

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.03.2018
CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.6622 of 2018
and WMP.Nos.8213 to 8215 of 2018

M.Sundararajan

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk, Chennai-5.
- 3.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore-641 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 1st respondent issued in G.O.(D).No.95, Municipal Administration and Water Supply (MAWS) (MC-IV) Department dated 09.03.2018 and quash the same insofar as the condition of transfer of the petitioner to Salem Corporation which is contrary to the provisions of statutory rule 38 of the Tamil Nadu Municipal Corporation Service General Rules, 1996.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader for R1 & R2

Mr.K.Magesh for R3

O R D E R

This Writ Petition has been filed challenging G.O.(D)No.95, Municipal Administration and Water Supply (MAWS) (MC-IV) Department dated 09.03.2018 issued by the first respondent, taking a decision to initiate departmental action under the Coimbatore City Municipal Corporation Services (Discipline and

Appeal) Rules, 1986, with a further direction to the Commissioner of Municipal Administration to initiate disciplinary action against the petitioner under Rule 8(2) of the Coimbatore City Municipal Corporation Services (Discipline and Appeal) Rules, 1986 and also to send a proposal to the Government to appoint an Enquiry Officer immediately.

2. Mr.T.Ranganathan, learned counsel appearing for the petitioner has submitted that when there was a complaint given by one Mr.R.Subramanian, a retired Superintendent from the Coimbatore City Municipal Corporation, making allegation against the petitioner that he has illegally got promoted as Sanitary Inspector, no action was taken against the petitioner, as the petitioner was considered for the said post on acquiring B.L.Qualification which is required for the said post. On the basis of the wrong complaint, the third respondent collected all the original certificates of the petitioner viz., S.S.L.C. Certificate, Higher Secondary Certificate, Community Certificate and Sanitary Inspector Course Certificate and forwarded the same to the first respondent, who, without affording any opportunity to the petitioner to defend his case, cannot pass any order. At this stage, the petitioner has approached this Court by filing W.P.No.36004 of 2016, praying for a direction to the respondents that no final order should be passed without affording any opportunity to him.

3. This Court, accepting the genuine request made by the petitioner that he was not afraid of facing the enquiry based on the complaint given by Thiru.R.Subramanian, issued a direction to the respondent to receive the explanation of the petitioner, before taking any final decision. Pursuant thereto, Thiru.V.Rajaraman, I.A.S., who was appointed as the Enquiry Officer, considered the explanation offered by the petitioner and submitted a report holding the petitioner not guilty. Unfortunately the said report of the Enquiry Officer was not accepted by the respondents and they decided to initiate disciplinary action against the petitioner under Rule 8(2) of the Coimbatore City Municipal Corporation Service (Discipline and Appeal) Rules, 1986 and further transferred the petitioner to Salem Corporation as Assistant Commissioner (Personnel) in the existing vacancy.

4. The learned counsel appearing for the petitioner has further submitted that when the report of the Enquiry Officer has made the position clear that the petitioner has not committed irregularity, instead of accepting the report of the Enquiry Officer, the respondents have decided to take disciplinary action against the petitioner under Rule 8(2) of the Coimbatore City Municipal Corporation Service (Discipline and Appeal) Rules, 1986 and directed the Municipal Commissioner to initiate disciplinary proceedings and forward a proposal to

the Government for appointing an Enquiry Officer immediately. In the meanwhile, the respondents have also transferred the petitioner to Salem Municipal Corporation as Assistant Commissioner (Personnel) in the existing vacancy, which is wholly unsustainable in law.

5. The learned counsel appearing for the petitioner, referring to Rule 38 of the Tamil Nadu Municipal Corporation Service Rules, 1996, has submitted that for the purpose of appointment, promotion, reversion, transfers and discharge from service, each Municipal Corporation shall be a separate Unit and while that being the rule position, the petitioner cannot be transferred to Salem Corporation. The learned counsel appearing for the petitioner has also submitted that when the report of the Enquiry Officer goes in favour of the petitioner, he is entitled to have a copy thereof and without furnishing a copy of the report of the Enquiry Officer, the respondents cannot order for fresh enquiry. In support of said submission, reliance has been placed upon the Constitution Bench decision of the Hon'ble Apex Court in Punjab National Bank and Others v. Kunj Behari Misra [(1998) 7 SCC 84].

6. Opposing the above prayer, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the respondents 1 and 2 has submitted that Section 116 of the Coimbatore City Municipal Corporation Act, 1981 confer enormous power to the Government to transfer any officer or servant of the corporation to any other municipal corporation that may be constituted under any law to the service of the corporation and therefore, transferring the petitioner to Salem Corporation as Assistant Commissioner (Personnel) in the existing vacancy, cannot said to be unsustainable.

7. A careful reading of Section 116 of the Coimbatore City Municipal Corporation Act, 1981 would clearly shows that the Government has got power to transfer any officer or servant of the corporation to any other municipal corporation constituted under any law or any municipality constituted under the Tamil Nadu District Municipalities Act, 1920. Therefore, this Court finds no merit in the writ petition, challenging the transfer order.

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8. This Writ Petition fails and accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jvm

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Municipal Administration and
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Secretariat, Chennai-600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk, Chennai-5.
- 3.The Commissioner,
Coimbatore City Municipal Corporation,
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+1 cc to M/s/T.Ranganathan Advocate sr 21822
+1 cc to M/s.K.Magesh Advocate sr 22131
+1 cc to the Govt pleader sr 22831

W.P.No.6622 of 2018

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