



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Writ Petition (MD) No.3040 of 2015

and

M.P(MD)No.1 of 2015

K.Thangasamy

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
Fort St., George, Chennai 600 009.
2. The Secretary,
Revenue Department,
Fort St., George, Chennai 600 009.
3. The District Collector,
Sivagangai.
4. The Revenue Divisional Officer,
Devakottai.
5. The Tahsildar,
Devakottai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration to declare the Rule 53(1) in G.O.Ms.No. 521. Revenue Gen. VII(2) Department dated 17.06.1998 as ultra vires to rule 7 and the object of the Rules and consequently quash the impugned transfer order passed in Na.Ka.No.A2/1103/2014 dated 17.02.2015 passed by the 4th respondent consequential order passed in Na.Ka.No.A3/1345/2015 dated 17.02.2015 passed by 5th respondent as contrary to Rule 7 of G.O.Ms.No.521 Revenue Gen.VII (2) Department dated 17.06.1998 and direct the respondents to retain the petitioner in Kottur Revenue Village in Devakottai Taluk. (Prayer amended vide order dated 07.11.2016 made in MP(MD) No.2 of 2016)

For Petitioner

: Mrs.S.Srimathy for
Mr.S.M.S.Johnny Basha

For Respondents

: Mr.S.Chandrasekar,
Government Advocate.

**ORDER**

(Order of the Court was made by **T.S.SIVAGNANAM,J**)

Originally, the prayer sought for in the writ petition is to declare Rule 53(1) in G.O.Ms.No.521, Revenue Gen.VII(2) Department, dated 17.06.1998 as ultra vires to Rule 7 and direct the respondents to post the petitioner in Kottur Revenue village in Devakottai Taluk. Subsequently, the petitioner amended the prayer by including the relief of Certiorari to quash the order of transfer dated 17.02.2015 passed by the fourth respondent and the consequential order passed by the fifth respondent dated 17.02.2015 as contrary to Rule 7 of G.O.Ms.No.521, dated 17.06.1998.

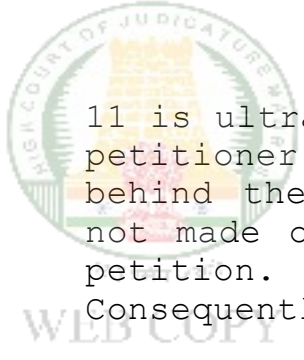
2.Thus essentially, what the petitioner is aggrieved by his order of transfer. Therefore, the petitioner has come forward with the above writ petition apart from challenging the order of transfer by a separate writ petition.

3.The post in which the petitioner was appointed under the provisions of the Tamil Nadu Village Servants Service Rules, 1980. Admittedly, the petitioner is not a new applicant and when a person who has been appointed much earlier, it has to be seen as to whether the petitioner at this stage can be aggrieved by the Rules prescribing qualifications for persons to be eligible for appointment to the post of village servants. Vis-a-vis the power given to appointing authority to transfer a village servant who is already in service.

4.Learned counsel's endeavour before us was to demonstrate that Rule 11 of the said Rules is ultra vires Rule 7.

5.The contention raised by the petitioner deserves to be rejected for the simple reason that the Rule 7 deals with qualifications prescribed for persons who are eligible to be appointed to the said post and Rule 11 deals with transfer and posting.

6.So far as Rule 11 is concerned, it confers power to the authorities to effect transfers outside the District on administrative grounds. It has been repeatedly held that transfer is not only an incidence of service but a condition of service. Therefore, the Government being the employer are entitled to impose conditions and this power of transfer exercisable under Rule 11 is on administrative grounds. Hence, we find that there is no inconsistency between Rule 7 of the Special Rules and Rule 11. The petitioner was appointed to the post during the year 2007 and followed the procedure under the Rules. The petitioner accepted the employment agreed to be governed by the Rules and has worked for eight years. This belated attempt to state that Rule



11 is ultra vires Rule 7 is a misconceived plea. That apart, the petitioner has not alleged/established any *mala fide* reasons behind the impugned order of transfer. Thus, the petitioner has not made out a case for the relief sought for in the above writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
State of Tamil Nadu,
Fort St., George, Chennai 600 009.
2. The Secretary,
Revenue Department,
Fort St., George, Chennai 600 009.
3. The District Collector,
Sivagangai.
4. The Revenue Divisional Officer,
Devakottai.
5. The Tahsildar,
Devakottai.

+1cc to Spl.Government Pleader Sr.No.53935

sms

vb/jc/04.05.2017/3p/7c

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