

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.12.2014

DATED: 5.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.30605 of 2014
& M.P.Nos.1 and 3 of 2014

Mr.M.Magesh Nagarajan Petitioner
Vs.

1. Engineer in Chief
Water Resource Department (WRD) &
Chief Engineer (General)
Public Works Department,
Government of Tamilnadu,
Chepauk, Chennai - 600 005

2. N.N.Thiayagharajan ... Respondents
(Respondent No.2 is impleaded as a party
as per Order dated 3.12.2014 in M.P.No.2
of 2014 in W.P.No.30605 of 2014)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records of the 1st respondent herein dated 19.11.2014 vide proceedings No.S1(1)/20100/2014-309 on the file of the respondent herein and to quash the same.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.M.Santhanaraman

For respondents : Mr.S.Pattabiraman, Govt. Advocate
for respondent No.1.
Mr.R.Venkataramani, Sr. Counsel
for M.Muthappan
for 2nd respondent

ORDER

The petitioner herein has joined the services of the first respondent in the year 1999. By the order dated 22.04.2013, the petitioner was posted on other duty to the Department of Registration. The petitioner joined the Department of Registration on 30.04.2014. Thereafter, the petitioner was transferred to State Agricultural Marketing Board, Vellore, in and by the proceedings dated 18.11.2014. The said order was modified and the petitioner was

retained in Chennai City itself in order to help the petitioner in avoiding loss in emoluments in House Rent Allowance and to get the City Compensatory Allowance as he was working earlier in the Department of Registration. The above said order was also passed on the ground that there is an existing vacancy at the Office of DPI Sub Division, Chennai-6. In other words, the petitioner, who was sent on other duty to work at Santhome in the Department of Registration, has been transferred by the impugned order to work at DPI Sub Division, Chennai-6, situated in Egmore. Challenging the said order, the present writ petition has been filed.

2. By the order dated 03.12.2014, the second respondent, who has been posted in the place of the petitioner, was impleaded by allowing M.P.No.2 of 2014. By consent, the writ petition itself has been taken up for hearing and disposed of by this order.

3. Heard Mr.B.Kumar, learned Senior Counsel appearing for the petitioner, Mr.S.Pattabiraman, learned Government Advocate appearing for the first respondent and Mr.R.Venkataramani, learned Senior Counsel appearing for the second respondent.

4. Submissions of the Petitioner:-

The learned Senior Counsel appearing for the petitioner submitted that the order of transfer has been effected without any basis. It has been done contrary to the Government Orders in G.O.Ms.No.549 Public Works Department, dated 18.03.1983, G.O.Ms.No.256 Personnel and Administrative Reforms (FR-II) Department, dated 25.04.1988 and G.O.Ms.No.10, Personnel and Administrative Reforms (Per-S) Department dated 07.01.1994. The petitioner has not even worked for 1 ½ years after deputation. The second respondent has not worked for two years as mandated in the Government Orders. Both the orders passed with respect to the petitioner and the second respondent were cancelled and thereafter, the order impugned has been passed. The petitioner has put in unblemished service in the Department of Registration. The petitioner has been transferred during the middle of the academic year. The order impugned has been passed in order to accommodate the second respondent which is impermissible in law. Therefore, the writ petition will have to be allowed.

5. Submissions of the Respondents:-

Both the learned Government Advocate as well as the learned Senior Counsel appearing for the second respondent submitted that the entire writ petition is misconceived. The petitioner has been sent to the Department of Registration on other duty. Therefore, the Government Orders relied upon by him are not applicable. The petitioner is not suffering any monetary loss and his service condition is not altered. The order passed in favour of the second respondent is not under challenge. The said respondent was also sent on other duty. The earlier order passed posting the petitioner to the State Agricultural Marketing Board has not been challenged. The petitioner has been accommodated within the city alone. Therefore, there is no question of transfer during the

academic year. As the petitioner does not have any vested right to continue in the particular place, the petition is liable to be dismissed.

6. DISCUSSION:-

6.1. The petitioner has been lent to the Department of Registration only on other duty. The period of service on other duty depends upon the essentialities prevailing in the Department of Public Works. The Department of Public Works is entrusted with the job of executing civil works and for that purpose the other Departments utilised the services of the Department of Public Works. Accordingly, in compliance with the request made by the Department of Registration. The petitioner was lent vide proceedings dated 22.04.2014. The duty assigned to the petitioner was to value the stability of the building or structure or assess the probable value. The said posting does not carry pre-service skills. The posting order of the petitioner from the Department of Public Works to the Department of Registration was only made on other duty as narrated above and not on foreign service. For transfer on foreign service, an employee would draw the salary from the source other than the consolidated fund of the State as per the Fundamental Rule 9 (7). Admittedly, in the present case, the petitioner continues to draw the salary from the consolidated fund of the State.

6.2. From the above said facts, it is very clear that the petitioner was sent only on other duty. Therefore, he cannot rely upon the Government Orders as referred to by the Senior Counsel appearing for the petitioner. Admittedly, the petitioner does not suffer any financial loss and his service conditions are not altered. After all, the petitioner has been posted to work within the city, that too, from Santhome to Egmore. No condition of minimum service of three years in the same post is required to be followed in such a case. The earlier order passed on 18.11.2014 was modified only in the interest of the petitioner. It was also passed on the availability of the vacancy. In any case, the petitioner's submission that he should be allowed to continue in the Department of Registration has no factual or legal basis. The letter said to have been given by the Head of the Department of Registration is of no consequence.

6.3. Now coming to the submissions made on the second respondent is concerned, as rightly submitted by the learned Senior Counsel appearing for the said respondent, the order of transfer pertaining to him has not been put into challenge. From the records produced by the second respondent, it is seen that he was sent on deputation on 22.04.2013. The learned Senior Counsel submitted that as the post held by the second respondent was upgraded as Executive Engineer, he was sent back to the parent department. However, no posting has been given and thereafter the order impugned has been passed. From the above said facts, this Court does not find any malafides in the said action. Since the second respondent is also posted on other duty, the question of non-compliance of the Government Orders relied upon

by the petitioner does not arise.

6.4. The power of judicial review of the order of transfer passed by the competent authority on administrative grounds is rather limited. This Court is not required to conduct a roving enquiry over an administrative decision involving in transfer. As held by this Court in W.P.No.13746 of 2012 dated 19.06.2012, the petitioner has not established malice either on fact or on law on the part of the first respondent.

6.5. For the foregoing reasons, this Court is of the considered view that no ground has been made out to allow the writ petition and the same is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raa

To

1. Engineer in Chief
Water Resource Department (WRD) &
Chief Engineer (General)
Public Works Department,
Government of Tamilnadu,
Chepauk, Chennai - 600 005.

1 cc to Mr.M.Santhanaraman ,Advocate, SR.No.50
1 cc to Mr. M.Muthappan,Advocate, SR.No.142
1 cc to Government Pleader,Sr.No.279

W.P.No.30605 of 2014

jp(co)
pmk.6.1.2014