IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 15668 of 2017
and W.M.P.No. 16959 of 2017

R.Shanmuganathan ... Petitioner

Vs

1. The Additional Chief Secretary to Government,
   Commercial Taxes and Registration Department,
   Secretariat, Fort St. George,
   Chennai - 600 009.

2. The Additional Chief Secretary
   Commissioner of Commercial Taxes,
   Commercial Taxes Department,
   Ezhilagam, Chennai - 600 005.

3. The Secretary,
   Personal and Administrative Reforms Department,
   Secretariat, Chennai - 600 009. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to transfer the petitioner to the post of Joint Commissioner (Enforcement), Madurai or as Joint Commissioner (Enforcement) Salem during the General Transfer 2017 by considering the representation of petitioner dated 18.07.2016 followed by representation dated 16.05.2017 in the light of the guidelines prescribed in Government orders in G.O. (3D) No.24 dated 01.08.1995 and G.O. Ms. No.184 dated 16.06.1994 issued by the Secretary to Government.

For Petitioner : Mr.P.Wilson
Senior Counsel for Mr.E.Vijay Anand

For Respondents : Mr.C.C.Rangarajan
Government Advocate

O R D E R

The prayer sought for in this writ petition is for a direction to direct the respondents to transfer the petitioner to the post of Joint Commissioner (Enforcement), Madurai or as Joint Commissioner (Enforcement) Salem during the General Transfer 2017 by considering the representation of the petitioner dated 18.07.2016 followed by a representation dated 16.05.2017 in the light of the guidelines prescribed in Government orders in G.O. (3D) No.24 dated 01.08.1995 and G.O.Ms.No.184 dated 16.06.1994 issued by the Secretary to Government.

2. This Court is not inclined to consider such a prayer, more specifically from a responsible officer, who is working as Joint Commissioner in the Commercial Taxes Department, Trichy Division.

3. The learned Senior Counsel appearing on behalf of the writ petitioner submitted that the prayer sought for in this writ petition are not properly worded and now he confines and restrict the prayer to the extent of issuing a direction to the respondents to consider the representation submitted by the writ petitioner.

4. This Court took an exception on this submission in view of the fact that, the very intention of the writ petitioner to secure a particular post is to be deprecated. Transfer is not a right and it is just an incidental to service more so it is a condition of service. Rule 40 of the Tamil Nadu State and Subordinate Services Rules stipulates that "a member of a service or a class of service may be required to serve to any post borne on the cadre of such service he is qualified to".

5. The petitioner working in the cadre of Joint Commissioner, Commercial Taxes is a class I Officer and vested with more powers and responsibilities and he is empowered to exercise the powers of various Acts and Rules. Such being the higher responsibilities attached to the post of Joint Commissioner, Commercial Taxes, he has come out with the present writ petition seeking for posting in a particular post. Even to consider the arguments advanced by the learned Senior Counsel to consider the representation of the writ petitioner, this Court is of the clear opinion that any order of recommendation or in the form of recommendation under Article 226 of the Constitution of India cannot be issued.

6. Thus, the prayer as such sought for deserves no merit or consideration. The order of transfer is not under challenge in this writ petition. Further, issuing a direction to consider the

representation also requires a right to be established. In other words, a semblance of right is a basic requirement to entertain the writ petition for issuing a direction under Article 226 of the Constitution of India. In the absence of demonstrating before this Court that the petitioner has got a legal right and such a right is violated, this Court cannot entertain the writ petition nor can act as a special purpose vehicle to carry any recommendation to the officials to consider such kind of administrative transfer orders. The Court cannot be used as an instrument for getting such orders of direction and pressurize the officials to exercise their administrative power of transfer, which is vested under the relevant Rules.

7. This Court is of the firm view that running an administration is a prerogative of the Government, and only if the right of an employee is violated, this Court can entertain the writ petition and issue appropriate direction for redressing the grievances of such employees.

8. Therefore, issuing a direction to consider the representations in the nature of a Writ of Mandamus cannot be considered as an advisable practice and such a prayer in the absence of establishing any legal right by the writ petitioner can never be entertained under Article 226 of the Constitution of India.

9. It is for the authorities to follow the guidelines issued by the Government in this regard and it is not for the Courts to interfere in the matters of transfer unless an order of transfer is issued without jurisdiction or with a malafide intention by the Authority. Even, in the case of, raising the plea of malafides, the said person has to be impleaded as a party in his personal capacity. In the absence of these grounds, no transfer petition can be entertained by this Court, under Article 226 of the Constitution of India.

10. In this view of the matter, the prayer as such sought for in this writ petition deserves no further consideration. Thus, the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Secretary to Government,
   Commercial Taxes and Registration Department,
   Secretariat, Fort St. George,
   Chennai - 600 009.

2. The Additional Chief Secretary
   Commissioner of Commercial Taxes,
   Commercial Taxes Department,
   Ezhilagam, Chennai - 600 005.

3. The Secretary,
   Personal and Administrative Reforms Department,
   Secretariat, Chennai - 600 009.

+1cc to Mr.E.Vijay Anand, Advocate, S.R.No.47636
+1cc to the Government Pleader, S.R.No.48270

W.P.No. 15668 of 2017

SK(CO)
CS/27/07/17