IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07-08-2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.21003 of 2017
and
WMP.Nos.21891 and 21892 of 2017

V.Maruthapandian
Assistant Commissioner (Ct)/
Personal Assistant to
Joint Commissioner(CT)
Chennai (North Division)
Chennai - 600 006. .. Petitioner

Versus

The Additional Chief Secretary/
Commissioner of Commercial Taxes
Ezhilagam,
Chepauk,
Chennai -5. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records of the respondent in Proc.No.CP2/2454/2017 dated 28.07.2017 and quash the same to the extent that it applies to the petitioner.

For Petitioner : Mr.V.Perumal
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader
(Taxes)

O R D E R

The order of transfer dated 28.07.2017 is under challenge in this writ petition.

2. The writ petitioner is working in the cadre of Assistant Commissioner of Commercial Taxes in Chepauk, Chennai. The writ petitioner is due to retire from service on 31.05.2018 and having 10 more months of service. Thus, the order of transfer

impugned in this writ petition, transferring the writ petitioner from Chennai to Madurai is contrary to the instruction issued by the Government in Letter No.39201/Per.S/94-1, Personal and Administrative Reforms(Per.S) Department, Madras - 9.

3. The learned counsel appearing for the writ petitioner contended that the writ petitioner is having less than one year of service, more particularly, 10 months of service is left. Further, the Government Letter also stipulates that the person having a short span of service, to say, less than one year, is to be posted in the same post and no transfer is to be effected on such employee.

4. The Government letter, issued in the form of an instruction, will not confer any legal right on the employees to claim that they should be allowed to remain in a particular place or post. The guidelines/ instructions are issued by the Government to the Competent Authorities to consider the cases wherever required and this will not have the effect of statutory rules. Thus, the Government instructions cannot be a ground for the employees to move this writ petition to remain in a particular place or post. It is the discretion of the Competent Authorities to consider these aspects and ultimately the interest of administration and the public interest alone should prevail over and above the instructions issued in the form of concessions. These Government instructions are issued in order to extend certain concessions and facilities to the Government employees. Such concessions or facilities cannot construe as if it provides a right to the Government employee.

5. The pleadings on sympathy has to be put-forth only before the Competent Authorities and the Constitutional Court cannot interfere in the day-to-day administration of the State. Transfers are incidental to service, more-so, a condition of service. Judicial review against the orders of transfer are certainly limited and the Courts have to be cautious before interfering with the administrative orders of transfer.

6. The writ petitioner is working in the cadre of Assistant Commissioner of Commercial Taxes, which is a responsible position and he has to serve for the public and in the interest of public. His personal interest or certain difficulties, cannot be pleaded in public service, when he is holding the higher post of the Assistant Commissioner of Commercial Taxes.

7. The Government employees are entitled to enforce their legal rights ensured under the Act and statutory Rules. However, they are not entitled to claim right based on certain facilities and concessions shown by the Government by way of Government letters/instructions. The State, being the model employer, time

and again providing certain concessions/ facilities for the welfare of its employees and to encourage them, so as to run the administration in an effective manner. But those concessions/ facilities can never be a matter of legal right to the Government employees. The Constitutional Courts need not extend any consideration based on such facilities/instructions/guidelines extended by the Government in order to motivate the Government employees for running the State administration more effectively.

8. A mere forthcoming retirement or short tenure, cannot constitute a ground to attack the administrative orders of transfers. Thus, the present writ petition filed by the writ petitioner deserves no consideration at all. No doubt, certain difficulties may arise in the family of the Government servants in the event of an order of administrative transfer. But the interest of administration and the public in general alone are the paramount importance and this Court cannot extend any leniency to the Government employee on such pleadings of personal grievances. It is for the Competent Authorities to consider those grievances and even in case, such grievances are not considered by the original authority, it is left open to the Government employees to approach the higher authorities or the Government in this regard, but certainly not before this Court under Article 226 of the Constitution of India.

9. Thus, this Court is of the firm opinion that administrative transfers are never to be interfered with under Article 226 of the Constitution of India. This being the consistent view taken by the Hon'ble Supreme Court of India as well as the High Courts, no further consideration or adjudication needs to be entertained in this writ petition on the grounds raised in the affidavit.

10. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected the miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kak/dna/Svn

To

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

+ 1 cc to M/s. Adithay Reddy, Advocate SR.56510
+ 1 cc to Special Government Pleader SR.56720

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PPA(CO)
EU 17.08.17