

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-08-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.19619 of 2017

And

W.M.P.Nos.21182 and 21183 of 2017

Er.R.Rekha

.. Petitioner

vs.

1.The Chief Engineer,
Public Works Department Buildings,
Chepauk,
Chennai-600 005.

2.The Superintending Engineer,
Public Work Department,
Building Construction,
Medical Works,
Chepauk,
Chennai-600 005.

3.Executive Engineer, PWD,
Building Construction, Division-1,
Medical Works,
Chepauk,
Chennai-600 005.

4.Mr.T.Thangarajan (now retired)

5.Mr.S.Muthukumar

.. Respondents

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the first respondent vide his proceedings bearing Executive Order No.S2(1)/30830/2017/154 dated 30.5.2017 and Executive Order

No.U.Se.Po/D10/2518/2017 dated 31.5.2017 and consequent order passed by the third respondent in his proceedings dated 6.6.2017 under his proceedings bearing Se.Mu.Order No.Ni 1/Ko.208/2016/(467/2017) and quash the same.

For Petitioner : Mr.G.Ilamurugu

For Respondents-1 to 3: Mr.S.Gunasekaran,
Additional Government Pleader.

ORDER

The order of transfer, transferring the writ petitioner from Kancheepuram to Chennai and the consequential order of relieving the writ petitioner, is under challenge in this writ petition.

2. The writ petitioner was initially appointed as Assistant Engineer (Civil) and was working in Buildings (C&M) Section, Medical Works, Kancheepuram. An order of transfer in proceedings dated 30.5.2017 was issued, transferring the writ petitioner from Kancheepuram to Chennai in the Office of the Chief Engineer. Consequently, the writ petitioner was relieved on 31.5.2017.

3. The learned counsel appearing for the writ petitioner strenuously contended that the order of transfer is punitive in nature and further the transfer order was issued with a mala fide intention to harass the writ petitioner. To substantiate the contention, the writ petitioner

said that the fifth respondent made a request to transfer him in anyone of the place nearby Kancheepuram and in order to accommodate the fifth respondent, the transfer order was issued. Further, the fourth respondent one Mr.T.Thangarajan, who is now retired and, was holding the post of Executive Engineer (PWD), made certain remarks against the writ petitioner and had written an adverse note containing wrong informations and pursuant to the report of the fourth respondent, the writ petitioner was transferred from Kancheepuram to Chennai. Citing all these grounds, the learned counsel appearing for the writ petitioner contended that the order of transfer, transferring the writ petitioner from Kancheepuram to Chennai was on mala fide grounds and by way of punishment and thus the order to be set aside.

4. The learned Additional Government Pleader, appearing on behalf of the respondents 1 to 3, filed typed set of papers, in which a complaint given by one Contractor viz., Mr.M.Murthy dated 15.3.2017, was enclosed. The said Contractor has stated that pursuant to the directions, the writ petitioner had executed certain works and the payment to the said works demanded by the Contractor was not honoured and the writ petitioner used certain abusive languages against the said Contractor.

5. The writ petitioner has given a reply to the complaint by

stating that the Contractor has not behaved properly and no such work has been allotted by her to the said Contractor M.Murthy. Further in her reply, dated 26.4.2017, the writ petitioner has raised number of allegations against the said Contractor stating that the Contractor M.Murthy was not performing his job properly and further, there are corruptive activities by the said Contractor. Since the writ petitioner has written complaint against the Contractor M.Murthy regarding the corrupt activities, the said Contractor has taken a personal vengeance against the writ petitioner and had written complaint to the Chief Engineer. Thus, the transfer order was issued based on those frivolous complaints.

6. However, the learned counsel appearing for the respondents contended that there are many complaints pending against the writ petitioner and earlier a memo in the form of a letter was issued and an enquiry was conducted. Even with regard to the present complaint also, a memo was issued and the writ petitioner submitted her explanation.

7. Thus, the writ petitioner is frequently indulging in such activities and quarrelling with the Contractors and committing certain irregularities continuously. In this regard, many complaints are received against the writ petitioner and the Department is also initiating actions in this regard. In order to avoid further confrontation and to run the

administration peacefully, the impugned order of transfer was issued to the writ petitioner on administrative grounds.

8. The learned Additional Government Pleader contended that administrative transfer order can be issued in order to neutralise the situation in the administration. The Department has received number of complaints from the Contractor and reply from the writ petitioner. Thus, in order to run the administration peacefully, the writ petitioner has been transferred to the Headquarters in the Office of the Chief Engineer. The allegations, counter allegations and the reply are to be considered fairly and in accordance with the rules. Thus, the respondents 1 to 3 felt that further continuance of the writ petitioner at Kancheepuram may not be conducive for conducting enquiry or for running the administration peacefully. Thus, considering all these grounds and the allegations, the order of transfer was issued to the writ petitioner on administrative grounds.

9. Till today, no charge memo has been issued under the Discipline and Appeal Rules to the writ petitioner and no departmental enquiry has been conducted. However, a preliminary enquiry was conducted and the writ petitioner had also submitted her reply explaining her position. Thus, the transfer cannot be considered as punitive and no disciplinary action under the Tamil Nadu Civil Services (Discipline and

Appeal) Rules, is initiated against the writ petitioner.

10. Under these circumstances, issuance of an administrative transfer by the authorities, cannot be said to be punitive. It is to be considered, as if, the transfer order has been issued on administrative grounds to neutralise the circumstances and to avoid further confrontation between the Government officials and the Private Contractors. In such a situation, better to transfer the Government officials in order to set right the disputes in the administration and all the public Departments are to function peacefully in the interest of public and to serve the public in an effective manner. Such being the principles, this Court is unable to see any infirmity in the order of administrative transfer issued against the writ petitioner in transferring the writ petitioner from Kancheepuram to Chennai.

11. All the administrative transfers are effected in order to run the administration peacefully and the Courts cannot interfere in the administrative transfers in a routine manner. A writ can be issued against an order of administrative transfer only on exceptional circumstances and judicial review in this regard to be exercised cautiously. Even where there are certain slightest indifferences in the order of transfer, the Courts have to consider the over all situation prevailing in the administration so as to avoid unnecessary interference in the administrative transfers.

12. In the case on hand, there are allegations and counter allegations between the Private Contractor and the writ petitioner. The Department has conducted certain preliminary enquiry that it is not desirable to allow the writ petitioner to continue in Kancheepuram. By taking this decision, an administrative transfer was issued, transferring the writ petitioner from Kancheepuram to Chennai. Such being the view of the Department, this Court need not interfere with the order impugned in this writ petition.

13. Transfer is an incidental to service, more-so, a condition of service. Thus, the place or the post can never be claimed as a matter of legal right by the Government employees. The Government employees, on acceptance of an order of appointment, have to work wherever they are posted. Thus the scope of interference in the matter of administrative transfers are absolutely limited and an employee can never claim the post or the place as a matter of choice. Thus, the writ petitioner cannot claim her continuance of work at Kancheepuram as a matter of right. She is holding a responsible position of Assistant Engineer and enjoying a public status in the Society. Thus, she has to work wherever she is posted and in the interest of public and to serve the people of this Great Nation. Instead raising allegations against the Private Contractors and quarrel with the Contractors by a public servant

is not certainly advisable.

14. This Court is able to find certain unwarranted languages used by the writ petitioner in her reply. Such words against the Contractors need to be avoided by such a responsible Government Officer. However, this Court need not go into the allegations and counter allegations set out in the writ petition both by the Contractor in his complaint and the writ petitioner in her reply. It is for the Department to initiate appropriate action in accordance with the rules against the erring personnel. Such being the view of this Court, no further adjudication on this administrative transfer needs to be entertained and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

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17-08-2017

Speaking Order/Non-Speaking Order.

Index : Yes/No.

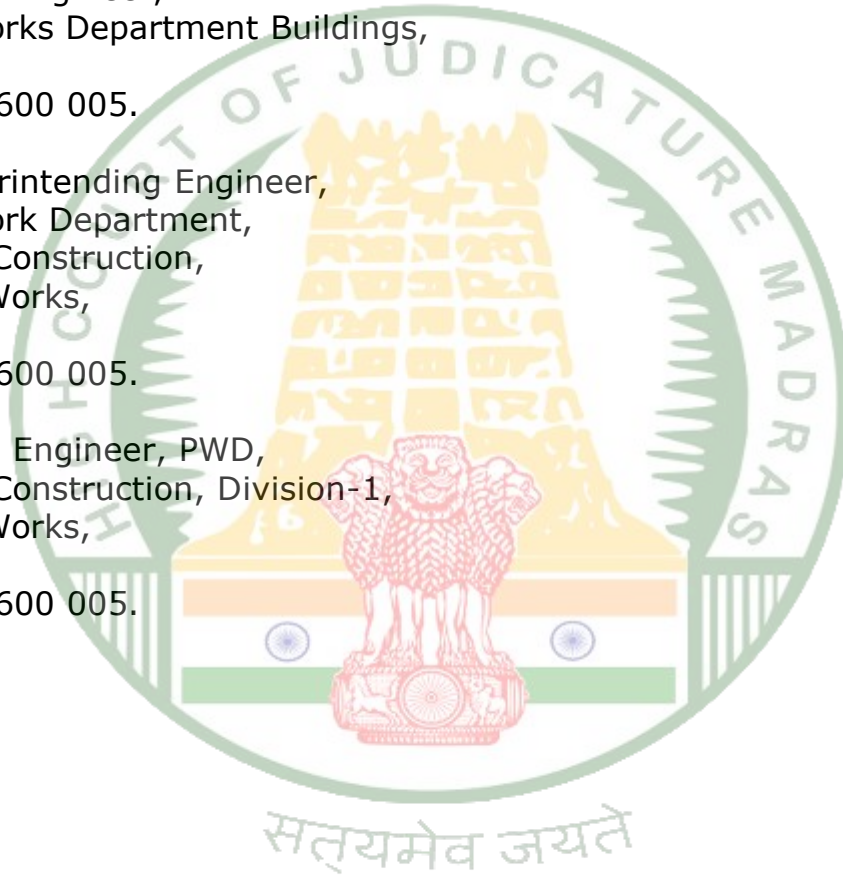
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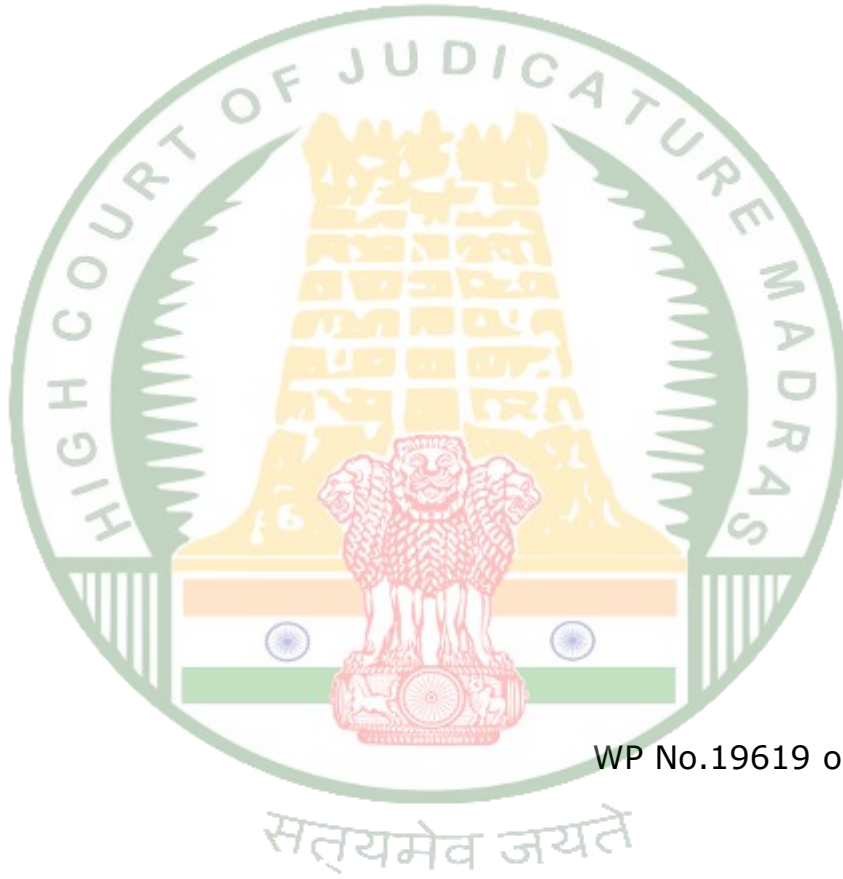
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S.M.SUBRAMANIAM, J.

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