

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM

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

W.P.No.6365 of 2018 &
W.M.P.Nos.7902 & 10633 of 2018

N.S.Ramesh

...Petitioner

Vs

- 1.The Union of India represented by
The Chief Secretary to Government,
Government of Puducherry,
Puducherry.
- 2.The Secretary to Government,
Housing Department,
Government of Puducherry,
Puducherry.
- 3.The Chairman,
Puducherry Slum Clearance Board,
No.106, Pallivasal Street,
Periyar Nagar, Savanapet,
Puducherry - 605 005.
- 4.Puducherry Slum Clearance Board,
rep. by the Chief Executive Officer,
No.106, Pallivasal Street,
Periyar Nagar, Savanapet,
Puducherry - 605 005.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of certiorari calling for the records relating to the Impugned Orders of Transfer vide Officer Order File No.PSCB/Estt/2018-19/319 dated 14.03.2018 and consequential Relieving Order vide No.PSCB/ESTT/2018-19/345 dated 16.03.2018, both issued by the 4th respondent and quash the same.

For Petitioner :Mr.R.Premkumar

For Respondents:Mr.R.Syed Mustafa,
Additional Government Pleader (P)

O R D E R

The order of transfer issued by the fourth respondent in proceedings dated 14.03.2018 and consequential Relieving Order dated 16.03.2018 issued by the fourth respondent are under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was appointed as Lower Division Clerk in the third respondent Board on 06.09.1989 and thereafter, promoted to the post of Upper Division Clerk on adhoc basis by way of an order dated 19.07.1999. The services of the writ petitioner was regularised in the post of Upper Division Clerk through an order dated 18.07.2001. The petitioner was further promoted to the post of Assistant on 23.08.2005 on adhoc basis. The next avenue for promotion is to the post of Superintendent and the petitioner is fully qualified for promotion to the post of Superintendent. The petitioner states that already he had filed two writ petitions in order to redress his grievances in relation to his promotion to the post of Superintendent. Those two writ petitions were filed in W.P.Nos.7122 and 7123 of 2017, which are pending before this Court. Under these circumstances, the respondents issued the impugned order of transfer in proceedings dated 14.03.2018, transferring the writ petitioner from Puducherry to Karaikal Branch office in his capacity as Assistant with immediate effect.

3.The learned counsel for the petitioner states that in order to punish the writ petitioner, in view of the fact that he has approached this Court by filing two writ petitions, the present transfer order has been issued. Thus, the order of transfer is punitive in nature. However, it is stated that the writ petitioner has already served in Karaikal for about 5 years and as per rules, the petitioner is required to serve two (2) years in Karaikal and he has served for more than two years and therefore, he cannot be again transferred to Karaikal. When the other similarly placed persons have not even served in Karaikal so far.

4.Relying on the Government Order issued in G.O.Ms.No.60 Personnel & Administrative Reforms (Personnel Wing) dated 27.06.1991, the learned counsel for the petitioner states that even as per the transfer policy, the writ petitioner had already served two years in Karaikal and therefore, instead of promoting other persons, who had not served in Karaikal, he is repeatedly harassed by way of such transfer.

5.The learned counsel appearing on behalf of the respondents opposed the contentions of the learned counsel for

the writ petitioner by stating that the writ petitioner was transferred on account of administrative exigencies and it is purely an administrative transfer. The case of promotion will be dealt with independently and based on the orders, if any passed by this Court. The learned counsel for the petitioner states that the Karaikal Branch office of the respondent Board now essentially in need of an experienced senior level clerical staff, since no proper well-experienced staff is available at Karaikal to expedite the progress of expenditure and to transact other financial matter at higher clerical. There is only one Senior Upper Division Clerk at Karaikal now working, who is unable to cope up with the day-to-day works for the successful implementation of the welfare schemes. The writ petitioner is an experienced assistant cadre official, working in the office of the respondent. The Government have sanctioned 36.654 crores for Karaikal Region alone towards grant of subsidy for the construction of house by the people, who do not have their own house under Puduchery Perunthalaivar Kamarajar Housing Scheme and for other development projects. Besides 33.28 crores, under PMAY has been allotted by Government of India to Karaikal Region for implementation of housing scheme for the benefit of 1664 poor families. The progress of implementation of these scheme works have slow down due to lack of proper experienced clerical staffs at the Branch office to monitor and report the issues to the Head office for taking speedy measures to achieve the target. In order to expedite the scheme works, the petitioner who is an experienced clerical staff, is transferred and posted for the speedy implementation of such scheme. Thus, the order of transfers is on administrative grounds and therefore, the same cannot be construed as punitive as contended by the learned counsel for the petitioner.

6. Transfer is an incidental to service, more so, a condition of service. No writ proceedings can be entertained against an order of transfer in a routine manner. Judicial review against an order of transfer is limited. Constitutional Courts cannot interfere into the day-to-day administration of the State. It is the prerogative of the competent authorities to ensure appropriate posting of the officials in an appropriate place for the effective implementation of the policies of the Government and in the interest of the public. Posts or place can never be claimed as a matter of right or of a choice. A Public servant, wherever posted, is bound to work in the interest of public. There cannot be any leniency or misplaced sympathy in respect of the implementation of the public scheme by the state, by posting the senior official for speedy or efficient or effective implementation.

7. Thus, this Court is of an opinion that mere filing of a writ petition for redressing the grievances in relation to promotion to the writ petitioner, he cannot make out a ground

for quashing the order of administrative transfer. The promotional opportunities are entirely different and the promotion of the writ petitioner is to be considered on merits and in accordance with law. Thus, the ground raised on behalf of the writ petitioner that the transfer order was issued on account of the writ petitions filed by the writ petitioner, cannot be considered and such a ground raised is of no avail for the purpose of setting aside the administrative transfer order.

8. Again, no writ can be entertained against an order of transfer and the same can be entertained only if the order of transfer is issued by an incompetent authority, having no jurisdiction or if an allegation of malafides are raised or the same is in violation of statutory rules in force. Even in case of raising an allegation of malafides, the authorities against whom such an allegation is raised, to be impleaded as a party respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal grounds, no writ can be entertained.

9. In the present case on hand, the learned counsel for the petitioner states that the Government order passed in G.O.Ms.No.60 Personnel & Administrative Reforms (Personnel Wing) dated 27.06.1991 has not been followed.

10. On a perusal of the Government Order, it is an administrative instructions provided to the subordinate officials for the purpose of maintaining a uniformity in taking decisions in relation to transfer of the employees. Such instructions issued for the purpose of convenience of the authorities to maintain uniformity will not provide any legal enforceability and such instructions cannot be construed as rules, so as to claim right over that. The instructions issued in respect of transfers are only for the convenience of the authorities and to maintain uniformity and further, to avoid discriminations among the employees in the matter of transfers. Such instructions will not confer any right on the writ petitioner for the purpose of assailing the order of transfers.

11. In this view of the matter, the writ petitioner has not established any acceptable legal ground for the purpose of interference by this Court. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

nl

Sd/-

Assistant Registrar(CS II)

//True Copy//

To

1.The Union of India represented by
The Chief Secretary to Government,
Government of Puducherry,
Puducherry.

2.The Secretary to Government,
Housing Department,
Government of Puducherry,
Puducherry.

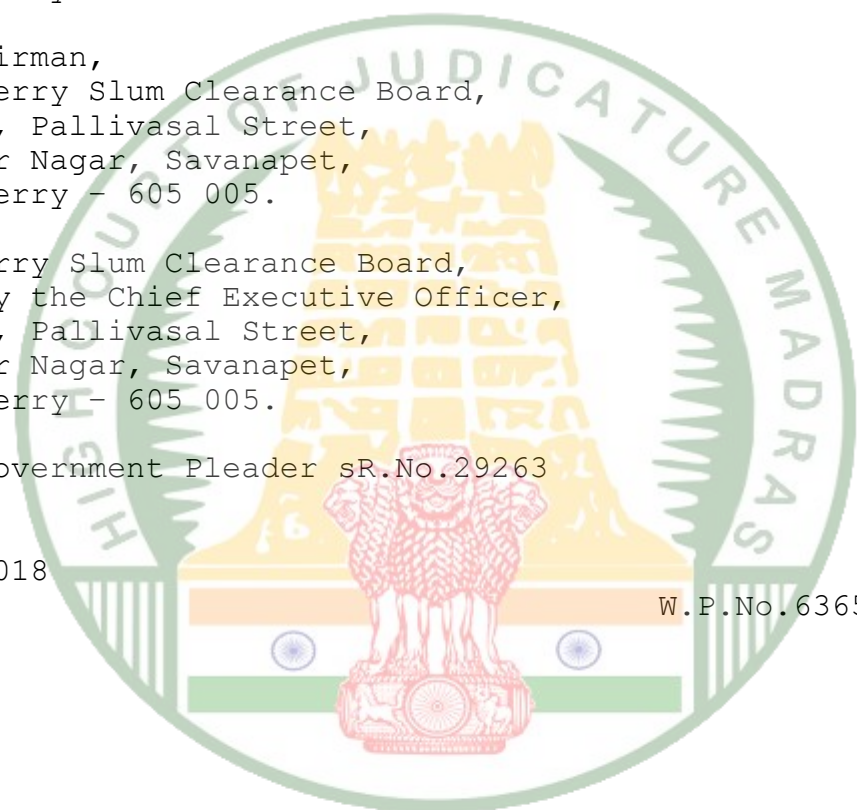
3.The Chairman,
Puducherry Slum Clearance Board,
No.106, Pallivasal Street,
Periyar Nagar, Savanapet,
Puducherry - 605 005.

4.Puducherry Slum Clearance Board,
rep. by the Chief Executive Officer,
No.106, Pallivasal Street,
Periyar Nagar, Savanapet,
Puducherry - 605 005.

+1cc to Government Pleader sR.No.29263

KAN(CO)
sm:11.5.2018

W.P.No.6365 of 2018

The seal of the High Court of Judicature Madras is a circular emblem. It features a central illustration of the Lion Capital of Ashoka, which is a four-lion capital standing on a base decorated with friezes of animals. The capital is set against a background of a temple gopuram (tower) with a flag on top. The entire emblem is encircled by a green border containing the text 'HIGH COURT OF JUDICATURE MADRAS' in white capital letters. Below the emblem, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

सत्यमेव जयते

WEB COPY