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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2016

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.17140 2016

and

W.M.P (MD) Nos.12421 and 12422 of 2016

P.Ravi

... Petitioner

vs.

1)The Commissioner of Municipal Administration,
Chepak,
Chennai-600 005.

2)Mr.Padmanabhan,
Revenue Inspector,
Sivagangai Municipality,
Sivagangai,
Sivagangai District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 1st respondent herein in his proceedings in Roc.No.39144/2016/K2 dated 07.09.2016 and quash the same.

For Petitioner : Mr.K.Hemakarthiskeyan

For R1 : Mr.S.Kumar, Additional Government Pleader

For R2 : Mr.J.Jeyakumaran for Mr.R.Prabhakaran

ORDER

By the proceedings of the 1st respondent/Commissioner of Municipal Administration, Chennai, the petitioner who is working as Revenue Inspector in Ramanathapuram, has been transferred to Sivagangai as Revenue Inspector. This order is under challenge in this writ petition.

2.Background facts of the case are that the petitioner was appointed as Cleaner in Ramanathapuram Municipality and promoted as Driver in the year 1992; subsequently, he was promoted as Revenue Assistant during 2003; he was further promoted as Revenue Inspector and transferred to Kovilpatti Municipality by the proceedings of the 1st respondent dated 14.09.2015; the petitioner made a representation to the 1st respondent on 03.05.2016 requesting to transfer him to Ramanathapuram Municipality, by considering his family circumstances; accordingly, the 1st respondent transferred the petitioner to Ramanathapuram



Municipality on 17.08.2016 and the petitioner immediately joined duty on the very next day.

3. It is further submitted that to the petitioner's shock and surprise, the impugned order was passed by the 1st respondent transferring him from Ramanathapuram Municipality to Sivagangai Municipality within 20 days from the earlier order of transfer which according to the petitioner is, at the instigation of the 2nd respondent/Mr. Padmanabhan, Revenue Inspector, who is presently employed in Sivagangai Municipality and by the very same impugned order, the 2nd respondent has been ordered to be transferred as Revenue Inspector to Ramanathapuram.

4. A counter affidavit has been filed by the Additional Director of Municipal Administration, Chepauk, Chennai, wherein, it is stated that there is no mistake in the impugned order of transfer which has been passed within 20 days to two places i.e., Ramanathapuram and Sivagangai which had happened due to non noticing of the spouse quota available to the 2nd respondent, who is fully eligible to be posted to Ramanathapuram Municipality. It is also specifically stated that except by transferring the petitioner, there is no other way to accommodate the 2nd respondent whose spouse is working at Ramanathapuram.

5. Whether there is any justification in the stand taken on behalf of the 1st respondent is the issue in question.

6. Under normal circumstances, the jurisdiction of the Courts to interfere in the orders of transfer is very very limited, unless such transfers are tainted with *mala fide* or *bias*, the Courts do not interfere in the transfer orders. The element of transfer is concomitant to administration and therefore, normally, Courts do not interfere in the discretion exercised by the authorities concerned, but when such discretion is tainted with *bias* or *mala fide*, naturally, the Courts have to intervene to correct the mistake. It is the stand of the deponent in the counter affidavit that in order to accommodate the 2nd respondent herein, necessarily, the petitioner has to be transferred. No doubt, the 2nd respondent is entitled to transfer on spouse quota, where his counterpart is employed.

7. But, when this Court raised questions as to when the fact that the 2nd respondent is entitled to spouse quota came to the knowledge of the 1st respondent and why immediately after 20 days from his earlier transfer, the petitioner was transferred by impugned order, there was no specific answer from the side of the 1st respondent.



8. If really, "spouse quota" is the real reason for accommodating the 2nd respondent at the inception itself, the petitioner would not have been transferred from Kovilpatti to Ramanathapuram. After effecting transfer from Kovilpatti to Ramanathapuram, then the subsequent transfer of the petitioner from Ramanathapuram to Sivagangai (on the ground of availability of "spouse quota" to the 2nd respondent) would go to show that the transfer is for extraneous consideration.

9. It is also relevant to point out that the 2nd respondent is not transferred straightaway from Keelakarai to Ramanathapuram, but he has been transferred from Keelakarai to Sivagangai and then from Sivagangai to Ramanathapuram. Had there been a claim for filling up of the post on "spouse quota" straightaway, the 2nd respondent should have been brought to Ramanathapuram, instead of taking him from Keelakarai to Sivagangai and then from Sivagangai to Ramanathapuram. These circumstances speak volume about the extraneous considerations that seems to have played a role.

10. It is the contention of the 2nd respondent that his wife is a Nurse working in Government Hospital, who has the responsibility of bringing up two daughters and has relied upon the decisions of the Hon'ble Supreme Court in Chandrika Jha vs. State of Bihar, reported in 1984 (2) SCC 41 and State of Madhya Pradesh and others vs. S.S.Kourav and others, reported in 1995 (3) SCC 270, in support of the contention that transfer made on administrative exigencies cannot be interfered by the Courts. In the very same decision, it has been held that even though it is for the administration to take appropriate decision, if the transfer is made on account of malafides or by extraneous consideration without any factual background foundation, then the transfer is vitiated. In this case also, the transfer is not on administrative grounds, but on account of extraneous consideration. Hence, it is set aside.

11. This Court gave ample opportunity to the petitioner as well as the 2nd respondent to have some *inter se* arrangements at least for a limited period, so that initial discomfort can be erased and later, subject to their convenience, there could be any adjustment, but, there is no response except by filing counter affidavits on behalf of the 1st and 2nd respondents. Under such circumstances, this Court is left with no other option except to set aside the impugned transfer order dated 07.09.2016. The order of transfer passed within a period of 20 days to two places cannot be justified on any ground whatsoever.



Accordingly, the impugned order is set aside and the Writ Petition stands allowed. No costs. Consequently, W.M.P(MD) Nos.12421 and 12422 of 2016 are closed.

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Sd/
Assistant Registrar(RTI)

/TRUE COPY/

Sub Assistant Registrar

To:

The Commissioner of Municipal Administration,
Chepak,
Chennai-600 005.

+1cc to M/S.J.Jeyakumaran, Advocate in SR.No.59761
+1cc to Special Government Pleader in SR.No.60566
+1cc to M/S.K.Hemakarthiskeyan, Advocate in SR.No.59732

W.P(MD)No.17140 of 2016
06.10.2016

nbi/ar

PA/GSV-PM/SAR I/17.10.2016/4P/5C