

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.37289 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 the 2nd respondent relating to the issue of Letter No.48420/N3 (1)/2003/ dated 24.12.2003 and quash the same and consequently direct the respondents to treat the period from 01.03.2000 to 08.01.2002 as duty on compulsory wait with all consequential monetary and service benefits.

For Petitioner : Mr.N.Subramaniyan

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

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ORDER

The short facts of the case are as follows:-

The petitioner has 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 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, the petitioner 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. 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.Vu1/1998, 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 is 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 08.01.2002, 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. Therefore, the writ petition.

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

It has submitted that the petitioner has filed the above Writ Petition praying for Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent relating to the issue of the Letter No.48420/N3 (1)/2003/ dated 24.12.2003 and quash the same and consequently direct the respondents to treat the period from 01.03.2000 to 08.01.2002 as duty on compulsory wait with all consequential monetary and service benefits. He has perused the affidavit of petitioner filed in support of the

above Writ Petition and deny all the averments made therein as false, untrue, baseless, frivolous and vexatious, except those that are specifically admitted hereunder. The petitioner has put to strict proof of all the allegations made. The above writ petition is not maintainable either in law nor on fact.

8.It has submitted that on selection and allotment by the Tamil Nadu Public Service Commission for appointment to the post of Assistant Engineer, the petitioner had been appointed as Assistant Engineer and posted to Puzhal Panchayat Union. The petitioner had joined duty in the Puzhal Panchayat Union on 27.01.1998. It is submitted that prior to the issue of G.O.Ms.No.102, dated 25.05.1998, in which separate Engineering Wing was ordered to be formed for Rural Development Department, all the Engineering and Technical posts in the Panchayat Unions were being filled up by the Highways and Rural Works Department. It has submitted that even after formation of Engineering Wing in the Rural Development Department, the Engineers and Technical Staff of Highways and Rural Works Department continued to work in Panchayat Unions for some time till the recruitment of new hands by the Rural Development Department.

9.It has submitted that the power to transfer and post as Assistant Engineer within the Division is vested with the Divisional Engineers (H) and within the Circle, with the Superintending Engineers (H). However, in the case of Union Engineers, who are working in the Panchayat Unions, which comes under the administrative control of the District Collector and the Director of Rural Development. The District Collector 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. The allegation 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. They 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.

10.It has submitted that the creation of additional posts in G.O.Ms.No.263, dated 27.12.1996, indicated by the petitioner is in no way connected with the posting of Engineers and Technical Staff by the Highways and Rural Works Department. The additional posts so created were filled up only by the Engineers and Technical Staff of Highways and Rural Works Department. As indicated above and as admitted by the petitioner himself, even after formation of Engineering Wing in G.O.Ms.No.102, dated 25.05.1998, the personnel of Highways Department were placed at the disposal of the Director of Rural Development / District

Collectors on transfer of service basis, till the recruitment of new hands by the Director of Rural Development.

11.It has submitted that the allegations as stated supra, after the issue of G.O.Ms.No.102, dated 25.05.1998, the Engineers of Highways and Rural Works Department were only placed at the disposal of the Director of Rural Development / District Collectors who have got every right to utilize the services of the Engineers and to post them in any one of the unions as per G.O.Ms.No.263, dated 27.12.1996. The Highways and Rural Works Department cannot intervene in the postings. As such, when the District Collector transferred the petitioner from Puzhal Panchayat Union to R.K.Pet Panchayat Union and the petitioner gave representation objecting the transfer order which was given by the District Collector, the Chief Engineer, Highways and Rural Works only directed the petitioner to obey the orders of the District Collector, since the Chief Engineer, Highways and Rural works is not supposed to intervene in the postings in between the unions. If at all 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. Since the petitioner had joined Puzhal Panchayat Union which comes under Rural Development Department and worked there for about 2 years, he cannot allege that he has been selected for the Tamil Nadu Highways Engineering Service only and not to work under different departments. If his allegation is that he would work only in the Highways and Rural Works Department, he should not have joined Puzhal Panchayat Union. He had 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 is true that the petitioner was appointed as Assistant Engineer under the Tamilnadu 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.

12.It has submitted that the transfer order had been served on the individual on 07.02.2000. The petitioner had obtained the interim order from the Tribunal on 21.08.2000, i.e. after six months from the date of transfer order. In the meantime, as the petitioner was under suspension with effect from 11.04.2000, he could not be given posting orders immediately on receipt of Tribunal order. However, action was taken to finalize the disciplinary proceedings initiated against the petitioner and posting order was issued by the Director of Rural Development on 20.01.2001 posting him back to Puzhal Panchayat Union.

13.It has submitted that if at all the allegations 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. Transfer of job from one place to another is an integral part of Government Service. The petitioner was not changed from one Department to another, as alleged by him, so as to get any willingness. It was the petitioner who had not joined duty, inspite of posting order given to him. The petitioner having omitted to join duty cannot blame the respondents.

14.It has submitted that regarding the claim of the petitioner to treat the period from 01.03.2000 to 08.01.2002 (22 months and 8 days) could not be considered for the reasons stated supra. The petitioner had neglected the transfer order issued on 17.02.2000 and kept away from duty after being relieved from Puzhal Panchayat Union on 29.02.2000. In the meantime, disciplinary action was initiated against the petitioner and he was placed under suspension with effect from 11.04.2000. Suspension was revoked and posting order was issued on 20.01.2001. The petitioner again neglected the posting order issued on 20.01.2001 and did not join duty. He was surrendered by the Director of Rural Development Department on 02.11.2001. The petitioner was given posting to a place of his choice in Highways Department and joined duty on 07.01.2002. Thus, the petitioner was under suspension from 11.04.2000 to 20.01.2001. The petitioner did not care to report for duty or act in accordance with the law during the periods from 01.03.2000 to 10.04.2000 and from 21.01.2001 to 06.01.2002, which itself shows his motive of gross disobedience and indiscipline. Nothing prevented the petitioner to challenge the order of second respondent. Disciplinary proceeding was different from the order rejecting the claim of petitioner. Both have no nexus. Hence the petitioner's case is hit by latches. It has submitted that the petitioner was under suspension for about 9 months and for the rest of the period he kept himself away from duty and on unauthorized absence. He chose to keep away from attending duty for want of a posting of his choice, so as to act according to his whims and fancies. 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-5 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 no law declares that every officer within the District is coming under the disciplinary control of the District Collector 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 submits 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 given posting in Highways Department immediately, but after a delay of 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 a 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.

16. He has submitted that the contention that as per G.O.263 dated 27.12.1996, the engineers allotted to RD Department as per G.O.102 is liable to be transferred is not applicable to the

petitioner as he was never allotted to RD Department. It is pertinent to note that the first respondent itself in para-6 of the counter affidavit specifically avers that orders issued in G.O.263 is no way connected with the postings of engineers and technical staff of Highways and Rural Works Department and naturally the petitioner who is an engineer of H&RW Department.

17.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 submits 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 submits 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.

18.With reference to the averments in para-9 of the counter affidavit under reply, he has submitted that the transfer issued by an incompetent authority and to Panchayat Union and not in Highways Department, the question of himself stayed away from duty from 20.02.2001 is without any legal basis and hence the question of a 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.

19. He has submitted that the contention that the writ petition is hit by latches as he had not challenged the rejection of his request for compulsory wait by second respondent is without any legal basis. As the disciplinary proceedings as to the correctness of not obeying the posting order issued by the District Collector was under enquiry and the sanction of compulsory wait depends purely on the result of the said proceedings, and hence the question of challenging the order of second respondent while the disciplinary is pending does not arise. Therefore, the said contention is liable to be rejected. With reference to the averment in para-17 that engineers of Highways Department were treated on deputation is baseless as they like the petitioner were posted as part of their service as the engineering posts of Panchayat Unions were sanctioned part of the H & RW Department and the invoking of FR 40 is no way applicable to this case, as the issue is as to who is the transferring authority for an Assistant Engineer of H & RW Department. He has submitted that all the averments in paras-11 to 16 and 18 and 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.

20. The learned counsel Mr. N. Subramanian appearing for the petitioner has submitted that the petitioner has been suspended on 11.04.2000 without assigning any valid reasons. Further, the petitioner made representation to the second respondent herein, inter alia, to declare the period from 01.03.2000 to 08.01.2002 as illegal detention of him in Highways Department, without posting and to regularise the above said period of service as duty with all back wages and consequential benefits due to him. The same was rejected by the second respondent stating that he has not obeyed the transfer orders dated 07.02.2000 of the District Collector, Thanjavur. Further, the second respondent, without conducting a comprehensive enquiry had rejected his application. Hence, the learned counsel entreats the Court to direct the respondents to treat the period from 01.03.2000 to 08.01.2002 as duty on compulsory wait with all consequential monetary and service benefits.

21. The learned Additional Government Pleader, appearing for the respondents has submitted that the power of transfer for those who are working on the Panchayat Union as Union Engineers, which comes under the Administrative control of the District Collector and Director of Rural Development. Both have rights to

transfer the Union Engineers from one place to another place within their jurisdiction in accordance with the administrative exigencies. The petitioner's allegation that the District Collector 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 which is patently false. Further, as per G.O.Ms.No.102 dated 25.05.1998, the Director of Rural Development or District Collectors have power to transfer the petitioner. Accordingly, the petitioner has been transferred from Puzhal Panchayat Union to R.K.Pet Panchayat Union. The petitioner gave representation objecting the transfer order which was given by the District Collector. On the said transfer order, the Chief Engineer has directed the petitioner to obey the District Collector order. But the petitioner has declined to obey the same. Therefore, charges were framed against him and the same was proved. Under the circumstances, the petitioner's request was rejected. The petitioner did not come to report for duty during the period from 01.03.2000 to 10.04.2000 and from 21.01.2001 to 06.01.2002. As such, the petitioner disobeyed his superiors orders. Hence, his request was rejected. Further, the District Collector's orders was endorsed by the Director, Rural Development, who is the direct superior officer to the petitioner.

22.On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the common typed set of papers, this Court is of the view that as per G.O.Ms.No.102, dated 25.05.1998, the District Collector and the Director of Rural Development have rights to transfer the petitioner. Besides, the District Collector, who is the top officer of the District and Administrative Control of the District. As such, the District Collector has not violated the power of the respondents herein. Therefore, the impugned order passed by the second respondent is appropriate. Hence, the above writ petition is dismissed.

23.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.

W.P.No.37289 of 2007

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