

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No. 975 of 2018
and
W.M.P.No.1090 of 2019

S.Kousalya
 Panchayat Secretary,
 Vadugacherry Panchayar,
 Nagapattinam Panchayat Union,
 Nagapattinam District.

Petitioner

Vs.

1. The District Collector
 Nagapattinam District
 Nagapattinam.

2. The Block Development Officer (VP)
 Nagapattinam Block,
 Nagapattinam

3. Mr.J.Ramesh,
 Panchayat Secretary,
 Agalangan Panchayat,
 Nagapattinam Block,
 Nagapattinam District.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in connection with the impugned clause of transfer passed vide his proceedings in Na.Ka.5925/Oo.Va.8/2018 dated 26.12.2018 and quash the same as illegal, arbitrary and violation of clause 11(1) and 11(2) of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 and

thereby direct the respondents to permit the petitioner to discharge her duty as Panchayat Secretary in Vadugacherry Panchayat within the time limit that may be stipulated by this Court.

For Petitioner : Mr.D.Selvam

For Respondents : Mr.R.S.Selvam
Government Advocate for R1
Mr.N.Srinivasan
for R2.

ORDER

The order of transfer 26.12.2018, transferring the writ petitioner from Panchayat Secretary, Vadugacherry Panchayat union to Agalangan Panchayat union at Nagapattinam District is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that as per the provisions of Tamil Nadu Village Panchayat Secretaries (Conditions of Service 2013) transfer of person can only be made on administrative grounds and seniority by the authorities concerned. This apart, the writ petitioner earlier approached this Court W.P.No.32073 of 2018 and this Court passed an order 06.12.2018 wherein paragraph 3 of the order, reads as follows;

*"3. At the time of hearing, when
the Court wanted the respondents to
clarify whether the case of the petitioner*

was termination or discharge or disengagement, learned Government Advocate appearing for the respondents produced a communication of the District Collector, Nagapattinam dated 05.12.2018 in which it is stated that immediately after restoration of normalcy, the petitioner would be given posting in a nearby Panchayat."

Relying on the said grounds, the learned counsel for the petitioner states that the impugned order of transfer is liable to be scrapped.

3. The learned counsel appearing on behalf of the respondents opposed the contentions of the petitioner by stating that the order passed by this Court in W.P.32073 of 2018 had been considered by the competent authority and an administrative decision is taken, considering the availability of the vacancy in that block. The writ petitioner is posted within the block and the place in which the writ petitioner is transferred wherein he had already worked. In fact, the writ petitioner has travelled from Vadugacherry to Agalangan Panchayat Union, which is nearer and

both the villages are within the same block. This being the factum, the impugned order of transfer is not to be interfered with by this Court. An order of administrative transfer cannot be challenged in a routine manner. Accordingly, this Court does not interfere with by the impugned order of transfer.

4. It is to be noted that transfer is an incidental of service, more so, a condition of Service. A public servant is liable to work wherever he is posted and place or post can never be claimed as a matter of right. However, if an order of transfer is issued without any intention, such transfers can be challenged by way of writ petition and not otherwise. An order of transfer can be interfered with only if the same has been issued by an incompetent authority having no jurisdiction or an allegation of mala fides are raised or in the same is in violation of the statutory rules in force. Even in case of raising allegation of mala fides, the authorities against whom such an allegation is raised, to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any of these legal grounds, no writ proceedings can be entertained in respect of the show cause notice issued under the statute. Judicial review against the show cause notice is certainly limited.

5. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.02.2019

Speaking Order
Index : Yes
Internet : Yes
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To

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S.M.SUBRAMANIAM, J.

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