IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.35448 of 2016

B.Suseelkumar ... Petitioner

vs.

1. The Additional Chief Secretary/
Principal Secretary to Government,
Secretariat, Chennai 600 009.

2. The Additional Chief Secretary/
Commissioner of Commercial Taxes,
Commercial Taxes Dept.,
Ezhilagam, Chennai 600 005.

3. The Secretary,
Personnel and Administrative
Reforms Department,
Secretariat,
Chennai 600 009. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to effect transfer to the petitioner and post him in any territorial wing of the Commercial Taxes Department in compliance of G.O.Ms.No.10, dated 07.01.1994 issued by the Government, G.O.Ms.No.184, dated 16.06.1994, G.O.(3D) No.24, dated 01.08.1995 issued by the respondents.

For Petitioner : Mr.V.Prakash,
Senior Counsel
for Mr.K.Krishnamoorthy

For Respondents: Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

WEB COPY

O R D E R

This Writ Petition is filed seeking a direction to the respondents to effect transfer to the petitioner and post him in any territorial wing of the Commercial Taxes Department in compliance of G.O.Ms.No.10, dated 07.01.1994 issued by the Government, G.O.Ms.No.184, dated 16.06.1994, G.O.(3D) No.24, dated 01.08.1995 issued by the respondents.

https://hcservices.ecourts.gov.in/hcservices/

2. According to the petitioner, as per G.O.Ms.No.10 issued by P & AR Department, i.e. the 3rd respondent herein, dated 07.01.1994, during the transfer period, persons who have already completed service of three years or who would complete a service of three years as on 30th June, shall be subjected to transfer to another seat or post and there is absolutely no impediment for the respondents to effect General Transfer for the years 2015 and 2016. However, the respondents did not efffect General Transfer for the years 2015 and 2016 for the reasons best known to them.

3. It is the case of the petitioner that he has already completed one year of service in the present post and therefore, he made a request to respondents 1 and 2 to consider him to any of the posts in territorial wing vide his letter dated 15.04.2016, as there is no impediment to consider his name in the General Transfer for the year 2015, as per G.O.Ms.No.10 under the request transfer.

4. As per G.O.3(D) No.24, no Deputy Commissioner (now Joint Commissioner) shall be allowed to continue in the same post for more than three years. The respondents have allowed certain Joint Commissioners to continue in the same post for more than five years, details of which are as follows:

S.No.	Name of the Joint Commissioner	Total period in service in the same post in violation of G.O.Ms.No.10 and 24
1	Thiru.C.Palani, Joint Commissioner (CT), Chennai, South Division	Continuing in the same post for the fifth year
2	Thiru. B.Devendhiraboopathy, Joint Commissioner (CT) Tirunelveli Division	Continuing in the same post for the fourth year
3	Thiru.P.Narayanan Joint Commissioner (CT) Vellore Division	Continuing in the same post for the fourth year
4	Thiru. S.Vijayakumar Joint Commissioner (CT) Madurai Division	Continuing in the same post for the fifth year
5	Thiru.P.Shanmuganathan Joint Commissioner (CT) Trichy Division	Continuing in the same post for the fourth year
6	Thiru.A.Jothinathan Joint Commissioner (CT) Coimbatore Appeals	Continuing in the same post for the fourth year

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

S.No.	Name of the Joint Commissioner	Total period in service in the same post in violation of G.O.Ms.No.10 and 24
7	Tmt. V.Radha Joint Commissioner (CT) Chennai North Division	Continuing in the same post for the fifth year
8	Tmt.D.Ramadevi Joint Commissioner (CT) Computer Systems	Continuing in the same post for the fourth year

5. G.O.Ms.No.10 issued by the Chief Secretary further emphasizes that in cases where severe allegations are pending enquiry, when it is considered necessary in the public interest and sufficient in lieu of suspension, the Officer may be transferred. The Joint Commissioners, who were given opportunity to continue in territorial/enforcement wing, when disciplinary proceedings under Rule 17(b) are pending against them, are as under :

(i) P.Shanmuganathan, JC (Territorial) Trichy, (Vigilance TDP)
(ii) Karunanithi, JC Enforcement, Trichy
(iii) V.Radha, JC (Territorial), Chennai (North)
(iv) M.Ravi, JC (Territorial), Salem
(v) K.M.Karthikeyani, JC (Territorial), Tirunelveli
(vi) V.Narayanan, JC (Territorial), Vellore
(vii) K.Latha, JC Enforcement, Vellore

(viii) M.Parameswaran, JC (Territorial), Chennai (Central), Vigilance - Detailed Enquiry pending in DVAC, Vigilance Commissioner/Chief Secretary accorded sanction for detailed enquiry.

6. It is the further case of the petitioner that he was also visited with charges framed under Rule 17(b), when he was working as Deputy Commissioner and the same was challenged before this Court in W.P.No.17272 of 2014 and this Court granted an order of interim stay on 02.07.2014 and the same was made absolute by this Court vide order dated 29.10.2014. Thereafter, he was promoted to the post of Joint Commissioner and posted as Additional Departmental Member, STAT.

7. As per G.O.Ms.No.184, Commercial Taxes and Hindu Religious Endowment, dated 16.06.1994, there was a direction to consider all the Officers for the purpose of getting exposure in various wings like assessment, enforcement, appellate and audit wing which are essentially different in its nature and functioning. According to the petitioner, the post of Joint

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Commissioner (CT) Territorial is a key post in generating revenue to the State and it requires practical knowledge about assessment of various types of cases and managerial skill.

8. Pursuant thereto, the petitioner preferred a Writ Petition in W.P.No.18531 of 2016 seeking to consider his representation dated 15.04.2016 and to effect general transfer in accordance with Government Orders and this Court by an order dated 26.05.2016, held as under:

> ''4. Considering the above submission of the learned Additional Government Pleader, the respondents are directed to consider the representation of the petitioner, dated 15.04.2016 by following the guidelines prescribed in Government Order in G.O.3(D) No.24, dated 01.08.1995, G.O.Ms.No.184, dated 16.06.1994 and G.O.Ms.No.10, dated 07.01.1994 issued by the Government and pass order within a period of three weeks from the date of receipt of a copy of this order.''

9. The grievance of the petitioner is that he has not been given an opportunity to get exposed in the territorial wing of Commercial Taxes Department, which is discriminatory and violative of Articles 14 and 16 of the Constitution of India. It is his contention that not effecting General Transfer with a view to facilitate a few Officers to continue in the same post for more than four years is violative of G.O.Ms.No.10, dated 07.01.1994 issued by the Government and G.O.3(D) No.24, dated 01.08.1995 issued by the respondents. Pursuant to the order of this Court in W.P.No.18531 of 2016, the respondents have effected General Transfer to the posts of Assistant Commissioner and Deputy Commissioner, whereas, they have not effected General Transfer in the post of Joint Commissioner till date. Though the ''Transfer Period'' was over as on 31.05.2016, the 1st respondent extended the period to effect transfer till 30.08.2016 vide G.O.Ms.No.349, dated 28.07.2016. The respondents have allowed the period so extended to lapse without effecting general transfer in the cadre of Joint Commissioner for the year 2016. Thus, according to the petitioner, the respondents have acted with indifference by not transferring and posting him in the Territorial Wing, while allowing the aforesaid Officials and his juniors to have exposure in the Territorial Wing. Hence, the present Writ Petition.

10. When the matter is taken up for consideration, learned counsel for the petitioner referring to paragraph 4 of G.O.Ms.No.10, dated 07.01.1994, and Clause (i) of Annexure I of the said G.O., submitted that there is no impediment for the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

respondent to consider the case of the petitioner for request-Transfer.

11. However, learned Additional Government Pleader (Taxes), by filing a detailed counter, submitted that General Transfers for the year 2016 is yet to be effected and at the time of issuing orders, norms and guidelines prescribed will be strictly followed and that continuance of a Joint Commissioner in that post is subject to his ability, performance and conduct and hence, the petitioner cannot claim to post him in any particular post, as a matter of right.

12. For better appreciation of the case, paragraph 4 of G.O.Ms.No.10, dated 07.01.1994 and clause (i) of the said G.O. are extracted hereunder:

> ''4. The procedures shall be followed for effecting transfers from 1st April 1994 and in subsequent years and any violation will be viewed seriously by the Government and severe disciplinary action taken against the erring officials.
>
> Clause (i)
>
> ''Requests for transfers or mutual transfers may be made any time, subject to other conditions. Requests sholuld be submitted through proper channel. But, advance copies may be submitted direct to the transferring authority on the basis of which the request shall be registered. Requests shall be registered immediately, with reference to the date of receipt of requests by the transferring authority on a 'first-come, first served' basis.''

13. In view of the above, the respondents are directed to consider the petitioner's request for transfer in the light of Clause (i) of G.O.Ms.No.10, dated 07.01.1994 and pass appropriate orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

This Writ Petition is disposed of with the above direction. No costs.

WEB COPY

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

aeb

https://hcservices.ecourts.gov.in/hcservices/

To:

1. The Additional Chief Secretary/
   Principal Secretary to Government,
   Secretariat, Chennai 600 009.

2. The Additional Chief Secretary/
   Commissioner of Commercial Taxes,
   Commercial Taxes Department,
   Ezhilagam, Chennai 600 005.

3. The Secretary,
   Personnel and Administrative Reforms Department,
   Secretariat,
   Chennai 600 009.

+1cc to Mr.K. Krishnamoorthy, Advocate, S.R.No.69842
+1cc to the Government Pleader, S.R.No.70064

SAI(CO)
EU(2/12/2016)

W.P.No.35448 of 2016

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/