

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MS. JUSTICE P.T.ASHA

W.A. No. 2850 of 2018

The Commissioner of Municipal Administration
Ezhiligam Annexe
Chepauk
Chennai - 600 005

.. Appellant

vs

1. C. Mathivanan
2. M. Jothikumar

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order W.P. No. 22539 of 2018 dated 04.12.2018 on the file of this Court, Petition filed Under Article 226 of Consitution of India, praying for the issuance of a Writ of Certiorarified mandamus to call for the files relating to the impugned order of transfer issued by the respondent in Roc.No. 370/2018/C1 dated 29.08.2018 quash the same and consequently, forbear the respondent from in any manner transferring the petitioner from Avadi Municipality till the expiry of three year from 9.8.2017.

For Appellant : Mr. Jayaprakash Narayanan
Government Pleader (In-charge)

J U D G M E N T

(Delivered by S.VAIDYANATHAN, J.)

Challenging the impugned order dated 04.12.2018 passed in W.P.No. 22539 of 2018, the present appeal has been filed.

2. Considering the nature of order to be passed herein, notice to respondents is dispensed with.

3. According to the learned counsel appearing for the appellant, the writ petitioner/first respondent herein was transferred from Avadi to Cuddalore and such transfer, being an incident of service, the writ petitioner/first respondent herein ought to have joined at the transferred place. He further

stated that, in the mean time, another person has been transferred to Avadi and he had joined the place on 31.08.2018 and, therefore, there was no vacancy.

4. During the pendency of the writ petition, it appears from the records that there was consent given by the appellant herein to accommodate the writ petitioner/first respondent herein in a post which was vacant at Pallavaram. However, now, it is stated by the learned Government Pleader (in-charge) that no such consent was given before the learned Single Judge and already a person is working at Pallavaram and the writ petitioner/first respondent herein cannot be accommodated at Pallavaram.

5. We cannot go into the various grounds raised by the learned Government Pleader (in-charge) appearing for the appellant as it appears from the record that the order passed by the learned Single Judge is a consent order and the learned Government Pleader has agreed before the learned Single Judge that there was a vacancy at Pallavaram and that the petitioner can be accommodated therein. Therefore, if there was no consent made, as stated by the appellant herein, the remedy is only to file review application before the learned Single Judge and not by filing an appeal.

We, therefore, do not find any merit in this Writ Appeal and the same stands dismissed. However, it is open to the appellant to file review before the learned Single Judge, if so advised. Consequently, C.M.P.No.23694 of 2018 is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ssm

To

The Commissioner of Municipal Administration
Ezhiligam Annexe,
Chepauk, Chennai - 600 005

+1 cc to Mrs.AL.Gandhimathi, Advocate, S.R.No.90078

+1 cc to the Government Pleader, S.R.No.90100

W.A. No. 2850 of 2018

KS (CO)
SSM(01/02/2019)