

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2018

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

W.P.No.31705 of 2018

and

W.M.P.Nos.36937, 36939 and 36940 of 2018

S.Jayanthi

...Petitioner

Versus

1. The Director of Prosecution,
Prosecution Department,
Office of the Director of Prosecution,
Tamil Nadu Slum Clearance Board Complex,
2nd Floor, No.5, Kamarajar Salai,
Chennai - 600 005.

2. Assistant Chief Secretary to Government,
Home (Courts VI) Department,
Fort.St.George,
Chennai.

3. The Deputy Director of Prosecution,
Trichy Region,
Cantonment,
Tiruchirapalli -1.

... Respondents

Prayer :Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the proceedings of the 2nd respondent in his proceedings in GO (2D) No.401 dated 22.11.2018 quashing the same as far as the petitioner is concerned and consequently directing the respondents to consider petitioner representation dated 25.10.2018 to post the petitioner in the post of Assistant Public Prosecutor Grade No.I in any court nearby Tiruchirappalli.

For Petitioner : Mr.S.K.Mani

For Respondents: Mr.A.N.Thambidurai,
Special Government Pleader.

ORDER

The petitioner has filed this writ petition seeking to quash the proceedings of the 2nd respondent in his proceedings in G.O. (2D).No.401 dated 22.11.2018 in so far as the order of transfer passed against her is concerned and consequently direct the respondents to consider her representation dated 25.10.2018, to post her in the post of Assistant Public Prosecutor Grade No.I in any court nearby Tiruchirappalli.

2. The petitioner is working as Assistant Public Prosecutor Grade II, in the Judicial Magistrate Court-II in Tiruchirapalli. The petitioner has delivered a child on 22.11.2017. While she was on maternity leave., she was transferred form Tiruchirapalli to Vandavasi in Thiruvannamalai District. This order of transfer is under challenge on the ground that the petitioner, who has just now delivered a child and is on Maternity leave, finds it difficult to travel 170 kms from the present Station. Therefore the petitioner sent a representation on 25.10.2018 to consider posting her in the post of Assistant Public Prosecutor Grade No.I in any court nearby Tiruchirappalli. As there was no response to the representation dated 25.10.2018, she has filed the present writ petition.

3. The learned counsel for the respondent has also submitted that there is a vacancy in Natham, Dindigul District inasmuch as the Judicial Officer posted there is likely to be transferred. In the event of the incumbent getting transferred from Natham to the place where he or she is posted, the claim of the petitioner shall be considered for being posted at Natham, Dindigul District.

4. Heard the learned counsel on either side and perused the materials placed on record.

5. By the impugned order of transfer, the petitioner was promoted and transferred as Assistant Public Prosecutor, Grade-I to Vandavasi, Tiruvannamalai which is 170 kilometers from the present Station where she is working. The grievance of the petitioner is that she could not travel so long especially when she has delivered a child on 22.11.2017. The learned counsel for the petitioner relied on Annexure - I to Government letter No. 23847/S/98-1 dated 05.08.1998 issued by the Personnel and Administrative Reforms (S) Department wherein guidelines have been issued for request transfer. In the Annexure-I to the said letter, in Para VII, relating to procedure to be followed for request transfer, it was stated as follows:-

" VII. Procedure to be followed for request transfer:

Request transfer to a vacant post, mutual transfers, request transfers of one of the spouse to the same station where the other is working and other request transfers which are found necessary, shall be allowed subject to the condition that no Travelling Allowance / Daily Allowance is claimed by the Government servants concerned who seek such transfers.

(see Govt.Lr.No.3517/P & A.R(S)/96-1, dt. 8.3.96)

Women Government employees on return from Maternity leave may be reposted to the same station from where they proceeded on leave provided they are not due for transfer, if they are due for transfer, they may be posted to the place according to the options (given by them in request transfer applications) registered in the Register for request transfers.

(see Govt. Lr.No.73661/S/95-1, dt. 25.1.96)"

6. In view of the limited relief sought for, this Court is of the view that it is not necessary to dwell into the merits of the issue, but it would suffice to direct the respondents to consider the representation submitted by the petitioner on dated 25.10.2018 to post the petitioner in the post of Assistant Public Prosecutor Grade No.I in any court nearby Tiruchirappalli and pass orders on the same within a particular time frame.

7. In the above circumstances, this writ petition is disposed of directing the respondents to consider the representation of the petitioner dated 25.10.2018, in the light of the above mentioned Section VII in the Establishment Rules and pass orders thereon and to post her in any Court nearby Tiruchirappalli, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Director of Prosecution,
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3. The Deputy Director of Prosecution,
Trichy Region,
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Tiruchirapalli -1.

+1cc to Mr.S.K.Mani, Advocate sr.no.83186

+1cc to Government Pleader sr.no.83728

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