



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.04.2017

Delivered on : 02.06.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Writ Petition (MD) Nos.4261 and 4262 of 2017
and

W.M.P.(MD) Nos.3404, 4351, 5668,
3406, 4350, and 5669 of 2017

Writ Petition (MD) No.4261 of 2017

Mariappan

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai.

2.The Commissioner of Municipal Administration,
Chepauk,
Chennai.

3.The Commissioner,
Dindigul Municipality,
Dindigul.

4.P.Paneer ... Respondents
(R4 is impleaded vide order dated 19.04.2017, in W.M.P(MD)4218/17)

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling the records relating to the impugned order passed by the 2nd respondent made in Roc.No.78/2017/F1-3, dated 10.03.2017 and quash the same.

Writ Petition (MD) No.4262 of 2017

Swaminathan

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai.



2.The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 006.

3.The Commissioner,
Dindigul Municipality,
Dindigul.

4.G.Santhoskumar ... Respondent
(R4 is impleaded vide court order dated 19.04.2017, in W.M.P(MD) 4217/17)

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling the records relating to the impugned order passed by the 2nd respondent made in Roc.No.78/2017/F1-3, dated 10.03.2017 and quash the same.

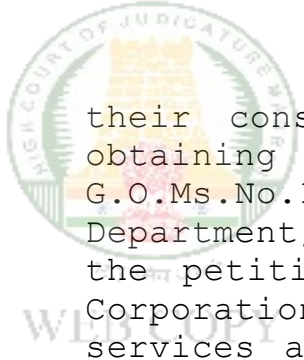
For Petitioner in both cases	: Mr.R.Murali For Mr.M.Suresh Kumar
For Respondents 1 and 2 in both cases	: Mr.C.Selvaraj Special Government Pleader
For Respondent 3 in both cases	: Mr.J.Lawrance
For Respondent 4 in both cases	: Mr.G.R.Swaminathan for Mr.B.Jameel Arasu

COMMON ORDER

These Writ Petitions have been filed for issuance of Writ of Certiorari to quash the impugned order passed by the second respondent, dated 10.03.2017. The impugned order is an order, by which the petitioner in the two writ petitions, who were working as 'Junior Engineers' in Dindigul Municipal Corporation, were transferred and posted on deputation basis to Cuddalore Municipality and Karur Municipality respectively.

2.The brief facts, which are necessary for the disposal of the above writ petitions, are as follows:-

2.1.The petitioner in W.P(MD)No.4261 of 2017 was transferred to the third respondent on 06.03.2014 from some other Municipality. The petitioner, while serving in the third respondent which was only then a Municipality, the third respondent became a Corporation and the provisions of Coimbatore Municipal Corporation Act, 1981 was made applicable to Dindigul Municipal Corporation. After the Dindigul Municipality became Municipal Corporation, the employees were required to give



their consent to continue them under the Corporation. After obtaining consent from the employees, the first respondent issued G.O.Ms.No.186, Municipal Administration and Water Supply (MC-5) Department, dated 22.12.2015, absorbing 447 employees including the petitioner in the two writ petitions under the Municipal Corporation Service Rules. From then onwards, the petitioners' services are governed under the Tamil Nadu Municipal Corporation Services Rules, 1996 and Tamil Nadu Municipal Service Rules 1970 has no application. It is also admitted that as per Rule 38 of the Tamil Nadu Municipal Corporation Services Rules, 1996, for the purpose of appointment, promotion, reversion, transfer and discharge from service, each Municipal Corporation shall be treated as a separate unit. It is the case of the petitioner in both the writ petitions that in terms of Section 116 of Coimbatore City Municipal Corporation Act, 1981, the first respondent, namely, the Government alone has power to transfer the employee of a Corporation to another Corporation. Since the petitioner is the employee of Dindigul Municipal Corporation, it is contended by the petitioner that the second respondent is not competent to transfer from the third respondent Corporation to a municipality. Hence, according to the learned counsel for the petitioners, the impugned order is, without jurisdiction. The case of the petitioner in W.P(MD) No.4262 of 2017 is also similar.

2.2.The petitioner in W.P(MD) No.4262 of 2017 is also joined the service of Dindigul Municipality service in the year 2000 and he was promoted as Junior Engineer on 05.03.2015. He was also transferred to a municipality by the impugned order. The contention of the petitioner in both the writ petitions are similar and common. The order of transfer was challenged by the petitioners on the following grounds in the original affidavits and in the reply affidavits:

a) The impugned order of transfer is without jurisdiction and contrary to Section 116 Coimbatore City Municipal Corporation Act which is applicable to the third respondent Corporation.

b)The petitioners in both the Writ Petitions, who are the employees of Municipal Corporation and governed by Municipal Corporation Service Rules cannot be transferred to different municipality, since each Corporation is a separate unit and the petitioner who is likely to loose station seniority is really affected by the impugned order and hence, the impugned order is illegal.

c) The petitioners in both the Writ Petitions were designated as Assistant Engineer by the third respondent. However, by the impugned order, the second respondent has transferred the petitioner to the post of Junior Engineer which is a lower cadre. Hence, the impugned order cannot be passed without issuing show cause notice to the petitioner.

d) The impugned order also read as if it is a transfer by way of deputation. Since petitioner's transfer is by way of deputation, the same is also illegal as the petitioner's consent



was not obtained. Since the person cannot be deputed to any other station comes under different employer without the consent of the employee, the deputation is wholly illegal and the impugned order is liable to be quashed.

3. Counter affidavits have been filed on behalf of the respondents 1 and 2 and the third respondent separately. The points taken in defence are identical. The counter affidavits are slightly different and the difference is not material. During the pendency of these writ petitions, the fourth respondent in the respective writ petition filed a petition to implead as a party to the proceeding, as the reversal of the impugned order would unsettle their position in the transferred place. In other words, the fourth respondent in the respective writ petitions were originally working in different municipalities. At their option, they were also transferred to Dindigul Municipal Corporation because of the transfer of the petitioner in the two writ petitions to the respective Municipalities in which the fourth respondent in the two writ petitions were working. The facts in these case are not in dispute. However, it is to be seen that the second respondent has categorically admitted in his counter affidavit that the petitioners were sent to other Municipalities on deputation basis as their service was very much necessary to those Municipalities to which they were sent. It is stated further in the counter that it is to adjust the work and render the best service for the welfare of public, the petitioners were discharged from third respondent Corporation so as to engage them in Karur Municipality and Cuddalore Municipality respectively. It is further stated that the transfer of petitioners to Municipalities cannot be taken as a transfer but it was only on deputation basis as the petitioners after completion of the specified work will be taken back in the third respondent Corporation. Despite the specific denial about the legal implication of Section 116 of the Municipal Corporation Act applicable to the third respondent, it is admitted before this Court that the power of transfer from one Corporation to another Municipality vests only with the Government and that therefore, the impugned order is without jurisdiction if it were to be a transfer.

4. The learned counsel for the petitioners relied upon the Section 116 of the Coimbatore City Municipal Corporation Act, 1981 which is applicable to the third respondent Corporation. The same reads as follows:

"116. Notwithstanding anything contained in this Act or in the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) the Government shall have power--

<https://hcservices.ecourts.gov.in/hcservices/>

(a) to transfer any officer or servant of the corporation to the service of the municipal corporation



of Madras constituted under the Madras City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919) or the municipal corporation of Madurai constituted under the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15 of 1971) or any other municipal corporation that may be constituted under any law or any municipality constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) or to transfer any officer or servant of any such municipality or the municipal corporation of Madras or the municipal corporation of Madurai or any other municipal corporation that may be constituted under any law to the service of the corporation.

(b) to issue such general or special directions as they may think necessary for the purpose of giving due effect to any transfer made under clause (a)."

5. The second submission of the learned counsel for the petitioners is that the impugned order which is stated to be an order of deputation is vitiated as no consent was obtained from the petitioners before they are transferred to different Municipalities on deputation. The learned counsel for the petitioners relied upon a judgement of the Hon'ble Supreme Court in the case of **Umapati Choudhary v. State of Bihar and another** reported in **(1999) 4 SCC 659**. The relevant portion of the judgement in paragraph 8 is extracted below:-

"Deputatoion can be aptly described as an assignment' of an employee (commonly referred to as the deputationist) of one department or cadres or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not. in public interest or it --.'as vitiated by favoritism or mala fide. The

learned single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned single



Judge had dismissed the writ petition. No material has been placed before us to show that between November 1987 when the judgment of the single Judge was rendered and December 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case had raised any grievance or made any complaint regarding non-compliance of the directions made in the judgment of the learned single Judge. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service, and therefore, the decision in the case is relevant only for the purpose of calculating his retiral benefits."

6.A similar view was taken earlier by Hon'ble Supreme Court in the case of **State of Punjab and others v. Inder Singh and others** reported in (1997) 8 SCC 372. The Hon'ble Supreme Court has observed in paragraph 18 as follows:

"18.The concept of "deputation" is well understood in service law and has a recognised meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be."

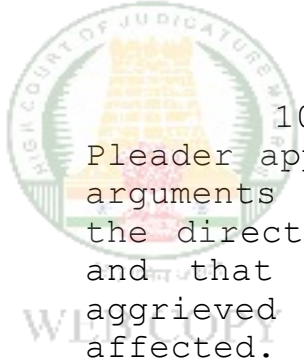
7.The same view was also reiterated by a Division Bench of this Court in the judgement in the case of **K.Raja Prabhu Doss and another v. Employees Provident Fund Organisation and others** reported in 2014 Writ L.R. 682.

8.From the reading of the judgement, it is clear that the order of transfer on deputation as per the impugned order is a nullity. Admittedly, no consent was obtained from the



petitioners. Secondly, as found in Section 116 of the Coimbatore City Municipal Corporation Act which is applicable to the third respondent, the competent authority to pass orders of transfer from Municipal Corporation to different Municipality is the first respondent Corporation. In the present case, the second respondent has passed the impugned order transferring the petitioners to another Municipality. Hence, the impugned order is without jurisdiction and unsustainable. Thirdly, the petitioners specifically stated that they were designated as Assistant Engineers by the third respondent. In such circumstances, the posting of petitioner in different Municipality as Junior Engineer is improper. Fourthly, it was contended by the petitioner that each Corporation has to be treated as a separate unit for the purpose of promotion and transfer. Since this Court is inclined to accept the case of respondents 2 and 3 that the impugned order is only an order of transfer on deputation, the apprehension of petitioners that they will lose their station seniority does not hold water.

9. The learned Special Government Pleader appearing for the respondents 1 and 2 after referring to the provisions of Coimbatore City Municipal Corporation Act, 1981 and the Rules applicable to the third respondent Corporation, fairly conceded the position indicated above. The learned counsel for the fourth respondent, however, filed independent counter affidavit filed in support of the petition to vacate the interim order. In the counter affidavit of the fourth respondent in the two writ petitions, it is specifically stated that the petitioners cannot come forward with any grievance, as they were transferred to Dindigul Municipality earlier from other Municipalities by the second respondent. When the petitioners have accepted the jurisdiction and authority of the second respondent to come to Dindigul Municipality earlier, they cannot raise a ground as regards the jurisdiction of the second respondent to pass the order of transfer. Section 116 of Coimbatore City Municipal Corporation has no application to the transfer of Writ Petitioners earlier from other Municipalities to Dindigul Municipality. Secondly, it was also contended by the learned counsel for the fourth respondent that the petitioners in the two writ petitions were sent only on deputation basis to Karur Municipality and Cuddalore Municipality respectively for the particular purpose of completion of specified work in the Municipality, and in that circumstances, the petitioner in both the writ petition will be repatriated to their original station, after completion of the project for which, the petitioners are transferred on deputation to different Municipalities. It was further contended by the learned counsel for the fourth respondent that the transfer of fourth respondent to Dindigul Corporation need not be disturbed as the petitioners in the two writ petitions do not challenge the transfer of fourth respondent.



10. Sum and substance, the learned Special Government Pleader appearing for the respondents 1 and 2 reiterated the same arguments and submitted that the petitioners are bound to obey the direction of the second respondent in the interest of public and that the petitioner in both the writ petitions are not aggrieved in the sense that their service conditions are not affected. In the counter affidavit filed by the fourth respondent further points submitted are that the writ petitions are not maintainable, as the petitioner in the respective writ petitions have not challenged the order by which they were relieved. Since the fourth respondent in the writ petitions have assumed charge and working in the third respondent Corporation by virtue of the impugned order, they cannot be disturbed. Finally, it was also contented by the fourth respondent that the fourth respondent in the writ petitions were working as Assistant Engineer for a long period and that they are seniors to the petitioner in the writ petitions. After pointing out this aspect, the learned counsel for the fourth respondent in both the Writ Petition submitted that the fourth respondents cannot be disturbed as the transfer of fourth respondents in the two writ petitions are independent and not challenged.

11. The contentions of the respective learned counsel appearing for the respective parties are considered in the light of the factual background narrated above.

12. Having regard to the provision of Section 116 of Coimbatore City Municipal Corporation Act, 1981, the order impugned is by an authority, namely, the second respondent who has no jurisdiction or authority to transfer any person from one Municipality or Corporation to another Municipality. Secondly, the respondents 1 and 2 have categorically admitted in their counter affidavits that the petitioners were transferred on deputation basis and it is purely temporary. They also assured that the petitioners will be serving only temporarily for a period till the project undertaken by the Municipality is completed and that they will be repatriated to the third respondent Corporation without affecting the service conditions of the petitioners. As pointed out by the learned counsel for the petitioners, the petitioners cannot be sent on deputation without their consent. The petitioners are holding the post of Assistant Engineer in the third respondent Corporation. Since the impugned order is passed without issuing a show cause notice or without giving an opportunity of hearing to the petitioners, the same is also arbitrary, illegal and violative of principles of natural justice.

13. For all the above reasons, this Court has no hesitation to hold that the impugned order of transfer of the petitioners from the third respondent Corporation to Karur Municipality and Cuddalore Municipality respectively is without jurisdiction and illegal. Hence, the order impugned in both the



writ petition is liable to be quashed and the Writ Petitions are allowed.

14.However, the grievance of the fourth respondent in the two writ petitions appears to be somewhat delicate. The fourth respondent in the two Writ Petitions were transferred to the place of petitioners in the Writ Petitions and hence, it is difficult to conclude that the transfer of fourth respondent is independent. Hence, while quashing the impugned order passed by the second respondent, this Court is inclined to observe that the order in the writ petition shall not be construed as one to invalidate the transfer of fourth respondent to the third respondent Corporation and it is open to the respondents 2 and 3 to retain fourth respondent in the two Writ Petitions if their services are required in the third respondent Corporation.

15.As a result, both the Writ Petitions are allowed. No costs. Consequently, the connected W.M.P.(MD) Nos.3404, 4351, 5668, 3406, 4350, and 5669 of 2017 are closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1.The Secretary,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai.

2.The Commissioner of Municipal Administration,
Chepauk,
Chennai.

3.The Commissioner,
Dindigul Municipality,
Dindigul.

+1 cc to Special Government Pleader in SR.No. 58300
+1 cc to Mr.M.Sureshkumar , Advocate in SR.No. 58370
+1 cc to Mr.J.Lawrance , Advocate in SR.No. 58146
+2 cc to Mr.B.Jameel Arasu , Advocate in SR.No. 58221
SRM
AE/JC/SAR4/07.06.2017/9P/9C