

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.5687 to 5689 of 2018

and

W.M.P.Nos.7034 to 7038 of 2018

L.Prabhakaran ... Petitioner in W.P.No.5687/2018
P.Rajesh ... Petitioner in W.P.No.5688/2018
G.Rameshkumar ... Petitioner in W.P.No.5689/2018

Vs

- 1.The Director of Rural Development and
Pachayatraj, Chennai-15.
- 2.The District Collector,
The Nilgiris District,
Udhagamandalam. ... Respondents in all W.Ps.

Prayer: Petitions filed under Article 226 of the Constitution of India, to to issue a Writ of Certiorari, calling for the records of the 1st respondent in Proc.No.101410/2017/VC.2-2 dated 15.2.2018 and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.P.Chandrasekaran
for M.Shivakumar

For Respondents : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

C O M M O N O R D E R

Challenging the Proceedings of the 1st respondent in Proc.No.101410/2017/VC.2-2 dated 15.2.2018, thereby transferring the petitioners from Nilgiris District to various districts, the present Writ Petitions have been filed.

2. The case of the petitioners is that the petitioners are working as Record Clerk, Assistant Engineer and Assistant respectively in the Udhagamandalam Panchayat Union. While so, the Vigilance and Anti Corruption Police, based on a surprise check made on 17.10.2017, has registered a Criminal Case in

Crime No.1/2017 on the file of the Vigilance and Anti Corruption, Nilgiris District against the petitioners and the same is pending. In the meanwhile, the 1st respondent has passed an impugned order of transfer, transferring the petitioners from the present place of Nilgiris District to Salem, Madurai and Thiruvannamalai District respectively. According to the petitioners, no transfer can be effected by way of punishment and the respondents cannot exercise the power in an arbitrary manner and there cannot be any order of transfer in lieu of departmental proceedings. Hence, challenging the said transfer orders, the present Writ Petitions have been filed.

3. A detailed counters have been filed by the 2nd respondent opposing the contention of the petitioners in which it has been stated among other things that the transfer orders have been passed on administrative grounds and the same will not be treated as Disciplinary Proceedings or punishment and the transfers have been effected as per Section 48(2) of the Tamil Nadu Government Servants Conditions of Service Act and therefore, the transfers will have no effect on their seniority, or their pay and their promotional opportunities. Hence, the Writ Petitions are liable to be dismissed.

4. The learned Counsel for the petitioners though raised several contentious issues resorting to Section 48(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 that the Director of Rural Development and Panchayatraj, Chennai-15, the 1st respondent herein has no authority or jurisdiction to effect such transfer, later on, given up that point and finally, requested this Court not to enforce the impugned orders of transfer on the petitioners till the completion of the academic year i.e. 2017-2018 since the petitioners are all having school going children and their transfer during the middle of the academic year would fatally affect their studies, as the petitioners have already accepted the transfer orders.

5. Learned Special Government Pleader appearing for the respondents also submitted that till date, the petitioners have not joined the transferred place. Since the 1st respondent has rightly passed the impugned orders of transfer, it does not require any interference by this Court.

6. Considering the facts and circumstance of the case, this Court is of the view that it is relevant to extract Section 48(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 hereunder:

'48(2) All postings and transfers shall be made by the appointing authority:

Provided that where the appointing authority is not

the Government, any authority to whom the appointing authority is administratively subordinate shall, in respect of any post within the jurisdiction of the appointing authority also be competent to effect postings and transfers to a post within their jurisdiction aforesaid:

Provided further that where leave not involving extra cost to the Government is granted to an officer by virtue of the delegation under Fundamental Rule 66, the Head of Department or Subordinate Authority concerned may re-post the officer on return from leave granted by it to the same place.''

I fully agree with the said submission made by the learned Special Government Pleader for the respondents. However, since the orders of transfer have been effected just one month prior to the completion of the academic year 2017-2018, the 1st respondent herein, namely, the Director of Rural Development and Panchayat Raj, Chennai-15, is directed to implement the same after 31.05.2018.

7. With this direction, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Director of Rural Development and
Pachayatraj, Chennai-15.

2.The District Collector,
The Nilgiris District,
Udhagamandalam.

+3cc to Mr.G.Ilamurugu, Advocate, S.R.No.21104 to 21106
+1cc to the Government Pleader, S.R.No.21391

W.P.No.5687 to 5689/2018

RRK(26/03/2018)