

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2015

Coram :

The Hon'ble Mr.Justice K.KALYANASUNDARAM

W.P.No.39024 of 2015
and M.P.No.1 of 2015

Mr.V.Shanmugam

... Petitioner

vs

1.The Director of Municipal Administration,
Chepauk, Chennai - 600 005.

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling for the records relating to the proceedings of the Director of Municipal Administration, Chepauk, Chennai - 600 005 in Roc.No.13485/2015/K1 dated 13.10.2015 in transferring the petitioner from Gudalur (Nilgiris) to Udagamandalam Municipality, quash the same and direct the 1st respondent to re-transfer the petitioner to his original post as Municipal Manager, Rasipuram Municipality.

For Petitioner : Ms.G.Sridevi

For Respondent : Mr.V.Jayaprakash Narayanan

O R D E R

By consent, this writ petition is taken up for disposal at the admission stage itself.

2. This writ petition has been filed to quash the order of the respondent dated 13.10.2015 made in Roc.No.13485/2015/K1 dated 13.10.2015 whereby the petitioner was transferred from Gudalur (Nilgiris) to Udagamandalam Municipality.

3. Heard Ms.G.Sridevi, learned counsel appearing for the petitioner and Mr.V.Jayaprakash Narayanan, learned Special Govt. Pleader who accepts notice on behalf of the respondent.

4. The learned counsel for the petitioner submitted that the petitioner was promoted to the post of Municipal Manager and posted at Rasipuram Municipality on 20.09.2013. While he was discharging his duties, he was transferred to Gudalur (Nilgiris) by

order dated 14.09.2015. The petitioner challenged the order in WP No.32133 of 2015 and this court, by order dated 09.10.2015, disposed of the writ petition directing the respondent to consider the representation of the petitioner for re-transfer.

5. The learned counsel would further contend that subsequent to the order of this court, in the earlier writ petition, the petitioner is now transferred to Udagamandalam Municipality and as per G.O.Ms.No.431 P&AR (PER.S) Department dated 25.04.1981, G.O.Ms.No.431 P&AR (PER.S) dated 25.07.1989, the respondent shall not transfer officers between the age group of 40 to 50 years to hilly areas and as per G.O.Ms.No.10 P&AR (PER.S) dated 07.01.1994, the petitioner cannot be transferred during non-transferable period. It is further submitted that the post at Rasipuram Municipality is still lying vacant and a further direction may be given to the respondent to transfer the petitioner to the said place.

6. Per contra, the learned Special Government Pleader submitted that the scope of judicial review in case of transfer of Government servant is very limited and the Government Orders relied upon by the learned counsel for the petitioner are only treated as guidelines and they do not have any statutory force and therefore the claim of the petitioner cannot be entertained.

7. The learned counsel relied upon the following decisions.

(1) 1991 Supp (2) SCC 659 [Shilpi Bose v. State of Bihar] and

(2) 1993 (4) SCC 357 [Union of India v. S.L.Abbas],

8. In 1991 Supp (2) SCC 659 [Shilpi Bose and others vs. State of Bihar and others], the Hon'ble Apex Court has held as follows -

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The appellants, who were lady teachers in primary schools, were transferred on their requests to places where their husbands were posted. The contesting respondents, who were displaced by the appellants, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. This Court allowed the appeal and set aside the judgment of the High Court by observing as under: -

"In our opinion, the courts should not interfere with a transfer order which are 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.....
....."

9. In 1993 (4) SCC 357 [Union of India v. S.L.Abbas], it is held as follows-

The respondent was working at Shillong in the office of Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Pauri in the hills of U.P. (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3.4.1986. The Tribunal allowed the petition and quashed the transfer order. In appeal this Court set aside the order of the Tribunal and observed as under: -

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any

representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

8. In the light of the above decisions, I do not find any reason to quash the impugned order. In the result, the writ petition is dismissed. However, it is made clear that the dismissal of the writ petition would not stand in the way of the respondent in considering the request of the petitioner in re-transferring him to his original post as Municipal Manager, Rasipuram Municipality, if the same is still vacant, as claimed by him. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rgr

To

The Director of Municipal Administration,
Chepauk,
Chennai - 600 005.

1 cc to Ms.G. Sridevi, Advocate, Sr. 68533
1 cc to Government Pleader, Sr. 68850

W.P.No.39024 of 2015

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