

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.04.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.5172 of 2018
and
W.M.P.No.6346 of 2018

G.Mohan

... Petitioner

Vs

1.Tamil Nadu Generation and
Distribution Corporation Limited
Rep by its Chairman
144, Anna Salai, Chennai - 600 002.

2.The Chief Engineer
The Tamil Nadu Generation and Distribution Corporation Ltd
Chennai North Region, Chennai.

3.The Superintendent Engineer
The Tamil Nadu Generation and Distribution Corporation Ltd
CEDC, North Region, Chennai - 2.

4.The Assistant Engineer
The Tamil Nadu Generation and Distribution Corporation Ltd
O&M/CEDC North, RK Nagar,
Chennai - 600 021.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records in letter Memo No.0015/SE/CEDC/N/ADM-I/A3/F-RS/2018, dated 24.02.2018, on the file of 3rd respondent and quash the same as illegal, incompetent and wholly without jurisdiction.

For Petitioner : Mr.V.Raghavachari

For Respondents: Mr.P.R.Dhilip Kumar [For R1 to R4]

Standing Counsel [Electricity Board]

O R D E R

The order of transfer issued by the third respondent vide proceedings dated 24.02.2018 is under challenge in this writ petition.

2.The writ petitioner was initially appointed on 29.07.1985 at Gudiyatham and thereafter, promoted up to the level of Revenue Supervisor and presently working at RK Nagar, O&M/CEDC Chennai North Region of the Tamil Nadu Generation and Distribution Corporation Limited.

3.The learned counsel for the writ petitioner states that some anonymous letter was sent to the State Election Commissioner alleging that the petitioner had involved in the distribution of money to the voters of RK Nagar, during the Bye-Election 2017. The Chief Electoral Officer had in turn directed the District Election Officer & Commissioner and the Commissioner of Police to initiate immediate action in respect of the allegations set out in the letters sent to him.

4.In this regard, the petitioner states that one Mr.M.R.Vasanth Sekhar, Assistant Executive Engineer at RK Nagar had also given a good conduct certificate by way of a letter to the Chief Electoral Officer stating that the petitioner had worked under him for the past six year at RK Nagar in his capacity as Revenue Supervisor and he is serving to the satisfaction of his Superior and no charges or allegations had been raised against him. In this regard, three Accounts Officers had given support to the statement made by the Assistant Executive Engineer.

5.However, a memo was sent on 04.12.2017 from the office of the Executive Engineer, Vyasarpadi directing the Assistant Executive Engineer/O&M /Royapuram for transferring the writ petitioner to Villupuram EDC on administrative grounds and relieving the petitioner immediately. On 28.12.2017 the Assistant Executive Engineer, RK Nagar had sent a letter, relieving the writ petitioner from duty. However, on 17.01.2018, the transfer order issued to the writ petitioner was cancelled and he was retained in the same place. On 17.01.2018, the Chief Engineer/Personnel sent a letter to the third respondent / Superintending Engineer, TANGEDCO, CEDC, North Region, Chennai transferring the writ petitioner to Villupuram EDC, At request the petitioner was retained in the same station. However, another transfer order was issued by the Senior Engineer, CEDC, North Region, Chennai in proceedings dated 24.02.2018 transferring the writ petitioner once again to Villupuram Electricity Distribution Circle and challenging the same the present writ petition is filed.

6.The learned counsel appearing for the writ petitioner states that the first transfer order was issued on 04.12.2017 and the writ petitioner was relieved from duty. However, the transfer order was not implemented and thereafter, the same was cancelled by the authority concerned. Therefore, the impugned

order, once again issued transferring the writ petitioner to Villupuram EDC is not on any justifiable ground and the same is liable to be set aside.

7.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is no way connected with the allegations set out in the anonymous letter sent to the Chief Electoral Officer and he has made representation to the Chief Electoral Officer stating that he is not connected with the allegations set out in the anonymous letter. Therefore, the writ petitioner is not liable to be transferred on administrative ground and the reason stated is not based on any adverse materials.

8.The learned counsel appearing on behalf of the respondent states that the writ petitioner is working in RK Nagar station as Revenue Supervisor from 2011 onwards. Therefore, the writ petitioner has already completed more than 7 years of service in the present station at RK Nagar.

9.It is contended that on account of the long services in the same station in RK Nagar station, the petitioner had developed clouds and the many affairs in the course of employment and also in other aspects. The complaint was received alleging that the writ petitioner's presence at the RK Nagar Section would not be in public interest. Considering the same the Chief Engineer/Personal in his letter dated 23.11.2017 ordered for transfer of the writ petitioner to Villupuram EDC on administrative grounds. The complaint was made through anonymous letter was forwarded by the Chief Electoral Officer & Principal Secretary to Government in letter dated 13.12.2017 to the District Election Officer and Commissioner and the Commissioner of Police. In respect of the said complaint, the fourth respondent has made a general enquiry with his staff more particularly the three supporting officials of the petitioner herein. Those three supporting officials have given their reply to the queries posed by the fourth respondent. The language employed and the tone and tenor of the reply to the queries raised by the fourth respondent who is the Superior and second head would yield his over supportings. Therefore, the fourth respondent was made to make a reply to the Chief Electoral Officer by-passing the official hierarchy which shows the content over the reply and the influence over his superior as well.

10.Under these circumstances, the petitioner was relieved on 28.12.2017. However, at that point of time, the Chief Engineer was not aware of the action and attitude of the petitioner and considering his request on humanitarian ground the order of transfer was cancelled on 17.01.2018. Thereafter

the action and ingenuineness of the petitioner came to the light of the higher officials and therefore the administration thought fit that continuance of such a person is not preferable and accordingly the present transfer order was issued in public interest.

11. This court is of an opinion that on a perusal of the entire orders passed by the respondent, the first order of transfer was issued in proceedings dated 14.12.2017. However, the petitioner is able to pursue the matter by way of request and subsequently, the same was cancelled. Though the learned counsel for the petitioner states that there was no request on the part of the writ petitioner for cancellation of the earlier transfer order, the fact remains that he was relieved on 28.12.2017 and till the cancellation order was passed, he had not joined at the transferred place at Villupuram. Though the writ petitioner was relieved by the Assistant Engineer on 28.12.2017, the petitioner had not joined till the order of cancellation was issued on 17.01.2018 by the Chief Engineer. Therefore, the inference is to be drawn that the petitioner had not joined in the transferred place and was attempting to cancel the transfer order in one way or other. If at all no request is made, the employee, who was relieved from the post must have joined in the transferred place within a period of 7 days. However, the writ petitioner had not joined in the transferred place within seven days. Therefore an inference is to be drawn that he was pursuing the matter for cancellation of the transfer order and achieved the same. Subsequently, the competent authority found that the continuance of the writ petitioner in RK Nagar for further period is not preferable on account of his conduct, which was ascertained after enquiry. The writ petitioner was involved in certain allegations in respect of certain electoral issues. Though it was an anonymous letter, the writ petitioner himself had addressed to the Chief Electoral Commissioner in his letter dated 05.01.2018. Therefore, it is apparent that the writ petitioner had made an attempt to influence the authorities and addressed his reply directly to the Chief Electoral Officer without even communicating the said copy of the letter to the Chief Engineer and to other higher officials of the Electricity Board.

12. Transfer is an incidental to service, more so, a condition of service. A writ petition challenging an order of transfer need not be entertained in a routine manner and only on exceptional circumstances, an order of transfer may be quashed. The place of work and the post can never be claimed as a matter of right by an employee and it is the discretion of the Competent Authority to implement the Government schemes and policies by posting the employees in a right manner.

13. This being the principle and the transfer being incidental to service, this Court is not inclined to interfere with the order of transfer impugned in this writ petition. The powers of judicial review on transfers are certainly limited. Intermediate intervention has to be exercised cautiously and cannot be done in a routine manner, more specifically in the matter of administrative transfers.

14. It is for the authorities to follow the guidelines issued by the Government in this regard and it is not for the Courts to interfere in the matters of transfer unless an order of transfer is issued without jurisdiction or with a malafide intention by the Authority. Even, in the case of, raising the plea of malafides, the said authority has to be impleaded as a party in his personal capacity. In the absence of these grounds, no writ petition can be entertained by this Court, under Article 226 of the Constitution of India.

15. In the present case on hand, this court is of an opinion that the writ petitioner has indulged in influencing the authorities. The said activities are unambiguously portrays in respect of the recommendation letter sent by the Assistant Engineer, O&M, CEDC/North /TANGEDCO at RK Nagar Chennai in proceedings dated 16.12.2017. The said Assistant Engineer has directly written a letter to the Chief Election Commissioner & Principal Secretary to Government without even communicating the said copy of the letter to the Chief Engineer and other higher officials of the Electricity Board. This court is of the view that the official letter sent by one Assistant Engineer to the Chief Election Commissioner & Principal Secretary to Government should have been communicated to the higher officials of the Board namely, SE, CE and the Secretary. However, on perusal of the letter, it is seen that the letter was not even communicated and therefore, he has committed an act of misconduct in not communicating the copy of the letter to the higher officials. In this regard, the respondents 1 and 2 has to conduct an enquiry and find out what prompted the said AE to send such a letter directly to the CEO, whether such prior permission was obtained from is done by the competent authority or not. In this regard, if necessary, a notice to be issued to the said Mr.M.R.Vasanth Sekhar and initiate appropriate action in accordance with Discipline and Appeals Rule. Such recommendations sent in favour of the certain employees more specifically in the matter of transfer are certainly unusual and on a perusal of letter, the said Assistant Engineer has directly written the letter to the Chief Election Commissioner & Principal Secretary to Government without the knowledge of the Electricity Board. Therefore, such conduct requires an enquiry and further action. In respect of the transfer of the writ petitioner, the writ petitioner was

already continuing in the same station at RK Nagar for more than 7 years and the competent authority of the Electricity Board came to the conclusion that further continuance is not preferable in the interest of public.

16.Thus no further adjudications are required in respect of administrative transfers and under these circumstances the writ petition preferred by the writ petitioner is devoid of merits and stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

may

To

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The Tamil Nadu Generation and Distribution Corporation Ltd
O&M/CEDC North, RK Nagar,
Chennai - 600 021.

+1cc to Mr.P.R.DHILIP KUMAR, Advocate, S.R.No.26013

+1cc to Mr.V.RAGHAVACHARI, Advocate, S.R.No. 26120

W.P. No.5172 of 2018

TR(09/05/2018)