

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07-11-2016

Orders pronounced on : 23-11-2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Writ Petition No.33077 of 2016

and

W.M.P.Nos.28560 and 28561 of 2016

M.K.Stalin,
Leader of Opposition and
Member of Legislative Assembly
(Kolathur Constituency),
25/9 Chitharanjan Salai,
Cenotaph Road,
Alwarpet, Chennai 600 018. Petitioner

Vs.

1. The Secretary,
Tamil Nadu Legislative Assembly,
Secretariat, Fort St. George,
Chennai 600 009.
2. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Legislative Assembly Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai 600 009.
3. Mr. P.Dhanapal,
Speaker, Tamil Nadu Legislative Assembly,
Fort St. George, Secretariat, Chennai 600 009.
4. Mr. A.M.P.Jamaludeen,
Secretary, Tamil Nadu Legislative Assembly,
Secretariat, Fort St. George,
Chennai 600 009.
5. M.Athiseshan,
Deputy Secretary-cum-
Special Personal Assistant to
the Leader of Opposition,
Tamil Nadu Legislative Assembly,
Secretariat, Fort St. George,
Chennai 600 009. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent pertaining to S.O.Ms.No.108, Legislative Assembly Secretariat, dated 22.08.2016, quash the same and consequently direct the first respondent to place the fifth respondent status-quo ante in terms of S.O.Ms.No.104, dated 08.08.2016, as Special Personal Assistant to the Leader of Opposition.

For Petitioner : Mr.P.Wilson, Senior Counsel for
Mr.R.S.Bharathi

For Respondents : Mr.B.Kumar, Senior Counsel for
Mr.S.Senthil, for R-1 & R-4
No Appearance for R-2, R-3 and R-5

ORDER

This writ petition has been filed by the petitioner seeking for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to S.O.Ms.No.108, Legislative Assembly Secretariat, dated 22.08.2016, whereby the fifth respondent, who was appointed as a Special Personal Assistant to the petitioner herein, was repatriated back to the Secretariat Services, downgrading to the post of Personal Assistant and to direct the first respondent to place the fifth respondent status-quo ante, in terms of S.O.Ms.No.104, dated 08.08.2016, as Special Personal Assistant to the Leader of Opposition.

2. The brief facts, which are necessary for the disposal of the above writ petition, are as follows:-

The petitioner is the Leader of Opposition in the Tamil Nadu Legislative Assembly. In the recently concluded General Elections to the Tamil Nadu Legislative Assembly held in May 2016, the Dravida Munnetra Kazhagam (DMK) party, won 89 seats and therefore, is the principal Opposition Party in the 15th Tamil Nadu Legislative Assembly that was formed after the elections. The DMK Party, nominated the petitioner, who is the Treasurer of the party to be the Leader of Opposition in the 15th Tamil Nadu Legislative Assembly and thereupon the petitioner was recognized as the Leader of Opposition, as defined under Rule 2 (1)(k) of the Tamil Nadu Legislative Assembly Rules, by the third respondent, vide his proceedings, dated 04.06.2016. The Tamil Nadu Legislative Assembly Rules have been framed pursuant to the powers conferred under Article 208 of the Constitution of India.

3. The Leader of Opposition has certain privileges in the House prescribed by the Rules made from time to time. One of the privileges is that the Leader of Opposition is entitled to have a Personal Assistant appointed. The said post was created, vide G.O.Ms.No.2784, Public Department, dated 10.12.1970 and was extended from time to time and finally vide S.O.No.450 dated 08.07.2016 issued by the first respondent, the post has been continued up to 30.06.2017.

4. Temporary post is governed by the Rules framed, vide G.O.Ms.No.87 dated 29.05.1979 (hereinafter will be referred to as "1979 G.O."). The 1979 G.O. has been issued in exercise of powers conferred under Article 187(3) of the Constitution of India. Article 187(3) confers the power to frame Rules regarding the recruitment and conditions of service of persons appointed to Secretariat Staff of the Assembly. The said 1979 G.O. came into force with retrospective effect from 29.07.1977.

5. The post of Personal Assistant to the Leader of Opposition (hereinafter will be referred to as "the PA") created by the said 1979 G.O., as referred in Rule 2 is a distinct category in Class II of the Tamil Nadu Assembly Secretariat Service. The appointments to the said post, as per Clause 3 of the 1979 G.O. shall be made from among the holders of the post of Class II of the Tamil Nadu Legislative Assembly Secretariat Service, either by recruitment by transfer of service or by direct recruitment. The appointing authority for the post is the first respondent. However, Clause 4 of the 1979 G.O. provides that the selection of panel of candidates for the post shall be made by the Leader of Opposition and only from the candidate selected by the Leader of Opposition, the first respondent ought to appoint a PA. Therefore, the choice of candidate is given to the Leader of Opposition and what follows is the appointment. So far as the tenure of appointment is concerned, the Rules prescribe that the person appointed to the post of PA shall continue till the Leader of opposition vacates office or till termination by the Leader of Opposition himself. The petitioner took charge as the Leader of Opposition and the fifth respondent was appointed as the PA to the petitioner by the first respondent, vide S.O.Ms.No.104, dated 08.08.2016, on the basis of the petitioner's letter, dated 17.06.2016. Before issuing the said letter, the petitioner sought his consent and recommended for his deputation and appointment. To accommodate the fifth respondent, who is in the rank of Deputy Secretary in the Legislative Assembly Secretariat Service, the first respondent upgraded the post of the PA to that of the Special Personal Assistant in the cadre of Deputy Secretary with a pay scale of Rs.15,500-39,100 + Grade Pay of Rs.7,600 (Pay Band 3) with effect from 17.06.2016.

6. The fifth respondent before his appointment as Special Personal Assistant to the petitioner was holding the rank of Deputy Secretary in the Tamil Nadu Legislative Assembly Secretariat in the pay scale of Rs.15,600-39,100 + G.P. 7,600 (Pay Band 3). However, the post of PA carries only the scale of pay of Rs.9,300-34,800 + G.P. 4,600 (PB2). Therefore, while appointing the fifth respondent, vide the said S.O.Ms.No.104, dated 08.08.2016, by way of deputation, the first respondent upgraded the post of PA to Special Personal Assistant in the pay scale of Rs.15,600-39,100 + G.P.7,600. In the said S.O., itself it has been clearly stipulated that the post will be automatically downgraded to the scale of Rs.9,300-34,800 + G.P.4,600, when the fifth respondent vacates the post or the necessity ceased, whichever is earlier. The fifth respondent was appointed by way of deputation to the post of Special Personal Assistant and started functioning as the Special Personal Assistant to the petitioner from 17.06.2016 onwards.

7. It is the further case of the petitioner that the DMK party began functioning and raised several important questions on the Floor of the House. The third and fourth respondents, with an intention to attempt and cripple the Leader of Opposition, created many administrative hurdles in furtherance of their malicious, motivated and biased intentions and at their behest, the first respondent has issued impugned S.O.Ms.No.108, dated 22.08.2016, repatriating the fifth respondent back to the Secretariat Service and downgrading the upgraded post of Special Personal Assistant to the post of PA in the earlier pay scale. In the said S.O.Ms.No.104, dated 22.08.2016, apart from the words 'administrative reasons', there is no reason given as to why the earlier S.O.Ms.No.104, dated 08.08.2016, has been deviated and the said fifth respondent who was appointed as Special Personal Assistant has been reverted without the consent of the petitioner. The fifth respondent, who has been functioning diligently and effectively in the office of the petitioner, is removed so as to inconvenience the petitioner and cripple the office of the Leader of Opposition. On behalf of the DMK party, a representation dated 08.09.2016 to the third respondent to withdraw S.O.Ms.No.108, dated 22.08.2016 and to restore the fifth respondent to the post of Special Personal Assistant to the petitioner in the earlier pay scale, in terms of S.O.Ms.No.104, dated 08.08.2016 was submitted, but the said representation has not been considered. Hence, challenging the said S.O.Ms.No, and associated relief, the present writ petition has been filed.

8. When the matter is taken up for consideration, Mr.P.Wilson, learned Senior Counsel, appearing for Mr.R.S.Bharathi, learned counsel for the petitioner, reiterating the above said facts, submitted that the petitioner is

recognized as the Leader of Opposition as defined under Rule 2 (1)(k) of the Tamil Nadu Legislative Assembly Rules, by proceedings, dated 04.06.2016 by the third respondent; the Leader of opposition has certain privileges in the house prescribed by the Rules made from time to time; one of the privileges is that the Leader of Opposition is entitled to have a PA of his choice; the said post was created vide G.O.Ms.No.2784, dated 10.12.1970, and was extended from time to time and vide G.O.Ms.No.450, dated 08.07.2016, the post has been continued upto 30.06.2017; the post created by the said 1979 G.O. is a distinct category in Rule 2 of the Tamil Nadu Legislative Assembly Secretariat Service and the said post does not fall under the regular categories of the Tamil Nadu Legislative Assembly Secretariat Service; as per Rule 3 of the 1979 G.O., there are three avenues from which the persons can be selected and appointed for the post of PA to the Leader of Opposition, viz., (i) holders of post in clause 2 of the Tamil Nadu Legislative Assembly Secretariat Service; (ii) recruitment by transfer from any other service; and (iii) by direct recruitment.

9. The learned Senior Counsel appearing for the petitioner further submitted that the appointment of the fifth respondent, as Special Personal Assistant to the Leader of opposition, is one of appointment by way of transfer on deputation to a distinct category post and it is a tenure post; the said post co-exists till the leader of opposition functions; a reading of 1979 G.O., along with the appointment order makes it crystal clear that the fifth respondent was not merely transferred, but was transferred on deputation to a distinct category and appointed to a tenure post. In support of the above said contentions, the learned Senior Counsel for the petitioner submitted that, as per the catena of judgments of the Hon'ble Supreme Court of India, when a person is transferred on deputation and appointed to a tenure post, such tenure cannot be permanently curtailed either by the lending department or by the borrowing department or by the person himself. In the case of Bhagat Singh v. Chancellor, Punjabi University and others, reported in I.L.R. (1982) 1 P&H 73, it has been held that when a person is appointed to a tenure post, even that person cannot be allowed to go back to his original post, if he opts to do so. He further relied upon a decision of the Supreme Court in the case of Ashok Kumar Ratilal Patel v. Union of India, reported in 2012 (7) SCC 757, wherein the Hon'ble Supreme Court of India has categorically held that once a person is appointed on deputation, he acquires indisputable right to be treated fairly and equally and that once he is appointed on deputation, the same cannot be cancelled except on ground of non-suitability or unsatisfactory work. He also relied upon a decision of the Hon'ble Supreme Court in the case of Union of India v.

S.N.Maity, reported in (2015) 4 SCC 164, wherein the Hon'ble Supreme Court of India has reiterated its earlier decisions and has differentiated a case of simple transfer with a case of appointment on deputation to a tenure post and finally held that there cannot be curtailment of deputation in an arbitrary or capricious manner. Relying upon the said decisions, the learned Senior Counsel submitted that, once an officer is appointed to a post with a fixed tenure and in the instant case, the tenure is till the leader of opposition vacates office or the leader of opposition himself terminates the fifth respondent, the appointment on deputation of the fifth respondent cannot be disturbed or prematurely curtailed by the first respondent.

10. The learned Senior Counsel for the petitioner further submitted that the impugned order, dated 22.08.2016, prematurely repatriating / reverting the fifth respondent back to the Assembly Secretariat Service does not contain any reasons except the two words 'administrative reasons'; the first respondent claims that for inquiring into an anonymous complaint, the fifth respondent is prematurely repatriated and in fact, the first respondent, after the passing of the impugned order on 22.08.2016, is now trying to improve the case by projecting as if the fifth respondent has obtained LLB degree in the year 2012 from an University, namely, Bharatiya Shiksha Parishad University, Uttar Pradesh, Lucknow (hereinafter will be referred to as "the BSPU") which has not got recognition from the University Grants Commission and that the fifth respondent has obtained his promotion as Deputy Secretary on the strength of LLB degree obtained from BSPU, entered the same in his service records and that the first respondent, taking advantage of the non-recognition issue, trying to initiate disciplinary proceedings against him and ordered repatriation / reversion of the fifth respondent to the parent department; even by the documents filed by the first respondent, there is nothing on record to show that the first respondent took any steps to verify the genuineness or otherwise of the certificates issued by the BSPU prior to the passing of the impugned order and all the efforts taken by the first respondent are only after the passing of the impugned order on 22.08.2016.

11. The learned Senior Counsel for the petitioner further submitted that the petitioner is the selecting authority and has selected the fifth respondent to be his Special Personal Assistant; the privilege given to the petitioner to have a person of his choice as his PA has been defeated by the arbitrary, illegal and mala-fide action of the first respondent, vide the impugned order. He further submitted that the impugned order is bereft of any reasons and it is wholly illegal, since the first respondent has no authority to unilaterally revert or prematurely repatriate the fifth respondent who has been

appointed on deputation to a tenure post; the fixed tenure of the fifth respondent will cease only when the Leader of Opposition vacates the office or the fifth respondent is terminated by the petitioner; hence, the above writ petition deserves to be allowed and the impugned order deserves to be set-aside.

12. Countering the above said submissions, Mr.B.Kumar, learned Senior Counsel appearing for Mr.S.Senthil, learned counsel for the respondents 1 and 4, by referring to the detailed counter affidavit, submitted that the writ petition is not sustainable in law and on facts; the writ petition filed by the petitioner, as Leader of Opposition, is not maintainable; there is no statutory rule to any convention by which the Leader of Opposition is entitled to choose any Government Servant to be posted as his PA; hence, the prayer sought for by the petitioner cannot be granted. He further submitted that the fifth respondent has been reverted back for valid and compelling reasons; as per Rule 6 of the Ad-hoc Rules issued to the temporary post of PA to the Leader of Opposition, the persons appointed by direct recruitment (Non-Government Servant) shall continue or may be terminated at any time by the Leader of Opposition. So far as the fifth respondent is concerned, he had been from Assembly services and posted as Special Personal Assistant to the petitioner under Special Ad-hoc Rules and on his end of promotion, he will be reverted back to the parent Department. Therefore, it acclimates that the disciplinary control over the said person is exercised only by the first respondent. Therefore, the argument of the learned Senior Counsel appearing for the petitioner that tenure appointment cannot be reverted, is factually incorrect. He further submitted that based on a complaint received, a preliminary inquiry was made which revealed that the fifth respondent has produced a fake law degree certificate from an unrecognised University and it was noticed in the University Grants Commission's Website that a public notice was depicted, in which 21 Universities were listed as fake Universities and the name of the BSPU (Bharatiya Shiksha Parishad University, Uttar Pradesh, Lucknow) has been mentioned with asterisk mark; another letter from the University Grants Commission was also exhibited in this regard in Letter No.F.2-2/91 (MPC) Pt.1 of March 2012, which stated that BSPU, is not an established University / institution, by either State Act or Central Act or Provincial Act or an empowered institution by an Act of Parliament to confer or grant Degrees; in this regard, a letter has been sent to the Bar Council of India and the University Grants Commission; in view of the investigation pending against the fifth respondent, he was reverted back to the Legislative Assembly Secretariat Service.

13. The learned Senior Counsel appearing for respondents 1 and 4 further submitted that the repatriation of the fifth respondent from the Office of the Leader of Opposition, who is likely to face disciplinary action on the ground of fraudulently furnishing a fake certificate and obtaining promotion, would no way amount to crippling the functioning of the petitioner; merely because of the fact that the fifth respondent has been appointed as PA to the petitioner, that will not confer any right on him for initiation of any disciplinary action; the third and fourth respondents have taken action as per the rules and procedures and there is no mala-fide intention or colourable exercise, as alleged.

14. In support of the said contentions, the learned Senior Counsel appearing for the respondents 1 and 4 relied upon the decisions reported in AIR 1962 Supreme Court 1044 (1) (Calcutta Gas Company (Proprietary) Ltd. v. State of W.B. And others); AIR 1964 Supreme Court 685 (State of Orissa v. Ram Chandra Dev and another), C.W.P.No.3139 of 2014 (Punjab and Haryana High Court), dated 11.03.2016 (Sunita Devi v. State of Punjab and others) and W.P.No.459 of 2007 (Madras High Court), dated 19.01.2015 (Shadrach Kalaiselvan v. The State of Tamil Nadu and eight others), wherein it has been held that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened, since the existence of a right is the foundation of a petition under Article 226 of the Constitution of India.

15. By way of reply, with regard to the submission made by the learned Senior Counsel appearing for the respondents 1 and 4 that the fifth respondent had obtained Law Degree from an unrecognized University and hence, disciplinary proceedings are being initiated, the learned Senior Counsel appearing for the petitioner submitted that the UGC itself has deleted the name of the BSPU from the list of fake Universities, since the matter is sub-judice before the District Court, Lucknow and therefore, prima-facie, the fifth respondent cannot be found fault with for obtaining Degree from that University in 2012, and hence, it is incorrect to state that the fifth respondent has obtained a fake Degree. In fact, there is no need for initiating disciplinary proceedings in this matter, as a case is pending before the District Court, Lucknow.

16. This Court has carefully considered the submissions made by the learned counsel for both sides and perused the materials available on record.

17. Based on the contentions raised by the learned counsel for both sides, the following questions emerge for consideration

in this writ petition and this Court is of the view that answering the same would suffice as substantive pronouncements on the subject:-

(i) Whether the act of the first respondent, in passing the impugned order, reverting the fifth respondent back to the parental department, without the consent of the petitioner, is legally sustainable? and

(ii) Whether the petitioner is having any locus-standi to file this writ petition?

18. On a perusal of the documents available on record, it could be seen that the post of PA to the leader of opposition was created vide G.O.Ms.No.2784, dated 10.12.1970 and was extended from time to time and finally vide S.O.No.450 dated 08.07.2016 issued by the first respondent and the post has been continued up to 30.06.2017. In exercise of powers conferred under Article 187(3) of the Constitution of India, the Governor of Tamil Nadu, after consultation with the Speaker of the Tamil Nadu Legislative Assembly, made the Adhoc Rules for temporary post of PA to the Leader of Opposition in G.O.Ms.No.87, dated 29.05.1979. The Rules read as follows:-

".... 2. Constitution: The post shall constitute a distinct category in the said class of the said service.

3. Appointment: Appointment to the post shall be made from among the holders of the posts in Class II of the Tamil Nadu Legislative Assembly Secretariat Service or by recruitment by transfer from any other service or by direct recruitment.

4. Appointing authority: The appointing authority for the post shall be the Secretary Tamil Nadu Legislative Assembly Department, provided that the selection of candidate for appointment to the post shall be made by the Leader of the Opposition, Tamil Nadu Legislative Assembly.

5. Probation: A person recruited from Government Service and appointed as Personal Assistant shall count his service as such towards his probation in the post in the Government held by him before his appointment

as Personal Assistant or in any other post in such service in which he would have acted to the extent he would have acted in such post but for his appointment as Personal Assistant.

Non-Government Servant appointed as Personal Assistant shall not be regarded a probationer in the Tamil Nadu Legislative Assembly Secretariat Service or in any other service and his appointment as such shall not confer on him any claim for future appointment to any of those services under the Government of Tamil Nadu.

6. Tenure of appointment of direct recruits: The services of a person appointed to the post by direct recruitment shall be terminated when the Leader of Opposition vacates office.

Provided that the services of such person may also be terminated at any time by the Leader of the Opposition."

19. As per Rule 3 of the said Rules, there are three avenues to which a person could be selected and appointed to the post of PA to the Leader of opposition and they are, viz., (i) from among the holders of the posts in Class II of the Tamil Nadu Legislative Assembly Secretariat Service; or (ii) by recruitment by transfer from any other service or (iii) by direct recruitment. A reading of Rule 4 of the said Rules would show that in all the said three cases, the selecting authority is only the Leader of Opposition and the candidate selected by the Leader of Opposition alone to be appointed by the first respondent. Rule 2 of the said Rules would show that the post of PA to the Leader of Opposition is a distinct post category of the said service. Therefore, it is clear that the post does not fall under the regular categories of the Tamil Nadu Regular Secretariat Service Rules. So far as the post of PA to the Leader of Opposition is concerned, it carries the scale of pay of Rs.9,300-34,800 + G.P. 4,600, but the petitioner has selected the fifth respondent to be appointed as the PA, who was in the cadre of Deputy Secretary in Class I category, therefore, the post of PA was upgraded to the Special PA in the pay-scale of Rs.15,600-39,100+G.P.7,600 (Pay Band 3) by S.O.(Ms) No.104, dated 08.08.2016. The said S.O. clearly stipulates that the post will be automatically downgraded to Rs.9,300-34,800 + G.P.4,600, when the fifth respondent vacates the post or the necessity ceases, whichever is earlier. Further, the materials available on record would show that the upgradation and

appointment of the fifth respondent were cleared by three Departments, namely, the Personnel and Administrative Reforms Department, Legislative Assembly Secretariat and Finance Department. Thus, the post of Special Personal Assistant has been upgraded with the pay band of PB-3.

20. Rule 6 of the said Rules states that the service of a person appointed to the post, by direct recruitment, shall be terminated when the Leader of Opposition vacates the office or at any time by the Leader of the Opposition. The tenure of the post of Special PA is further exemplified by the appointment order itself in S.O.Ms.No.104, dated 08.08.2016, which states that the upgraded post of Special PA to which the fifth respondent is appointed, will be automatically downgraded when the fifth respondent vacates the post or the necessity ceased, whichever is earlier. Therefore, a reading of the said Government Order along with the appointment order to the fifth respondent makes it clear that the fifth respondent was not merely transferred, but was transferred on deputation to a distinct category and appointed to a tenure post. Further, the said appointment was made in accordance with the Rules prescribed therefor. In this regard, it is appropriate to notice a decision of the Supreme Court reported in 2012 (7) SCC 757 (Ashok Kumar Ratilal Patel Vs. Union of India), wherein, the Supreme Court held as follows:

"13. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no requirement in its true import and significance takes place as the person continues to be a member of the parent service.

14. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor is it open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person who applies for appointment on deputation has an indefeasible right

to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.

.. .. .

17. Going by the principles as referred to above, we are constrained to state that the High Court failed to appreciate the difference between "transfer on deputation" and "appointment on deputation" and erred in holding that the appellant has no right to claim entitlement to the post of Director. As the appellant was selected after due selection and was offered appointment on deputation, and, in absence of any valid ground shown by the respondents, we hold that the appellant has a right to join the post and the respondents were bound to accept his joining."

21. Further, in the decision of the Supreme Court reported in 2015 (4) SCC 164 (Union of India Vs. S.N.Maity), it has been held as follows:

"15. The controversy that has emerged in the instant case is to be decided on the touchstone of the aforesaid principle of law. We have already opined that it is not a case of simple transfer. It is not a situation where one can say that it is a transfer on deputation as against an equivalent post from one cadre to another or one department to another. It is not a deputation from a government department to a government corporation or one Government to the other. There is no cavil over the fact that the post falls in a different category and the first respondent had gone through the whole gamut of selection. On a studied scrutiny, the notification of appointment makes it absolutely clear that it is a tenure posting and the fixed tenure is five years unless it is curtailed. But, a pregnant one, this curtailment cannot be done in an arbitrary or capricious manner. There has to have some rationale. Merely because the words "until further orders" are used, it would not confer allowance on the employer to act with caprice."

22. Therefore, on a reading of the above dictum laid down by the Supreme Court in the two judgments, it is seen that a person on deputation has an indefeasible right. In the instant case, deputation is not simple transfer, but it is transfer and appointment on deputation to a tenure post. Therefore, a person on deputation has an indefeasible right to be treated fairly and equally and once such a person is appointed on deputation in a tenure post, the same cannot be cancelled. Therefore, the submission made by the learned Senior Counsel appearing for the respondents 1 and 4 that the fifth respondent was not directly recruited as per Rule 6 of the Rules, and as the fifth respondent had been from Assembly Secretariat Service and posted as Special Personal Assistant to the Leader of Opposition under Special Ad-hoc Rules, he could be reverted back to the parent Department at any stage, cannot be accepted.

23. So far as the submission of the learned counsel for the petitioner that the impugned order, dated 22.08.2016 does not contain any reasons except the two words 'administrative reasons' and subsequently, after the filing of the writ petition, the learned Senior Counsel for respondents 1 and 4 has supplemented / introduced several reasons stating that they are going to initiate disciplinary proceedings against the fifth respondent and for that reason, they require the fifth respondent back to the Department, is concerned, it has to be pointed out that there is an error apparent on the face of the impugned order itself, since in the impugned order, except stating the words 'due to administrative reasons', nothing more has been stated by the first respondent and now, during arguments, the respondents 1 and 4 are trying to improve the case, which in the opinion of this Court, is unjustified. In this regard, a reference could be placed to the judgment of the Supreme Court reported in 1978 (1) SCC 405 (Mohinder Singh Mill Vs. Chief Election Commissioner), wherein the Apex Court held as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J in Gordhandas Bhanji (Commissioner of Police, Bombay Vs. Gordhandas Bhanji - AIR 1952 SC 16):

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older."

24. On a reading of the above judgment of the Supreme Court, it could be seen that when certain grounds were made by the statutory functionary in an order, he has to stick on only to the said reasoning given in the said order and he cannot supplement anything by assigning different reasons thereafter.

25. Hence, though elaborate submissions were made by respondents 1 and 4 with regard to the law degree certificate produced by the fifth respondent from the BSPU, this Court is of the opinion that the respondents 1 and 4 cannot improve their case / cannot supplement fresh reasons in the shape of affidavit or otherwise. In the instant case, had there been any intention on the part of respondents 1 and 4 to initiate any disciplinary action, they would have stated so in the impugned order itself, but simply stating 'administrative reasons' in the impugned order and further developing the same by way of counter affidavit, is legally not sustainable. Therefore, this Court is of the opinion that there is an error apparent on the face of the impugned order.

26. In respect of yet another contention made by the learned Senior Counsel for the petitioner that the fifth respondent was repatriated only for the purpose of initiating disciplinary proceedings against him for allegedly obtaining L.L.B. degree from an unrecognized university, it is to be pointed out that the fifth respondent has not been merely deputed to the post on transfer, but appointed on deputation to the post of Special PA, which is a tenure post. Further, the right to face disciplinary proceedings by the fifth respondent, while serving as a Special PA to the petitioner on deputation to a tenure post, is not taken away or prohibited under any of the Rules. Equally, the first respondent is also entitled to take any disciplinary action against the fifth respondent, in accordance with the Rules framed therefor, while the fifth respondent is in the services on deputation or on deputation to a tenure post. Therefore, this Court is of the considered opinion that the

appointment of the fifth respondent on deputation to a tenure post, as Special PA to the petitioner, certainly will not take away the right of the parental department in accordance with the Rules of the Department.

27. Now the issue that has to be considered is, whether it is necessary to revert back the fifth respondent to the parent department, for the purpose of taking disciplinary action. The decision of the Supreme Court reported in 1976 (3) SCC 699 (Khemi Ram v. State of Punjab), would give a fitting answer to the issue raised, wherein it has been categorically held that the Government Servants, on deputation in a tenure post to another State, would still be governed by the Service Rules of the parent State and disciplinary action could therefore be initiated by the parent State while serving in the transferee State. A reading of the said principle laid down in the decision, cited supra, in Khemi Ram's case, would show that one need not be reverted back to the parent Department for the purpose of initiating disciplinary proceedings.

28. Further, it would be useful to extract Rules 31 and 32 of the Tamil Nadu Legislative Assembly Service Rules, which reads as follows:-

"31. Authority to impose penalties in case of persons promoted or transferred or reverted or reduced:- (a) Where on promotion or transfer a member of the service in any class is holding an appointment in another class or in another service no penalty shall be imposed upon him in respect of his work or conduct before such promotion or transfer except by an authority competent to impose the penalty upon a member of the service in the latter class or service, as the case may be.

(b) Where a person has been reverted or reduced from another service to the service or from one class of the service to another class, no penalty shall be imposed upon him in respect of his work or conduct, while he was a member of the service or class as the case may be, from which he was reverted, or reduced except by an authority competent to impose the penalty upon a member of such service or class as the case may be.

32. Penalties by a borrowing authority:- (a) Where a member of the service to be punished has been lent to a borrowing authority, the power to impose the penalty of compulsory retirement or removal or

dismissal shall lie only with the lending authority, the borrowing authority shall in case where it considers that the punishment of compulsory retirement, removal or dismissal should be imposed, complete the enquiry and revert the person concerned to the lending authority for such action as that authority may consider necessary, and

(b) the borrowing authority shall consult the lending authority before imposing any lesser penalty and in the case of suspension shall report forthwith to the lending authority the circumstances leading to the imposition of that penalty."

29. Rule 32 of the above quoted Rules, states that the power to impose the penalty of compulsory retirement or removal or dismissal, shall lie only with the lending authority. Therefore, when Rule 4 of the Ad-hoc Rules states that the selection and appointment of a person to serve as PA to the Leader of Opposition, lies with the Leader of Opposition, without his consent, certainly, the first respondent cannot revert him back to the parent Department, though terming / stating it as 'due to administrative reasons'. Hence, the reason assigned by the first respondent in the impugned order, cannot be accepted and the same has to be set aside.

30. Then comes the question of locus-standi on the part of the petitioner, in questioning the impugned order. It is the submission of the learned Senior Counsel appearing for respondents 1 and 4 that the petitioner has no locus-standi to challenge the impugned order, because he, as the Leader of Opposition, has no legally enforceable right against the impugned order and in the instant case, the person aggrieved by the impugned order is only the fifth respondent. In support of this contention, learned Senior Counsel appearing for the respondents 1 and 4 relied upon a decision of the Supreme Court reported in AIR 1964 SC 685 (State of Orissa Vs. Ram Chandra Dev and another). In the said decision, it has been held that, before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened, since the existence of a right is the foundation of a petition under Article 226 of the Constitution of India. In the instant case, the petitioner (Leader of Opposition) has certain privileges in the House prescribed by the Rules made from time to time and one of the privileges is that the Leader of Opposition is entitled to have a PA of his choice and the said post of PA was created vide G.O.Ms.No.2784, Public Department, dated 10.12.1970, and was extended from time to time and vide G.O.Ms.No.450, dated 08.07.2016, the post has been continued upto 30.06.2017.

Therefore, the option of selecting the service candidate, as his PA., is given to the Leader of Opposition, according to his convenience with whom he is reposing / having confidence. Therefore, viewed from four squares, the writ petition filed by the petitioner herein is maintainable.

31. With regard to the submission made by the learned Senior Counsel for the petitioner that since the impugned order was not passed by His Excellency the Governor and it was passed only by the first respondent, the impugned order is liable to be set-aside, for which, a reply was made by the learned Senior Counsel for respondents 1 to 4 that as per G.O.No.28, Legislative Assembly Department, dated 16.02.1984, the Legislative Assembly Secretariat has all the powers and status of a Department of Government in the Secretariat, including the powers of circulation and the Secretary of the Legislative Assembly Secretariat shall be the administrative head of the Secretariat under the disciplinary control of the Speaker and shall have the status, powers and privileges as that of any other Secretaries to Government in the Government Secretariat. So far as the above submission and reply made by the learned Senior Counsels on both sides, is concerned, it is clear that the said G.O.28 empowers to issue an order so far as the present case is concerned, which could subsequently be ratified by His Excellency The Governor. So far as the present case is concerned, since the fifth respondent was appointed as Special P.A. to the petitioner, on deputation to a tenure post, he cannot be reverted back without the consent of the petitioner (Leader of Opposition) to the parent Department, who is the selecting authority. Therefore, the impugned order is not in consonance with the Rules therefor.

32. As far as the decisions relied upon by the learned Senior Counsel for the respondents 1 to 4, viz., AIR 1962 Supreme Court 1044 (1) (referred to supra), AIR 1964 Supreme Court 685 (referred to supra), C.W.P.No.3139 of 2014 (O & M), dated 11.03.2016 (referred to supra) and W.P.No.459 of 2007, dated 19.01.2015 (referred to supra), are concerned, it has to be pointed out that there is no quarrel with respect to the settled legal position enunciated therein, but the facts of the said decisions are totally different from the case on hand and the same are distinguishable.

33. The Hon'ble Supreme Court of India, time and again has reiterated that a person appointed on deputation in a tenure post for a fixed period, has no right to go back to his original post before the fixed term comes to an end. A person appointed on deputation in a tenure post, has an indefeasible right to be treated fairly and equally. If such a person is appointed on deputation, the same cannot be cancelled without the consent of the person before whom that person is presently serving on

deputation. If deputation is not a simple transfer and if the appointment is a tenure posting, the same cannot be curtailed.

34. In view of the foregoing reasons, the impugned order is liable to be quashed and therefore, the same is quashed. Accordingly, the writ petition stands allowed as prayed for. No costs. Consequently, the connected WMPs are closed.

Today, at the time of pronouncing the order, the learned Senior Counsel appearing for the petitioner prayed this Court to fix a time limit to implement this order. Hence, the first respondent is directed to place the fifth respondent, in terms of S.O.Ms.No.104, dated 08.08.2016, as Special Personal Assistant to the Leader of Opposition, at the earliest.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srk / cs
To

1. The Secretary,
Tamil Nadu Legislative Assembly,
Secretariat, Fort St. George,
Chennai 600 009
2. The Secretary to Government,
State of Tamil Nadu,
Legislative Assembly Department,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai 600 009
3. The Speaker,
Tamil Nadu Legislative Assembly,
Fort St.George, Secretariat,
Chennai-600 009.
4. The Deputy Secretary-cum-Special Personal Assistant
to the Leader of Opposition,
Tamil Nadu Legislative Assembly,
Secretariat, Fort St.George,
Chennai-600 009.

+1cc to Mr.S.Senthil, Advocate, S.R.No.68161

Writ Petition No.33077 of 2016

AK(CO)
CA(15/12/2016)