

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.39537 of 2016

K.Rasu

.. Petitioner

-vs-

1. The Agricultural Production Commissioner
and the Secretary to Government
Fort St.George
Chennai 600 009

2. The Director of Agriculture
Chepauk
Chennai 600 005

3. K.Vasubabu

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the G.O.(Vaalaayam) No.342, Agriculture (Ve.Nee.1) Department dated 7.11.2016 issued by the Agricultural Production Commissioner and Secretary to the Government, Chennai-9 the first respondent herein, quash the same in so far as the petitioner is concerned and direct the respondents herein to retain the petitioner as Deputy Director of Agriculture (Plant Protection) in the office of the second respondent with all consequential service and monetary benefits withheld on account of the impugned order.

For Petitioner :: Mr.K.Rajkumar

For Respondents :: Mr.V.Jayaprakash Narayanan
Special Government Pleader for
R1 & 2

ORDER

This writ petition has been directed against the correctness of the impugned transfer order dated 7.11.2016 passed by the Agricultural Production Commissioner and Secretary to Government, the first respondent herein, in and by which the petitioner was shifted from Chennai to Vellore, when he is left

with only one year of service, in total violation of the Government letter dated 11.7.94, which says that a person who is due for transfer on completion of three years of service in a seat/post/station need not be transferred to another station if his left-over service before retirement is one year or less.

2. Taking a ground on the basis of the said Government letter dated 11.7.94, the learned counsel for the petitioner has placed four-fold submissions before this Court. Firstly, when the petitioner has not even completed the full tenure of three years and on the other hand, he has served only 2 years and 2 months in Chennai, even before the completion of the three years period, he has been wrongly transferred. Secondly, the impugned transfer order is also running contrary to the Government letter dated 11.7.94, which clearly and categorically states that if a person is having a left-over service of one year or less, he shall not be transferred. Thirdly, the impugned order of transfer was passed with a mala fide intention to accommodate the third respondent. Supporting the said stand, it has been explained before this Court by the learned counsel for the petitioner that the first respondent has passed the impugned order wrongly mentioning the date of retirement of the petitioner as 31.08.2019, instead of 31.01.2018. Arguing further, he submitted that in order to accommodate the third respondent only, the first respondent has wantonly mentioned the date of retirement of both the petitioner and the third respondent as 31.08.2019 and 31.05.2017, instead of the actual date of retirement as 31.01.2018 and 31.05.2019, respectively. That clearly goes to show that the first respondent has passed the impugned order of transfer, even without keeping in mind the Government letter dated 11.7.94, which clearly says that any person with a left-over service of one year or less than one year cannot be transferred. Therefore, for all these reasons, the impugned order is liable to be interfered with. Concluding his arguments, he submitted that to confirm the case of the petitioner, a corrigendum was also issued clearly admitting that the date of retirement of the petitioner is 31.01.2018 and the date of retirement of the third respondent is 31.05.2019. At least, after issuing the corrigendum in G.O.(Vaalaayam) No.355, Agriculture (Ve.Nee.1) Department dated 18.11.2016, the first respondent, applying the Government letter dated 11.7.94, ought to have withdrawn the impugned order of transfer.

3. Per contra, the learned Special Government Pleader for the respondents 1 & 2 submitted that the contentions made by the learned counsel for the petitioner to warrant interference with the impugned order of transfer have to be rejected in limine, since no order of transfer is ordinarily interfered with by this Court, more particularly, when the first respondent, in the present case, has passed the impugned order of transfer

transferring the petitioner from Chennai to Vellore on administrative grounds. Adding further, replying to the contention in respect of the Government letter dated 11.7.94 that a Government servant left with less than one year of service should not be transferred, he submitted that it is only a guideline. When the Government letter issued on 11.7.94 being a guideline, there is no mandatory requirement not to violate the same. If the administrative exigency warrants the transfer of any Government servant from one place to another place, the petitioner cannot come to this Court taking support from the Government letter dated 11.7.94, which gives certain guidelines for transfer. Answering to the next contention that the impugned order of transfer has been passed with a mala fide intention deliberately giving a wrong date of retirement, it was submitted that after taking note of the actual date of retirement of both the petitioner and the third respondent, the first respondent has also issued a corrigendum on 18.11.2016. Therefore, it is not proper on the part of the petitioner to allege mala fides, he pleaded.

4. But this Court is unable to find merits in the contentions made by the learned Special Government Pleader for the respondents. The reason is that when the petitioner was transferred to Chennai on 22.08.2014 and when the Government letter dated 11.7.94 specifically speaks that a person who is due for transfer on completion of three years of service in a seat/post/station need not be transferred to another station if his left-over service before retirement is one year or less, it is not known how the first respondent can disturb the petitioner, when he is having less than one year of service. Therefore, this Court, considering the genuine case of the petitioner that he should not have been disturbed, more particularly, his case is squarely covered by the Government letter dated 11.7.94 giving clear guidelines for transfer, has passed an interim order of status quo. Subsequently, when the matter was taken up, this Court has granted an order of interim stay of operation of the impugned transfer order. Secondly, when the petitioner has alleged mala fides on the part of the first respondent that only to deny the benefit of the Government letter dated 11.7.94, the first respondent has deliberately and wilfully issued the transfer order wrongly mentioning the date of retirement of the petitioner as 31.08.2019, hence, the subsequent corrigendum dated 18.11.2016 issued by the first respondent also supports the case of the petitioner that his date of retirement is 31.01.2018 and the date of retirement of the third respondent is 31.05.2019. Therefore, even if we go by the corrigendum issued by the first respondent dated 18.11.2016, the case of the petitioner has to be considered in the light of the Government letter dated 11.7.94. The relevant portion of the said Government letter reads as follows:-

"2. In continuation of the orders issued in the said G.O.the following further instructions are issued on the transfer policy:-

A person who is due for transfer on completion of three years of service in a seat/post/station need not be transferred to another station if his left-over service before retirement is one year or less. In such case, he should be given a chance of seat/post/ in the same station, or if that is not possible, and if the post is a non-sensitive one, he may be allowed to continue in the same post until he retires from service on attaining the age of superannuation. However, if the post is a sensitive one and there is no other suitable post in the station then he should be transferred to another station."

5. A mere perusal of the above letter supports the case of the petitioner that as he is left with only eight months of service to demit his office, he should not be disturbed. This apart, the purpose of issuing the Government letter dated 11.7.94 also shows that a person who is going to retire should not be disturbed at the fag end of his service, may be for the purpose of ensuring that his service records are kept ready by the department, wherein he has served for a period of three years. Therefore, when the Government guidelines have been clearly violated in the present case, may be for the purpose of accommodating the third respondent, this Court, fully agreeing with the case of the petitioner, is constrained to set aside the impugned order. Accordingly, the impugned order is set aside and the writ petition stands allowed. Consequently, W.M.P.Nos.33816, 38657 of 2016 & 329 of 2017 are closed. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

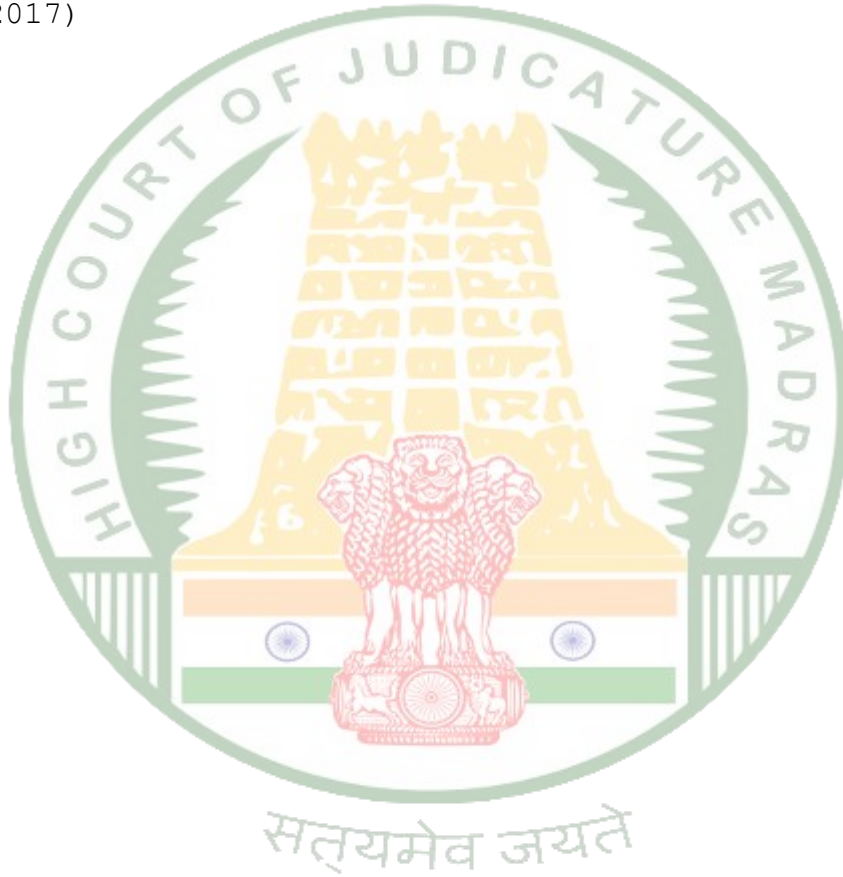
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and the Secretary to Government
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Chennai 600 009

2. The Director of Agriculture
Chepauk
Chennai 600 005

+1cc to M/s.K.Raj Kumar, Advocate SR.No.16150
+1cc to Government Pleader SR.No.16553

W.P.No.39537 of 2016

NEII (CO)
GN(10/04/2017)



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