

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2016

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.36096 of 2015

and

M.P.No.1 of 2015

A.Sekar

.. Petitioner

vs

1. The Chief Engineer (Personnel)
TANGEDCO
Vellore Region
Vellore.

2. The Superintending Engineer
TANGEDCO
KEDC, Krishnagiri.

3. The Executive Engineer (O & M)
TANGEDCO
Krishnagiri Division
Krishnagiri.

4. The Chairman
Tamil Nadu Electricity Board
800, Anna Salai
Chennai.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the respondents and to quash the second respondent's impugned order issued in Memo No.816/Adm.1/A.1/F.C1/2015 dated 26.09.2015.

For Petitioner : Mr.S.Sathiaseelan

For Respondents : Mr.M.Fakkir Mohideen

O R D E R

This writ petition has been filed by one A.Sekar, challenging the impugned transfer order issued by the second respondent on two major grounds:

(i) Firstly, it was contended that the petitioner, who has been serving in the post of Commercial Inspector has been subjected to transfer by the impugned order dated 26.09.2015 passed by the Superintending Engineer, Krishnagiri, who is not an authority, even as per the circulars repeatedly issued by the respondents.

(ii) Secondly, drawing the notice of this Court to the Administrative Transfer guidelines issued by the Chief Engineer (Personnel) dated 20.06.1996, it was contended that in respect of cases to be transferred within the Circle, the Superintending Engineer will forward such cases to the Chief Engineers concerned and the said Chief Engineer will examine such request and pass orders after recording the justification and that the respondents have violated the said circular also. Further it is stated that the employees, who have not completed three years of stay should not be normally be disturbed.

2. Continuing his argument, the learned counsel for the petitioner also brought to the notice of this Court the Tamil Nadu Electricity Board's Service Regulation to say that the administrative transfers of all other categories except the entry level category, viz., Helper and Testers Grade II and equivalent categories within the Region, Chief Engineer (Distribution) alone has got power. Here in the present case, the Superintending Engineer, who has no authority whatsoever to pass any order of transfer has passed the impugned transfer order. Hence, the same is liable to be quashed.

3. Adding further, the learned counsel for the petitioner would submit that the petitioner has been subjected to frequent transfer. Inasmuch as prior to the present transfer order, he was transferred by order dated 27.12.2014 and that the petitioner joined the said place only on 20.01.2015 and again within eight months' he has been issued with the impugned transfer order.

4. Learned counsel for the petitioner, taking support from the judgment of the Apex Court reported in the case of Badrinath vs. Government of Tamil Nadu and others reported in (2000) 8 SCC 395, holding that once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime - like the recommendation of the State and by the UPSC and the action taken thereon would fall to the ground, submitted that since in the case on hand, the impugned transfer order has been passed by an authority, who is not having the competency to pass the same, as per the Tamil Nadu Electricity Board-Service Regulations any

further action namely, posting in his place another person also would fall to the ground.

5. By way of reply, the learned Standing counsel appearing on behalf of the respondents vehemently urged this Court to dismiss the writ petition on the ground that the petitioner's challenge to the impugned transfer order is unknown to law. He would further submit that in the cases of transfer falling within the Circle- the Superintending Engineer concerned is the competent authority.

6. Obviously, no transfer order is open to challenge. I fully agree with his submission. However, but any order of transfer can be challenged on the following three grounds:

(i) Firstly, if the order of transfer is passed violating any statutory rules or circular.

(ii) Secondly, if any order of transfer is passed with mala fide intention.

(iii) Thirdly, if the same order of transfer is passed by way of punitive measure without following the rules or regulations.

Anyone aggrieved by any one of the aforementioned situation is entitled to challenge the same.

7. In the present case, as rightly canvassed by the learned counsel for the petitioner, the respondents-Electricity Board have given a go-by to their very own circular. In this context, it is relevant to extract the bye-law issued by the respondents in their Service Regulation, which reads as under:

Regular work Establishment Workmen	I.
	II. Distribution Circles/Region
	(i)
	(ii)
	(iii)
	(iv)
	(v) Administrative transfers of all other categories within the Region-Chief Engineer (Distribution)

8. Secondly, one another Administrative Transfer Guidelines dated 20.06.1996, which mandates that only the Chief Engineer

alone has got power to pass the transfer order within the Circle has also been given a go-by. The relevant portion of the said guidelines issued in Memorandum No.10432/P1/95-1 (Sectt.Br.) dated 20th June 1996, runs as under:

"(i)

(ii)

(iii) In respect of cases to be transferred within the circle the Superintending Engineers will forward such cases to the Chief Engineers concerned. The Chief Engineer in turn will examine such requests and pass orders after recording the justification."

9. At this juncture, it is also useful to refer to the judgment of the Hon'ble Apex Court reported in (2001)5 SCC 508 [State Bank of India vs. Anjan Sanyal and others] wherein the Apex Court has held that, an order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order, the same can be set aside.

10. In the case on hand, as mentioned above, the impugned order of transfer has been wrongly passed by an authority, viz., Superintending Engineer, whereas the competent authority being the Chief Engineer to effect transfer of the petitioner.

11. This Court having found that in the present case, the respondents having failed to comply with clause (v) of Annexure-IV [Referred to in Regulation 105] of TNEB Service Regulations, since the impugned order of transfer is an Administrative transfer, a conjoint reading of the clauses (ii) and (v) of the said Regulations would clearly go to show that the Chief Engineer alone is the competent authority to pass the transfer order with regard to the petitioner. Accordingly, the impugned transfer order is set aside.

12. At this juncture, the learned Standing counsel for the respondents, by relying on para No.8 of the counter affidavit filed would submit that pursuant to the transfer order, the petitioner was relieved on 26.09.2015 and in his place another person has joined.

13. However, on instructions, the learned Standing Counsel for the respondents submitted that instead of disturbing the incumbent officer, the petitioner may be posted at Elathagiri, which is about 45 kms away from the present place of his posting

and only 9 kms from his place of stay. His statement is recorded.

14. Insofar as the grievance of the petitioner with regard to the payment of the salary, it is open to the petitioner to make appropriate representation to the authority concerned and if any such representation is made, it is for the authority to decide the same on its merits.

15. With the above observation, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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800, Anna Salai
Chennai.

+1cc to Mr.M. Fakkir Mohideen, Advocate, S.R.No.17837
+ 1 cc to MR.S. Sathiaseelan, Advocate Sr.17589

UG(CO)
EU(6/04/2016)

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