

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2017

CORAM

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

W.P.No.29937 of 2015

and MP.No.1 of 2015

G.Selvi

... Petitioner

Vs

1.The Director of Employment and Training,
Alanthur Road, Guindy,
Chennai - 600 032.

2.The Regional Joint Director (Employment),
Thiruchirappalli Region,
Thiruchirappalli -1.

3.The District Employment Officer,
O/o.District Employment Office,
Ariyalur - 621 713, Ariyalur District.

4.The District Employment Officer,
O/o.District Employment Office,
Nagapattinam.

5.Mr.Baskaran
District Employment Officer,
Krishnagiri, Krishnagiri District.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the proceedings of the 2nd respondent in proceedings No.A1/4469/2015, dated 08.09.2015 and quash the same.

For Petitioner : Ms.Subhalaxmi Samanta

For Respondents : Mr.S.Gunasekaran

Additional Government Pleader, R1 to R4

O R D E R

The order of transfer issued by the second respondent in proceedings No.A1/4469/2015, dated 08.09.2015, is under challenge in this writ petition.

2. The writ petitioner is working as an Office Assistant and she was issued with an order of administrative transfer in proceedings dated 08.09.2015, transferring her from Ariyalur to Nagapattinam.

3. The learned counsel appearing for the writ petitioner made a submission that the writ petitioner has made a complaint against the fifth respondent with regard to the sexual harassment in the work place and without conducting proper enquiry under the provisions of the Sexual Harassment of Women at Works place (Prevention, Prohibition and Redressal) Act, 2013, the petitioner was transferred to Nagapattinam. In this regard, the learned counsel made a submission that under Section 12 of the aforesaid Act, transfer of an aggrieved woman shall be made only on a written request made by the aggrieved person, but not otherwise and therefore, the order of transfer is not in accordance with the said Act and the same is to be set aside. This apart, the learned counsel made a submission that the enquiry report was improper and the writ petitioner has to take further course of action based on the enquiry report.

4. The learned Additional Government Pleader appearing on behalf of respondents 1 to 4 made a submission that the order of transfer is administrative in nature and no way connected with the complaint given by the writ petitioner. He has further submitted that the complaint preferred by the writ petitioner against the fifth respondent was promptly acted upon by the department and a proper Internal Complaints Committee was constituted in accordance with Section 4 of the said Act and the committee also conducted a detailed enquiry by examining the witnesses and the documents. The said Committee consists of responsible Gazetted Officers and a representative from the NGO was also a member in the Committee. The said committee submitted a detailed report on 03.07.2015. However, the Committee, in its report made a finding that the allegations of sexual harassment against the fifth respondent has not been proved by the writ petitioner. However, a finding is recorded that there is a possibility of misbehaviour by the fifth respondent on some occasion. However, the allegations set out in the complaint have not been proved before the Committee by the writ petitioner.

5. Under these circumstances, the second respondent viz., the Regional Joint Director (Employment), Thiruchirappalli, issued an order of transfer in proceedings dated 08.09.2015. Thus, it is clear that the order of administrative transfer, which is impugned in this writ petition, was issued after the

conclusion of the enquiry by the Internal Complaints Committee and therefore, the complaint and the enquiry by the Committee under the Act is no way connected with the administrative transfer issued against the writ petitioner.

6. On a perusal of the order of transfer, this Court is of the opinion that the writ petitioner was transferred to District Employment Exchange of Nagapattinam on administrative grounds. The complaint was preferred against the fifth respondent by the writ petitioner and that was promptly acted upon by the department by invoking the provisions of the said Act. The Internal Complaints Committee was constituted under Section 4 of the Act and the Committee conducted a detailed enquiry and submitted its report. If any grievance still exists for the writ petitioner against the report of the Committee, it is left open to the writ petitioner to pursue the same in accordance with law. However, the report of the Committee is no way connected with the order of administrative transfer passed. In view of the fact that the administrative transfer order was issued after conclusion of the enquiry by the Internal Complaints Committee. The Committee concluded the enquiry and submitted its report on 03.07.2015 and the order of transfer impugned in this writ petition was issued on 08.09.2015. Thus, there is a gap of more than two months and therefore, this Court has every reason to believe that the order of administrative transfer is in no way connected with the action taken on the complaint filed by the writ petitioner against the fifth respondent.

7. The order of administrative transfer is incidental to service, more so a condition of service. The writ against an order of transfer cannot be entertained in a routine manner. The writ against an order of transfer can be entertained only on exceptional circumstances, such as lack of jurisdiction, incompetency or malafide. Even in the case of raising the allegation of malafide, the authority against whom such an allegation is made has to be impleaded as a party in the writ proceedings. However, in the case on hand, the fifth respondent is impleaded as a party in his personal capacity. But, the complaint against the fifth respondent filed by the writ petitioner was properly addressed by the department and Internal Complaints Committee was constituted and the Committee submitted its report on 03.07.2015, holding that the allegations set out in the complaint filed by the writ petitioner have not been proved.

8. Thus, this Court has to see independently whether the order of administrative transfer is infirm or not. The administrative transfers are issued in order to maintain a good administration and the Courts cannot interfere in the day to day administration of the department. It is for the competent authority to exercise the power of administrative transfer, when

the circumstances warrant. The Courts while exercising the judicial review against the order of transfer shall be cautious and it cannot be done in a routine manner. The orders of administrative transfer are issued in order to run the administration in peaceful manner. The department after conducting an enquiry into the complaint submitted by the writ petitioner against the fifth respondent issued an order of administrative transfer.

9. Thus, this Court is of the opinion that there is no infirmity in the order of administrative transfer and the transfer order was issued in order to maintain peace in the office, in which the writ petitioner was earlier working. After dealing with this kind of complaint in one station, it is a reasonable way to transfer both the employees.

10. The learned Additional Government Pleader informed that the fifth respondent had been already transferred to Krishnagiri. Thus, the department had acted promptly by transferring the fifth respondent immediately to Krishnagiri and thereafter transferred the writ petitioner to Nagapattinam after concluding the enquiry and submission of report by the Internal Complaints Committee which is constituted under Section 4 of the Act. This being the factum of this case, no further consideration on the ground raised in this writ petition requires to be undertaken.

11. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

ms

To

1. The Director of Employment and Training,
Alanthur Road, Guindy,
Chennai - 600 032.

2. The Regional Joint Director (Employment),
Thiruchirappalli Region,
Thiruchirappalli -1.

3.The District Employment Officer,
O/o.District Employment Office,
Ariyalur - 621 713,
Ariyalur District.

4. The district employment officer,
O/o. District Employment office,
nagapattinam.

+1C.C. to M/S.Subhalaxmi Samanta Advocate SR.NO. 64374
C.C.to M/S.the Government Pleader Advocate SR.NO. 64925

W.P.No.29937 of 2015

SK(CO)
T.R (26/09/2017)



WEB COPY