

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.08.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.23367 of 2017

N.James

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Petitioner

Vs

1.The Chief Engineer (Personal),
TANGEDCO, No,144, Annasalai,
Chennai-600 002.

2.The chief Engineer, (Distribution),
TANGEDCO, Maharaja Nagar,
Thirunelveli.

3.Tmt.Pearl Metilda,
chief Engineer, (Distribution)
TANGEDCO, Maharaja Nagar,
Thirunelveli.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus directing the 2nd respondents to issue re-posting order as required and as mandated for the petitioner's posting in the existing vacancy for the post of Chief Store Officer in the vacancy caused due to the transfer of Thiru.Sridhar in the Thirunelveli Distribution Circle and also for relieving him from the office of the Stores Controller, Central Power Station, Ennore, Chennai-600057, the present station where he is working, pursuant to the proceedings of the 1st respondent made in Memo No.033170/567/G.30/G.602/2017-

3, dated 13.06.2017.

For Petitioner : Mr.A.Amal Raj
For Respondents : Mr.R.Varalakshmi

ORDER

The relief sought for in this writ petition is for a direction to direct the 2nd respondent to issue re-posting order as required and as mandated for the petitioners posting in the existing vacancy for the post of Chief Store Officer in the vacancy caused due to the transfer of Thiru.Sridhar in the Thirunelveli Distribution Circle and also for relieving him from the office of the Stores Controller, Central Stores, Ennore Thermal Power Station, Ennore, Chennai-57.

2. The learned counsel appearing for the writ petitioner submits that the writ petitioner was appointed as Helper in the year 1987 and promoted as Commercial Assistant and thereafter, promoted to the post of Grade-II Store Custodian and now, he is working as Stores Officer in Chennai. The writ petitioner states that an order of transfer was issued transferring the writ petitioner from the post of Chief Stores Officer, Ennore Thermal Power Station to the office of the Superintending Engineer, Tirunelveli Electricity Distribution Circle against the existing vacancy. The grievances advanced is that inspite of the order of transfer issued by the Chief Engineer in proceedings

dated 13.06.2017, the writ petitioner has not relieved from the present station at Chennai. Further, the 2nd respondent has also not issued any consequential order enabling the writ petitioner to join at Thirunelveli. Further, it is stated that the Chief Engineer has been impleaded in his personal capacity as 3rd respondent, since, at the instance of the 3rd respondent, the consequential order has not been passed in favour of the writ petitioner.

3. Considering the facts stated above, this Court is of the firm opinion that post or place can never be claimed as a matter of right by the public servants. Transfer being incidental to service and more so condition of service, the post or place can never be a choice for public servants, who has to serve in the interest of public. The Government servants are liable to serve wherever they are posted and the personal grievances so advanced by the Government Servants are to be redressed only by the competent authority, and certainly not by the Constitutional Courts. The instructions and circulars issued by the Government to the Subordinate authorities to consider the grievances of the individuals in order to maintain effective public administration. Such instruction/guidelines/circular will never give rise to the employees seeking indulgence of this court. Thus, this Court is of the

firm opinion that relieving or promoting the writ petitioner and appointing him in another post or place is an administrative prerogative of the respondents and it is for the competent authority to consider all these aspects in the interest of administration.

4. An order of transfer in a particular post or place cannot be assailed in a writ petition under Article 226 of the Constitution of India . If any such order of transfer, relieving or order accommodating any person, was issued by the incompetent authority having no jurisdiction or such an order was passed on malafide, intention or same is in violation of the statutory rules. Even in cases of allegation of malafide, the authority against whom such an allegation raised is to be impleaded as a party respondent in the writ proceedings in the personal capacity. In the absence of any one of this ground, no writ can be issued. In the case on hand, no doubt the 3rd respondent has been impleaded as a party in his personal capacity. However, the allegation raised against the 3rd respondent in the affidavit is not sufficient to prove malafide. The relevant portion of the affidavit is extracted hereunder:

"The 3rd respondent holding her official position ought to have applied the guidelines prescribed by the Chief

Engineer, personnel which makes it clear in unequivocal terms that, "transfer/promotion should be based on the nature and gravity of charges on which disciplinary proceedings have been initiated and for which punishment was imposed. Instead of outright rejection of the transfer/promotion, such cases shall be examined and decided on merits of each case." Here is a case where the charge as raised by the 3rd respondent on her capacity as 2nd respondent has no legs to stand in as much as (i) The Charge is barred in view of limitation prescribed by the board, (ii) The petitioner himself has cancelled the loan application and not availed any housing loan after having the knowledge that LIC Agent has managed to produce false salary certificate and therefore, the question of accusation does not arise, that too for transfer order already in force, (iii) The charge as alleged is not falling within the purview of petitioner's employment, but outside the purview of is employment, (iv) The act of malafide is exposed from the 2 different nature of proceedings one by the 1st respondent and another by the 3rd respondent".

5. The personal allegation as such raised in the affidavit by the writ petitioner relates to exercise of administrative power and this Court is unable to findout any personal reasons or personal motive as against the 3rd respondent in not passing an order of posting to the petitioner. Further, the learned counsel emphasized that the 3rd

respondent knows the writ petitioner personally and passed certain orders. Certain administrative actions taken by the officials competent to take it cannot be construed as personal issues and in order to raise allegation of malafide, there must be substantial materials to show that motive against the person is to be established. In the absence of any such allegation of personal motive, the general allegation or allegation against the exercise of power of administration cannot be considered or construed as malafide. Thus, the general allegation set out in the writ petition against the 3rd respondent with regard to the administrative actions or the administrative power exercised by the 3rd respondent cannot be a ground for attacking the actions of not issuing the relieving order. In this view of the matter, this Court is not inclined to consider the allegation raised by the writ petitioner. It is for the competent authority to transfer the person from one place to another place in the interest of administration and in order to maintain good governance.

6. In this view of the matter, no further adjudication is required in this writ petition and deserves no merits. Accordingly, the writ petition stands dismissed. No costs.

30.08.2017

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To

- 1.The Secretary,
Transport Department,
Fort St.George, Chennai-600 087.
- 2.The Managing Director
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan House, Anna Salai,
Chennai-600 002.



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S.M.SUBRAMANIAM,,J

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W.P. No. 23367 of 2017

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