

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2017

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 17079 of 2017

&

WMP.Nos.18558 & 18559 of 2017

A.Rajaram

.. Petitioner

Vs

1. The Director of Agriculture,
Chepauk,
Chennai-600 005.

2. The Joint Director of
Agriculture (in charge)
1422-A, Thadagam Road,
GCT Post, Coimbatore-641 013.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus or any other appropriate Writ calling for the records relating to the proceedings of the Joint Director of Agriculture (in charge) Coimbatore, the second respondent herein made in Reference No.A1/6100/2017 (3) dated 30-6-2017 quash the same and direct the respondents herein to retain the petitioner as Agricultural Officer, Soil Survey and Land Use Organisation, Coimbatore with all consequential service and monetary benefits including arrears of salary if any due to the petitioner on account of passing of impugned order of transfer and disburse all arrears within a short date that may be fixed by this Hon'ble Court.

For Petitioner : Mr.K.Rajkumar

For Respondents : Mr.S.Gunasekaran
Addl. Govt. Pleader

O R D E R

The order impugned in this writ petition is regarding the transfer of the writ petitioner from Coimbatore to Karamadai within the same District. The writ petitioner is holding the post of Agricultural Officer and presently, working in Coimbatore. In order dated 30th June 2017 he is transferred from Coimbatore to Karamadai.

2. Even, the learned counsel appearing for the writ petitioner stated that the distance from Coimbatore to Karamadai, which is about 40 kms and in the same district. The grounds raised in this writ petition is that, the writ petitioner was frequently subjected to transfer and the respondents are intentionally harassing the writ petitioner.

3. Secondly, the writ petitioner is going to retire from service on attaining the age of superannuation on 31st October 2018 and he has left with 14 more months of service.

4. Though the learned counsel appearing for the writ petitioner advanced his arguments relating to mala fide, the Officer against whom such an allegation is made has not been impleaded as party in his personal capacity. Furthermore, such an allegation was not substantiated in the affidavit filed in support of this Writ Petition.

5. The writ petitioner is working in the cadre of Agricultural Officer, Group A post. Thus, the impugned order transferring Group A officer from Coimbatore to Karamadai, within the same district, cannot be considered or construed as harassment caused by the Department. Transfer is mere incidental to the service, more so, a condition of service. A public servant by virtue of his designation enjoys a status in the Society and therefore, it is his duty to serve the public in the place in which he is posted. In this regard, this Court is of the view that an order of transfer can be challenged only on certain limited grounds, more specifically, on incompetency, without jurisdiction or mala fides. In the event of raising allegations of mala fide, the Officer against whom such an allegation has been raised has to be impleaded as party in the Writ Petition, in his personal capacity. In the absence of any of the grounds cited supra, no writ can be entertained, if the challenge in such a Writ Petition is an order of transfer.

6. The learned counsel appearing for the petitioner taken this Court to the contents of the impugned order, in which G.O.Ms.No.10 P & AR Department dated 07.01.1994, is cited in the reference. The learned counsel submits that the Transfer Policy has been laid down by the Government in G.O. Ms. No.10, and the conditions of the Policy has been violated, in the case on hand.

7. Undoubtedly, the Government issued certain guidelines regarding the transfer policy, in G.O.Ms.No.10, P & A R Department, dated 07.01.1994. The guidelines issued in the said G.O., undoubtedly are to be followed by the Government Officials working in the Government. But, it remains only as a guidelines and therefore, the transfer orders issued on administrative grounds or exigencies cannot be designed as contrary to the transfer guidelines. Such transfer guidelines are issued only to prevent the higher officials from using their power of transfer excessively or misuse of their power. The Government are issuing guidelines only for the purpose of guiding the authorities to maintain uniformity and to prevent the abuse or colourable exercise of power. Such guidelines issued in G.O.Ms.No.10, cannot come in the way of administrative transfer or an order of transfer passed on exigencies. In the present case, the writ petitioner is a Group 'A' officer working in the cadre of Agricultural Officer, transferred from Coimbatore to Karamadai, in the same district and therefore, such an argument holding that the transfer order is in violation of guidelines, cannot be considered.

8. At this juncture, the learned counsel cited the Instructions issued by the Director of Agriculture, which was cited in the reference in the impugned order. It is submitted that the decision regarding the transfer was taken at the behest of the Head of the Department, namely, the Director of Agriculture and the Joint Director cannot independently decide the issue. In this regard, the learned counsel cited the Judgement of the Hon'ble Supreme Court, BAHADURSINHLAKHUBHAI GOHIL v. JAGDISHBHAI M.KAMALIA AND ORS [(2004) 2 SCC 65], stating that if any decision is taken by the statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra virus. For better appreciation, paragraph No.26 of the Judgment is extracted below:

"26.It is also well settled that if any decision is taken by a statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra vires. (See Commr. Of Police v. Godhandas Bhanji and Mohinder Singh Gill v. Chief Election Commr.)."

Substantiating the above decision, the learned counsel stated that the authority competent to issue the transfer order has not applied his mind and just followed the decision at the behest of the Head of the Department namely, the Director of Agriculture. Hence, the transfer order is unsustainable.

9. This Court is of the firm view that what is referred by the learned counsel for the petitioner is the decision taken at the behest of the Director who is the Head of the Department. The decision of the Director was followed by the Joint Director. The arguments advanced that the Joint Director cannot pass orders following the directions of the Head of the Department, deserves no merit consideration. The Head of the Department and the Government undoubtedly are superior officials of the Joint Director and any decision taken by the Government to be followed by all concerned and the decision taken by the Head of the Department is to be followed scrupulously by all the subordinates working under the concerned Department. Further, the power of the Head of the Department to transfer an employee working in the cadre of Agricultural Officer, cannot be questioned. Hence, the Judgment relating to the decision with regard to the other issues other than the transfer orders cannot be compared with regard to the decision taken in the matter of transfer in this case. Thus, the Judgment cited above by the learned counsel may not have any implication or relevance with regard to the facts and circumstances of the present case.

10. This apart, the learned counsel for the petitioner contended that more than seven Officers who have completed more than two years of service were not transferred and the petitioner alone was issued with an order of transfer.

11. Length of service, seniority or nature of responsibility of a particular post, has no relevance with the order of transfer. The concept of transfer is prevailing only to maintain an effective administration. Who is to be posted in a particular post and who will be the right person for effective implementation of public schemes are to be ascertained by the officials who have been conferred with such powers and it is the prerogative of the Government to transfer an Officer from one place to another place in order to provide an effective administration. Therefore, all such decisions cannot be brought under the litigation, more specifically, under Article 226 of the Constitution of India.

12. Thus, the arguments advanced by the learned counsel for the writ petition deserves no consideration in this regard and the duration and the period of service in a particular post is to be decided by the authorities concerned and a mere guideline providing certain periods in certain Government Orders will not confer any right on the petitioner to claim that he must be allowed to continue in a particular post for a particular tenure.

13. In view of the above discussions, the Writ Petition deserves no further consideration and accordingly stands dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

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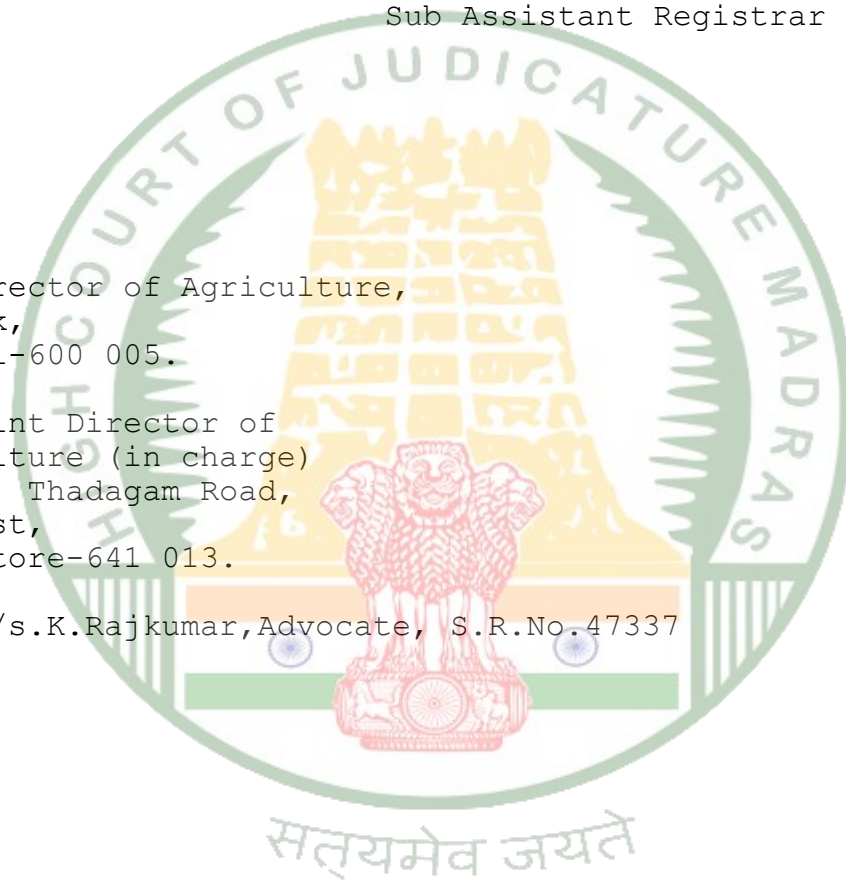
Sub Assistant Registrar

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To

1. The Director of Agriculture,
Chepauk,
Chennai-600 005.
2. The Joint Director of
Agriculture (in charge)
1422-A, Thadagam Road,
GCT Post,
Coimbatore-641 013.

+1cc to M/s.K.Rajkumar, Advocate, S.R.No.47337



W.P.No. 17079 of 2017

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