Unauthorised leave during pendency before the learned Single Judge	Period of pendency of the intra Court appeal of the Division Bench	Date of joining
25.09.2020	30.10.2020-25.03.2021	25.03.2021-30.06.2022	14.02.2023

Respondent No.7-D. Rajabaskar:

Date of Transfer	Unauthorised leave during pendency before the learned Single Judge	Period of pendency of the intra Court appeal of the Division Bench	Date of joining
20.06.2020	22.06.2020-25.03.2021	25.03.2021-30.06.2022	14.02.2023

14. The learned senior counsel for respondent nos. 4 and 7 submitted that these respondents *bona fide* believed that as their petitions had been clubbed with the other four pending petitions, they were also entitled to the benefit of the interim order, and that was the impression given by their counsel. However, she admits that no specific interim order was passed by the learned Single Judge in the petitions filed by respondent nos. 4 and 7.
15. She has, thus, submitted that the same benefits extended to the other four private respondents should also be extended to respondent nos. 4 and 7, including regularisation of their period of absence and the clearing of their arrears of salary for that period of absence.
16. Having considered the submissions, this Court is of the view that the appellant cannot withhold the salary of respondent nos. 4 and 7, once the learned Single Judge had allowed their petitions on 25.03.2021, and had quashed the transfer orders. It is an admitted position that before the Division Bench, there was no interim order in favour of the appellant-University. Finally, the

appeals filed by the appellant-University were dismissed on 30.06.2022. It is further not an issue before this Court that no interim order was passed in favour of the appellant-University, except for the stay on the contempt proceedings.

17. In view of the above facts, we do not find any justification for the appellant-University to not regularise the period of absence for the entire period, as the transfer orders had been set aside by the learned Single Judge and the said order was confirmed by the Division Bench. Further, the respondent nos. 4 and 7 would in any case be entitled to receive their salaries with effect from date of the judgment by the learned Single Judge, i.e., 25.03.2021. However, the fact remains that without any interim order in their favour, respondent nos. 4 and 7 remained absent without any sanctioned leave during the period mentioned above. As such, they would not be entitled to any salary for the period as follows:

For Respondent No.4-M. Rajakumar: From 30.10.2020 until 24.03.2021, i.e., a day before the judgment of the learned Single Judge.

For Respondent No.7-D. Rajabaskar: From 22.06.2020 until 24.03.2021, i.e., a day prior to the judgment of the learned Single Judge.

18. Despite there being no interim order in their favour, respondent nos. 4 and 7 continued to remain absent after being relieved from their original place of posting. As such, this Court is not inclined to extend any benefit of salary for the period of unauthorised absence. However, as the transfer order was quashed by the learned Single Judge, their service periods shall continue to be treated in continuity, and they would be entitled to whatever other benefits accrued to them due to this continuity, but no salary for the said period of unauthorised absence.

19. Accordingly, these appeals are allowed. The impugned orders passed by the Division Bench and learned Single Judge are set aside. The appellant is directed to clear all dues for respondent nos. 1,2,3 and 5, if not already cleared. Insofar as respondent nos. 4 and 7, M. Rajakumar and D. Rajabaskar respectively are concerned, their dues may be cleared, subject to the

condition that no salary is paid for the period of unauthorised absence, as noted earlier.

.....**J**
(VIKRAM NATH)

.....**J**
(PRASANNA B. VARALE)

NEW DELHI
AUGUST 20, 2024

ITEM NO.54

COURT NO.7

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 13070-13075/2022

(Arising out of impugned common order dated 30-06-2022 in WA No. 1498/2021 30-06-2022 in WA No. 1499/2021 30-06-2022 in WA No. 1500/2021 30-06-2022 in WA No. 1501/2021 30-06-2022 in WA No. 1502/2021 30-06-2022 in WA No. 1503/2021 passed by the High Court Of Judicature At Madras)

THE TAMIL NADU AGRICULTURAL UNIVERSITY & ANR. Petitioner(s)
ETC.

VERSUS

R. AGILA ETC. Respondent(s)

Date : 20-08-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH
HON'BLE MR. JUSTICE PRASANNA BHALACHANDRA VARALE

For Petitioner(s) Ms. Haripriya Padmanabhan, Sr. Adv.
Mr. Santhosh K, Adv.
Mr. Madhav Gupta, Adv.
Mr. S. Manikandan, Adv.
Mr. Manoj Kumar A, Adv.
Mr. P Ashok, Adv.
Mr. Vairawan A.s, AOR

For Respondent(s) Mr. Abhith Kumar, AOR
Ms. Bindu K Nair, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of
the signed order.

Pending application(s), if any,
shall stand disposed of.

(SONIA BHASIN)
COURT MASTER (SH)

[Signed order is placed on the file]

(RANJANA SHAILEY)
COURT MASTER (NSH)