

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV on 22.09.2014

DATED: 18.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.37288 of 2007

M.H.Syed Ibrahim

.. Petitioner

Vs.

1.The Govt. of Tamilnadu,
Represented by its Secretary,
Highways Department,
Fort St. George,
Chennai - 600 009.

2.The Chief Engineer (GI),
Highways Department,
PWD Campus, Chepauk,
Chennai - 600 005.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the records on the file of 1st respondent relating to the issue of G.O.Ms.No.50 Highways Department dated 13.04.2007 and quash the same and consequently direct the respondents to consider the petitioner for inclusion in the panel of Assistant Engineers fit for promotion as Assistant Divisional Engineer of the year 2007-08 and for promotion as Assistant Divisional Engineer according to his original seniority.

For Petitioner : Mr.N.Subramaniyan

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader

ORDER

The short facts of the case are as follows:-

The petitioner has submitted that he has been appointed as Assistant Engineer, the 5th category in Tamilnadu Highways Engineering Service, in Highways and Rural works Department by the second respondent in his proceedings No.410/N4/1997, dated 23.01.1998 and joined as Union Engineer, Puzhal Panchayat Union

on 27.01.1998. He has further submitted that initially the Highways Department was formed in the year 1946, to carry out the works related to Government roads and all the works coming under District Boards. Later, subsequent to the enactment of Tamilnadu Panchayat Act 1958, the department was reorganised bringing within its fold the engineering personnel incharge of various types of engineering works coming under Panchayat Unions and was renamed as Highways and Rural Works Department and directed to be headed by a Chief Engineer in and by the G.O.Ms.No.851 Rural Development and Local Administration Department dated 09.05.1960. Accordingly, the Highways and Rural Works Department caters to the engineering needs of Panchayat Unions, the successor bodies of District Boards. All the technical posts are exclusively under the Panchayat Union, i.e. Union Engineers, Overseers and Road Inspectors were sanctioned under the Highways and Rural Works Department and are being governed by the Special Rules to Tamilnadu Highways Engineering Service and Tamilnadu Highways Engineering Subordinate Service. It is pertinent to note that the Assistant Engineer / Junior Engineers when posted in Panchayat Unions are known as Union Engineers. Further, the posts of various categories of Assistant Divisional Engineer, Divisional Engineer, Superintending Engineer and Chief Engineer were sanctioned as common for both Panchayat Union works and Government Road works. Accordingly, he was appointed in Tamilnadu Highways Engineering Service and posted as Union Engineer, Puzhal Panchayat Union by the Chief Engineer and by the Divisional Engineer (H & RW), Saidapet and joined the service on 27.01.1998.

2.He has further submitted that according to the Special Rules of Tamilnadu Highways Engineering Service, the power to transfer and post an Assistant Engineer, i.e., Union Engineer, within the Division is vested with the Divisional Engineer; within the circle with the Superintending Engineer and within the State with the Chief Engineer. The District Collector or Director of Rural Development has not been conferred with any authority to transfer and post an Union Engineer or to have control over the engineers of Highways and Rural Works Department working in Panchayat Union.

3.He has further submitted that in the mean while, the Government have issued orders in G.O.Ms.No.263, dated 27.12.1996 creating additional posts for the Panchayat Union works and the newly sanctioned staff in the said G.O. were directed to be treated as a separate unit headed by a Superintending Engineer under the control of Director of Rural Development. No orders were issued in that G.O. in respect of the posts of Union Engineer and Assistant Divisional Engineer sanctioned under the Highways and Rural Works Department and working in Panchayat Unions. Subsequently in G.O.Ms.No.102, dated 25.05.1998, the Government have issued executive orders, the Paragraph-3 of which reads as follows:

"The Chief Engineer (H & RW) / Government in Highways Department shall stop posting personnel directly to the

"Original" 53 posts of Assistant Executive Engineers (RD); 384 posts of Block Engineers, 768 posts of Overseers, 53 posts of Junior Engineer / Assistant Engineers and 53 posts of Junior Draftsmen (one in each technical Sub-Division) and all the posts of Road Inspectors, which are borne on Panchayat Union General Funds, with immediate effect. The Chief Engineer (H & RW) / Government in Highways Department should instead place these personnel at the disposal of the Director of Rural Development / Collectors on transfer of service basis and the Director of Rural Development / Collectors will, in turn, discharge the duty and powers of postings and transfers".

4. He has further submitted that a plan reading of the said G.O. would show that the G.O. dated 25.05.1998 only deals with the Engineers allotted by second respondent to Director of Rural Development after 25.05.1998. In this G.O. also, no orders were issued in respect of the Union Engineers and Assistant Divisional Engineers sanctioned under the Highways and Rural Works Department and working in Panchayat Unions prior to 25.05.1998. The District Collector, Thiruvallur, had transferred him from Puzhal Panchayat Union to R.K.Pet Panchayat by his proceedings R.C.No.210/2000/PA2, dated 07.02.2000 and he has been relieved from the post by the B.D.O. Puzhal Panchayat Union on 29.02.2000. Shocking to see the usurpation of power by the District Collector, Thiruvallur in blatant violation of Special Rules to TNHES, on transfer and posting of the Assistant Engineers working as Union Engineer in Panchayat Unions, he has represented to the Chief Engineer, the second respondent in this regard pointing out the illegality of his transfer and requested postings in Highways Department, who in turn in his letter dated 27.03.2000 directed him to obey the orders of the District Collector, incorrectly relying on the G.O. dated 25.05.1998 and without taking into consideration his unwillingness to work in service other than in TNHES. Subsequently, he represented to the second respondent on 03.04.2000, 21.04.2000 and 01.06.2000 stating that he has joined the Tamilnadu Highways Engineering Service only and not to work under different department. Mean while, the Director of Rural Development, without any authority in his proceedings dated 11.04.2000 has suspended him pending enquiry into grave charges. Mean while, the second respondent in Memo No.12055/Ni.Vul/1998, dated 03.07.2000 has informed him that the Assistant Engineers working in Panchayat Unions are continued to be governed by Special Rules to TNHES and the original posts formed integral part of Highways Department till all the posts are transferred to Rural Development Department in a phased manner.

5. He has further submitted that aggrieved by the act of changing his department of posting without his willingness, he challenged the said transfer order dated 07.02.2000 and the memo of

the second respondent dated 27.03.2000 in O.A.No.6102 before the Tamilnadu Administrative Tribunal. The Tribunal, in their order dated 21.08.2000 initially stayed the order of transfer dated 07.02.2000 and later extended the same until further orders. Even after the aforesaid stay order of the Tribunal, the second respondent did not issue posting order to him posting in Highways Department. In the meanwhile, the Director of Rural Development revoked the Suspension order issued by him even without conducting any enquiry or framing the charges alleged to have been contemplated in the suspension order and reposted him to Thiruvallur District in his proceedings dated 18.01.2001 and the District Collector, Thiruvallur, in turn posted him to Puzhal Panchayat Union in his proceedings dated 20.01.2001 without any authority and even when the G.O.102 dated 25.05.1998 under which, the second respondent claimed that Director of Rural Development derives Power to transfer him was stayed by the Tribunal in their order dated 24.10.2000 in separate proceedings in O.A.No.7766 of 2000 and batch cases.

6.He has further submitted that once again he represented to the second respondent stating that he is not at all willing to work in Rural Development Department but he should be posted only in Highways Department. With the ambition to work in Highways Department only, he has subjected him to TNPSC selection and got appointed. Only after this, second respondent issued posting orders to him posting in Highways and Rural Works Department. Therefore, he legally entitled from the day on which the District Collector, Thiruvallur usurped the power of control over the Engineers, governed by Special Rules to Tamilnadu Highways Engineering Service working in Panchayat Unions, to be posted, and the second respondent ought to have posted him in Highways and Rural Works Department. The second respondent posted him in Highways Department in accordance with Special rules to Tamilnadu Highways Engineering Service only on 04.01.2002 and necessary reposting order on 07.01.2002, thereby kept him without postings from 01.03.2000 to 09.01.2002, the date of his joining as Assistant Engineer in Highways Department at Chenglepet on 09.01.2002. Because of the aforesaid compliance of his prayer in O.A.No.6102 of 2000 to post him in the Highways Department by the second respondent, the O.A. has become infructuous. Subsequently, the Tribunal in their order dated 25.06.2002 have closed the O.A.No.6102 of 2000 along with several O.A.s without deciding on merits on the reason of lapse of time.

7.He has further submitted that charges were framed against him by the second respondent in charge Memo No.4397/Conf.2/2001-1 dated 05.12.2003 as hereunder:

- (i) As per G.O.Ms.No.1046/Personnel and Administrative Reforms Department, dated 13.11.1987, Government Servant who has not completed 5 years of service will not be permitted to avail any additional leave except the eligible leave as per rules.

Thiru.M.H.Syed Ibrahim, has been issued posting orders on 20.01.2001 by the District Collector, Thiruvallur and he has not joined duty until 02.11.2001, the date by which the Director of Rural Development has surrendered him to the Highways Department. He has not acted as a responsible official and acted on his own accord. He neither gave any leave application nor accepted the transfer order issued by the Collector of Thiruvallur District, dated 20.01.2001 and not joined duty.

(ii) He had neither joined duty nor applied for leave. Thus he failed to act as a responsible Government Servant.

(iii) Due to the above two charges, he had violated rule 20(1) of Government Servants Conduct Rules, 1973.

8.He has further submitted that his reply in his letters dated 24.12.2003. The inquiry was conducted thereafter and second show cause notice was issued on 28.07.2006 by first respondent for which she has sent his reply on 09.08.2006, denying the allegations. The enquiry officer not at all considered his replies in arriving at the conclusion in the enquiry report. The Government also, without taking the aforesaid points, imposed on him penalty of stoppage of one increment without cumulative effect in the impugned G.O.(3D) No.50 Highways (HL2) Department dated 13.04.2007 on the reason that the Chief Engineer has allotted him to Rural Development Department which is totally incorrect. Shocked by this reason given by the Government he has sought from first respondent the copy order of second respondent by which he has been allotted to Rural Development Department. The first respondent replied that by G.O.Ms.No.102 dated 25.05.1998 he has been impliedly allotted to Rural Development Department. Therefore, he is aggrieved of the impugned order as it causes him monetary loss and affects his right to be considered for promotion to the post of Assistant Divisional Engineer for the year 2007-08. Therefore, the writ petition.

9.The respondents have filed counter statement which are as follows:-

It has submitted that the petitioner was appointed as Assistant Engineer and allotted to Saidapet (Highways) Division and posted to Puzhal Panchayat Union. He had joined at Puzhal Panchayat Union on 27.01.1998 and had been working in the above said station for more than two years. It has submitted that the Highways Department was formed during the year 1946. Later, subsequent to the enactment of Tamil Nadu Panchayat Act 1958, the department was reorganized and the works in the Panchayat Union were being executed by the Engineering and Technical Personnel of Highways Department and the Highways Department was renamed as Highways and Rural Works Department. It has submitted that the Assistant Engineers of Highways Department, when posted to Panchayat Union were being designated as Union Engineers of the respective Union. Accordingly, the petitioner was appointed as Assistant Engineer in the Highways Department and posted as Union Engineer, Puzhal Panchayat Union.

10.It has submitted that the transfer and postings of Assistant Engineers working in Highways Department were affected by Divisional Engineers / Superintending Engineers and Chief Engineers. However in the case of Union Engineers, who are working in the Panchayat Unions, which come under the administrative control of the District Collectors and the Director of Rural Development. The District Collectors and the Director of Rural Development have rights to move the Union Engineers and other Technical Staff from one place to another within their jurisdiction in accordance with the administrative exigencies. It has submitted that the averment of the petitioner that the District Collectors or Director of Rural Development has not been conferred with powers to transfer or to have control over the Highways and Rural Works Department personnel working in Panchayat Unions is patently false. The said officials have every right to utilize the services of the Engineers of Highways and Rural Works Department or to surrender them to the Department if the engineers are not found suitable.

11.It has submitted that new posts were created for the Panchayat Union Works and the additional posts so created were filled up only by the Engineers and Technical staff of Highways and Rural Works Department. It has submitted that subsequently in G.O.Ms.No.102, dated 25.05.1998, the Government have issued orders stating that the Chief Engineer (Highways and Rural Works) shall stop posting personnel directly to the original posts which are borne on Panchayat Union General Funds. It has further stated that the Chief Engineer (H&RW) should instead place these personnel at the disposal of the Director of Rural Development / Collectors on transfer of service basis and the Director of Rural Development / Collectors will in turn discharge the duty and powers of postings and transfers.

12.It has submitted that due to administrative reasons and in the public interest, the petitioner was transferred from Puzhal Panchayat Union to R.K.Pet Panchayat Union by the District Collector. It has submitted that the petitioner neither expressed his willingness nor opted to come over to Highways Department but continued to work in Rural Development Department for about 2 years under the control of the District Collector, who is the administrative head of the District. It has submitted that the petitioner expressed his willingness to return to the Parent Department only on the issue of the transfer order by the District Collector from Puzhal Panchayat Union to R.K.Pet Panchayat Union. It has submitted that it is highly illogical on the part of the petitioner to refuse to join in a new station (R.K.Pet Panchayat Union) within the same district. It has submitted that the petitioner when represented to the Highways Department, he was directed to obey the orders of the District Collector. It has submitted that in spite of the instructions by the Parent Department he failed to oblige the orders by the District

Collector. It has submitted that if the petitioner was not willing to continue to work in the Rural Development Department, he could have requested the Rural Development authorities to surrender him to the Highways and Rural Works Department. It has submitted that the petitioner has put forth the plea that he was selected for Highways and Rural Works Department only on issue of transfer orders transferring him from Puzhal Panchayat Union to R.K.Pet Panchayat Union. It has submitted that the petitioner was appointed as Assistant Engineer under Tamil Nadu Highways Engineering Service, but as long as he was at the disposal of the Rural Development Department he had to obey the order of the Rural Development Department.

13.It has submitted that aggrieved by the transfer order of the District Collector, the petitioner filed an O.A.No.6102 of 2000 before the Tribunal and obtained an interim stay for the said transfer. In the meanwhile, the suspension order was revoked by the Director of Rural Development Department and since the petitioner obtained an interim stay for his transfer from Puzhal Panchayat Union to R.K.Pet Panchayat Union to maintain status quo, he was posted back to Puzhal Panchayat Union. It has submitted that if at all the allegation of the petitioner that only with the ambition to work in Highways Department, he subjected himself to the Tamil Nadu Public Service Commission selection was true, he should not have joined Puzhal panchayat Union and worked there for about two years from 27.01.1998 to 29.02.2000. As long as the Puzhal Panchayat Union was convenient to him, he did not raise any objection and only on transfer to R.K.Pet Panchayat Union which he might have disliked, he came with the plea that he should have been posted in Highways and Rural Works Department. The petitioner has no choice, as a matter of right, to work in any particular place. It has submitted that transfer from one place to another is an integral part of Government Service. It has submitted that the petitioner adamantly stayed back and did not care to join in his original station even after ten months from the date of issue of the order. Hence, he was surrendered to the Highways Department and was posted to Highways Department. It has submitted that the petitioner joined at his parent department on 07.01.2002.

14.It has submitted that the petitioner on transfer from Puzhal Panchayat Union to R.K.Pet Panchayat Union, was relieved from Puzhal Panchayat Union on 29.02.2000. Further, the Director, Rural Development placed the petitioner under suspension. subsequent to the orders of the Tribunal in O.A.No.6102 of 2000, the orders of suspension were withdrawn by the Director of Rural Development on 18.01.2001 and he was again reinstated and posted to Puzhal Panchayat Union on 20.01.2001 by the District Collector, Thiruvallur. However, the petitioner did not join duty in Puzhal Panchayat Union till 01.11.2001. Therefore, the District Collector, Thiruvallur surrendered the petitioner to the Director of Rural Development. As recommended by the District Collector,

Thiruvallur, disciplinary action was initiated against the petitioner for having stayed away from duty from 20.02.2001 without prior permission. It has submitted that charge memo was issued in Chief Engineer, Highways Charge Memo No.4397/Con-2/2002-1, dated 05.12.2003 framing charges under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for having disobeyed the transfer orders issued by the District Collector. It has submitted that the petitioner submitted his explanation dated 24.12.2003 and Inquiry Officer was appointed. It has submitted that the Inquiry Officer after careful examination of the connected records and documents held the charges as proved. It has submitted that the further defence statement and explanation of the petitioner were examined and found not acceptable and illogical. It has further submitted that the petitioner was imposed with a punishment of stoppage of increment for one year without cumulative effect vide G.O.No.50, Highways Department dated 13.04.2007. Hence, this respondent prays to dismiss the writ petition.

15.The petitioner has filed rejoinder to the counter statement of the respondents which are as follows:-

(i)He has submitted that the averments of the first respondent in para-4 of the counter affidavit that "in case of Union Engineers, who are working in Panchayat Unions, which come under the administrative control of the District Collectors and the Director of Rural Development and the District Collectors and the Director of Rural Development have rights to move the Union Engineers and other technical staff from one place to another within their jurisdiction in accordance with the administrative exigencies" is patently false and the person who sworn the affidavit being the Secretary to Government, having known the true legal position, have averred falsely to mislead this Court to get the writ petition dismissed.

(ii)He has submitted that all the transfer of the Union Engineers were made only by the Engineers of Highways Department as per the Special Rules to Tamilnadu Highways Engineering Service till the union works were taken outside the control of the Highways Department after the rules were framed under Tamilnadu Panchayat Act 1994 during 2000 and on those who were allotted to RD Department as per G.O.102 dated 25.05.1998. Further, there is no law or rule conferring such powers on the District Collectors and the Director of Rural development as claimed earlier to the said period.

(iii)He has submitted that in India, governed by rule of law, a written Constitution of India, any authority what so ever high its position be, could act only based on the powers conferred on him and cannot usurp any power on their own without sanction of law. Herein, the Technical control of the works were vested with the Highways Department; all the posts in respect of engineers in charge of Panchayat Union works were sanctioned as part of Highways Department, (formerly Highways and Rural works Department, and service rules, namely Special Rules to Tamilnadu Highways

Engineering Service were framed to govern these posts and appointments, transfer and postings to these technical posts in panchayat unions were done by the engineers only accordance with the Special Rules to Tamilnadu Highways Engineering Service. The panchayat union is a self government, a local body and is not subordinate of the Rural Development Department of first respondent as claimed. The District Collector is only conferred with the powers as Inspector of Panchayat under the said Act and the duties and powers of the District Collector is enumerated therein and the said provisions do not stipulate such controlling powers on the engineers working in Panchayat Unions on the District Collector, even on exigencies. In the absence of conferment of any such power to transfer the union engineer, the District Collector cannot derive any such power under the guise of administrative exigencies which would result in mockery of rule of law and is not possible in a democratic country but could be possible only in anarchy. Therefore, the entire contention of the first respondent in this regard is devoid of merits and without any legal basis and hence liable to be rejected by this Court.

16.He has further submitted that the averments of the first respondent in para-5 that new posts and additional posts were created for panchayat union works and were filled from the engineers of Highways Department is only in favour of the petitioner as only because the technical posts being part of Highways Department, then called as Highways and Rural Works Department and Special Rules to Tamilnadu Highways Engineering Service having been framed by first respondent, it is natural and in accordance with law that the said posts were to be filled only from the engineers of Highways Department in accordance with the said Special Rules. The rest of the contention therein is only the reproduction of the G.O.102 and hence not replied.

17.(i)With respect to the contentions of first respondent in para-6 of the counter affidavit, he has submitted that as soon as the District Collector transferred him without authority, he represented to the Chief Engineer to post him in Highways Department who in turn illegally directed him to obey the orders of the District Collectors erroneously relying upon G.O.102 dated 25.05.1998. He challenged the same in Tamilnadu Administrative Tribunal and interim stay has been granted staying the transfer order. Therefore, it is incorrect on the part of the first respondent to claim, he should have opted to be surrendered to Highways Department, which question does not arise, as he was appointed as Assistant Engineer, i.e., Union Engineer by the Chief Engineer and Divisional Engineer and addressed to his appointing authority. The question of addressing the D.R.D. does not arise.

(ii) Another contention that he kept mum for 2 years and question the working in panchayat unions only after transfer is fallacious. He has submitted that he was posted to work in Panchayat Union only as an engineer of Highways Department and not

as staff of Rural Development Department and only when the District Collector usurped powers illegally and the appointing authority also taken the same position, he aggrieved and started questioning the transfer. His case is that he has been selected to serve in Highways Department, he cannot be directed to serve in any other Department without his consent or without any rule therefor. Therefore, the entire contention of the first respondent in para-6 is bereft of merits and liable to be rejected.

18.He has submitted that he filed O.A.No.6102 of 2000 challenging the transfer by the District Collector and the letter of second respondent rejecting his request to post him in Highways Department and consequently sought a direction to the second respondent to post him in Highways Department only on the grounds that the District Collector has no authority to transfer him and he has to be dealt only as per Special Rules to Tamilnadu Highways Engineering Service. The Tamilnadu Administrative Tribunal was pleased to stay the transfer order and hence the DRD having realized the incompetence withdrew the suspension order and the second respondent also posted him in Highways Department immediately pursuant to the interim order of Tamilnadu Administrative Tribunal, no issue would have arisen. But the officers, denied him posting him in Highways Department for months only to victimize him for protesting ill treatment meted out to him without simply obeying as a slave. Therefore, the averments of first respondent, having not been supported with any law, is liable to be rejected as baseless.

19.(i)With reference to the averments of the first respondent in para-6 of the counter affidavit that the transfer of the petitioner is only on administrative exigencies and in the public interest is not correct but illegally without any authority and that is why the petitioner challenged the transfer order and obtained interim stay from the Tribunal.

(ii)Another contention of the first respondent therein that the petitioner worked under the control of the District Collector as District Head is legally unsustainable as the District Collector has not been declared as District head and every officer within the District is coming under the disciplinary control of the District Collector under any law nor he is conferred with any power therefor. The Panchayat Unions are self Government and every wing of the Government machinery works therein in accordance with the Tamilnadu Panchayat Act and accordingly, the District Collector is the Inspector of Panchayat under the Act and his powers as Inspector of Panchayat are enumerated therein. There is no such provision enabling the District Collector to have administrative control over the engineers of Highways Department working in Panchayat Unions in accordance with the provisions of Tamilnadu Panchayat Act. The first respondent has not placed material to substantiate their contention. He has submitted that the officer who sworn to the affidavit is highly responsible officer and

definitely one cannot say that he is not aware of the legal provisions and hence this statement of the first respondent in the counter affidavit is nothing but a false statement made by the first respondent to mislead this Court to get orders in their favour.

(iii) He has submitted that the transfer of the petitioner and the direction of the first respondent to obey the illegal transfer are illegal and hence the same was challenged before the Tamilnadu Administrative Tribunal and also sought direction to post him in Highways Department for the reason that he applied to work only in Highways Department and not in RD Department and the Tamilnadu Administrative Tribunal was pleased to stay the transfer illegally issued by the District Collector. In spite of the same, the petitioner was not given posting in Highways Department immediately, but only after a delay of about 22 months for which the petitioner seeks to treat the period as compulsory wait as stipulated under the Fundamental Rules. Another contention of the first respondent that even though the petitioner was appointed under the Special Rules to Tamilnadu Highways Engineering Service, as long as he works in Rural Development department, he has to obey the order of RD department is baseless, as the Panchayat Unions are not at all RD Department, but self local Governments governed by the provisions of Tamilnadu Panchayat Act 1994. Therefore, all the contentions of the first respondent in para-6 are legally unsustainable and liable to be rejected.

20. He has submitted that the contention in para-8 of the counter affidavit that the petitioner should not have joined the Puzhal Panchayat Union had his ambition to appear for selection as Assistant Engineer was only to work in Highways Department is legally unsustainable. He has submitted that the petitioner was posted to Puzhal Panchayat Union only by the Chief Engineer and the Divisional Engineer and the transfer power was vested only with the Divisional Engineer not with the District Collector. Only when the District Collector illegally transferred and the Chief Engineer, his appointing authority illegally directed him to obey the illegal orders, he started protesting the illegality and challenged the same before the Tamilnadu Administrative Tribunal and obtained interim stay, therefore, the said contention is without any basis and liable to be rejected. Another contention therein that the petitioner adamantly did not join the transferred place for about ten months is incorrect, as, himself being a law abiding and upright citizen, he will not violate any law and at the same time he will never subject himself to or obey illegal orders from any authority who is incompetent to issue such orders. He has submitted that the transfer order having been issued by the District Collector without any power, the said order was non-est and ab initio void and hence the question of obeying or disobeying the said order does not arise, it is pertinent to note that only because the DRD / District Collector do not have any power over him to transfer or suspend, he was issued postings in Highways

Department after a long delay and hence the petitioner is entitled to get the compulsory wait as claimed in this writ petition and the punishment imposed for disobeying the illegal transfer order is liable to be set aside.

21. With reference to the averments in para-9 of the counter affidavit under reply, he submits that the posting order issued by an incompetent authority, that too to a Panchayat Union and not in Highways Department, the question of himself stayed away from duty from 20.01.2001 is without any legal basis and hence the question of charge memo issued by the Chief Engineer disobeying the illegal order and finding of the enquiry officer against him, all depend on as to whether the District Collector has power to transfer the petitioner / engineer working Panchayat Union. There was no decision in this regard by enquiry officer. He has further submitted that even though the first respondent claims that the District Collector has administrative control over the petitioner, did not initiate disciplinary proceedings against the petitioner but only the Chief Engineer initiated the same, which itself is sufficient to prove the falsity of the claim of the first respondent and which is actually in support of the petitioner. He has submitted that the averments in paras-11 to 19 are repetition of the earlier contentions of the first respondent and hence the replies made above would answer the same. Therefore, for the reasons stated above, it is prayed that this Court may be pleased to reject the contentions of the first respondent made in the counter affidavit and allow the writ petition as prayed for.

22. The learned counsel Mr.N.Subramaniyan appearing for the petitioner has submitted that initially, the highways department was established in the year 1946, to carry out the works related to Government roads and all the works coming under the District Boards. Subsequently, the Department was reorganised bringing within its fold, the engineering personnel in charge of various types of engineering works coming under the Panchayat Union and was renamed as Highways and Rural works department and directed to be headed by a Chief Engineer in and by the G.O.Ms.No.851, Rural Department and Local Administration Department dated 09.05.1960. Accordingly, the highways and the rural works department caters to the engineering needs of Panchayat Unions, the successor besides of district boards. Further, all the technical force, is exclusively under the Union Panchayat i.e. Union Engineers, Overseers and Rural Inspectors were sanctioned under the Highways and Rural Works Department and are being governed by the Special Rules to Tamilnadu Highways Engineering Service and Tamilnadu Highways Engineering Subordinate Service. The very competent counsel has further submitted that the Assistant Engineer and Junior Engineers were posted in Panchayat Unions are known as Union Engineers. The posts of various categories of Assistant Divisional Engineer, Divisional Engineer, Superintending Engineer and Chief Engineer were sanctioned as common for both Panchayat Union works and Government

road works. Accordingly, the petitioner has been appointed in Tamilnadu Highways Engineering Service and posted as Union Engineer at Puzhal Panchayat Union by the Chief Engineer and by the Divisional Engineer, Highways Rural Works Department. As per the Special rules of Tamilnadu Highways Engineering Service, the power to transfer and post on Assistant Engineer i.e. Union Engineer within the Division is vested with the Divisional Engineer, within the circle with the Superintending Engineer and within the State with the Chief Engineer. The District Collector or Director of Rural Development has not been conferred with any authority to transfer and post an Union Engineer or to have control over the engineers of Highways and Rural works department working in Panchayat Union. In the meanwhile, the Government have issued orders in G.O.Ms.No.263 dated 27.12.1996, creating additional posts for the Panchayat Union works and the newly sanctioned staffs in the said G.O. were directed to be treated as a separate unit, headed by a Superintending Engineer under the control of Director of Rural Development. Thereafter, the G.O.Ms.No.102 dated 25.05.1998 was passed.

23.As per G.O., the Chief Engineer, Highways and Rural works shall stop posting personnel directly to the original 53 posts of Assistant Executive Engineers, 384 posts of Block Engineers, 768 posts of Overseers, 53 posts of Junior Engineers / Assistant Engineers and 53 posts of Junior draftsman and all the posts of Road Inspectors, which are borne on Panchayat Union general funds. The Chief Engineer should instead place this personnel at the disposal of the Director of Rural Development / Collectors on transfer of service basis and the Director of Rural Development, Collectors, will in turn discharge the duty and powers of posting and transfers. Under the circumstances, the District Collector attached to the Tiruvallur District had transferred the petitioner from Puzhal Panchayat Union to R.K.Pet Panchayat Union dated 07.02.2000 and the petitioner has been relieved from the post by the Block Development Officer, Puzhal Panchayat Union on 29.02.2000. As such, the Collector, Tiruvallur District, in Blatant Violation of Special Rules of Tamilnadu Highways Engineers Service, on transfer and posting of the Assistant Engineers, working as Union Engineer in Panchayat Unions.

24.The very competent counsel has further submitted that aggrieved by the said arbitrary order of transfer, the petitioner has submitted a representation to the second respondent herein and requested him to post him in Highways Department, who in turn, in his letter dated 27.03.2000 directed him to obey the orders of the District Collector, which run against the G.O.Ms.No.102 dated 25.05.1998. Thereafter, the petitioner has made additional 3 more representations to the Chief Engineer, on various dates. Under the circumstances, the Director of Rural Development has suspended the petitioner. In the meanwhile, the second respondent, in his letter dated 03.07.2000, has informed the petitioner, the Assistant

Engineers working in Panchayat Unions are continued to be governed by Special Rules to TNHES and the original posts formed integral part of Highways Department till all the posts are transferred to Rural Development Department in a phased manner. The petitioner challenged the said transfer order and memo of the second respondent herein before the Tamilnadu Administrative Tribunal. This tribunal was pleased to grant stay. Subsequently, the Director of Rural Development revoked the suspension order even without conducting an enquiry and reposted him to Tiruvallur District and the District Collector, in turn, posted the petitioner to Puzhal Panchayat Union.

25.The very competent counsel has further submitted that the petitioner represented to the second respondent herein stating that he is not at all willing to work in Rural Development Department. Only after this, the second respondent issued posting orders to him posting him in Highways and Rural Works Department. Therefore, the petitioner is legally entitled from the day on which the District Collector, Tiruvallur usurped the power of control over the engineers governed by Special Rules to Tamilnadu Engineering Service working in Panchayat Union's to be posted. But, the second respondent kept the petitioner without posting from 01.03.2000 to 09.01.2002. Under the circumstances, the second respondent had framed two charges under the Government servants conduct rules. After domestic enquiry, the petitioner was imposed penalty of stoppage of 1 increment without cumulative effect. Hence, the learned counsel entreats the Court to set aside the impugned order and consider him for promotion to the post of Assistant Divisional Engineer for the year 2007-2008.

26.The highly competent Additional Government Pleader, Mr.M.S.Ramesh appearing for the respondents has submitted that the District Collectors and Director of Rural Development have rights to move the Union Engineers and other Technical staff from one place to another within their jurisdiction in accordance with law, with the administrative exigencies. The new posts were created for the Panchayat Union Works and the additional posts so created were filled up only by the Engineers and Technical staff of highways. Due to administrative reasons and in public interest, the petitioner was transferred. Further, the District Collector, who is the administrative head of the District and Top officer of the District. The petitioner, wantonly and deliberately had disobeyed the said order. The said transfer order has been implemented by the Director of Rural Development and the Chief Engineer i.e. second respondent herein. Both the officers have not raised any objections since their administrative powers have not been violated by the District Collector in his transfer order. Due to disobedience, two charges were framed under the Tamilnadu Government servant rules and penalty of stoppage of 1 increment without cumulative effect was imposed since both charges were proved. The first charge was that the petitioner had neither

joined duty nor applied for leave. As such, he failed to act as a responsible government servant. Further, he has not completed 5 years of service. Therefore, he will not be permitted to avail any additional leave except the eligible leave as per rules. Therefore, the impugned order is fit to be operated upon.

27. On considering the facts and circumstances of the case and arguments advanced by the very competent counsels on either side and on perusing the typed set of papers, it is seen that the petitioner has not joined duty until 02.11.2001 as per the District Collector's order. As such, he has not acted as a responsible Government servant. Further, the petitioner had neither joined duty nor applied for leave. As such, there is negligence and insufficiency of service on his part. Therefore, the above writ petition does not generate sufficient force to allow it. Hence, it is dismissed.

28. In the result, the writ petition is dismissed. No costs.

Sd/-
Asst. Registrar (CS II)

/true copy/

Sub Asst. Registrar

vs

To:

1. The Govt. of Tamilnadu,
Represented by its Secretary,
Highways Department,
Fort St. George,
Chennai - 600 009.

2. The Chief Engineer (GI),
Highways Department,
PWD Campus, Chepauk,
Chennai - 600 005.

1 cc to Government Pleader, Sr. 69214

W.P.No.37288 of 2007

AD (CO)
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