

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11-07-2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.5906 of 2014

Kalai Arasi

.. Petitioner

versus

1. The Block Development Officer,  
(Village Panchayat) Alathur Taluk,  
Perambalur District.

2. The District Collector,  
Perambalur District.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records in Na.Ka.No.A3/394/14, dated 18.2.2014 passed by the Block Development Officer (Village Panchayat) Alathur taluk, Perambalur District, the 1st respondent herein and quash the same.

For Petitioner : Mr.V.Vijayashankar for  
Mr.K.Kamaraju

For Respondents : Mr.P.Sanjay Gandhi, AGP

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue of Writ of Certiorari, to call for the records in Na.Ka.No.A3/394/14, dated 18.2.2014 passed by the Block Development Officer (Village Panchayat) Alathur taluk, Perambalur District, the 1st respondent herein and quash the same.

2. The petitioner joined Allinagaram Town Panchayat on 1.5.2005. According to the petitioner, Allinagaram Town Panchayat consisting Allinagaram, Keela Hussain Nagaram, Mela Hussain Nagaram and Thondapadi villages. It is located within one kilometer from the petitioner's village. While she was working as such, by proceedings dated 18.2.2014, she was transferred from Allinagaram Panchayat to Melamathur Pannchayat and in her place, one Mr.S.Anbumani was posted. The transfer order was served on the petitioner on 21.2.2014. According to

the petitioner, the order was contrary to G.O.Ms.No.72 Rural Development and Panchayat Raj, dated 9.7.2013, which Government Order notified Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules 2013. Therefore, the petitioner is before this Court, assailing the order of transfer.

3. Upon notice, Mr.Sanjay Gandhi, learned Addl.Govt.Pleader entered appearance for the respondents and filed a counter affidavit. In the counter affidavit, it is stated that the petitioner has been transferred on administrative grounds and without obeying the order of transfer, the petitioner had obtained medical leave from 19.2.2014 and thereafter, she had not chosen to join the transferred post. Since the transfer was on the basis of administrative grounds, it is not open to the petitioner to challenge the same before this Court.

4. Mr.Sanjay Gandhi, learned Addl.Government Pleader appearing for the respondents, vehemently opposed any relief to be granted by this Court in favour of the petitioner.

5. On the other hand, Shri V.Vijayshankar learned counsel appearing for the petitioner would submit that the transfer order is per se contrary to the above said Rules and therefore, the same is liable to be struck down. He would draw the attention of this Court, particularly, to Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules 2013, which reads as under:

"11. Transfer:-(1) Transfer of a person holding the post shall be made only on administrative grounds supported by valid reasons and after proper enquiry by the authorities concerned.

(2) Transfer and postings within the Block shall be made by the Block Development Officer (Village Panchayats) of the Panchayat Union concerned. Transfer and postings to other Blocks within the District shall be made by the Personal Assistant (Development) to the Collector. All transfers and postings within the Block and the District shall be done in consultation with the Executive Authority of the Village Panchayat concerned. The Commissioner / Director of Rural Development and Panchayat Raj is the competent authority to make transfer from one District to another District based on the specific report from the Collector."

6. According to the learned counsel, any transfer of Secretary from one Panchayat union to the other, such transfer order must contain valid reasons and due enquiry has to be conducted before such transfer. In this case, no reason has been admittedly cited in the impugned order of transfer and no enquiry was conducted. Therefore, the impugned order of

transfer is void ab initio and cannot be sustained in law. According to the learned counsel, Secretary of the Panchayat cannot be transferred from one Panchayat union to another Panchayat union and such transfer cannot be countenanced in law or on facts. In any event, admittedly, no reasons were spelt out and no enquiry as contemplated in the Rules, was conducted and therefore, the Writ Petition is liable to be allowed on this ground. He would further submit that during the pendency of the Writ Petition, one S.Anbumani who was posted in the place of the petitioner had not joined and as on date, the post of Secretary in Allinagaram Panchayat is still remaining vacant, which fact was admitted by the respondents.

7. The issue raised in the Writ Petition is rather very simple to the fact that the transfer of the petitioner by impugned order dated 18.2.2014 is per se appears to be contrary to the Rule 11 of the above mentioned Rules. The Rule relied upon by the petitioner is very clear that whenever transfer is effected, valid reasons must be given and enquiry must precede before such transfer. In the instant case, the Rule has not been followed as there was neither any reasons cited nor any enquiry was conducted before the impugned order of transfer was issued. Since the transfer order is issued contrary to the specific Rule, this Court is unable to uphold the order of transfer. In the face of the clear provision in the Rule, this Court finds that the impugned order of transfer suffers from patent illegality. Therefore, the impugned transfer order in Na.Ka.No.A3/394/14, dated 18.2.2014 passed by the Block Development Officer (Village Panchayat) Alathur taluk, Perambalur District, the 1st respondent herein, is hereby set aside. Since admittedly, the post of Secretary in Allinagaram Panchayat is still vacant, the respondents are directed to post the petitioner at Allinagaram Panchayat. The respondents shall comply with the order within a period of two weeks from the date of receipt of copy of this order.

The Writ Petition is allowed on the above terms. No costs. Consequently, connected MP is closed.

suk

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Block Development Officer,  
(Village Panchayat) Alathur Taluk,  
Perambalur District.

2. The District Collector,  
Perambalur District.

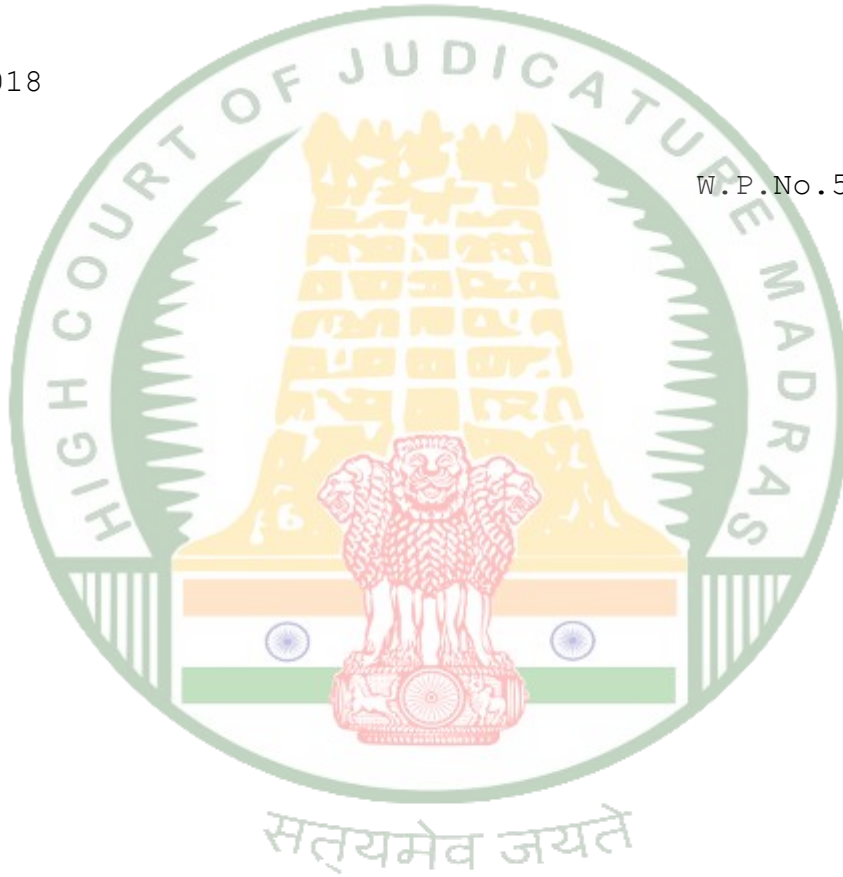
+lcc to Mr.K.Kamaraju, Advocate SR.NO.45172

+lcc to Mr.P.Sanjay Gandhi, Advocate SR.NO.46035

PA(CO)

sm:25.9.2018

W.P.No.5906 of 2014



WEB COPY