

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2015

DELIVERED ON : 06.03.2015

CORAM:

The Honourable Mr. Justice K.K. SASIDHARAN

W.P.No.19449 of 2014
& M.P.Nos.1 to 3 of 2014

P. Velmurugan

... Petitioner

- Vs. -

1. The Director of Local Fund Audit
Kuralagam
Chennai-600 108.
2. The Chief Auditor (incharge)
Internal and Statutory Board Audit
Chennai-600 002.
3. The Assistant Director
Office of the Assistant Director of Local Fund Audit
Namakkal-637 001.
4. J. Kailainathan
5. K. Ravi

.... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the orders in (i) Pro.Na.Ka.No.Pa & Ni (3)/1730/2014 dated 07/07/2014 by the first respondent (2) Pro.Na.Ka.No.2206/A1/2014 dated 04/06/2014 of the second respondent in so far as relates to the petitioner is concerned and quash the same and to issue consequential directions to the respondents to allow the petitioner to continue to serve as Inspector of Local Fund Audit, Namakkal.

For Petitioner : Mr.M. Ravi

For Respondents : Mr.M.S.Ra mesh

Addl. Govt. Pleader for RR1 to 3
RR.4 & 5 - No Appearance

ORDER

The order deputing the petitioner on Foreign Service is challenged on the ground of jurisdiction besides violation of the Government Orders, which provides that such deputation must be on the basis of seniority and experience.

Brief facts:

2. The petitioner was initially appointed as Assistant Inspector of Tamil Nadu Local Fund Audit. He was promoted as Deputy Inspector of Local Fund Audit and was posted at the office of Assistant Director of Local Fund Audit, Tiruppur. The petitioner was then promoted as Inspector of Local Fund Audit and posted in the office of the Assistant Director of Local Fund Audit, Namakkal. The petitioner is stated to be the office bearer of Tamil Nadu Local Fund Audit Services Association. According to the petitioner he was instructed by respondents 3 and 5 to delete certain paragraphs as contained in the audit report of Namagiripettai Panchayat Union. The petitioner refused to oblige and that was the reason for dragging him from pillar to post.

3. The petitioner was transferred from Namakkal to Uthagai vide order dated 4 June 2014. The petitioner submitted a representation dated 5 June 2014 requesting the first respondent to cancel the transfer order. During the currency of the said representation, the petitioner was deputed to function as Divisional Accountant of Tamil Nadu Slum Clearance Board at Salem. The order was issued by the first respondent and the consequential order was passed by the second respondent. The order deputing the petitioner to Foreign Service is challenged primarily on the ground that it is a mala fide exercise of power. The petitioner has taken up a further contention regarding jurisdiction and non completion of five years which are mandatory requirements for deputation to Foreign Service.

4. The first respondent in his counter affidavit justified the impugned order. According to the first respondent, the petitioner was transferred earlier purely on account of administrative exigency. The petitioner refused to obey the transfer order and the same resulted in issuing a memo to him. According to the first respondent, the Tamil Nadu Slum Clearance Board made a request to fill up the post of Divisional Accountant. It was only pursuant to the said request, seven Inspectors working in Local Fund Audit were deputed to the Slum Clearance Board. The first respondent justified the impugned order on the ground that it was only to fill up the new posts allotted to his department on foreign service terms and

conditions by the Tamil Nadu Slum Clearance Board, the petitioner was sent on deputation.

Submissions:

5. The learned counsel for the petitioner contended that refusal on the part of the petitioner to delete certain paragraphs from the audit report alone made respondents 3 to 5 to transfer him from one post to another and finally sending him on deputation. According to the learned counsel, the first respondent has no authority to send a Government servant to a Foreign Service. The Government alone is having the authority to make such transfers. The learned counsel contended that the Government order in G.O.Ms.No.256, Personnel and Administrative Reforms (FR.II) Department dated 25 April 1988 provides that deputation should be made only in the order of seniority. The petitioner is the junior most and as such the first respondent erred in sending him on deputation. The learned counsel further contended that the transfer in question on deputation is nothing but a punitive action.

6. The learned Additional Government Pleader submitted that the Government have delegated powers to the first respondent and only in the said capacity, the petitioner was sent on deputation by the first respondent. The learned Additional Government Pleader further contended that it was an order in respect of several officers and as such it cannot be said that the petitioner was singled out.

Factual Analysis:

7. The petitioner is an employee of Tamil Nadu Local Fund Audit Department. The petitioner is holding the post of Inspector of Local Fund Audit. The petitioner has taken up several contentions in his effort to prove that deputation as Divisional Accountant in Tamil Nadu Slum Clearance Board was in effect a punitive transfer to a different department. The petitioner has given bunch of materials to substantiate the said contention. However I am not inclined to take up the issue of bias or mala fides on account of the legal issues raised by the petitioner with regard to jurisdiction and violation of the relevant Government Orders with regard to deputation.

8. The petitioner was deputed to a Foreign Service as Divisional Accountant in Tamil Nadu Slum Clearance Board at its Salem office. The deputation was not made with the consent of petitioner. F.R. 110(a) of the Fundamental Rules provides that no Government servant shall be transferred to a Foreign Service against his will. The first proviso to the said provision says that sub rule (a) would not apply to the transfer of a Government servant to the service of a body incorporated or not, which is wholly or substantially owned or

controlled by the Government. Sub Rule (b) of Rule 110(a) provides that transfer to a Foreign Service shall be sanctioned by Government in consultation with the personnel and Administrative Reforms Department.

Jurisdiction:

9. The petitioner has taken up a primary contention that transfer to a Foreign Service was made by the first respondent without the concurrence of Government.

10. The learned Additional Government Pleader has produced a copy of the Government Order in G.O.Ms.No.842, Finance (Local Fund) Department dated 2 November 1992 delegating the power to the Examiner of Local Fund Accounts to sanction deputation. The Government Order permits the Examiner of Local Fund Accounts to sanction deputation of Assistant Examiner of Local Fund Accounts and Deputy Examiner of Local Fund Accounts to foreign bodies on foreign service. The Government Order is very specific that it would apply only to Assistant Examiner of Local Fund Accounts and Deputy Examiner of Local Fund Accounts to Foreign bodies. The petitioner is holding the position as Inspector of Local Fund Audit. The Government has not delegated the power to transfer Inspector of Local Fund Audit on deputation. The learned counsel for the petitioner is therefore perfectly correct in his contention that the Government alone is empowered to sanction deputation to a foreign service. The impugned order is therefore liable to be set aside on the ground of jurisdiction.

Violation of Government Order:

11. The documents available on record shows that the Tamil Nadu Slum Clearance Board vide its proceedings dated 11 June 2014 requested the first respondent to appoint seven Divisional Accountants on deputation in Tamil Nadu Slum Clearance Board to fill up the existing vacancies. The proceedings states that suitable candidates who possess atleast five years experience in works audit from the cadre of Inspectors of Audits, may be sponsored to the Board. The petitioner has not completed five years experience in work audit. The first respondent was therefore not correct in deputing the petitioner to function as Divisional Accountant in Tamil Nadu Slum Clearance Board. The Board wanted only experienced officers to function as its accountants. The Government have issued an order in G.O.Ms.No.256, Personnel and Administrative Reforms (FR.II) Department dated 25 April 1998 to the effect that deputation should be made only in the order of seniority. As per the said Government Order, if a senior could not be deputed, his next junior should be considered for deputation. The petitioner has taken up a specific

contention that the Government Order regarding seniority was flouted by the first respondent by sending a junior like him on deputation. The first respondent has not denied the said contention. The impugned order is therefore liable to be set aside also on the ground of violation of the Government Order in G.O.Ms.No.256, Personnel and Administrative Reforms (FR.II) Department dated 25 April 1988.

12. The first respondent miserably failed to prove that he was authorised to sanction deputation of Inspector of Local Fund Audit without consent. I am therefore of the view that the petitioner must succeed.

13. In the result, the impugned order dated 7 July 2014 is set aside. The writ petition is allowed. Consequently, the connected MPs are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Tr Sub Assistant Registrar

To

1. The Director of Local Fund Audit
Kuralagam
Chennai-600 018.
2. The Chief Auditor (incharge)
Internal and Statutory Board Audit
Chennai-600 002.
3. The Assistant Director
Office of the Assistant Director of Local Fund Audit
Namakkal-637 001.

+1cc to Mr.M.Ravi, Advocate, S.R.No.12694

+1cc to the Government Pleader, S.R.No.12930

TM(CO)
CA(13/03/2015)

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