

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13070 of 2017

and

W.M.P.Nos.13953, 13954 & 17510 of 2017

K.Jothi

.... Petitioner

Vs.

1.The Registrar,
Pondicherry University,
Kalapet, Pondicherry – 605 014.

2.The Joint Registrar (Administration),
Pondicherry University,
Kalapet, Pondicherry – 605 014.

.... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records from the file of the second respondent and quash the impugned transfer order passed by the second respondent vide Order No.PU/Estt/NT11/2017-18/143 dated 06.04.2017 (Office Order No.02).

For Petitioner : Mr.M.Magesh

For Respondents : Mr.Stalin Abhimanyu

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ORDER

Heard Mr.M.Magesh, learned counsel appearing for the petitioner and Mr.Stalin Abhimanyu, learned counsel appearing for the respondents.

2.The order of transfer dated 06.04.2017 is under challenge in this Writ Petition.

3.The writ petitioner, who is working in the cadre of Senior Assistant was transferred from Vigilance and Security Wing Section to Centre for Foreign Language Section of Pondicherry University. The grievance of the writ petitioner is that the post of Senior Assistant in Vigilance and Security Wing Section is more sensitive than that of the post of Senior Assistant in the Department of Centre for Foreign Languages.

4.The learned counsel appearing for the writ petitioner contended that the petitioner has to appear as a witness in a criminal case and in order to harass the writ petitioner, the impugned transfer order is issued.

5.The learned counsel appearing for the respondents contended that earlier the writ petitioner filed a W.P.No.12290 of 2017, challenging the very same impugned order of transfer dated 06.04.2017 and the writ petition was withdrawn on 10.05.2017. Further contended that though the writ petition was withdrawn on 10.05.2017, during the summer holidays of this High Court, the writ petitioner has chosen to file a fresh writ petition, challenging the very same transfer order on 16.05.2017. The copy of the order in that earlier writ petition was issued on 16.05.2017 by the Registry of this High Court. But the present writ petition was filed on the very same day i.e., on 16.05.2017.

6.Therefore, this Court is of a doubt, whether the writ petitioner has adopted a tactics of forum hunting and to choose a particular Court, so that, he can pursue the one or other. The earlier writ petition was filed, challenging the very same transfer order dated 06.04.2017 was withdrawn on 10.05.2017 and the fresh writ petition was filed on 16.05.2017 itself. The conduct of the writ petitioner in this regard is to be deprecated, such practice of filing the writ petition under Article 226 of the Constitution of India is to be viewed seriously.

The writ petitioner has taken an attempt to abuse the process of this Court and filed the second Writ Petition on the same cause.

7.The learned counsel for the respondent cited a Judgment in the case of ***Upadhyay & Co. /Vs/ State of U.P. and others reported in (1999) 1 Supreme Court Cases 81*** as extracted hereunder:

“13.The aforesaid ban for filing a fresh suit is based on public policy. This Court has made the said rule of public policy applicable to jurisdiction under Article 226 of the Constitution (Sarguja Transport Service v. STAT¹). The reasoning for adopting it in writ jurisdiction is that very often it happens, when the petitioner or his counsel finds that the court is not likely to pass an order admitting the writ petition after it is heard for some time, that a request is made by the petitioner or his counsel to permit him to withdraw it without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit withdrawal of the petition. When once a writ petition filed in a High Court is withdrawn by the party concerned, he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. If so, he cannot file a fresh

petition for the same cause once again. The following observations of E.S. Venkataramiah, J. (as the learned Chief Justice then was) are to be quoted here: (SCC p. 12, para 9)

“[W]e are of the view that the principle underlying Rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in the High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.”

8. Yet another Judgment in the case of ***Sarguja Transport Service /Vs/ State Transport Appellate Tribunal, M.P., Gwalior, and Others reported in (1987) 1 Supreme Court Cases 5*** as extracted hereunder:

“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in *Darayao case*¹ is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition may not bar other remedies like a suit or a petition under 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under

Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the person liberty of an individual in which the petitioner prays for the issue of a writ in the nature of *habeas corpus* or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.”

9. Even on merits, this Court is of the firm opinion that the writ petition, challenging the order of transfer cannot be entertained in a routine manner and only in exceptional circumstances the Court can accept the order of transfer issued on administration grounds. In the case on hand, it is a transfer from one section to another section within the University campus. Transfer is incidental to service, more so, the condition of service. No employee can claim a particular post,

as a matter of right and it is the discretion of the competent authority to post any employee in a particular place for conducting the administration effectively. Thus, the way in which the second writ petition is filed by the writ petitioner is certainly to be condemned.

10.The learned counsel appearing for the petitioner has submitted that the communication dated 05.05.2017 issued by the Assistant Registrar was not enclosed in the earlier writ petition, that is the reason why he has withdrawn the writ petition and filed the present writ petition. The said communication was issued on 05.05.2017 and the earlier writ petition in W.P.No.12290 of 2017 was filed on 09.05.2017 and 10.05.2017 it was taken up for hearing and even at that point of time, there was no information regarding the letter and the counsel withdrawn the writ petition. This communication is unnecessarily filed for the adjudication of the transfer petition. Thus, the arguments advanced deserves no consideration at all.

11.In this view of the matter, this Court is of the firm opinion that it is a sheer abuse of process of Court and when the Court is not inclined to admit the writ petition, the same was suddenly withdrawn on the date on which the copy made ready on 16.05.2017. The writ petition was again filed during the next vacation Court and the writ

petition was got admitted and an Interim order was also obtained. Therefore, the manner in which the two writ petitions were moved before this Court under Article 226 of the Constitution of India, raised a great concern with regard to the attitude of the writ petitioner towards this constitutional Court.

12.However, by taking a lenient view regarding the conduct of the writ petitioner, this Court is not willing to initiate any penal action against the writ petitioner. However, to mitigate the circumstances, the writ petitioner is directed to pay Rs.10,000/- (Rupees Ten thousand only) towards costs to be paid to the High Court Legal Services Authority, within a period of two weeks from the date of receipt of a copy of this order.

13.With these observations, the Writ Petition stands dismissed with costs and report the same to this Court. Consequently, connected Miscellaneous Petitions are closed.

14.List the matter after four weeks, for compliance.

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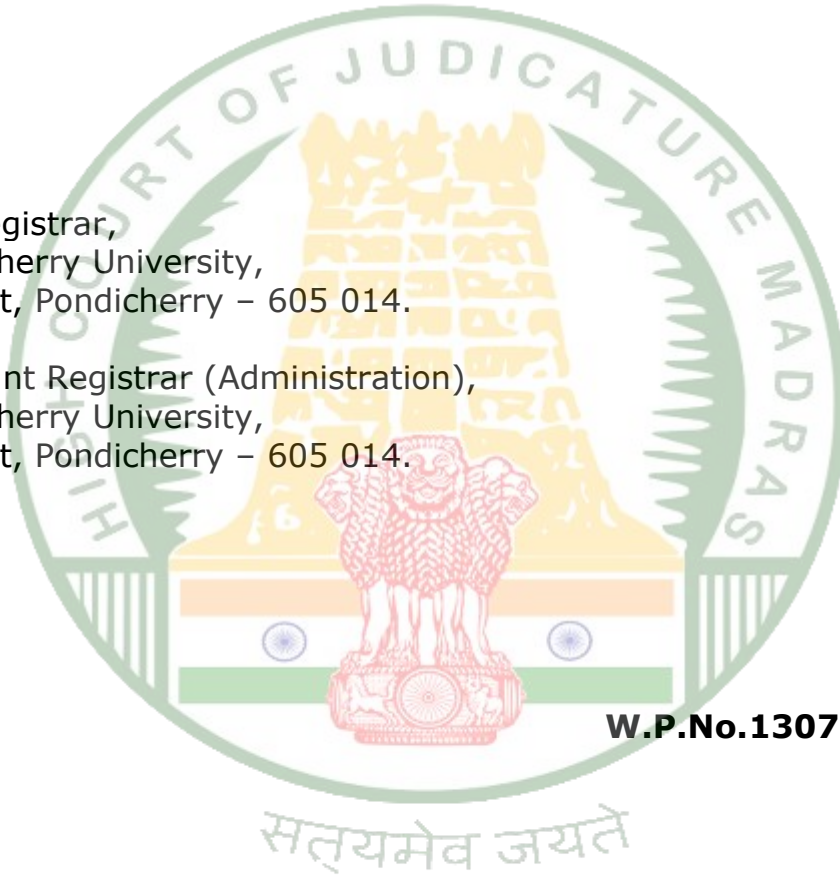
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S.M.SUBRAMANIAM, J.,

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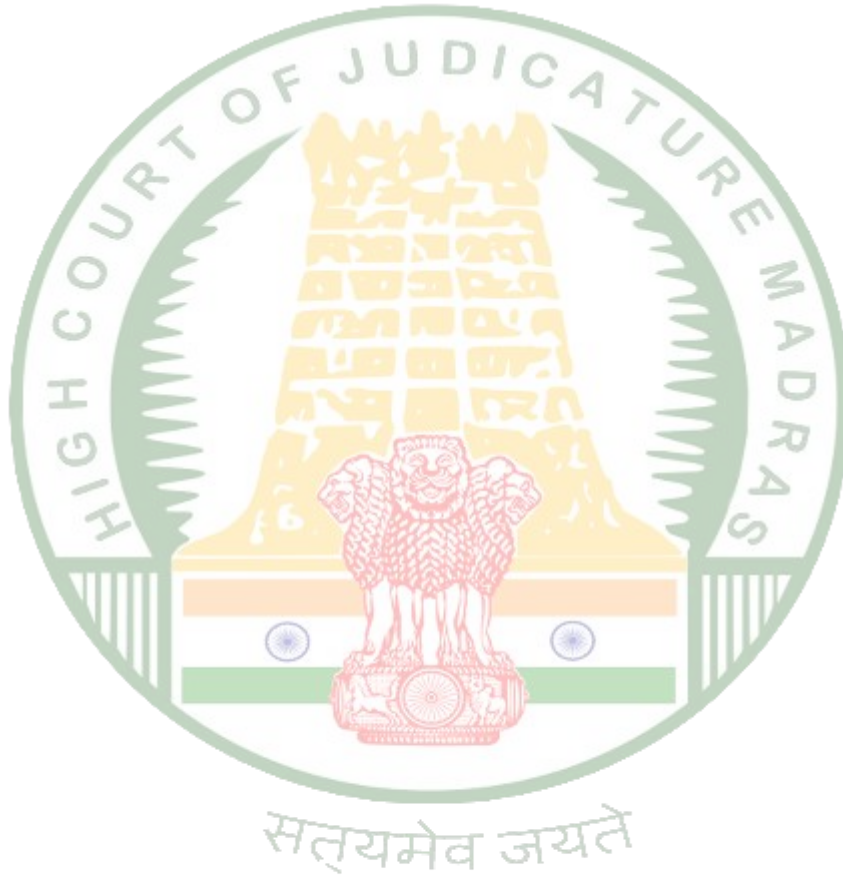
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