

REGISTRAR GEN., HIGH COURT OF JUDICATURE AT  
MADRAS

v.

R. PERACHI & ORS.  
(Civil appeal No. 7936 of 2011)

SEPTEMBER 19, 2011

[J.M. PANCHAL AND H.L. GOKHALE, JJ.]

*Service law:*

*State Judicial Ministerial Service – Transfer of employee in the subordinate judiciary on administrative grounds – Decision of Chief Justice to transfer – On facts, respondent working as Sheristadar in the State Judicial Ministerial Service was transferred outside the District by the Chief Justice – Writ petition – High Court held that the Chief Justice had no power to transfer the respondent unilaterally and the transfer was punitive and set aside the transfer because it would affect his promotion as P.A., directing the High Court to restore him in his District and confer him the post of P.A. – On appeal, held: Action of transfer against the respondent was on the basis of the report of the Registrar (Vigilance) – Relevant material clearly show that the Full Court had passed a resolution under which the subject of vigilance enquiries was retained with the Chief Justice – District Judge had opined that retention of the respondent in his district was undesirable from the administration point of view – More so, the respondent did not dispute the power of the High Court to transfer him outside the district, nor the Division Bench interfered on that ground – Respondent himself clearly stated in his affidavit that there was no malafide exercise in his transfer – Transfer is an incident of service – One cannot make grievance if transfer is made on administrative grounds, without attaching any stigma – Pay, position and seniority of the respondent was not affected by the transfer, and thus, the transfer was not*

- A *punitive merely because his promotional chances got affected due to the transfer – There is no right of promotion available to an employee – He has a right to be considered for promotion – Furthermore, the integrity of the officers functioning in the administration is of utmost importance to*
- B *retain the confidence of the litigants in the fairness of the judicial system – If there is any complaint in this behalf, the Chief Justice is expected to act on behalf of the High Court to see to it that the stream of justice does not get polluted at any level – Thus, the decision of Chief Justice to transfer*
- C *respondent outside that district could not be faulted – Order passed by the High Court is set aside.*

D *Transfer of employee in the subordinate judiciary on administrative grounds – Passing of judicial orders by the High Courts – Scope of – Held: Is limited – Transfer is an incident of service – One cannot make grievance if transfer is made on administrative grounds, without attaching any stigma.*

E *Constitution of India, 1950 – Control of the High Court over the subordinate courts under – Held: Includes general superintendence of the working of the subordinate courts and their staff, since their appeals against the orders of the District Judges lie to the High Court – Word control in Article 235 is used in the comprehensive sense – It includes the control and*

F *superintendence of the High Court over the subordinate courts and the persons manning them both on the judicial and administrative side – Control over the subordinate courts vests in the High Court as a whole – However, it does not mean that a Full Court cannot authorize the Chief Justice in*

G *respect of any matter whatsoever.*

H *Judicial Discipline – Judges deciding a subsequent case overlooking judgment of a co-ordinate Bench – Propriety of – Held: Judges are bound by the earlier decision – They are not expected to take a different view from point of view of judicial discipline.*

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First respondent was working as Sheristadar in the State Judicial Ministerial Service and was holding the additional charge of the post of P.A. to the District Judge at place 'P'. The first respondent along with two head clerk were transferred outside the District by the order issued by the appellant on behalf of the High Court on administrative grounds. The two head clerks filed writ petitions but the same were dismissed. The first respondent did not challenge his transfer at that time and joined the office at District 'R'. Thereafter, he came to know that the post of P.A. to District Judge 'T' was being filled and he made a representation for consideration for the said post. The first respondent learnt that he was not considered for the post because he was already transferred outside the District. Aggrieved, the first respondent filed a Writ Petition. The Division Bench of the High Court set aside the transfer of the first respondent from District 'T' to District 'R' and directed the High Court to restore him in District 'T' with his seniority and confer on him the post of P.A. to the District Judge at place 'T'. Therefore, the appellant filed the instant appeal.

The appellant contended that the decision of the Division Bench was erroneous on both the grounds on which the Division Bench decided against the appellant viz. that the transfer was punitive and that it was not passed by a competent authority.

Allowing the appeal, the Court

HELD: 1. The action of transfer against the first respondent was on the basis of the report of the Registrar (Vigilance). Besides, the District Judge had also opined that retention of the appellant in his district was undesirable from the point of view of administration, pending enquiry. Thus, it involved inter-district transfer. The respondent No.1 did not dispute the power of the High Court to transfer him outside the district, nor did the

- A Division Bench interfered therein on that ground. This is apart from the fact that transfer is an incident of service, and one cannot make a grievance if a transfer is made on the administrative grounds, and without attaching any stigma which was so done in the instant case. [Para 21]  
B [679-G-H; 670-A-B]

- N.K. Singh vs. Union of India* AIR 1995 SC 423: 1994 (2) Suppl. SCR 772 ; *State of Madhya Pradesh vs. S.S. Kourav*, AIR 1995 SC 1056: 1995 (1) SCR 482; *Airports Authority of India vs. Rajeev Ratan Pandey* 2009 (8) SCC 337: 2009 (13) SCR 343 – referred to  
C

- 2.1 The first ground on which the Division Bench of the High Court interfered with the order of transfer was that the transfer order was passed by the then Chief Justice initially, and he did not have the competence therefore. The appellant produced the relevant material before this Court which clearly shows that the Full Court had passed a resolution under which the subject of vigilance enquiries was retained with the Chief Justice. It is, therefore, difficult to accept the view of the Division Bench that the Chief Justice unilaterally transferred the appellant outside the district, and the decision ought to have been taken either by the Full Court or a Committee appointed by the Full Court. [Para 26] [682-F-G; 683-F-H]  
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E

- 2.2 The control of the High Court over the subordinate courts under Article 235 of the Constitution includes general superintendence of the working of the subordinate courts and their staff, since their appeals against the orders of the District Judges lie to the High Court. The word control referred to in Article 235 of the Constitution has been used in the comprehensive sense and includes the control and superintendence of the High Court over the subordinate courts and the persons manning them both on the judicial and administrative side'. This control over the subordinate courts vests in  
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the High Court as a whole. However, the same does not mean that a Full Court cannot authorize the Chief Justice in respect of any matter whatsoever. [Para 26] [682-H; 683-A-C]

2.3 The Full Court of the Madras High Court had passed a resolution way back in the year 1993 to retain the subject of "Vigilance Cell" with the Chief Justice. Therefore, it was fully within the authority of the then Chief Justice to take the decision to transfer the appellant outside district 'T'. The transfer was particularly necessary in view of the complaint that was pending against him. The Division Bench observed that the complaint was an anonymous one. Even so, the same had been looked into by the Vigilance Cell, and the District Judge had reported that departmental enquiries were pending against the appellant and the other employees against whom the complaint had been made. In view of all these factors, the Chief Justice had to take the necessary decision. [Para 26] [683-D-G]

*R.M. Gurjar Vs. High Court of Gujarat* AIR 1992 SC 2000: 1992 (3) SCR 775; *Gauhati High Court Vs. Kuladhar Phukan* 2002 (4) SCC 524; *High Court of Rajasthan Vs. P.P. Singh & Anr.* 2003 (4) SCC 23 – relied on.

3.1 The other ground on which the Division Bench interfered with the transfer order is that according to the Division Bench, but for this transfer order there was no other impediment for the District Judge to promote the respondent No.1. The Division Bench was of the view that the first respondent had lost the opportunity of getting promoted to the post of P.A. to the District Judge on account of this transfer, and therefore, the same was punitive. The Bench ought to have noted that the transfer is an incident of service, and the first respondent himself had clearly stated in his affidavit in support of the petition that there was no malafide exercise in the present

A transfer. The transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first respondent and other employees, with respect to their integrity. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the concerned unit. That is desirable from the point of view of the administration as well as that of the employee. In the circumstances the decision of the then Chief Justice to transfer him outside that district could not be faulted.  
[Para 27] [684-A-E]

3.2 There is no right of promotion available to an employee. He has a right to be considered for promotion which has been held to be a fundamental right. However, though a right to be considered for promotion is a condition of service, mere chance of promotion is not.  
[Para 28] [684-G]

*S.B. Bhattacharjee Vs. S.D. Majumdar* 2007 (10) SCC 513; 2007 (6) SCR 743; *Mohd. Shujat Ali Vs. Union of India* AIR 1974 SC 1631; 1975 (1) SCR 449 – referred to

3.3 The fact that the first respondent could not be considered for promotion to the post of P.A. in district 'T' was undoubtedly the consequence of this transfer outside that district. However, that itself cannot make his transfer a punitive one. The then Registrar General rightly stated in her affidavit before the High Court that the first respondent would be retaining his original seniority though he was transferred in another district. He was in the cadre of Sheristadar and he continued in that cadre in district 'R' after he was transferred to that district. In district 'T', he was officiating as P.A. to the District Judge since that post was vacant, but his substantive post was that of Sheristadar. The officiating work did not create any right in him to be continued in the post of P.A. That was not also his case, and that is how he had sought to

be empanelled for being considered for the promotion to the post of P.A, though in district 'T'. Since the first respondent was no longer in district 'T', obviously he could not be included in the panel prepared for consideration for the post of P.A. in that district. [Para 29] [684-H; 685-A-C]

3.4 In the instant case, the pay, position and seniority of the first respondent was not affected by the impugned transfer, and therefore, the same could not be said to be punitive merely because his promotional chances got affected due to the transfer. Thus, there was no question of providing him any opportunity of hearing at that stage before effecting the transfer, and the order of transfer could not be faulted on that count as well. [Para 30] [685-H; 686-A-B]

*Paresh Chandra Nandi Vs. Controller of Stores, N.F. Railway AIR 1971 SC 359 – referred to.*

3.5 Noting that the respondent No. 1 was transferred on account of an anonymous complaint, the Division Bench had referred to a few judgments wherein this Court has emphasized the responsibility of the Higher Judiciary to guard the judicial officers in the Subordinate Courts against unjustified complaints. In the instant case, a Sheristadar was transferred on receiving a complaint, although an anonymous one, but against whom a departmental inquiry is pending. He was transferred to another district though retaining him in the same cadre with the same pay as well as his seniority. Such an action was fully justified and within the authority of the High Court. No observations were made against him, nor was any stigma attached. The reliance on the said three judgments to interfere in such an order clearly shows a non-application of mind by the Division Bench to the problem which the High Court Administration was faced with, and which was being attended in accordance with

A the relevant rules. [Paras 31, 32] [686-C-H; 687-A-B]

*Ishwar Chand Jain Vs. High Court Punjab and Haryana* 1988 (3) SCC 370; 1988 (1) Suppl. SCR 396; *K.P. Tiwari Vs. State of M.P.* 1994 Suppl. (1) SCC 540; 1993 (3) Suppl. SCR 497; *Ramesh Chander Singh Vs. High Court Allahabad* 2007 (4) SCC 247; 2007 (3) SCR 198 - referred to.

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D 4. The Division Bench also erred in ignoring that the first respondent had been transferred under a common order alongwith two other employees-Head Clerks. The writ petitions filed by them had been dismissed. Besides, a judgment of a co-ordinate bench in *A.K. Vasudevan's* case was cited before the Division Bench wherein the facts were almost identical. It was therefore, not expected of the Division Bench to take a different view from the point of view of judicial discipline. [Para 33] [687-F-H]

*Sri Venkateswara Rice Ginning & Groundnut Oil Mill Vs. State of Andhra Pradesh* AIR 1972 SC 51; 1972 (1) SCR 346 - relied on.

E *The Registrar of High Court of Madras Vs. Vasudevan, A.K.* 1996 (1) MLJ 153 - referred to.

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G 5. It cannot be ignored that the integrity of the officers functioning in the administration is of utmost importance to retain the confidence of the litigants in the fairness of the judicial system. If there is any complaint in this behalf, the Chief Justice is expected to act on behalf of the High Court to see to it that the stream of justice does not get polluted at any level. The decisions on the judicial side such as the one in the instant case create unnecessary difficulties for the High Court Administration. [Para 34] [688-A-D]

H *High Court Judicature for Rajasthan Vs. Ramesh Chand Paliwal* (1998) 3 SCC 72; 1998 (1) SCR 961- relied on.

6. The impugned judgment and order are wholly unsustainable, and in complete disregard of the law laid down by this Court. The judgment and order dated passed by the High Court is set-aside. [Para 35] [689-C-D]

*Jagdish Lal Vs. State of Haryana* 1997 (6) SCC 538; *High Court of Judicature at Bombay Vs. Shirishkumar Rangrao Patil*, (1997) 6 SCC 339; 1997 (3) SCR 1131 *Centre for Public Interest Litigation Vs. Union of India* 2005 (8) SCC 202; 2005 (4 ) Suppl. SCR 77 – referred to

Case Law Reference:

1994 (2) Suppl. SCR 772	Referred to	Para 22	
1995 (1) SCR 482	Referred to	Para 23	
2009 (13) SCR 343	Referred to	Para 23	D
1992 (3) SCR 775	Relied on	Para 26	
2002 (4) SCC 524	Relied on	Para 26	
2003 (4) SCC 239	Relied on	Para 26	E
AIR 1971 SC 359	Referred to	Para 30	
2007 (6) SCR 743	Referred to	Para 28	
1975 (1) SCR 449	Referred to	Para 28	
AIR 1971 SC 359	Referred to	Para 30	F
1988 (1) Suppl. SCR 396	Referred to	Para 31	
1993 (3) Suppl. SCR 497	Referred to	Para 31	
2007 (3) SCR 198	Referred to	Para 31	G
1972 (1) SCR 346	Relied on	Para 33	
1998 (1) SCR 961	Relied on	Para 34	
1997 (6) SCC 538	Referred to	Para 15	H

A	1997 (3) SCR 1131	Referred to	Para 16
	2005 (4) Suppl. SCR 77	Referred to	Para 17
	1996 (1) MLJ 153	Referred to	Para 17, 18, 33

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7936 of 2011.

C From the Judgment & Order dated 28.08.2008 of the High Court of Judicature at Madras, Madurai bench in W.P. (MD) No. 7121 of 2007.

V. Balachandran for the Appellant.

T.R.B. Siva Kumar, K.V. Vijayakumar for the Respondents.

D The Judgment of the Court was delivered by

**H.L. GOKHALE, J.** 1. Leave Granted.

E 2. This appeal by Special Leave seeks to challenge the judgment and order dated 28.08.2008 passed by a Division Bench of the Madras High Court (at Madurai Bench) in W.P. (MD) No.7121/2007. The Division Bench has allowed the writ petition filed by the first respondent who is working as a Sheristadar in the District Judicial Service in the State of Tamil Nadu.

F 3. The Division Bench by its impugned judgement and order has quashed and set-aside the transfer of the first respondent from District Thoothukudi to District Ramanathapuram, and directed the High Court to restore him in District Thoothukudi with his seniority, and confer on him the post of Personal Assistant (P.A.) to the District Judge, Thoothukudi.

**Facts leadings to this appeal are as follows -**

H 4. The first respondent joined the Tamil Nadu Judicial

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Ministerial Service as a Typist on 11.4.1979, and was initially posted in the Court of Judicial Magistrate II Class at Kovilpatti in District Thoothukudi (formerly known as Tuticorin). Over the period he was promoted from time to time and from 15.10.2001 onwards he was working as Sheristadar Category I in Court of Principal District Judge, Thoothukudi. He was also holding the additional charge of the post of P.A. to the District Judge, Thoothukudi, since that post had fallen vacant. It is his case that he was expecting the regular promotion in the post of P.A. to the District Judge.

5. It so transpired that the first respondent alongwith other two employees in the District, that is one S. Kuttiapa Esakki, Sheristadar, Sub-Court, Kovilpatti and one T.C. Shankar, Head Clerk in the Court of Principal District Judge, Thoothukudi came to be transferred outside the district by order dated 19.9.2006 issued by the appellant on behalf of the High Court on administrative grounds. These other two employees filed writ petitions bearing nos. WP (MD) No.9378 and 10528 of 2006 before the Madurai Bench of Madras High Court, but the petitions came to be dismissed by the High Court by its order dated 20.4.2007. The first respondent did not challenge his transfer at that time and joined at the place where he was transferred in district Ramanathapuram.

6. The first respondent came to know that the post of P.A. to the District Judge, Thoothukudi was being filled, and on 21.4.2007 he made a representation to the Principal District Judge, Thoothukudi, the respondent no.2 herein for being considered for that post. The first respondent learnt that the fourth respondent was promoted to that post of P.A. to the District Judge though he was due to retire shortly on 31.8.2007. He is junior to the first respondent as well as to the third respondent. Third respondent went on medical leave in July 2007 and that is how fourth respondent was promoted to that post. Later on, the first respondent learnt that he was not considered for this post for the reason that he was already

A transferred outside that district, and the reasons for the decision were recorded in the proceeding of the second respondent dated 6.6.2007:

B 7. At this stage the first respondent obtained necessary information by filing an application under the Right to Information Act, 2005 and then filed a writ petition on 24.8.2007 bearing W.P. (MD) No.7121/2007 before the Madurai Bench, and prayed that the proceeding dated 6.6.2007 bearing No.2697 concerning his non-consideration for that post be called from the file of the second respondent, and be quashed and set-aside. He also prayed that a selection panel be prepared for the post of P.A. to the District Judge, Thoothukudi by including his name in that panel, and necessary orders be passed. The Principal District Judge was joined as the first respondent, the High Court was joined as the respondent no.2, and the two concerned employees were joined as respondent no.3 and 4 in that petition.

E 8. The first respondent contended in his petition that in spite of his transfer from District Thoothukudi, he retained his lien on his post in that district. That was the basis of his prayers. He did not challenge his transfer from that district. It is material to note what is stated in paragraph 8 of his affidavit in support of his writ petition. This para reads as follows:-

F *“8. I submit that the 2nd respondent is well within his powers to transfer any employee from one district to another district on administrative grounds and there was no malafide exercise in the present transfers. However, the 3rd and 4th respondents were left out though they too were the candidates. In any case, one cannot challenge the transfers but the same shall not have the effect of obliterating the lien I hold and any right to be considered for the promotion as PA to the District Judge, Thoothukudi.”*

H Thus, it would be seen that the first respondent accepted

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that it was within the powers of the appellant, i.e. the Registrar General representing High Court Administration to transfer the employees from one district to another, and there was no malafide exercise in the present transfer. His only submission was that he retained his lien on his post in district Thoothukudi in spite of his transfer therefrom, and he should be considered for promotion to the post of P.A. in that district.

9. The writ petition was opposed by the second respondent herein i.e. by the District Judge, Thoothukudi by filing an affidavit dated 20.3.2008. He pointed out that the first respondent was transferred outside district Thoothukudi alongwith earlier mentioned two employees S. Kuttiapa Esakki and T.C. Shankar by the High Court under a common order on the basis of a confidential letter received from the then Principal District Judge, Thoothukudi. The District Judge also pointed out in his affidavit that the first respondent can claim appropriate promotion in the district where he was transferred on the basis of his original seniority, but he can no longer claim it in district Thoothukudi wherein he had lost his lien. He referred to Rule 14(A) (d) of the Fundamental Rules of Tamil Nadu Government which lays down that the lien of a Government servant on his post shall stand terminated on his acquiring lien on another permanent post.

10. It was therefore, pointed out in the affidavit that after the writ petitions filed by the earlier mentioned two employees were dismissed, the employees who were in the zone of consideration were considered for the promotion to the post of P.A. to District Judge, Thoothukudi, and the selection was made after considering the merit, ability and seniority of the candidates concerned as per rules 8 and 19 of Tamil Nadu Judicial Ministerial Service Rules. As far as the claim of the first respondent to the lien on a post in Thoothukudi is concerned, it was pointed out that first respondent had not challenged his transfer from Thoothukudi. It was, therefore, submitted that the petition be dismissed. Since, the above referred Rule 14-A was

A relied upon, we may quote the same which reads as follows:-

“14-A:

- B (a) Except as provided in clauses (c) and (d) of this rule, a Government servant's lien on a post may, in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.
- C (b) Deleted.
- D (c) Notwithstanding the provisions of Rule 14(a), the lien of a Government servant holding substantively a permanent post shall be terminated while on refused leave granted after the date of retirement under Rule 86 or corresponding other rules. Vide G.O.829, Personnel and Administrative Reforms Department, dated 26.8.1985.
- E (d) A Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Government or the Central Government or any other State Governments) outside the cadre on which he is borne.”

F 11. A counter affidavit dated 18.7.2008 was filed by the then Registrar of the High Court, and it was pointed out that the first respondent himself had not alleged any malafides to challenge his transfer. He had also admitted that transfer was within the powers of the High Court Administration. The affidavit stated that the transfers were effected on the basis of the report/directions received from the Vigilance Cell of the Madras High Court, however, the transferred employee will retain his seniority in the Ramanathapuram district under explanation 1 of Rule 39 of the Tamil Nadu Judicial Ministerial Service Rule right from the date of his first appointment in Thoothukudi district.

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12. In view of these affidavits filed in reply to his petition, the first respondent amended his petition nearly after nine months by filing an application dated 21.4.2008 with supporting affidavit, and now sought to add the prayer that the records relating to the transfer order dated 19.9.2006 be also called from the files of the High Court, and the same be quashed and set-aside.

13. The amended petition was opposed by the then Registrar General of the High Court by filing one more affidavit dated 1.8.2008. She pointed out that the first respondent was transferred along with two other employees outside the district Thoothukudi on administrative grounds by the High Court under administrative proceeding dated 19.9.2006. She also pointed out that a complaint had been received from the staff of the judicial department of that district by the Vigilance department of the High Court on 2.1.2006. The complaint stated that the first respondent along with some other employees had formed a coterie in the District Court and they were dominating the District Administration whereby the Court was suffering in its work, and therefore these employees be transferred to other district. That letter was forwarded to the District Judge, Thoothukudi for his comments, who in turn wrote back to the High Court on 28.4.2006 placing it on record that departmental enquiries were pending against the first respondent and three other employees on the charges of corruption. The District Judge had also opined that if these employees were continued in the district, the administration would be very much spoiled. It is, therefore, that the High Court Administration directed that the first respondent and the concerned employees be transferred outside the district on administrative grounds. There was no malafide intention whatsoever in these transfers.

14. Thereafter the first respondent sent a mercy petition to the High Court submitting that he was on the verge of promotion to a higher post viz., that of P.A., and therefore, he may be promoted in district Thoothukudi and if necessary be

A transferred to the nearest district Tirunelveli. The High Court considered that representation but rejected it by its proceeding dated 8.5.2007. Incidentally, Ramanathapuram is also a district adjoining Thoothukudi.

B 15. The writ petition was thereafter considered by a Division Bench of the Madras High Court at Madurai which passed the impugned order. The High Court did not accept the plea of the first respondent that he retained a lien in district Thoothukudi. It held that his lien in that district stood terminated in view of the above referred Rule 14 (A) (d) of the Fundamental Rules, and also in view of the proposition laid down by this Court in *Jagdish Lal Vs. State of Haryana* reported in [1997 (6) SCC 538], that an employee cannot simultaneously claim a lien on two posts. The Division Bench also did not find any error in the proceeding / order dated 6.6.2007 of the Principal District Judge, Thoothukudi wherein he had recorded that the first respondent could not be taken up for consideration for promotion in district Thoothukudi, since he had been transferred outside that district.

E 16. The Division Bench, however, held that although the High Court had the power to transfer the first respondent from one District unit to another unit, it had to be seen whether such power had been exercised by a competent authority or not. The Division Bench further held in para 20 of its judgment that as per Article 216 of the Constitution, High Court means 'the Chief Justice and his companion Judges and the matter should have been placed before the full Court'. The bench also observed that in any case no committee had been constituted by the High Court in that matter before taking the decision to transfer, and the impugned transfer was a unilateral decision taken by the then Honourable Chief Justice of Madras High Court. If such prior steps were taken, the order could have been held to be valid as per the judgment of this Court in *High Court of Judicature at Bombay Vs. Shirishkumar Rangrao Patil*

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—eported in [1997 (6) SCC 339]. At the end of para 20 of its A  
—udgment, the Court held as follows:-

"20.....At the cost of repetition it is to be B  
held that no such Committee has been appointed or the  
matter has been placed before the Full Court and painfully  
the impugned decision has been taken unilaterally by the  
then Honourable Chief Justice of the Madras High Court,  
which has been communicated through the second  
respondent/Registrar General, which cannot be said to be  
satisfying the meaning of 'High Court' embodied in the C  
Constitution. On this ground also, the impugned transfer  
order is liable to be set aside."

17. The Division Bench thereafter noted that the impugned  
order of transfer had been passed on an anonymous letter and  
thereafter on the basis of a report from the District Judge and D  
after ordering of a vigilance enquiry. The Division Bench  
referred to three judgments of this Court in *Ishwar Chand Jain  
Vs. High Court Punjab and Haryana* reported in [1988 (3) SCC  
370], *K.P. Tiwari Vs. State of M.P.* reported in [1994 Suppl.  
(1) SCC 540] and *Ramesh Chander Singh Vs. High Court E  
Allahabad* reported in [2007 (4) SCC 247] and also to *Centre  
for Public Interest Litigation Vs. Union of India* reported in  
[2005 (8) SCC 202] and thereafter observed in paragraph 25  
and 26 as follows:-

"25. Thus, it has been time and again held by the F  
Honourable Apex Court that it is the duty of the higher  
judiciary to protect the officers of the lower judiciary from  
the persons, who make reckless, baseless and unfounded  
allegations, by way of anonymous petitions. The same  
reasoning would apply even in the case of staff members. G  
Admittedly, in the case on hand, the impugned action has  
been initiated pursuant to an anonymous petition  
received....."

26. None of these aspects have been taken into H

A consideration before ordering transfer of the petitioner. No  
 doubt, transfer is an incidence of service. But, since in the  
 peculiar facts and circumstances of the case on hand,  
 where the impugned order of transfer has served as a  
 punishment on the petitioner, that too without conducting  
 B any enquiry, since it has impaired his chances of promotion  
 besides reducing his cadre to that of the Sheristadar of  
 the Chief Judicial Magistrate's Court from that of the P.A.  
 to the District Judge, which he was enjoying even though  
 as an additional charge, as there are many more seniors  
 C in the Ramanathapuram District, now a question would  
 arise as to whether such an order of transfer which worked  
 as a punishment on the petitioner, is sustainable under  
 law."

18. The appellant had drawn the attention of the Division  
 D Bench to the judgment of another Division Bench of Madras  
 High Court in the case of *The Registrar of High Court of  
 Madras Vs. Vasudevan, A.K.* reported in [1996 (1) MLJ 153].  
 In that matter complaints were received against court bailiffs  
 working in the City Civil Court at Madras. After the vigilance  
 E cell held discreet enquiries, they were transferred to various  
 courts outside Madras on administrative grounds. A Single  
 Judge had set-aside those transfers by holding them to be  
 punitive. Allowing the Writ Appeal, the Division Bench had held  
 that the employer is entitled to consider whether the particular  
 F employee is suitable to work in a particular place or to continue  
 there. It is however to be seen that transfer has not affected the  
 service conditions in any way. The Division Bench held that the  
 order of transfer had not affected any of the service conditions  
 of the bailiffs and their chances of promotion were also not  
 diluted. Therefore, there was no question of providing any  
 G hearing as well.

19. The impugned judgment distinguished the judgment in  
 Vasudevan's case by observing that the promotional prospects  
 of the first respondent were affected in the present matter which  
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was not so in Vasudevan's case. The Division Bench observed that after obtaining the remarks of the District Judge, the appellant ought to have issued a notice and sought the explanation from the first respondent. It was therefore, of the view that the first respondent had not been provided with any opportunity to explain and the transfer was punitive. The Court, therefore, passed an order setting aside the transfer, directing the appellant and the District Judge to immediately restore the respondent no.1 and 2 at District Thoothukudi alongwith his seniority, and confer on him the post of P.A. in that district, since, according to the Division Bench except the order of impugned transfer, there was no other impediment for his promotion. It is this order which is challenged in this appeal. This Court has passed an order of status quo with respect to that order during the pendency of this appeal.

**Consideration of rival submissions -**

20. We have heard the counsel for the appellant and for respondent No. 1. There is no appearance for the other respondents though served. It was submitted on behalf of the appellant that the decision of the Division Bench was erroneous on both the grounds on which the Division Bench decided against the appellant viz. (i) that the transfer was punitive and (ii) that it was not passed by a competent authority. On the other hand, the counsel for the first respondent reiterated the submissions made on his behalf before the High Court, and submitted that the order did not deserve to be interfered with in any manner whatsoever.

21. We have considered the submissions of both the counsel. As far as the action of transfer against the first respondent was concerned, the same was on the basis of the report of the Registrar (Vigilance). Besides, the District Judge had also opined that retention of the appellant in his district was undesirable from the point of view of administration. Thus, it involved inter-district transfer. The respondent no.1 had not

A disputed the power of the High Court to transfer him outside the district, nor did the division bench interfere therein on that ground. This is apart from the fact that transfer is an incident of service, and one cannot make a grievance if a transfer is made on the administrative grounds, and without attaching any stigma which was so done in the present case.

22. In the context of transfer of a govt. servant we may refer to the dicta of this Court in *N.K. Singh Vs. Union of India* reported in [AIR 1995 SC 423] where this Court observed in para 22 as follows:-

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"22..... *Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.*"

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23. In *State of Madhya Pradesh Vs. S.S. Kourav* reported in [AIR 1995 SC 1056], the Administrative Tribunal had interfered with the transfer order of the respondent and directed him to be posted at a particular place. It is relevant to note that while setting aside the order of the tribunal this Court observed in para 4 of its judgment as follows:-

*"4.....The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."*

We may mention that this Court has reiterated the legal position recently in *Airports Authority of India Vs. Rajeev Ratan Pandey* reported in [2009 (8) SCC 337] that 'in a matter of transfer of a govt. employee, the scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.'

24. The Division Bench has however interfered with the order of transfer on the ground that the transfer order was passed by the then Chief Justice unilaterally, and he did not have the competence therefor. In rebuttal, the appellant relied upon a Full Court Resolution dated 19.7.1993, and the text thereof was placed before this Court. Item 3 thereof was regarding services of Judicial Officers, and Ministerial and Menial Staff. The subject of "Vigilance Cell" alongwith certain other subjects was specifically included therein as falling within the jurisdiction of the Chief Justice alone. It was submitted that all residuary subjects not allocated to the committee of Judges or any individual Judge, remain within the jurisdiction of Chief Justice. Further, the Chief Justice has to supervise the administration in the subordinate Courts also and has to take



A the decisions in emergencies, on all necessary matters. It was  
 also submitted on behalf of the appellant that the Division  
 Bench erred in not accepting the propositions emanating from  
 the judgment of the other Division Bench in the case of *A.K.*  
*Vasudevan* (*supra*) which judgment had been left undisturbed  
 B by this Court when a Special Leave Petition against the same  
 was dismissed.

25. The other ground on which the Division bench has set-  
 aside the transfer of the first respondent is that the transfer  
 affected the promotional prospects of the first respondent, and  
 C therefore it was punitive in nature. According to the Division  
 Bench but for the transfer there was no impediment for the  
 promotion of the first respondent, and therefore it directed his  
 promotion. The appellant pointed out in this behalf that an  
 employee does not have a right of promotion as such. He has  
 D only a right to be considered for promotion, and even in the  
 present case the District Judge had considered a panel of  
 persons who came in the zone of consideration, and thereafter  
 effected the promotion. The first respondent could not be  
 included in that panel since he was already transferred outside  
 E that district. It was therefore, submitted that the Division Bench  
 had erred in directing the promotion of the first respondent to  
 the post of P.A. to the District Judge and the order deserved  
 to be set-aside.

F 26. As far as the first ground on which the High Court has  
 interfered with the order of transfer is concerned, namely that  
 it was not passed by a competent authority, the appellant has  
 produced the relevant material before this Court which clearly  
 shows that the Full Court had passed a resolution under which  
 the subject of vigilance enquiries was retained with the Chief  
 G Justice. Besides, in view of the pending inquiry against the  
 appellant, the District Judge of Thoothukudi had expressed that  
 it was not desirable to retain the appellant in that district. The  
 control of the High Court over the subordinate courts under  
 Article 235 of the Constitution includes general superintendence  
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of the working of the subordinate courts and their staff, since their appeals against the orders of the District Judges lie to the High Court. (see *R.M. Gurjar Vs. High Court of Gujarat* reported in AIR 1992 SC 2000). 'The word control referred to in Article 235 of the Constitution has been used in the comprehensive sense and includes the control and superintendence of the High Court over the subordinate courts and the persons manning them both on the judicial and administrative side'. (see para 14 of *Gauhati High Court Vs. Kuladhar Phukan* reported in [2002 (4) SCC 524]. This control over the subordinate courts vests in the High Court as a whole. 'However, the same does not mean that a Full Court cannot authorize the Chief Justice in respect of any matter whatsoever'. (see para 18 and 19 of *High Court of Rajasthan Vs. P.P. Singh & Anr.* [2003 (4) SCC 239]. The Full Court of the Madras High Court had passed a resolution way back in the year 1993 to retain the subject of "Vigilance Cell" with the Chief Justice. Therefore, it was fully within the authority of the then Chief Justice to take the decision to transfer the appellant outside district Thoothukudi. The transfer was particularly necessary in view of the complaint that was pending against him. The Division Bench has observed that the complaint was an anonymous one. Even so, the same had been looked into by the Vigilance Cell, and the District Judge had reported that departmental enquiries were pending against the appellant and the other employees against whom the complaint had been made. The District Judge had also opined that it was undesirable to retain the appellant in his district from the point of view of the administration of that district. In view of all these factors, the Chief Justice had to take the necessary decision. It is, therefore, difficult to accept the view of the Division Bench that the Chief Justice unilaterally transferred the appellant outside the district, and the decision ought to have been taken either by the Full Court or a Committee appointed by the Full Court. In view of what is pointed out above, there was no reason for the Division Bench to take such a view in the facts of the present matter.

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A 27. The other ground on which the Division Bench has  
interfered with the transfer order is that according to the  
Division Bench, but for this transfer order there was no other  
impediment for the District Judge to promote the respondent  
no.1. The Division Bench was of the view that the first  
B respondent had lost the opportunity of getting promoted to the  
post of P.A. to the District Judge on account of this transfer,  
and therefore the same was punitive. As far as this finding of  
the bench is concerned, it ought to have noted that the transfer  
is an incident of service, and the first respondent himself had  
C clearly stated in para 8 of his affidavit in support of the petition  
that there was no malafide exercise in the present transfer. As  
seen above, the transfer was purely on the administrative  
ground in view of the pending complaint and departmental  
enquiry against first respondent. When a complaint against the  
D integrity of an employee is being investigated, very often he is  
transferred outside the concerned unit. That is desirable from  
the point of view of the administration as well as that of the  
employee. The complaint with respect to the first respondent  
was that he was dominating the administration of the District  
Judiciary, and the District Judge had reported that his retention  
E in the district was undesirable, and also that departmental  
enquiries were pending against him and other employees, with  
respect to their integrity. In the circumstances the decision of  
the then Chief Justice to transfer him outside that district could  
not be faulted.

F 28. Besides, there is no right of promotion available to an  
employee. He has a right to be considered for promotion which  
has been held to be a fundamental right (see para 13 of *S.B.  
Bhattacharjee Vs. S.D. Majumdar*, [2007 (10) SCC 513].  
G However, though a right to be considered for promotion is a  
condition of service, mere chance of promotion is not (see para  
15 of the Constitution Bench judgment in *Mohd. Shujat Ali Vs.  
Union of India*, [AIR 1974 SC 1631].

H 29. The fact that the first respondent could not be

considered for promotion to the post of P.A. in district Thoothukudi was undoubtedly the consequence of this transfer outside that district. However, in view of what is stated above, that itself cannot make his transfer a punitive one. As rightly stated by the then Registrar General in her affidavit before the High Court, the first respondent would be retaining his original seniority though he was transferred in another district. He was in the cadre of Sheristadar and he continued in that cadre in district Ramanathapuram after he was transferred to that district. In district Thoothukudi, he was officiating as P.A. to the District Judge since that post was vacant, but his substantive post was that of Sheristadar. The officiating work did not create any right in him to be continued in the post of P.A. That was not also his case, and that is how he had sought to be empanelled for being considered for the promotion to the post of P.A., though in district Thoothukudi. Since the first respondent was no longer in district Thoothukudi, obviously he could not be included in the panel prepared for consideration for the post of P.A. in that district.

30. The first respondent was contending that his transfer was punitive only because his promotional chances were affected. This controversy is no longer res-integra. In *Paresh Chandra Nandi Vs. Controller of Stores, N.F. Railway* [AIR 1971 SC 359] the situation was almost similar though the grievance of the appellant was that on account of transfer of respondents 4 to 8 into his department alongwith their lien, his chances for promotion were materially affected. The appellant was working in the stores department of the North East Frontier Railway. This Court however, noted that the transfer was effected under the relevant rules on administrative grounds, and it did not affect his pay in any way. The court held that the transfer of a permanent employee alongwith the consequent transfer of his lien cannot be challenged when the transfer is to a permanent post in the same cadre not carrying less pay, even if such transfer materially affects chances for promotion. In the present case the pay, position and seniority of the first respondent was not affected by the impugned transfer, and

A therefore, the same could not be said to be punitive merely because his promotional chances got affected due to the transfer. Hence, there was no question of providing him any opportunity of hearing at that stage before effecting the transfer, and the order of transfer could not be faulted on that count as well.

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31. Noting that the respondent No. 1 was transferred on account of an anonymous complaint the Division Bench had referred to a few judgments wherein this Court has emphasized the responsibility of the Higher Judiciary to guard the judicial officers in the Subordinate Courts against unjustified complaints. *Ishwar Chand Jain* (supra) was a case where the Advocates who were not satisfied with the orders passed by the Appellant Judicial Officer had made unjustified complaints against him. This Court had set-aside the order of termination of services of the appellant which was based on these complaints, and in that context observed that if complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side, no judicial officer would feel protected. In *K.P. Tiwari* (supra) the High Court had made disparaging remarks, against the appellant, a Judicial Officer, while recalling an unjustified bail order granted by him. This Court had deprecated attributing of improper motives to the subordinate officers. In *Ramesh Chandra Singh* (supra) disciplinary proceedings were initiated by the High Court against the Appellant Judicial Officer for a bail order which order could not be said to be unjustified. The Disciplinary action was disapproved by this Court and the matter was remitted to the Full Court for its consideration.

G 32. As can be seen from these judgments, they were all rendered in altogether different context. In the present case we are concerned with a Sheristadar who has been transferred on receiving a complaint, although an anonymous one, but against whom a departmental inquiry is pending. He has been transferred to another district though retaining him in the same

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cadre with the same pay as well as his seniority. Such an action was fully justified and within the authority of the High Court. No observations were made against him, nor was any stigma attached. The reliance on the above three judgments to interfere in such an order clearly shows a non-application of mind by the Division Bench to the problem which the High Court Administration was faced with, and which was being attended in accordance with the relevant rules. In *Centre for Public Interest Litigation* (supra), the grievance was with respect to the likely appointment of respondent No. 3 to the post of Chief Secretary, Uttar Pradesh when she was facing criminal prosecution. This Court had therefore directed that she be transferred to some other post in the cadre/grade to which she belonged. It was in this context that the Court made a general observation that, postings in sensitive posts should be made in transparent manner so that there is no scope for making grievance, though grievances can be made for ulterior motive with the intention of damaging the reputation of an officer who is likely to be appointed in a sensitive post. These observations have also no application in the present case since all that has happened is that first respondent has been transferred from one district to another in view of a complaint received against him and a pending inquiry. It cannot be said that the action was with a view to deny him any post. In fact the first respondent himself had stated in his Writ Petition to the High Court that there was no malafide exercise in his transfer.

33. The Division Bench also erred in ignoring that the first respondent had been transferred under a common order alongwith two other employees i.e. S. Kuttiapa Esakki, and one T.C. Shankar. The Writ Petitions filed by them had been dismissed. Besides, a judgment of a co-ordinate bench in A.K. Vasudevan was cited before the Division Bench wherein the facts were almost identical. It was therefore, not expected of the Division Bench to take a different view from the point of view of judicial discipline. To put it in the words of this Court in *Sri Venkateswara Rice Ginning & Groundnut Oil Mill Vs. State*

A of *Andhra Pradesh* reported in [AIR 1972 SC 51], 'it is regrettable that the learned Judges who decided the latter case overlooked the fact that they were bound by the earlier decision' (para 9 of the report in AIR).

B 34. We cannot ignore that the integrity of the officers  
functioning in the administration is of utmost importance to  
retain the confidence of the litigants in the fairness of the judicial  
system. If there is any complaint in this behalf, the Chief Justice  
is expected to act on behalf of the High Court to see to it that  
C the stream of justice does not get polluted at any level. We are  
pained to observe but we must state that the decisions on the  
judicial side such as the one in the present case create  
unnecessary difficulties for the High Court Administration. In  
*High Court-Judicature for Rajasthan Vs. Ramesh Chand*  
*Paliwal* reported in [1998 (3) SCC 72], the order under  
D challenge was with respect to the issue whether the post of  
Deputy Registrar should be filled from amongst the officers  
belonging to the establishment of the High Court, or from the  
judicial side. A Division Bench of Rajasthan High Court had  
opined that the subject be placed before the Full Court, since  
E according to the bench the Chief Justice ought not to have  
brought in the officers from the judicial side for an administrative  
post. This Court set-aside that direction by holding that it  
amounted to encroachment upon the authority of the Chief  
Justice, and was contrary to the constitutional scheme. This was  
F a matter concerning an officer of the High Court covered under  
Article 229 of the Constitution. What the Apex Court has  
observed in para 38 of this judgment is quite relevant for the  
present matter and worth reproducing. This para 38 reads as  
follows:-

G "38. As pointed out above, under the constitutional  
scheme, Chief Justice is the supreme authority and the  
other Judges, so far as officers and servants of the High  
Court are concerned, have no role to play on the  
administrative side. Some Judges, undoubtedly, will  
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become Chief Justices in their own turn one day, but it is A  
imperative under the constitutional discipline that they work  
in tranquillity. Judges have been described as "hermits".  
They have to live and behave like "hermits" who have no  
desire or aspiration, having shed it through penance. Their  
mission is to supply light and not heat. This is necessary B  
so that their latent desire to run the High Court  
administration may not sprout before time, at least, in  
some cases."

35. Thus it is very clear that the impugned judgment and C  
order are wholly unsustainable, and in complete disregard of  
the law laid down by this Court. This Court has, therefore, to  
allow this appeal and to set-aside the judgment and order dated  
28.8.2008 passed by the Madras High Court on W.P.(MD) No.  
7121 of 2007. Accordingly, this appeal is allowed and the order D  
dated 28.8.2008 passed by the Madras High Court on Writ  
Petition (MD) No. 7121 of 2007 is set-aside. The said writ  
petition shall stand dismissed. There will, however, not be any  
order as to the costs.

N.J.

Appeal allowed. E