

In the High Court of Judicature at Madras

(Orders reserved on 05.10.2016)

Dated :21.10.2016

Coram

The Honourable Mr.Justice R.SUBBIAH

W.P.No.25366 of 2016

and

W.M.P.No.21666 of 2016

and

W.M.P.No.25209 of 2016

C.Madhammal

.... Petitioner

..vs..

1.The District Collector,
Dharmapuri District.

2.The Assistant Director,
Town Panchayat Department,
Dharmapuri Division,
Collectorate Campus at Dharmapuri,
Dharmapuri District.

3.The Executive Officer,
Selection Grade Town Panchayat,
Palakode, Palakode Taluk,
Dharmapuri District.

..Respondents

Writ Petition has been filed under Article 226 of Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records in Na.Ka.No.A3/1739/2016, dated 11.07.2016, passed by the 1st respondent and to quash the same and consequently, to direct the respondent to transfer the petitioner in Paupparapatti Town Panchayat, Pennagaram Taluk, Dharmapuri District, within a time frame.

For Petitioner : Mr.T.Karunakaran

For Respondents : Mr.K.Dhananjayan, Spl GP (for R1 & R2)

Mr.V.Jayapraksh Narayanan (For R3)

ORDER

This writ petition has been filed by the petitioner challenging the transfer order passed by the 1st respondent in Na.Ka.No.A3/1739/2016, dated 11.07.2016, in and by which the petitioner, who is working as Junior Assistant, has been transferred from the office of the 3rd respondent to Kambaianallur Town Panchayat, Harur taluk, Dharmapuri District.

2.The brief facts of the case of the petitioner are as follows_

2-1.The petitioner's husband was working as Fitter in Harur Town Panchayat Office, Dharmapuri District and he died on 30.07.1990 while in service. Thereafter, on 15.05.1991, the petitioner was given compassionate appointment, as Record Clerk in Pauppireddipatty Town & Post, Pauppireddiapatty Taluk, Dharmapuri District. Thereafter, the petitioner had been transferred and posted in many places, such as Kaveripattinam, Kambaianalur, Pennagram, Marandahalli, Karimangalam. Finally, she was transferred to the office of the 3rd respondent on 08.11.2012 as Junior Assistant.

2-2.It is further stated by the petitioner that from 08.11.2012, the petitioner is working in the office of the 3rd respondent. Since the petitioner is suffering from some health problems, she finds it very difficult to travel long distance, to reach her office from her residence. Hence, she had made a representation dated 18.01.2013 to the 2nd respondent, requesting to transfer her to any place nearby to her residential place. But, the said representation was not considered by the 2nd respondent. In the meantime, on 22.02.2013, the petitioner was admitted in Fortis Hospital, Bangalore, for taking treatment for cancer in kidney and she had undergone a surgery in the said hospital and her left kidney has been removed on the same day ie., on 22.02.2013. The petitioner was discharged from the said Hospital only on 01.03.2013.

2-3.Since the petitioner's representation dated 18.01.2013 for transfer was not considered by the respondents, the petitioner made a Grievance Petition on 22.07.2013 before the 1st respondent. But, a reply was sent by the 2nd respondent stating that the petitioner's claim was rejected due to the administrative reasons.

2-4.It is further stated by the petitioner that as her health condition got deteriorated, she again made representations dated 23.07.2015 and 30.05.2016 to the 1st respondent. Thereafter, the petitioner was on medical leave from 12.06.2016. While so, to her shock and surprise, the petitioner received a phone call from the 3rd respondent stating that she has been transferred from the office of the 3rd respondent to the Kambaianallur Town Panchayat, Harur Taluk, Dharmapuri District. The petitioner received the impugned transfer order on 11.07.2016. Hence, the petitioner has come forward with the present writ petition challenging the impugned transfer order.

3.Along with the writ petition, the petitioner has also filed a Miscellaneous Petition in W.M.P.No.21666 of 2016 seeking interim stay of the operation of the impugned transfer order. When the matter came up on 21.07.2016, this court has granted interim stay of the operation of the impugned transfer order.

4.The learned counsel appearing for the petitioner made a detailed argument by adverting to the contentions made in the affidavit filed in support of the writ petition. The learned

counsel appearing for the petitioner would mainly contend that the petitioner had undergone a surgery for cancer in her kidney and her left kidney was removed on 22.02.2013. The petitioner finds it very difficult to travel a long distance. As per the Government Order in G.O.(ID).No.129, School Education (E1) Department, dated 09.05.2013, ill health of the Government Employee can be considered while passing the transfer order. But, in the instant case, without considering the health condition of the petitioner, the impugned transfer order has been passed by the 1st respondent, transferring the petitioner to a far away place from her residential place. Thus, the learned counsel for the petitioner sought for quashing the impugned transfer order.

5.The respondents filed a petition in W.M.P.No.25209 of 2016 seeking to vacate the interim stay order granted by this court.

6.The learned Special Government Pleader appearing for the respondents 1 & 2, would contend that while the petitioner was working as Junior Assistant in the office of the 3rd respondent, the 1st respondent has passed the impugned order, dated 11.07.2016 transferring the petitioner from the office of the 3rd respondent to the vacant post lying in Kambainallur Town Panchayat, Dharmapuri District. The transfer order dated 11.07.2016 was communicated to the petitioner on 14.07.2016 and the 3rd respondent relieved the petitioner on 15.07.2016 enabling her to join duty in the office of the Kambainallur Town Panchayat, Dharmapuri. But, suppressing the relieving order dated 15.07.2016, the petitioner has approached this Court and obtained the interim order of stay from this Court. It is further contended by the learned Special Government Pleader that the transfer order was made purely on administrative grounds and the petitioner does not have any right to stay in particular place for her convenience. The 1st respondent being the head of the institution has power to transfer any of the employee from one place to another place for ensuring smooth administration. In the instant case, the impugned transfer order has been passed only on administrative grounds. Further, G.O.(ID).No.129, School Education (E1) Department, dated 09.05.2013, will be applicable only to the Education Department and not to the others; therefore, the petitioner can not rely upon the said GO, as she is working in Municipal Administration and Water Supply Department. Further, absolutely there is no mala fide on the part of the respondents in transferring the petitioner. It is incorrect to state that she has been transferred to far away place; the distance from the residential place of the petitioner to the work place is only 35 kms. Thus, the learned Special Government Pleader sought for dismissal of the writ petition.

7.Keeping in view the submissions made on either side, I have carefully gone through the materials available on record.

8.The present writ petition has been filed to quash the order of transfer passed by the 1st respondent, transferring the petitioner, who is working as Junior Assistant in the office of the 3rd respondent, to Kambainallur Town Panchayat, Dharmapuri

District. The petitioner is seeking to quash the transfer order, only on the ground that she had undergone surgery and her left kidney was removed on 22.02.2013; she would find it very difficult to travel long distance. Further, the petitioner has also relied upon the G.O.(ID).No.129, School Education (E1) Department, dated 09.05.2013, in support of her contention that health condition of the Government Employee should be taken into consideration, before issuing transfer order; but, in the instant case, the respondents have not consider the said GO.

9.But, a perusal of the materials available on record, I find that the as per the said GO viz., G.O.(ID).No.129, School Education (E1) Department, dated 09.05.2013, it will be applicable only to the Education Department and not to others. A reading of the impugned transfer order would show that it was passed purely on the administrative reasons. It is well settled legal principle that transfer order can be interfered with, only when it is passed mala fide or in violation of the statutory provisions.

10.But, in the instant case, it is not the case of the petitioner that the impugned transfer order has been passed in mala fide or in violation of the statutory provisions. It is only contention of the learned counsel for the petitioner that before passing the transfer order, health condition of the petitioner was not taken into consideration by the respondents. But, the said contention of the learned counsel for the petitioner will not serve as a legally valid ground to quash the transfer order. In this regard, it would be appropriate to place a reference in the judgment reported in (1989) 3 SCC 445 [Union of India Vs. H.N.Kirtania], wherein it has been held by the Hon'ble Apex Court that transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides.

11.In the instant case, absolutely there is no mala fide on the part of the respondents in passing the transfer order. Further, there is no violation of any statutory rules, in passing the impugned order. When that being the position, interference with the impugned transfer order by this Court is unwarranted. If the impugned transfer order is interfered with by this Court, it will affect only the smoothing function of the office. Hence, there is no merit in the writ petition and the same is liable to be dismissed.

12.For the foregoing reasons, the writ petition is dismissed and the interim stay is vacated. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Asst.Registrar (CS IV)

To

1.The District Collector,
Dharmapuri District.

2.The Assistant Director,
Town Panchayat Department,
Dharmapuri Division,
Collecterate Campus at Dharmapuri,
Dharmapuri District.

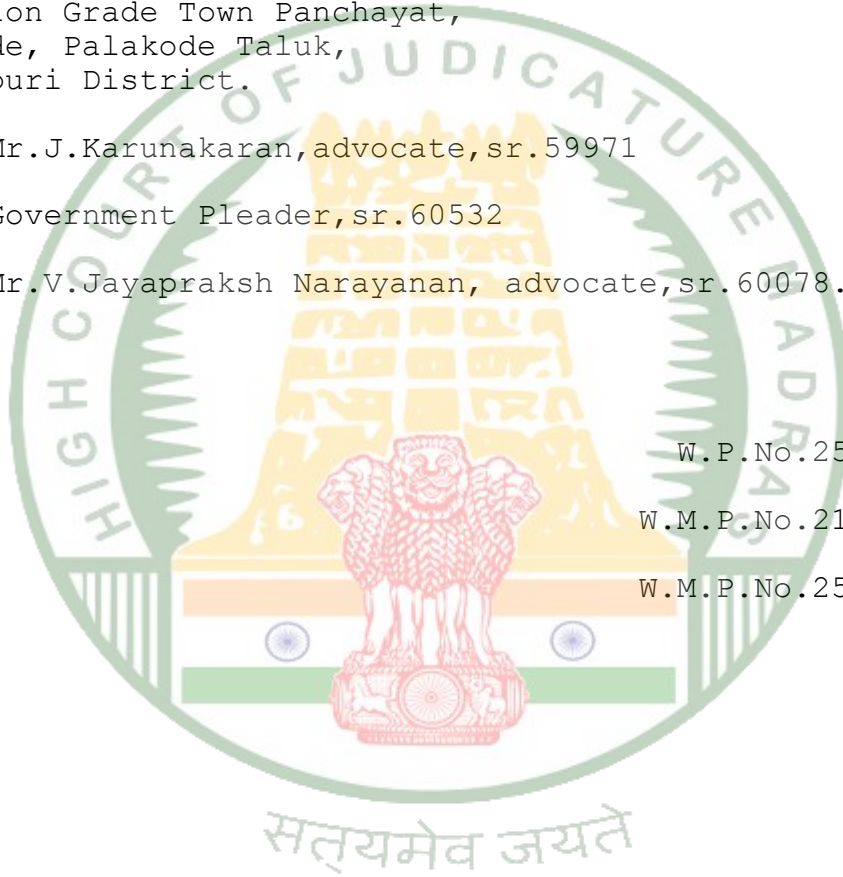
3.The Executive Officer,
Selection Grade Town Panchayat,
Palakode, Palakode Taluk,
Dharmapuri District.

+1 cc to Mr.J.Karunakaran,advocate,sr.59971

+1 cc to Government Pleader,sr.60532

+1 cc to Mr.V.Jayapraksh Narayanan, advocate,sr.60078.

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krd 21/11



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