

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.NO.41520 OF 2016

AND

W.M.P.NOS.35508 & 35509 OF 2016

C.D.Arunkumar

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Adi-Dravidar Housing and
Development Corporation Limited,
No.31, Cenotaph Road, 2nd Lane,
Teynampet, Chennai-600 018.
2. The General Manager (Technical),
Tamil Nadu Adi-Dravidar Housing and
Development Corporation Limited,
NO.31, Cenotaph Road, 2nd Lane,
Teynampet, Chennai-600 018.
3. The Executive Engineer,
Tamil Nadu Adi-Dravidar Housing and
Development Corporation Limited,
Govt. Hospital Road,
Villupuram District,
Veillupuram-605 602.
4. Thiru.P.Alagumani,
Asst Executive Engineer,
Tamil Nadu Ad-Dravidar Housing and
Development Corporation Limited,
C/o.Government Hospital Road,
Villupuram District,
Villupuram-605 602.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the impugned order in Proceedings No.A2/522/2014, dated 23.09.2016, issued by the Managing Director, Tamil Nadu Adi-Dravidar Housing and Development Corporation Limited (TAHDCO), No.31, Cenotaph Road, the 1st respondent herein and to quash the same.

For Petitioner : Mr.C.Selvaraj, Senior Counsel
for Mr.Dalit Tiger C.Ponnusamy

For Respondents : Mr.V.Jayaprakash Narayanan, Spl GP

ORDER

This writ petition has been filed challenging the impugned order of transfer, posting the petitioner from Cuddalore to Madurai, passed by the 1st respondent vide his proceedings No.A2/522/2014, dated 23.09.2016.

2. Mr.C.Selvaraj, learned senior counsel appearing for the petitioner would submit that the petitioner was selected for the post of Assistant Engineer and appointed on 24.07.2015 vide proceedings No.A2/5652/2015, dated 24.07.2015, in Chennai Division and thereupon, he was directed to work in Kanchipuram Sub-Division. After some time, he was transferred to the office of the Tamil Nadu Adi-Dravidar Housing and Development Corporation Limited, Villupuram Division, Villupuram District, on 12.10.2015. While serving in Villupuram Division, the work in Cuddalore Sub-Division was also supervised by the petitioner and he finished all the works allotted to him with the co-operation of contractors and guidance from superior officers. He prepared bills for all the works and issued in time. His immediate superior officer Mr.P.Alagumani, the Assistant Executive Engineer, Cuddalore Sub-Division (4th respondent herein) assumed office on 19.01.2016 in the Sub-Division of Cuddalore. While so, the petitioner has observed some controversial things happening among the contractors in Villupuram Division. As he strictly instructed the contractors that the work given by NABARD should be done perfectly and in order, some unanimous complaints have been given against the petitioner. Similarly, the petitioner has also given representation about some malpractice/activities of the said Alagumani (4th respondent herein), to the higher officials on 10.08.2016, stating that the said Alagumani (4th respondent) has been insisting upon him to release Additional Security Deposit amount to the contractors regarding 13 toilet constructions, the work of which have not been started. The petitioner refused to release the above said amount because the criminal cases are pending. In this regard, a letter has also been addressed by the petitioner to the Executive Engineer, Villupuram Division on 05.08.2015. While so, without even issuing both the transfer order and releaving order, the petitioner was orally informed to go to Madurai as he was transferred to Madurai, which shows that the impugned transfer order is punitive in nature. When the petitioner made a representation on 14.11.2016, the 1st respondent has issued the impugned transfer order dated 23.09.2016.

3.The learned senior counsel appearing for the petitioner would submit that during the transfer period alone, the transfer can take place. But, the impugned transfer order dated 23.09.2016 passed by the 1st respondent clearly shows that during the non-transfer period, the petitioner has been sent out from Cuddalore to Madurai Division. Moreover, the transfer can take place only after completion of transfer period of three years. The said criteria has also not been followed by the 1st respondent while passing the impugned transfer order. Thus, the learned senior counsel for the petitioner sought for quashing the impugned transfer order.

4.A detailed counter affidavit has been filed by the respondents 1 to 3.

5.The learned Special Government Pleader Mr.V.Jayaprakash Narayanan appearing for the respondents submitted that the petitioner has not even visited the premises where the work is going on; on the other hand, he had sent his father Dhakshnamurthy for supervision and measurement of the work. Moreover, he has not issued payment bills in time, even after completion of measurements. In this regard, the 4th respondent has sent a letter to the 1st respondent stating that the petitioner did not know how to mark center line of the building and further, he did not know to measure the completed work in the building and mark the same in M-Book. These are the reasons for taking action against the petitioner, however no departmental actions were taken in lieu thereof and in view of the administrative exigencies, the impugned transfer order has been passed. But, the petitioner did not come forward to receive the transfer order passed by the 1st respondent. Even after issuance of both transfer order and relieving order, knowing pretty well that there is no office in Cuddalore, he used to mark his attendance through Biometric attendance machine, only at Villupuram Division, that shows that the petitioner deliberately evaded to receive the transfer order, which amounts to willful disobedience. While the order of transfer has been passed legally and in accordance with law and the transfer is one of the service conditions, the petitioner does not have any legal right to continue in a particular place. Further, as the petitioner has not even joined the new station for a period of one year, he has violated the Government Conduct Rules. Therefore, according to the learned Special Government Pleader, the writ petition, challenging the impugned transfer order, is liable to be dismissed.

6. I fully agree with the submission made by the learned Special Government Pleader appearing for the respondents.

7. When the petitioner was transferred from Cuddalore to Madurai by order dated 23.09.2016, it is not known how the petitioner has been evading from attending the duty in the transferred place viz., Madurai, even after completion of one long year. It is submitted by the learned senior counsel for the petitioner that since the impugned order has been passed as a punitive measure, the petitioner has made representations on 03.10.2016 and 14.11.2016 and anticipating response from the respondents, the petitioner was unable to join duty at the transferred place and that cannot be considered as willfull violation of the Government Conduct Rules.

8. But, this Court is unable to appreciate the said attitude of the petitioner. When the petitioner has been transferred during the period he was put on probation, he should not remain away from the transferred place, as it is a well settled principal that the transfer is not only condition of service but also incident of service, therefore, the petitioner has no justification to come to this Court questioning the impugned transfer order, as it has been passed only on administrative reasons.

9. Therefore, the writ petition fails and the same is dismissed accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssv

To

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+1cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.82981

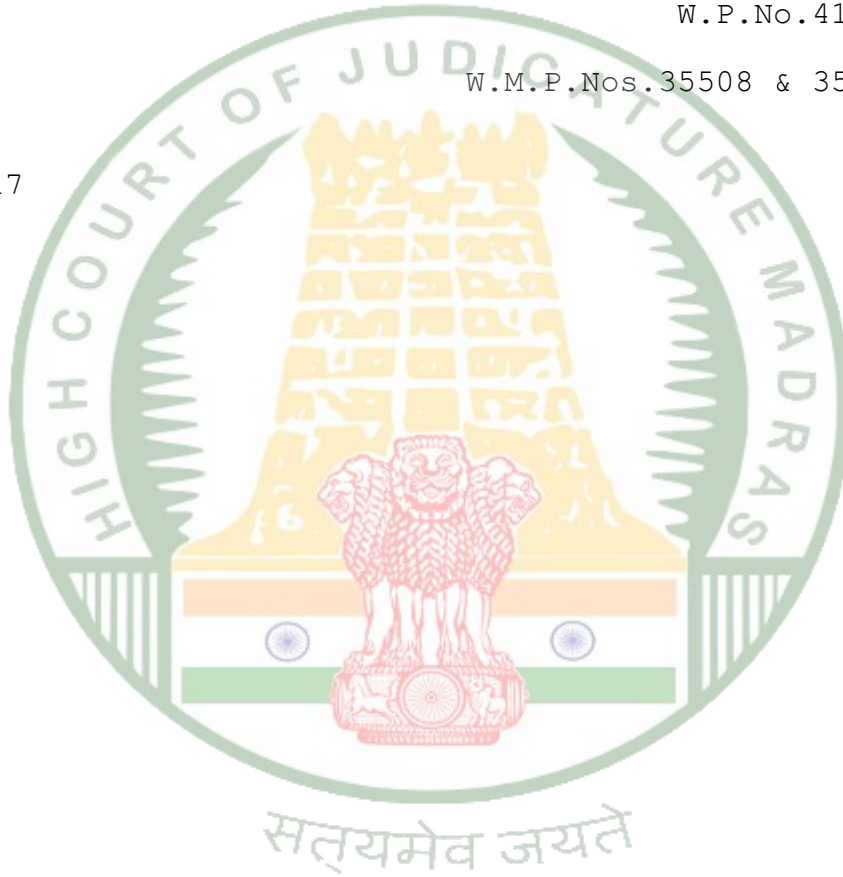
+1cc to Mr.Dalit Tiger C.Ponnusamy, Advocate, S.R.No.82738

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