

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.1428 & 1429 of 2017

B.Srinivasan .. Petitioner in W.P.No.1428 of 2017
B.Madesh .. Petitioner in W.P.No.1429 of 2017

-VS-

1. The District Collector (PD Section)
Krishnagiri District
Krishnagiri
2. The Block Development Officer (PD Section)
(Special Officer) Village Panchayat
Hosur Panchayat Union
Krishnagiri District .. Respondents 1 & 2 in both the
petitions
3. N.Vishnuvardhana ..Respondent No.3 in W.P.No.1428 of 2017
4. Murugesh Reddy ..Respondent No.3 in W.P.No.1429 of 2017

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records pertaining to the order bearing Na.Ka.No.2912/2016/E2 dated 11.01.2017 of the second respondent herein in so far it relates to the petitioners and quash the same.

For Petitioners :: Mr.V.Suthakar

For Respondents :: Mr.K.Rajendraprasad
Government Advocate for R1 & 2
Mr.M.P.Saravanan for R3

ORDER

These two writ petitioners have come to this Court questioning the correctness of the impugned transfer order dated 11.1.2017 issued by the Block Development Officer (PD Section), Village Panchayat, the second respondent herein.

2. Learned counsel for the petitioners, heavily assailing the grounds assigned for transfer, taking support from Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 issued in G.O.(Ms.)No.72, Rural Development & Panchayat Raj (E5) Department dated 9.7.2013, urged this Court to take note of the fact that when Rule 11 is candid that

transfer of a person holding the post of Panchayat Secretary shall be made only on administrative grounds supported by valid reasons and after proper enquiry by the authorities concerned, till date, no valid reason has been assigned in the impugned transfer order and no proper enquiry appeared to have been held by the respondents 1 & 2. Therefore the impugned order of transfer is in clear violation of Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules. Adding further, it was contended that when the main object of the rule makes it clear that the Panchayat Secretaries should not be transferred frequently, as they are entrusted with the maintenance of properties of the village panchayat, maintenance of cash register and all village panchayat records, collection of taxes for executing the above works and the local knowledge of the individual is also required, flouting all these norms, the transfer order has been passed. Therefore, the same is liable to be interfered with. Continuing further, he submitted that when representations were given by Mr.N.Vishnuvardhana and Mr.Murugesh Reddy, the respective third respondent in both the writ petitions, who are presently working as Panchayat Secretaries at Kopanapalli and Atchettipalli Village Panchayats, the District Collector on 23.12.2016 wrote a letter to the Block Development Officer (PD Section), the second respondent herein to issue the posting orders to the respective third respondent to Nallore and Begapalli Village Panchayats, where the petitioners are working. Immediately on coming to know of the letter written by the District Collector dated 23.12.2016, the petitioners also gave their representation to the respondents 1 & 2 requesting them to retain the petitioners in the present places citing family circumstances. Subsequently, on 7.1.2017, the first respondent sent a letter stating that the Madurai Bench of this Court had granted an interim order of stay of the G.O.Ms.No.72 dated 9.7.2013 with regard to the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules. When that is the stand taken by the first respondent-District Collector, all of a sudden, within a few days, the impugned transfer order has been passed. When there is neither any valid reason assigned nor any proper enquiry held and moreover there is no such order of interim stay granted with regard to the G.O.Ms.No.72 dated 9.7.2013, the impugned transfer order passed against these petitioners is nothing but clearly motivated. Hence the same is liable to be interfered with, he pleaded.

3. Detailed counter affidavits have been filed by the respondents 1 & 2. The learned Government Advocate for the respondents 1 & 2 urged this Court to dismiss the writ petitions, citing two reasons. Firstly, Mr.B.Srinivasan, the petitioner in W.P.No.1428 of 2017, has been transferred after he served in the erstwhile place for more than 8 years and 9 months and Mr.B.Madesh, the petitioner in W.P.1429 of 2017, has been transferred after he served in the erstwhile place for more than 4 years and 10 months. Secondly, several complaints were

received against the petitioners, therefore, in order to avoid initiation of disciplinary proceedings, they have been transferred by the impugned order. However, intervening at this stage, the learned counsel for the petitioners submitted that there is no such thing pleaded in the counter affidavits. However, in reply, the learned Government Advocate submitted that although this point has not been taken in the counter by the respondents 1 & 2, as a matter of fact, in order to avoid initiation of departmental proceedings against the petitioners, they have been simply transferred within the Block only, namely, Mr.B.Srinivasan has been transferred within a distance of 8 Kms., and Mr.B.Madesh has been transferred within a distance of less than 25 Kms. Therefore the petitioners cannot come to this Court on the ground that they have been put to hardship. Moreover, both of them have completed the tenure of four years in the erstwhile places. Hence, they do not have any indefeasible right to come to this Court questioning the transfer order.

4. The learned counsel for the respective third respondent in both the writ petitions also submitted that when the petitioners have completed their tenure of four years, they have been transferred within the same block by a competent authority, namely, the Block Development Officer, (PD Section), Village Panchayat, the second respondent herein in fine tune with Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules. The reasons are also given, but they are not many in number. However, the petitioners cannot allege that no reasons are given in the impugned transfer order. Moreover, when there is no prejudice caused to the petitioners, the impugned transfer order cannot be interfered with.

5. I also find some substance in the submissions made by the respective counsel for the respondents. A reading of Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules shows that the transfer of a person holding the post of Panchayat Secretary shall be made only on administrative grounds supported by valid reasons and after proper enquiry by the authorities concerned. This is for the purpose of avoiding frequent transfers of the Panchayat Secretaries, since when there is a change in the administration of the panchayat after the completion of the fixed tenure, ordinarily the new President, immediately after taking over the office of Presidentship, tends to disturb the Panchayat Secretary. Therefore, these rules have been rightly brought in. As highlighted above, although the rule is clear that no transfer order can be passed without any valid reason and there must be also an enquiry, in the present case, both the petitioners, after serving for more than four years, namely, in the case of Mr.B.Srinivasan, having served for 8 years and 9 months and in the case of Mr.B.Madesh, having served for 4 years and 10 months, have been shifted and posted within a distance of 8 Kms., and within a distance of less than 25 Kms., respectively.

Further, when the transfers have been made only within their block, this Court is not able to see any prejudice caused to the petitioners, after completion of their tenure of four years. Hence, this Court is not inclined to entertain the writ petitions. Accordingly, the writ petitions fail and they are dismissed. Consequently, W.M.P.Nos.1361 & 1362 of 2017 are also dismissed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1. The District Collector (PD Section)
Krishnagiri District
Krishnagiri
2. The Block Development Officer (PD Section)
(Special Officer) Village Panchayat
Hosur Panchayat Union
Krishnagiri District

+2 cc to Mr.M.P.Saravanan,advocate,sr.16157, 16158

+2 cc's to Mr.V.Suthakar,advocate,sr. 15909

+1 cc to Govt.Pleader,sr.16023.

sr(co)
krd 3/4

W.P.Nos.1428 & 1429 of 2017

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