IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.Nos.1004, 1065 and 1081 of 2017
and
CMP.Nos.14094, 14913 and 15055 of 2017

V.Maruthapandian ... Appellant in W.A.No.1004/2017

S.Muthu ... Appellant in W.A.No.1065/2017

S.Rajarethinam ... Appellant in W.A.No.1081/2017

vs.

The Additional Chief Secretary/
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk, Chennai – 5. ... Respondent in all the respondent

WP.No.1004/2017: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 07.08.2017 passed by a learned Single Judge of this Court in WP.No.21003 of 2017.

WP.No.1065/2017: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 08.08.2017 passed by a learned Single Judge of this Court in WP.No.21080 of 2017.

WP.No.1081/2017: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 07.08.2017 passed by a learned Single Judge of this Court in WP.No.21017 of 2017.

For Appellants : Mr.S.R.Raghunathan for
Mr.Adithya Reddy

For Respondent : Mrs.Narmatha Sampath, SGP (Taxes)

COMMON JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH, J.)

Since the issue involved in all these intra court appeals is similar, they are disposed by this common judgment.

2.Heard the learned counsel appearing for the parties and perused the materials.

3.Feeling aggrieved over the orders passed by a learned Single Judge in the respective writ petitions, the present intra court appeals have been filed by the appellants.

4.The appellants have filed the respective writ petitions challenging the order of transfer passed by the respondent herein. The learned Single Judge, by the orders impugned in these intra court appeals, dismissed those writ petitions.

5.We have no disagreement with the view taken by the learned Single Judge that transfer is not only an incident inherent in the terms of appointment, but also implicit as an essential condition of service and that transfer should not be interfered with, unless the same is vitiated by *mala fides* or violative of rules and regulations or the same is issued by an authority sans competence.

6.However, the learned counsel for the appellants, during the course of argument, has drawn the attention of this Court to the Government letter dated 11.07.1994 bearing No.39201/Per.S/94-1 Personnel and Administrative Reforms (Per.S) Department, Madras-9 issued by the Chief Secretary to Government to all the heads of the Departments, which reads as follows:

"Sub: PUBLIC SERVICES – Transfer of Government Servants from one Station/Post to another - Once in three years – Procedure in case of persons with left over service of one year or less for retirement – Instructions – Issued.

Ref: G.O.Ms.No.10, Personnel and Administrative Reforms (Per.S) Dept., dated 7-1-94.

...

I am directed to invite a reference to the orders issued in the G.O cited laying down the new transfer policy.

2.In continuation of the orders issued in the said G.O., the following further instructions are issued on the transfer policy:-

A person who is due for transfer on completion of three years of service in a seat/post/station need not be transferred to another station if his left-over service before retirement is one year or less. In such case, he should be given a chance of seat/post in the same station, or if that is not possible, and if the post is a non-sensitive one, he may be allowed to continue in the same post until he retires from service on attaining the age of superannuation. However, if the post is a sensitive one and there is no other suitable post in the station then he should be transferred to another station.

Yours faithfully,
sd/-. A.H. John Britto,
for Chief Secy to Govt."

7.Having regard to the admitted fact that the appellant in W.A.No.1004 of 2017 is due to on 31.05.2018 and the appellants in W.A.Nos.1065 and 1081 of 2017 are due to retire on 31.06.2018, i.e., their remnant service is less than one year, we are of the view that in the light of the aforesaid communication issued by the Government, the appellants need not be transferred. As such, we have no hesitation to hold that the transfer order passed by the respondent is arbitrary, illegal and against the policy decision taken by the Government. In such view of the matter, the transfer order passed by the respondent herein and the orders of the learned Single Judge are liable to be set aside and are, accordingly, set aside.

8.At this stage, the learned counsel for the appellants submitted that by virtue of the interim order passed by this Court, the appellants in W.A.Nos.1065 and 1081 of 2017 have been continuing in the same station and as far as the appellant in W.A.No.1004 of 2017 is concerned, since he has been transferred to some other place, some one was accommodated in his original place.

9.In view of the above, we are of the opinion that there can be no impediment for the appellants in W.A.Nos.1065 and 1081 of 2017 to continue in their original place. As regards the appellant in W.A.No.1004 of 2017, the respondent is directed to accommodate him in any one of the posts in Chennai.

10.The intra-court appeals are allowed as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

(H.G.R., J.) (T.K.R., J.)

rk 21.11.2017

HULUVADI G. RAMESH,J.
and
RMT. TEEKAA RAMAN,J.

rk

To
The Additional Chief Secretary/
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk, Chennai – 5.

W.A.Nos.1004, 1065 and 1081 of 2017

21.11.2017