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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL  
AND  
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**W.A(MD)NO.1298 OF 2017  
and  
C.M.P(MD)No.9018 of 2017**

P.Ponnuthurai,  
Warden,  
Govt.De-notified School Boys Hostel,  
Tenkasi,  
Tirunelveli District. : Appellant/Petitioner

.vs.

1. The Commissioner of Backward Classes welfare,  
Chepauk, Chennai - 600 005.
2. The District Backward Classes and Minorities Welfare Officer,  
Tirunelveli District,  
Tirunelveli.
3. Mr.P.Thiruppathi,  
Warden,  
Govt.Backward Classes School Boys Hostel,  
Oothumalai,Tirunelveli District. : Respondents/Respondents

**PRAYER:** Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order, passed by this Court in W.P(MD)No.18265 of 2017 dated 22.09.2017.

Prayer in WP(MD). 18265/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of certiorari to call for the records on the file of the 2nd Respondent in connection with the impugned order of transfer passed by him in his proceedings in Na.Ka.Nya.2/12428/2016 dated 18.09.2017(received on 21.09.2017) and quash the same as illegal and arbitrary and pass such other further.

For Appellant : M/s.K.Gurunathan

For Respondents : Mr.VR.Shanmuganathan  
1 and 2 Special Govt.Pleader

For Respondent-3 : No appearance.

**JUDGEMENT**

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[Judgement of the Court was made by **M.VENUGOPAL, J.**]

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The Appellant/Petitioner has filed the present Writ Appeal as an 'aggrieved person' as against the order, dated 22.09.2017 in W.P(MD)No.18265 of 2017.

2.Heard the Learned Counsel for the Appellant and the learned Special Government Pleader appearing for the Respondents 1 and 2. R3-Court Notice refused to be received and service held to be sufficient.

3.Earlier, the Learned Single Judge while passing the impugned order on 22.09.2017 in W.P(MD)No.18265 of 2017 at paragraph 4 to 6, had observed the following:

'4.The learned counsel for the petitioner would submit that when the petitioner's request for mutual transfer was accepted on 06.06.2017, thereby posting him at Tenkasi from Senkottah, ignoring the fact that he is a physically challenged person, he has been again transferred to the present place, namely, Oothumalai. Drawing the notice of this Court to the transfer guidelines, the learned counsel for the petitioner submitted that without even prior approval from the District Collector, the present impugned transfer could not be passed.

5.The learned Additional Government Pleader submitted that the petitioner is transferred only to a short distance of 15 kms from his native.

6.In view of the said submission made by the learned Additional Government Pleader, I do not find any merit in the submission made by the learned counsel for the petitioner. When the petitioner is not prejudiced on account of the impugned transfer order transferring to 15 kilometers, the contention made by the learned counsel for the petitioner that only to accommodate the third respondent, the petitioner has been transferred to the present place, is not accepted. It is well settled legal position that transfer is not only an incident of service, but also a condition of service. Further, in the matter of transfer, it is well settled by this Court as well as by the Hon'ble Apex Court in umpteen number of judgments that no transfer order is questioned, unless it is proved that the said order is passed mala-fide or in violation of



the statutory rules or the authority, who passes the transfer order has no jurisdiction to pass the same. Since the petitioner has been transferred only to a short distance of 15 kms from his native place, I do not find any grave prejudice caused to the petitioner. The reason is, 15 kms from the native place cannot be inconvenience to anyone including the petitioner."

4. Assailing the validity, correctness and legality of the impugned order, dated 22.09.2017 in W.P(MD)No.18265 of 2017 passed by the Learned Single Judge, the Appellant/Writ Petitioner has filed the instant Writ Appeal primarily contending that the Second Respondent/The District Backward Classes and Minorities Welfare Officer, Tirunelveli District, Tirunelveli had failed to advert to the Circular issued by the First Respondent/The Commissioner of Backward Classes Welfare, Chepauk, Chennai - 600 005, before passing the impugned order of transfer, dated 18.09.2017.

5. The Learned Counsel for the Appellant contends that the impugned transfer order, dated 18.09.2017 issued by the Second Respondent was effected during the non-transfer period and that was done only to accommodate the Third Respondent, who was transferred on complaint, which was un-sustainable in the eye of law and amounts to colorable exercise of power. The Learned Counsel for the Appellant projects an argument that the Appellant/Writ Petitioner had not even completed an year in the present place namely, Tenkasi where he was transferred on mutual request and was disturbed even without any human consideration, as he is a physically challenged person.

6. Per contra, it is the submission of the Learned special Government Pleader appearing for the Respondents 1 and 2 that one P.Kani, working as Cook in the Government Students Hostel (DNC), Tenkasi gave a complaint as against the Appellant/Writ Petitioner that he is not supplying necessary vegetables, milk, eggs and meat as required, for cooking food to the students. Furthermore, the allegation against the Appellant/Writ Petitioner was that he used to come to the Hostel by 11.00 a.m., and leave the hostel by 6.30 p.m., and that he is not conducting tuition to the hostel students. Likewise, the students of the Government Students Hostel, Oothumalai, on 12.09.2017, made similar complaints as against the Third Respondent(Thiruppathi) and in order to ease the situation, both the Appellant/Writ Petitioner and Third Respondent were mutually transferred on administrative reasons.

7. The Learned Special Government Pleader appearing for the Respondents 1 and 2 contends that since the order of transfer is on administrative grounds, the same is valid in Law, because of the reason that 'transfer' is purely an 'incident of service' and may not be interfered with, unless and until, it is



tainted with mala-fide or is without jurisdiction. In short, it is the fervent plea of the Respondents that the impugned order of transfer is valid in Law and the dismissal of the Writ Petition by the Learned Single Judge is a correct and proper one in the eye of Law.

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8.This Court has heard the submissions of the Learned Counsel for the Appellant and the Learned Special Government Pleader appearing for the Respondents 1 and 2 and notice their contentions.

9.At this juncture, this Court, on a perusal of the Circular in B3/2974/2017 issued by the First Respondent/The Commissioner of Backward Classes Welfare, Chepauk, Chennai - 600 005 (Full Additional Charge), dated 12.06.2017 and in the said letter, at paragraph 3, it is observed as under:

*''3.While this is being so, instances have been brought to notice that Tutor cum Warden/Tutor cum Matrons are posted to work in the Secondary Grade Wardens/Secondary Grade Matrons Places and vice versa by the District Backward Classes Minorities Welfare Officers. Apart from that Tutor cum Wardens/Tutor cum Matrons, Secondary Grade Wardens/Secondary Grade Matrons, Cooks/Servant cum Watchman working in the hostel are transferred from one hostel to another hostel frequently by the District Backward Classes and Minorities Welfare Officer merely stating administrative reasons. It has also been brought to the notice that suspension orders are issued to the Wardens/Cooks for flimsy reasons while there is no strong prima facie evidence and subsistence allowance are paid unnecessarily to them by the DBCWOS. Thus aggrieved Government Servants challenge such actions by filing writ petition before the Honourable High Court and cause many administrative inconvenience to the administration.''*

10.Apart from the above at Paragraph 4(i) it is mentioned as under:

*''(i)It has to be ensured that every hostel any transfer shall be effected during the 'transfer period' namely between 1st April and 30<sup>th</sup> June of every year.''*

11.Further in Paragraph 4(vi), it is mentioned as under:

*''(vi)Transfers should not be effected at the first instance. When the deficiency in their services are noticed among hostel staff, instead, necessary disciplinary action should be taken.''*



12. Further, in Paragraph 4(vii) it is mentioned as follows:

*''(vii) In case where severe allegations are pending enquiry, when it is considered necessary in the public interest, and sufficient in lieu of suspension that the hostel staff may be transferred, only after getting approval of the District Collector. In that case transfer shall be effected to a vacant post in another hostel or to the post where junior most person of the same category is working in the case where no vacant place are available.''*

13. Admittedly, in the present case, before effecting the impugned order of transfer, dated 18.09.2017, issued by the Second Respondent, no prior approval of the District Collector, Tirunelveli District was obtained. Therefore, this Court without any hesitation, comes to an inevitable conclusion that the procedures prescribed in the Circular, dated 12.6.2017 of the First Respondent in Paragraph 4(vi) and 4(vii) was not adhered to by the Second Respondent and on that simple score alone, this Court interferes with the impugned order of this Court in W.P.(MD) No.18265/2017, dated 22.09.2017 and sets aside the same, to prevent an aberration of justice. Consequently, the Writ Appeal succeeds.

14. In fine, the Writ Appeal is allowed, leaving the parties to bear their own costs. The impugned order, dated 22.09.2017 in W.P (MD) No.18265 of 2017 passed by this Court is hereby set aside by this Court, for the reasons assigned in this Writ Appeal. Resultantly, the order of transfer passed in W.P(MD) No.18265 of 2017, dated 22.09.2017 is hereby quashed. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

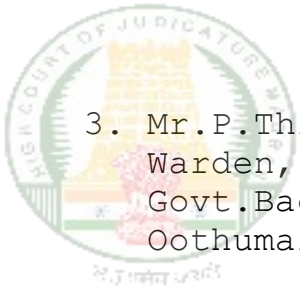
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Sub Assistant Registrar

To

1. The Commissioner of Backward Classes welfare,  
Chepauk, Chennai - 600 005.

2. The District Backward Classes and Minorities Welfare Officer,  
Tirunelveli District,  
Tirunelveli.



3. Mr.P.Thiruppathi,  
Warden,  
Govt.Backward Classes School Boys Hostel,  
Oothumalai,Tirunelveli District.

+ 1 cc TO Mr.K.Gurunathan , Advocate in SR No. 90775  
+ 1 cc TO The Special Government Pleader in SR No. 90890

vsn  
AE/KK/SAR1/18.12.2017/2P/6C

**JUDGEMENT MADE IN  
W.A(MD)NO.1298 OF 2017  
and  
C.M.P(MD)No.9018 of 2017  
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