

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2016

Coram:

Hon'ble Mr.Justice NOOTY. RAMAMOHANA RAO
and
The Hon'ble Mr.Justice S.M.SUBRAMANIAM

WRIT APPEAL No.1566 of 2016

M.H.Syed Ibrahim

Appellant

Versus

1. The Government of Tamilnadu,
rep. by its Secretary,
Highways Department,
Fort St. George, Chennai- 600 009.

2. The Chief Engineer, (G1)
Highways Department,
PWD Campus, Chepauk,
Chennai-5.

Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order passed by the learned single Judge in W.P.No.37288 of 2007 dated 18.12.2015.

Petition presented under Article 226 of the constitution of India for issuance of a writ of certiorari mandamus calling for the records on the file of the 1st respondent relating to the issue of G.O.Ms.No.50 Highways Dept dated 13.4.2007 and quash the same and consequently direct the respondents to consider the petitioner for inclusion in the panel of Asst Engineer fit for promotion as Asst Divisional Engineer of the year 2007-2008 and for promotion as Asst Divisional Engineer according to his original seniority.

For Appellant ... Mr.N. Subramaniyan

JUDGMENT

(DELIVERED BY NOOTY.RAMAMOHANA RAO,J)

This Appeal under Clause 15 of the Letters Patent, is directed against the order dated 18.12.2015, rendered by the learned single Judge, C.S.Karnan, J, dismissing the W.P.No.37288 of 2007, instituted by the writ petitioner, calling

in question, the legality and sustainability of the orders passed by the State Government in G.O.Ms.No.50, Highways Department dated 13.04.2007.

2. Heard Shri. N.Subramaniyan, learned counsel for the writ petitioner/appellant for a considerable length of time.

3. At the very outset, though the learned counsel for the appellant has ventilated a serious concern about the method and manner in which the writ petition has been dealt with and decided by the learned single Judge, however, we are not inclined to advert to the said aspect of the matter. But instead, requested Shri N.Subramanian, learned counsel for the appellant to address us on merits of the case, so that, we can give a fresh and independent approach to the subject matter altogether. Finally, Shri N.Subramanian, learned counsel for the appellant, has accepted our suggestion and addressed us on merits of the matter.

4. The facts that lie in a very narrow campus are, that the writ petitioner, a graduate in Engineering, has been selected by the Tamil Nadu Public Service Commission for recruitment as Assistant Engineer, in the State Highways and Rural Works Department. The Chief Engineer, Highways and Rural Works, by his proceedings dated 23.01.1998, has appointed the writ petitioner/appellant as Assistant Engineer and posted him to Puzhal Panchayat Union, where the writ petitioner joined. It is thereafter, on 07.02.2000, the District Collector, Thiruvallore, had issued an order of transfer and posting him from out of Puzhal Panchayat Union to R.K. Pet Panchayat Union. The writ petitioner/appellant has resisted this attempt of transfer of writ petitioner by the District Collector on the ground that the District Collector lacks competence to issue any such order of transfer. As a result, he has not carried out the orders of transfer dated 07.02.2000. The reasons why the writ petitioner/appellant has resisted the order of transfer passed by the District Collector, Thiruvallore, are:

(i) He was appointed as Assistant Engineer in Puzhal Panchayat Union, by the Chief Engineer, Highways and Rural Works Department and the service Rules relating to the Highways Engineering Department spells out that the competent authority to effect transfers and postings of Assistant Divisional Engineer and Assistant Engineers, within the Division, is the Divisional Engineer and within the Circle it is the Superintending Engineer and to any place within the State, it is the Chief Engineer of the Highways and Rural Works Department. Therefore, the District Collector not being one of the aforementioned authorities ought not to have given order of transfer and posting.

(ii) The writ petitioner/appellant has already opted to serve only in the Highways Department and hence he cannot be administratively controlled by any officer of the Rural Works Department Wing.

5. As a consequence, as already noticed supra, he declined to carry out the order of transfer. Instead, he represented to the Chief Engineer, Highways and Rural Works Department, seeking posting orders. The Chief Engineer, by a communication dated 27.03.2000, made it very clear to the writ petitioner/appellant that as and when he is surrendered to the Highways Department by the Director of Rural Development, he could be posted in the Highways Department and hence, the order of transfer issued by the District Collector is correct in the context and the writ petitioner/appellant was instructed to join duty at the new station as per the orders of the District Collector. But, yet, the writ petitioner/appellant has not carried out the directions of the Chief Engineer. Instead, he approached the Tamil Nadu Administrative Tribunal, at Chennai, by instituting Original Application No.6102 of 2000, which was entertained by the Tribunal on 21.08.2000 and it has passed the following order:-

"Admit. Notice returnable by two weeks. Private notice permitted. Interim stay."

6. Time and Time again, Constitutional Courts have been pointing out that orders of Administrative transfers are not to be interfered with lightly, particularly by the Administrative Tribunals, in the absence of challenge to the competence and for lack of bonafides. It is prerogative of the State and its machinery to utilize the services of its servants considered in the most effective manner, by issuing suitable orders of transfer and postings. Every Civil Servant, whose conditions of service require him to render services at any place wherever he is posted, by the very nature of the calling and also by the nature of compulsion trust upon him as Civil Servant, is required to carry out any such order of transfer with utmost discipline and dedication to the service. In the instant case, the writ petitioner/appellant has assumed for himself that the District Collector lacks competence to transfer him. He assumed that since he has not opted to serve Rural Development Department, but opted for Highways Department, the Director of Rural Development or for that matter, the District Collector ought not to have issued any order of transfer in his case. This assumption of the writ petitioner/appellant was the basis for the entire actions that followed.

7. In this context, we require to notice that the State Government, for rendering effective services, has decided to reorganize the Department of Highways and Rural Works into two separate units. It wanted the Director of Rural Development to be exclusively in-charge of Rural Development Works and

administratively supervise, control and manage the services relating thereto, leaving the Highways Department under the exclusive control of the Chief Engineer, Highways. In that context, the State Government has passed orders, undoubtedly under its Executive Power, through their G.O.Ms.No.102, Rural Development Department, dated 25.05.1998, requiring the Chief Engineer, Highways and Rural Works Department, to stop issuing posting orders of personnel directly to the 53 posts of Assistant Executive Engineers (RD), 384 posts of Block Engineers, 768 posts of Overseers, 53 posts of Junior/Assistant Engineers and 53 posts of Junior Draughtsman and all the posts of Road Inspectors which are borne by Panchayat Union General Funds, as immediate effect. The Chief Engineer, Highways and Rural Works Department was further directed to 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 their duty and powers of posting and transfers.

8. This arrangement made by the State Government through their G.O.Ms.No.102, dated 25.05.1998, according to the learned counsel for the writ petitioner/appellant is, in the teeth of the Service Rules governing Tamil Nadu Highways Engineering Service, in particular, Rule 15 thereof, which regulated the postings and transfers of Assistant Divisional Engineers and Assistant Engineers in the manner, referred to and noticed by us a little earlier.

9. We are afraid, the contention canvassed by the learned counsel for the writ petitioner/appellant is without any merit. It is undoubtedly true that the orders contained in G.O.Ms.No.102, dated 25.05.1998, are issued in exercise of Executive Power of the State. Those orders have not been issued by the Governor of the State exercising the powers available to him under the proviso to Article 309 of the Constitution. But, however, what is worth to be noticed is, the direction contained in paragraph 3 of the said order, which is purely an Administrative Reform which is sought to be put in place by the State Government. The Chief Engineer, Highways and Rural Works Department, has been directed not to issue transfer and posting orders to the personnel who were found working at the time when the orders in G.O.Ms. No.102 dated 25.05.1998 are issued. Simultaneously, to such personnel who were found working against these posts are notionally treated to having been lent on transfer basis to the Rural Development Department, which is now brought under the Administrative Control of the Director of Rural Development/Collector of the concerned District. Thus, a new Administrative mechanism is sought to be implemented by the State Government. After the orders have been passed by the State Government through G.O.Ms.No.102, dated 25.05.1998, all the personnel who have been found working as on 25.05.1998 in

connection with Rural Development Department under the Administrative control of one Panchayat Union or the other, as the case may be, are treated notionally to have been transferred to the Rural Development Department. Thus, for a temporary period, all such personnel are sought to be administered and controlled by the Director of Rural Development/District Collector, as the case may be.

9. It is undoubtedly true that as a matter of principle, an option for exercising willingness is required to be afforded to every Civil Servant as and when a bifurcation of a composite service occurs. Depending upon the availability of the cadre strength and depending upon compositional requirements of the cadre, acceptance or otherwise of the so exercised options will be carried out. It is not uncommon for the State Government not to accept all the options ought right. For instance, when the composite department is sought to be bifurcated, if all the seniors opt to work for one particular department, the efficiency and efficacy of the other department would get impacted and impaired. Therefore, an appropriate parameter for balanced allocation of seniors and also juniors can be worked out. Fortunately, we are not so much concerned of the parameters which the State Government is required to adopt while allocating the personnel belonging to composite department of Highways and Rural Works Department, in between the two wings, now. Suffice it for the present to know that the writ petitioner/appellant at the relevant point of time namely 25.05.1998, since he was working as an Assistant Engineer in charge of the Rural Works in Puzhal Panchayat Union, by virtue of the Administrative orders contained in G.O.Ms.No.102, he is sought to be regulated administratively treating his services to have been lent to Rural Works Department. As and when his option to serve 'Highways Department' gets accepted, he would be relieved of by the Rural Works Department.

10. That is the reason why the Collector had effected transfer of the writ petitioner/appellant and that is precisely the reason why the Chief Engineer in his communication dated 25.05.1998, informed the writ petitioner to wait for his surrender by the Rural Works Department to the Highways Department, as per his request, so that the Chief Engineer can issue posting orders to writ petitioner and till then to comply with the orders of transfer passed by the District Collector, Thiruvallore on 07.02.2000. The writ petitioner/appellant has assumed for himself that the District Collector lacks competence. Therefore, he has not complied with the orders of transfer passed on 07.02.2000. It is long thereafter, on 21.07.2000 while entertaining O.A.No.6102 of 2000 instituted by the writ petitioner/appellant, the Administrative Tribunal passed an interim order as noticed by us already supra. No reasons are assigned by the Tribunal why it has preferred to

interfere with the order of transfer passed by the District Collector, nearly several months after the said order has been passed. Nor did the Tribunal adjudicate the lis on merits even subsequently holding that the District Collector did lack competence to effect the impugned transfer of the writ petitioner/appellant. We are informed at the Bar, that the Tribunal disposed of the case, without adjudicating it on merits.

11. It is only pursuant to the interim order passed by the Tamil Nadu Administrative Tribunal, the Chief Engineer, Highways and Rural Works Department has issued necessary posting orders to the writ petitioner. Obviously to avoid possibly further complications including the prospects of being hauled up for contempt by the Tribunal. Admittedly, the writ petitioner rejoined the duty only on 08.01.2002 pursuant to the orders of postings issued by the Chief Engineer on 07.01.2002. Thus, for a period of nearly two years he kept himself away from the service on the assumed ground that he has been wronged by an incompetent District Collector. For this act of the writ petitioner, he has been subjected to disciplinary control. The State Government finally passed orders through their G.O.Ms.No.50, Highways (HL 2) Department, dated 13.04.2007, imposing on the writ petitioner/appellant punishment of withholding one annual increment without cumulative effect, as the explanation offered by the writ petitioner/appellant was not found satisfactory.

12. Rule 8 of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, has listed out various punishments which can be imposed upon the Civil Servants for good and sufficient reasons, one among them being stoppage (withholding) of increment without cumulative effect. It also specifies that such a punishment is to be treated as a minor punishment and the procedure to be followed for imposition of minor punishment is set out in Rule 17(a) which merely specifies that reasonable opportunity of hearing may be accorded to the Civil Servant and thereafter, the proceeding may be finalised.

13. In the instant case, there is no serious challenge, that the State Government has not followed the procedure prescribed under the Discipline and Control Rules. On the other hand, the detailed procedure contemplated and provided for imposition of major punishments as contained under Rule 17(b) has been followed. It is a well settled principle of law that when a detailed procedure is followed, which would enable the State Government/Competent Authority to impose a major punishment, it would also enable the State Government/Competent Authority to impose a minor punishment instead. In the instant case, the State Government has shown appropriate consideration and imposed a minor punishment on the writ petitioner/appellant of withholding one annual increment without cumulative effect.

Therefore, the imposition of punishment on that score cannot be faulted.

14. The State Government, in the course of the order of punishment, has also assigned appropriate reason as to why it has considered that the District Collector is the competent authority to effect transfer of the writ petitioner/appellant as on 07.02.2000. The view of the State Government, in fact, is in accordance with the policy decision contained in G.O.M.S.No.102, dated 25.05.1998, which we have also elaborated in the preceding paragraphs of this Judgment.

15. We are, therefore, of the opinion that the State Government having shown appropriate consideration, have chosen to impose one of the lenient punishments which can be imposed in the circumstances. We find, therefore, no merit in the contentions canvassed before us and in the Writ Petition, independently.

16. We are, therefore, of the considered view that the writ petition is lacking merit and hence it deserves to be dismissed. Accordingly, we dismiss the present writ appeal. But, however, without costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gr.

To

1. The Secretary
Government of Tamilnadu,
Highways Department,
Fort St. George, Chennai- 600 009.

2. The Chief Engineer, (G1)
Highways Department,
PWD Campus, Chepauk,
Chennai-5.

1 cc to Mr.N. Subramaniam, Advocate, Sr. 71928

W.A.No.1566 of 2016

RSY (CO)
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