

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. No. 22555 of 2017
and W.M.P. No.23683 of 2017

V. Rajakumari

..Petitioner

Vs.

1.The Collector,
Salem, Salem District.

2.The Commissioner,
Kadaiyampatti Panchayat Union,
Salem District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in Na.Ka.No.124/2017/Sa.U.Thi 2 dated 11.08.2017 and quash the same.

For Petitioner : Mr. P. Manoj Kumar
For Respondents : Mr.K. Dhananjayan
Spl.Government Pleader

ORDER

The order of transfer which was issued by the first respondent vide proceedings dated 11.08.2017, is under challenge in this writ petition.

2.The learned counsel appearing for the writ petitioner states that the petitioner is working as Noon Meal Organiser at the Kadaiyampatti Panchayat Union, Salem District. Through the impugned order issued by the first respondent, the writ petitioner was transferred to Periyathands Panchayat Union Elementary School, Kolathur Panchayat Union.

3.The learned counsel for the writ petitioner contends that the order of transfer is punitive in nature. Since the transfer order was issued based on the complaints received by the administration, such an order of transfer issued on receipt of complaints has to be set aside, as the same is punitive in nature. Further, as per G.O.Ms.No163, Social Welfare and

Nutritious Meal Programme Department dated 18.04.2010, the transfer and posting have to be done only within 3 km and there is a condition that the residence and workplace of the Noon Meal Organiser shall be within 3 km radius. Such being the contention, the writ petitioner is now transferred to a far off place and on that ground also, the order of transfer is to be set aside.

4.The learned Special Government Pleader opposed the writ petition stating that the terms and conditions stipulated in G.O.Ms.No163, Social Welfare and Nutritious Meal Programme Department are relating to the appointment and it is in no way connected with the transfer of an employee. Thus, the Government Order is to be followed only at the time of appointment of a person and the writ petitioner was transferred on account of certain complaints given by the local people. Such being the case, the transfer was issued on administrative grounds and the order of transfer states that it is only temporary in nature. Such being an order of transfer on the administrative grounds, the points raised in this writ petition need not be considered and the writ petition deserves to be rejected.

5.This court is of the view that the order of transfer is an incidental to service. More so, such administrative transfer was effected for effective administration of the department and the Constitutional Court need not interfere with the administrative transfers frequently. The writ petition can be entertained against the order of transfer only on exceptional circumstances and not in a routine manner.

6.An order of transfer can be interfere only if the same is issued by an authority having no jurisdiction or competency or allegations of malafides are raised. Even in case of raising allegation of malafide, the authority against whom such an allegation is made, has to be impleaded as a party in the writ proceedings in his personal capacity. If an order of transfer is passed in violation of the Statutory Rules, then also the writ can be entertained. In the absence of any one of this ground, no writ can be entertained on merits and on other personal inconvenience.

7.In the case on hand, the learned counsel for the petitioner cited G.O.Ms.No163, dated 18.04.2010. On a perusal of the above said Government Order, it is clear that the Government Order relates to the procedure for appointment. One of the eligibility prescribed in the said Government Order is that the applicant seeking appointment should reside within the radius of 3 km from the place for which the recruitment is called for. Thus, the eligibility condition prescribed in the appointment procedure cannot be applied for transfers and postings. Once the

candidate is appointed for the post, transfers and postings is the administrative prerogative of the appointing authority under the rules. Thus, the reason stated that the writ petitioner has to be transferred only within the radius of 3 km cannot be accepted.

8. On perusal of impugned order in this writ petition, it is unambiguously stated that on receipt of certain complaints, the first respondent issued an order of transfer on administrative grounds. Further, it is stated that the order of transfer is temporary. Thus, this court is able to appreciate the fact that in order to avoid certain inconveniences and to avoid further issues in a particular post, the first respondent issued an order of transfer. The transfer order can be issued even to avoid an order of suspension. Instead of allowing the writ petitioner to continue in the place, where the troublesome atmosphere created, it is acceptable, if a transfer order is issued in lieu. Thus, an order of administrative transfers are issued in order to maintain good administration in an effective manner and such an order of administrative transfers need not be interfered in the writ proceedings under Article 226 of the Constitution of India. Therefore, the contention raised by the learned counsel for the writ petitioner that the order of transfer is punitive in nature, cannot be accepted. Further, there was no disciplinary proceedings initiated or final orders was passed against the writ petitioner. Hence, considering the nature of the complaints against the petitioner an order of transfer was passed on administrative grounds and such an action of the 1st respondent cannot be construed as punitive in nature. Further, no Government employee can claim post or place as a matter of right and they have to work wherever they are posted. Thus, the appointment condition of residing within 3 km radius from the place of posting, it is to be interpreted as an eligibility for appointment. Even in the case on hand, the writ petitioner after receiving the order of transfer has to join in the transferred place and stay within the radius of 3 km for effective performance of duties and responsibilities. In such view of the matter, no further adjudication on the grounds raised in the writ petition is required to be considered.

9. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Collector,
Salem, Salem District.

2.The Commissioner,
Kadaiyampatti Panchayat Union,
Salem District.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.60861

+1cc to the Government Pleader, S.R.No.61033

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SAI (CO)
GN(15/09/2017)



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