

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

W.P.No.29989 of 2016

and

W.M.P.Nos.25959 & 25960 of 2016

A.N.Paneerselvam

... Petitioner

Vs.,

1. The Revenue Divisional Officer,
Tambaram Division,
Kancheepuram District.

2. Mr.P.S.Ganapathy,
Village Administrative Officer,
Gerugambakkam Village,
Alandur Taluk,
Kancheepuram District.

3. Mr.N.Janakiraman,
Village Administrative Officer,
Thiruvancheri Village,
Tambaram Taluk,
Kancheepuram District.

.... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent herein in Na.Ka.No.1562/16/B, dated 23.08.2016 transferring and posting the 2nd respondent herein as Village Administrative Officer at Pallikaranai, Sholinganallur Taluk, Kancheepuram District and to quash the same and to direct the 1st respondent herein to transfer the petitioner to Okkiam-Thoraipakkam Village as per the choice exercised by the petitioner in the Counseling which was held on 12.08.2016 and 23.08.2016 or permit the petitioner to continue to serve as Village Administrative Officer at Pallikaranai itself.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel,
for M/s.AL.Ganthimathi

For Respondents : Mr.S.Gunasekaran,
Additional Government Pleader
for R1

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent herein in Na.Ka.No.1562/16/B, dated 23.08.2016, transferring and posting the 2nd respondent herein as Village Administrative Officer at Pallikaranai, Sholinganallur Taluk, Kancheepuram District and to quash the same and consequently, to direct the 1st respondent herein to transfer the petitioner to Okkiam-Thoraipakkam Village, as per the choice exercised by the petitioner in the Counseling, which was held on 12.08.2016 and 23.08.2016 or permit the petitioner to continue to serve as Village Administrative Officer at Pallikaranai itself.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner that he joined Revenue Department, Government of Tamil Nadu, as Village Administrative Officer (in short 'VAO') in Kancheepuram District on 11.08.1982. He was posted as VAO in Tambaram Division of Kancheepuram District on 1.1.1997. Thereafter, he was transferred and posted at Pallikaranai Village, Sholinganallur Taluk of Kancheepuram District on 12.08.2015 and as on date, he is working in the said place. It is further stated by the petitioner that so far as the transfer of VAOs is concerned, the Government has issued an order in G.O.Ms.No.515, Revenue Department, dated 25.08.2008, directing that the transfer of VAOs should be made by conducting Counseling among the VAOs, who are due for transfer. The said Government Order and the directions, which are issued therein, are binding on all the Revenue Divisional Officers, who are the authority to issue the orders of transfer. For the purpose of effecting transfers, the Seniority List of the VAOs in Tambaram Division was prepared. The petitioner herein is at Serial No.1 in the seniority in the said Division and at Serial No.2 in seniority in the District. In accordance with the directions issued in the aforesaid Government Order, the 1st respondent ought to have called the petitioner for Counseling as the first candidate and on the basis of the choice exercised by the petitioner, posting should have been given. However, posting was not given by the 1st respondent, after the Counseling was conducted on 12.08.2016. The 1st respondent proceeded to communicate issuance of orders of Transfer and Postings from the last candidate in the seniority list. The same was objected to by the Union and hence, the entire Counseling which was held on 12.08.2016 was not acted upon and a fresh Counseling was scheduled to be held on 23.08.2016. On 23.08.2016, the Counseling was held and the petitioner was called for Counseling and he expressed his option that he may be allowed to continue in Pallikaranai Village itself, since he has been in the said station only for about 1 year and further, he is due for retirement in the next 10 months viz., by 30.06.2017. In the alternative, the

petitioner requested the 1st respondent to post him at Okkiam-Thoraipakkam Village. The 1st respondent stated that the request of the petitioner would be considered and appropriate orders would be issued. So far as the petitioner is concerned, no posting order has been issued to him to Okkiam-Thoraipakkam. On the other hand, the 1st respondent has issued transfer and posting order to the 2nd respondent herein, who is at Division Serial No.5 and District Serial No.39 in the Seniority List, which was prepared for Counseling which was held on 12.08.2016 and who figures at Division Serial No.3 in the seniority list which has been prepared for the Counseling which was held on 23.08.2016 to Pallikaranai Village where the petitioner is presently working. The 1st respondent herein appears to have issued Transfer and Posting order to the 3rd respondent herein, who is in Division Serial No.15 and District Serial No.260 in the list which was prepared for the Counseling held on 12.08.2016 and in Division Serial No.12 in the list which was prepared for Counseling held on 23.08.2016 to Okkiam-Thoraipakkam Village, the Station where the petitioner has requested for being posted. The action of the 1st respondent in issuing the Transfer and Posting order to the 2nd respondent herein transferring him from Gerugambakkam to Pallikaranai and transferring and posting the 3rd respondent from Thiruvancheri to Okkiam-Thoraipakkam without considering the request of the petitioner for either retaining at Pallikaranai Village or being posted to Okkiam-Thoraipakkam, is arbitrary. Hence, the petitioner has come forward with the present writ petition before this Court.

3.The learned senior counsel for the petitioner would submit that as per G.O.Ms.No.515, Revenue Department, dated 25.08.2008, the transfer and posting of the VAOs should be made only by conducting Counseling. In the Counseling held on 23.08.2016, the petitioner had expressed his intention to continue at Pallikaranai or in alternative, to transfer him to Okkiam-Thoraipakkam. But, now the petitioner has been transferred to Perungudi, Sholinganallur Taluk. The 1st respondent ought to have seen that in terms of the said G.O.Ms.515, it was made mandatory for all the Revenue Divisional Officers to strictly implement the directions issued in the said Government Order. But, by giving go-bye totally to the said GO, the 1st respondent has issued the transfer orders arbitrarily. Thus, the learned Senior Counsel for the petitioner sought for quashing the impugned transfer order and consequently to direct the 1st respondent to allow the petitioner to continue at the present place or in the alternative, to transfer him to Okkiam-Thoraipakkam.

4.Per contra, the learned Additional Government Pleader, by filing detailed counter, would contend that the petitioner had joined duty as Village Administrative Officer on 11.10.1982 and continued as VAO in bifurcated Kancheepuram District from 01.01.1997 having district seniority at No.2 and

No.1, Tambaram Divisional Seniority serving as VAO from 07.08.2006 in Tambaram Division. Initially, date for counseling was fixed on 12.08.2016. But, the Tamil Nadu Village Administrative Officers Munnetra Sangam represented by District Secretary stated that seniority list was not drawn properly and requested to take up counseling after publication of proper seniority list. Hence, date 23.08.2016 was fixed for Counseling with correct seniority list. The petitioner requested the 1st respondent to allow him to continue in the present village viz., Pallikaranai considering his Superannuation on 30.06.2017. The petitioner has served in Okkiyam-Thoraipakkam and Pallikaranai Village, which are 'A' Villages, as per norms in his service. Totally during his tenure of 27 years service from 1989, the petitioner had served in Okkiyam-Thuraipakkam and Pallikaranai, which are 'A' Villages for about 9 years in total. His service in 'A' village as VAO is more than the norms prescribed in the said Government Order (G.O.Ms.No.515). The petitioner's option to continue in the same village viz., Pallikaranai, considering his superannuation, cannot be considered as per norms. Further, the petitioner is facing a departmental enquiry on the basis of the allegation received from the Vigilance and Anti-Corruption Department while he was serving at Okkiyam-Thoraipakkam Village. Hence, the petitioner's request for transferring him to Okkiyam-Thoraipakkam Village cannot also be considered as it would hamper the enquiry pending against him. Moreover, the 3rd respondent was posted in Okkiyam-Thoraipakkam village vide proceedings in Rc.1562/2016/B dated 23.08.2016 and he has also joined duty in the said village on 23.08.2016. It is further contended by the learned Additional Government Pleader that the petitioner is not eligible for posting in 'A' Villages, as he had already served in 'A' Villages for totally 9 years. However, the petitioner has been transferred only to nearby village viz., Perungudi Village. Further, the 2nd respondent, having served in 'B' villages, has been posted in Pallikaranai Village and he has also joined in the said Village on 29.08.2016. Thus, the learned Additional Government Pleader opposed the prayer of the petitioner and sought for dismissal of the writ petition.

5. Heard both sides and perused the materials available on record.

6. It is the main contention of the learned Senior counsel for the petitioner that as per G.O.Ms.515, Revenue Department, dated 25.08.2008, the transfer of VAOs should be made only by conducting Counseling. Even in the present case, Counseling was conducted and the petitioner herein participated in the Counseling on 23.08.2016 and he opted for retention in the same village or in alternative, to transfer to Okkiam-Thoraipakkam village. But, it is seen that the petitioner had already served in Okkiyam-Thoraipakkam at different spell. (*) Further, the 3rd respondent herein was already relieved and he reported duty at Okkiyam-Thoraipakkam. Hence, the petitioner

has been transferred to Perungudi. Under such circumstances, absolutely I do not find any mala fide on the part of the 1st respondent in transferring the petitioner from Pallikaranai to Perungudi. Normally, the Court will not interfere with the matter of transfer unless there is mala fide. The order of transfer could be interfered by the Court, only on the ground of mala fide on the part of the authority concerned. In the present case, when absolutely there is no mala fide on the part of the 1st respondent in transferring the petitioner to Perungudi, this Court cannot interfere with the said transfer, which is purely an administrative action. The petitioner has not made out any case to interfere with the impugned order.

7.Hence, the writ petition is liable to be dismissed and accordingly, the same is dismissed. Connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CCC)

Dated : 27.09.2016

(*)Deleted as per Order dated 02.12.2016

in Rev.Appln.No.131 of 2016

Sd/- Assistant Registrar(CO)

Dated : 22.12.2016

//True Copy//

Sub Assistant Registrar

(ssv)

To

The Revenue Divisional Officer,
Tambaram Division,
Kancheepuram District.

To be substituted to the
order already despatched
On 13.10.2016

+1cc to Mr.C. Jayaprakash, Advocate, S.R.No.51751

+1cc to Mr. A.L. Ganthimathi, Advocate, S.R.No.71563

+1cc to the Government Pleader, S.R.No.71655

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SSK(CO)

EU(27/09/2016)

CA(23.12.2016)