

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2016

CORAM

THE HON'BLE MR. JUSTICE B.RAJENDRAN

WP.No.21966 of 2016
and
W.M.P.No.18789 of 2016

A.Rajapandiyan

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Agriculture Department,
Secretariat,
Chennai-9.
- 2.The Joint Director (Personnel),
O/o.The Commissioner of Agriculture,
Chepauk,
Chennai-5.
- 3.The Director of Seed and Organic Certification,
1424-A, Thadagam Road,
Coimbatore-13.
- 4.The Joint Director of Agriculture,
Kancheepuram,
Kancheepuram District.
- 5.V.Sathish Kumar,
Agriculture Officer,
O/o.Assistant Director of Agriculture,
Thiruporur,
Kancheepuram District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records connected of the 4th respondent in No.A1/6017/2016, dated 14.06.2016, and quash the same insofar as the petitioner is concerned and to direct the respondents 1 to 4 to allow the petitioner as Seed Inspector at Kancheepuram and to pass such further orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.A.Thiyagarajan
Senior Counsel
for Mr.G.Elanchezhiyan

For Respondents: Mrs.M.E.Raniselvam
Additional Government Pleader

O R D E R

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in No.A1/6017/ 2016, dated 14.06.2016, and quash the same insofar as the petitioner is concerned and to direct the respondents 1 to 4 to allow him to work as Seed Inspector at Kancheepuram.

2. The petitioner entered into service as Agriculture Officer, on 15.03.1980. Subsequently, he was transferred on deputation and allotted to Deputy Director of Seed and Certification, Chennai, at his request. He was relieved from the parent Department of Agriculture. He was posted as Seed Inspector at Kancheepuram and was continuing the said post. While so, without following the Rules, the 4th respondent has issued the transfer order in proceedings No.A1/6017/2016, dated 14.06.2016 and transferred him from the Department of Director of Seed and Certification to Office of the Assistant Director of Agriculture, Thiruporur, which comes under the control of Department of Agriculture. Alleging that the transfer order passed by the 4th respondent, dated 14.06.2016, is illegal and seeking to quash the same, the present Writ Petition has been filed.

3. Mr.A.Thiyagarajan, the learned senior counsel appearing for the petitioner, would point out that the impugned order is without jurisdiction. As per Rule 10 of the Special Rules for Tamil Nadu Agriculture Subordinate Service Rules issued in G.O.Ms.No.111, Agriculture (AAV) Department, dated 21.01.1981, the transfer could be effected only by the Joint Director (Personnel), who is always in the Headquarters, but the present impugned order has been passed by the Joint Director of Agriculture, Kancheepuram, itself. He would further add that Rule 10 of the Special Rules deals with postings and transfers to the several class of posts specified in col.2 of the Table below and it shall made by the authorities specified in the corresponding entries in col.3 thereof :-

Class	Post	Competent Authority	
Class I	Joint Director of Agriculture (Extn.)	Government	
Class II	Deputy Director of Agriculture (Extn.)	Director of Agriculture	
Class III	Assistant Director of Agriculture (Extn.)	Director of Agriculture	
Class IV	Agricultural Officer (Extn.)	1.Transfer from one Region to another 2.Transfer within the region	1.Jt. Director of Agriculture (Per.) 1.Jt. Director of Agriculture (Extn) or Dy. Director of Agriculture (Extn) incharge of the region as the case may be 2.Jt. Director of Agriculture (Per.) in respect of persons working in the Head Office.

Relying on the above, the learned senior counsel would submit that the 4th respondent has got no authority to pass the transfer order and therefore, the transfer order cannot be given effect to. For the proposition that when an authority has no authority to pass an order, the transfer order passed by him cannot be given effect to, the learned senior counsel relies upon the judgment of the Hon'ble Apex Court reported in (1994) 2 LLJ 192, Dr.Ramesh Chandra Tyagi vs. Union of India and others, wherein, in paragraph No.5, it was held as follows:-

"5. Two basic questions arise, one, whether the basic transfer passed against the appellant was valid and in accordance with law and the other if the dismissal order suffers from any infirmity. Taking up the transfer order it is undisputed that the Competent authority, to transfer the appellant was the Secretary of the department whereas the order was passed by the Director General. It was attempted to be

defended by claiming that the power of transfer was delegated. But despite grant of time no order delegating the authority could be produced. The learned Counsel appearing for Union of India had to concede that no order of delegation was on record. We are not prepared to infer delegation because there were orders on the record which indicated that subsequently the Secretary had delegated the powers. It is not delegation earlier or later which is material but whether any delegation existed on the date when the transfer order was passed. Further it is necessary to mention that the respondents having taken definite stand in the written statement that the transfer order was approved but did not produce the record in the trial court nor they could substantiate it even in this Court, there is no option but to hold that the order was not passed by the person who alone was Competent to do so. The transfer order issued by the Director General, thus, being contrary to rules was non est in the eye of law."

Relying on the judgment cited above, the learned senior counsel would contend that the impugned transfer order cannot be given effect to. He would further add that till date, the petitioner has not been relieved from the post of Seed Inspector, Kancheepuram, and he is on medical leave, therefore, the transfer order has not been implemented.

4. Mrs.M.E.Raniselvam, the learned Additional Government Pleader appearing for the respondents would contend that no doubt, the Special Rules originally prescribe that the Joint Director (Personnel) alone can pass transfer order, but, the power has been delegated to the concerned Officers, by proceedings in f/vz;/nt/mep/1-23672-2016. Dated 15.06.2016 and therefore, the 4th respondent is empowered to pass the transfer order and rightly, the impugned order has been passed by the 4th respondent and hence, she prays for the dismissal of the Writ Petition.

5. Heard both sides. By consent, the Writ Petition itself is taken up and disposed of.

6. No doubt, the respondents' claim that there is a delegation of power by virtue of proceedings, dated 15.06.2016. The impugned order was passed on 14.06.2016, but, subsequently, on 15.06.2016 only, the delegation of power was given. As rightly pointed out by the learned senior counsel appearing for the petitioner, it is not delegation earlier or later which is

material, but, what is material is whether any delegation existed on the date when the transfer order was passed. There is no option, but, I have to hold that the delegation not existed on the date when the transfer order was passed and therefore, the transfer order was not passed by the person, who alone was competent to do so.

7. In the result, following the judgment of the Hon'ble Apex Court (cited supra) that on the day when the impugned order was passed, the authority concerned has no authority to pass such an order, I have to hold that the impugned order is non est in the eye of law. The impugned order passed by the 4th respondent, dated 14.06.2016, is set aside. This Writ Petition is allowed. It is made clear that this order will not in any way prevent the appropriate authority concerned from making necessary further orders. The connected Miscellaneous Petition is closed. There shall be no order as to costs.

paa

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to Government
State of Tamil Nadu,
Agriculture Department,
Secretariat, Chennai-9.
- 2.The Joint Director (Personnel),
O/o.The Commissioner of Agriculture,
Chepauk, Chennai-5.
- 3.The Director of Seed and Organic Certification,
1424-A, Thadagam Road,
Coimbatore-13.
- 4.The Joint Director of Agriculture,
Kancheepuram, Kancheepuram District.
- 5.V.Sathish Kumar,
Agriculture Officer,
O/o.Assistant Director of Agriculture,
Thiruporur, Kancheepuram District.

+ 1 cc to The Govt.Pleader, Sr 36590

+ 1 cc to Mr.G.Elanchezhiyan, Advocate Sr 36518 (13/7/16)

KR/12/7/16

W.P.No.21966 of 2016