



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. (MD) Nos.14926 and 15415 of 2015
and

M.P. (MD) .Nos.1 and 2 of 2015
in

W.P. (MD) .No.14926 of 2015
and

M.P. (MD) .No.1 of 2015
in

W.P. (MD) .No.15415 of 2015

1.S.Palanichamy ...Petitioner in W.P. (MD) .No.14926/15
2.T.Tharmaraj ...Petitioner in W.P. (MD) .No.15415/15

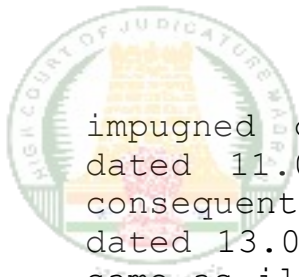
Vs.

1.The Chief Engineer/Personnel (I/c.),
Tamilnadu Generation and Distribution Corporation Ltd.,
Administrative Branch,
No.144, Anna Salai,
Chennai-600 002.

2.The Senior Administrative Officer,
For Chief Engineer (Distribution),
Tamilnadu Generation and Distribution Corporation Ltd.,
O/o.The Chief Engineer (Distribution)
Tirunelveli Region/Tirunelveli-11,
Tirunelveli District. ... Respondents 1 & 2 in both
Writ Petition

3.The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
TNEB/Tirunelveli
Tirunelveli District-627 011. ...3rd Respondent in
W.P.No.14926 of 2015

S.Palanichamy ... 3rd Respondent in
W.P.No.15415 of 2015



impugned order of transfer in Memo No.064012/G.11/G.111/2015-2 dated 11.08.2015 on the file of the Respondent No.1 and the consequential order in Memo No.011361/1058/Adm/A.1/F.AEE./2015, dated 13.08.2015 on the file of the respondent No.2 and quash the same as illegal.

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For Petitioner ... Mr.T.Lajapathiroy
For Respondents ... Mr.G.Kasinatha Durai
for TNEB

PRAYER in W.P.(MD).No.15415 of 2015:

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the first and second respondent to permit the petitioner to work as Assistant Executive Engineer in the office of the second respondent as per the proceedings of the first respondent in Memo No.064012/G.11/G.111/2015-1 dated 11.08.2015 and the consequent proceedings of the second respondent in Memo.No.011362/1059/Additional District Munsif/A1/F.AEE/2015 dated 13.08.2015.

For Petitioner ... Mr.G.Prabhu Rajadurai
For R1 and R2 ... Mr.K.Chellapandian
Addl. Advocate General
Asst. by
Mr.G.Kasinatha Durai

COMMON ORDER

There are two writ petitions filed by the petitioners. Aggrieved by an order of transfer dated 11.08.2015, they have come to this Court challenging the same on the ground that his elder son viz., P.Karthick is having 70% of disability of mental disorder. Hence, he is under the constant care of Home for mentally retarded children. Therefore, petitioner had to drop him in the morning and collect him in the evening. Such fatherly duty and care towards his elder is interrupted with the impugned order of transfer.

2.In support of his prayer to interfere with the transfer, he has also produced an Office Memorandum issued by Under Secretary to the Government of India, stating that the Government employee, who has disabled child should be exempted from the routine exercise of transfer / rotational transfer subject to the administrative constraints. The word disabled also has been explained in the said office memorandum includes (i)blindness or (ii)deafness (iii)hearing impairment (iii)locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities.



3.The learned counsel also relied on one another office memorandum No.21060 / A18 / A181 / 2015 -1, Dated 7th April, 2015.

4.Considering the fact that the petitioner's son is having 70% disability, this Court thought it fit to interfere with the same. Accordingly, granted an order of stay on 20.08.2015.

5.Aggrieved by the grant of stay, another writ petition has been filed by Mr.T.Tharmadurai on the ground that on the date of grant of stay viz., 20.08.2015, the petitioner/Mr.Tharmadurai was already relieved from Tirupattur to join at Tirunelveli on 19.08.2015. After relieving from Tirupattur, he has joined at Tirunelveli on 20.08.2015. Therefore, this Court posted both the matters together.

6.Heard the learned counsel for the petitioners and the learned Additional Advocate General appearing for the respondents.

7.Today, when the matter was taken up for hearing, the learned Additional Advocate General appearing for the official respondents opposing the grant of stay, emphatically contended that Mr.S.Palanisamy, who is serving as an Assistant Executive Engineer in Tirunelveli Electricity Distribution Circle for the past 20 years, has been holding the seat at Tirunelveli Town for a period of six long years, therefore, the transfer effected on administrative exigency cannot be questioned by him, more particularly when the petitioner was shifted from Tirunelveli to Ayakudi, which is hardly 50 km. As a matter of fact, the petitioner ought not to have challenged the order, since he has been moved only to a reachable and accessible distance of 50 km. Therefore, the question of taking care of his disabled son, who is having 70% disability cannot be considered as a reason to interfere with any routine transfer order, he pleaded. Learned Additional Advocate General further submitted that if the order of transfer is set aside, the petitioner will be allowed to continue in one place for more than 20 long years, this will send a wrong signal to the department. Although, the learned counsel appearing for the petitioner, in reply, attempted to justify the order of stay granted by this Court, taking support from the reported decision of this Court in *W.P. (MD).No.8580 of 2012, dated 14.09.2012* on the ground that the state cannot act against the interest of one employee to favour another employee Mr.Tharmaraj, I find no merits in these writ petitions, for, as rightly pointed out by the learned Additional Advocate General, the petitioner has been serving as an Assistant Executive Engineer in Tirunelveli Electricity Distribution Circle from 1990 for about 20 long years. The petitioner has been working in the present place for about six long years viz., in the same seat. By the impugned order of transfer dated 11.08.2015, the petitioner has been moved only to a

little distance of less than 50 kms vz., Ayakudi.

8. Therefore, this Court is not convinced by the arguments made by the learned counsel for the petitioner that he should be allowed to take care of his disabled son by extending his full care to attend the school every day and in this contest reliance made on a decision of the Hon'ble Apex Court in *S.C.SAXENA V. UNION OF INDIA AND OTHERS* reported in (2006) 9 Supreme Court Cases 583, also cannot be made applicable to this case.

A mere perusal of the decision, clearly reminds me of the well settled legal position that the order of transfer is not only an incident of service but also a condition of service. Therefore, no employee is having vested or indefeasible right to stay at one place as mentioned above, for all time to come. When the petitioner has been serving in Tirunelveli District for about 20 long years, the present order of transfer which is based only on the administrative grounds, cannot be interfered with. Yet another reason to confirm the impugned order is that when the petitioner came to this Court, challenging the impugned transfer, Mr.T.Tharmaraj, had already taken charge. This has not been brought to the notice of this Court at the time of granting the order of stay. Therefore, the interim stay already granted by this Court on 20.08.2015, stands vacated. These writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1.The Chief Engineer/Personnel (I/c.),
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Administrative Branch,
No.144, Anna Salai,
Chennai-600 002.

2.The Senior Administrative Officer,
For Chief Engineer (Distribution),
Tamilnadu Generation and Distribution Corporation Ltd.,
O/o.The Chief Engineer (Distribution)
Tirunelveli Region/Tirunelveli-11,
Tirunelveli District.



3.The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
TNEB/Tirunelveli
Tirunelveli District-627 011.

- + 2 CC TO MR.J.LAJAPATHIROY, ADVOCATE IN SR NO. 62046, 62047
- + 1 CC TO MR.G.PRABHU RAJADURAI, ADVOCATE IN SR NO. 61763
- + 2 CC TO MR.G.KASINATHADURAI, ADVOCATE IN SR NO. 62059, 62060

NS

TE/SK-SKN/ 01/12/2015 : 4P/9C

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