



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.3598 of 2018

and

W.M.P (MD) Nos.3726, 3727 and 5505 of 2018

P.Ayubkhan

... Petitioner

vs.

1.The State of Tamil Nadu
represented by its
Principal Secretary to Government,
Municipal Administration and
Water Supply (ME.1) Department,
Secretariat, Chennai.

2.The Commissioner of Municipal Administration,
Chepauk,
Chennai - 5.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned relieving order passed by the second respondent vide his proceedings Roc.No.1977/2016/C1 dated 22.01.2018 and the proceedings in G.O.(D) No.68 dated 16.02.2018 and quash the same as illegal.

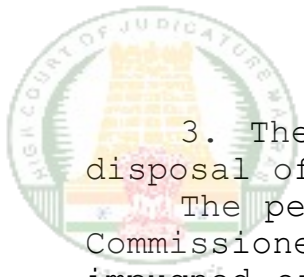
For Petitioner : Mr.Ajmal Khan senior counsel
for Ajmal Associates

For Respondents : Mr.Chellapandian
Additional Advocate General
assisted by M.Rajarajan
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorari to call for the records relating to the impugned relieving order passed by the second respondent vide his proceedings Roc.No.1977/2016/C1 dated 22.01.2018 and the proceedings in G.O.(D) No.68 dated 16.02.2018 and quash the same as illegal.

2.Heard Mr.M.Ajmal Khan, learned senior counsel appearing for the petitioner and Mr.K.Chellapandian, Additional Advocate General, assisted by Mr.M.Rajarajan, Government Advocate, appearing for the respondents.



3. The short facts, which are required to be noticed for the disposal of the writ petition are as follows:

The petitioner, against whom, while he was working as Municipal Commissioner at Kadayanallur Municipality, Tirunelveli District, the impugned order of transfer has been given, by which, the petitioner has been relieved from the office of the Commissioner of Kadayanallur Municipality and posted at Tamil Nadu Institute of Urban Studies as Faculty, at Coimbatore, on deputation basis. Challenging the said order of transfer and posting, the petitioner has moved the present writ petition with the aforesaid prayer.

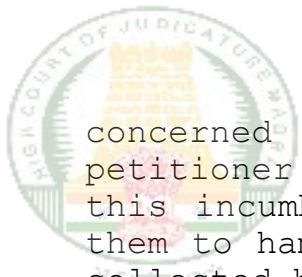
4. The learned senior counsel appearing for the petitioner would submit that, initially, the relieving order dated 22.01.2018 was issued and only after three weeks, the order of transfer has been given by the impugned order dated 16.02.2018, which shows that the petitioner has been made to compulsorily wait to get orders of posting. Before relieving the petitioner, no order of transfer has been given and therefore, the impugned order of transfer is passed, sheer, out of malafide on the part of the respondents for the reason best known to them and therefore, on the ground of malafide, the said order has to be interfered with.

5. The learned senior counsel would further submit that the petitioner is a physically challenged person and if at all for any administrative reasons, though the same is not admitted by the petitioner, he is transferred, the petitioner could have been accommodated in nearby places, instead, he has been placed in a far off place at Coimbatore from Kadayanallur, thereby, placing the petitioner in a pitiable condition unmindful of the fact that he is physically challenged. Therefore, on this ground, the learned senior counsel would assail the order of transfer.

6. Per contra, Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents, by relying upon the counter affidavit filed by the second respondent, would submit that, in October 2017, based on a reliable information, the Director, Department of Vigilance and Anti Corruption (DVAC) conducted a surprise check on 13.10.2017 at the Municipal Office, Sankarankovil, Tirunelveli District, where a joint audit was convened in respect of four Municipalities including the Kadayanallur Municipality, where the petitioner herein has been working as Municipal Commissioner.

7. The learned Additional Advocate General would further submit that, consequent to the surprise checking and on preliminary enquiry, the DVAC registered a criminal case in Crime No.16 of 2017 under Section 102 Cr.P.C., and under Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and the investigation is pending.

8. Therefore, according to the learned Additional Advocate General, it was a directive issued by the DVAC, that in the interest of continuing the investigation in the said criminal case, the



concerned officials of the said Municipality including the petitioner can be kept in some other places, as the continuance of this incumbents in the present place at Kadayanallur, would enable them to hamper the investigation by way of tampering evidence to be collected by the investigating team.

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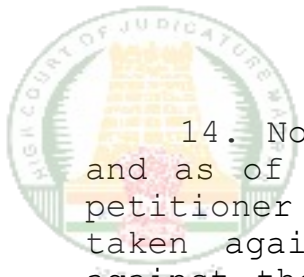
9. Therefore, the learned Additional Advocate General would submit that based on the said input received from the DVAC, immediately, all the officials, who were allegedly involved or against whom, such crime was registered, including the petitioner had been relieved and thereafter, considering the physical nature of the petitioner, as he is a physically challenged person and also considering the input received from the DVAC that the individual can be given non sensitive post in a far away place in order to prevent them from interfering in the official process, which might hamper the investigation, the respondents decided to place the petitioner in the said Institute as Faculty.

10. The learned Additional Advocate General would further submit that, equivalent to the cadre of the petitioner, that was the only post available as a non sensitive post. Therefore, he has been placed therein by way of deputation and therefore no malafide can be attributed against the officials or authorities, who passed the order of transfer against the petitioner. Therefore, the learned Additional Advocate General would submit that, this order of transfer, which was passed on the administrative exigency, that too, based on the input supplied by the DVAC, taking into account the physical nature of the petitioner, requires no interference from this Court.

11. I have considered the said rival submissions made by the learned counsel appearing for both sides.

12. No doubt, the impugned order is a transfer order, whereby, the petitioner has been posted as a Faculty in an Institute located at Coimbatore. During the tenure of the petitioner, though the petitioner had been working in other places including the place called Chidambaram, which is also a far off place from his native place, insofar as the present impugned order of transfer is concerned, it is a case of the petitioner that, if it is a mere administrative transfer, the same cannot be assailed on any other reason except the reason of want of jurisdiction or malafide or on violation of statutory rules. However, in the case of the petitioner, almost, it is a like a punitive transfer, as the very reason cited by the respondents from the counter affidavit filed herein would disclose that only based on the directive issued by the DVAC, the petitioner has been transferred to a far off place prejudicial to the interest of the petitioner from the point of view of his health condition.

13. I have considered the said submissions made by the learned senior counsel appearing for the petitioner.



14. No doubt, the petitioner is a physically challenged person and as of now, there is no direct criminal case filed against the petitioner and if at all any criminal case filed, action should be taken against him. Assuming that some enquiry is contemplated against the petitioner and others, it is open to the respondents / authorities to initiate such disciplinary action including placing the petitioner under suspension.

15. Very often this Court has underlined the requirements of taking disciplinary action, in case, any violation is noticed from the Government Servant. However, the transfer cannot be the remedy against such erring employees.

16. Though the transfer is one of the service conditions, which no employee can avoid, the same cannot be initiated on any employee by way of punishment. Because, such transfer sometime become a worst punishment and in that case, for conducting any enquiry, such kind of punitive transfer cannot be made unless some extraordinary situation arises.

17. Here, in the case in hand, the reason cited by the respondents is that the DVAC has instructed the authorities to transfer the petitioner and other persons in order to prevent them from interfering the official process, which might hamper the officials. In order to comply with the said input or directive, the authorities may transfer the petitioner, but, considering his physical condition, he could have been accommodated in a nearby place instead of a far off place, which may be a convenient one for a physically challenged person.

18. Being a physically challenged person, he has to depend his family members for all his needs. When that being the position, all of a sudden, if a physically challenged person is driven to a far off place that itself would amount to a punishment on such person and therefore, this Court is of the view that, on that ground, the placement now given to the petitioner to a far off place cannot be accepted. Therefore, in this regard, this Court feels that the impugned order can be interfered with. At the same time, since the DVAC has already registered a case, where investigation is going on and depending upon the investigation, some actions may be taken against all persons involved therein, which may include the petitioner, it may not conducive to accept that the petitioner shall also be permitted to continue in the very same place ie. at Kadayanallur unmindful of the directive/suggestions made by the DVAC people.

19. Therefore, in order to strike out the balance, this Court is of the view that, while approving the relieving of the petitioner from Kadayanallur Municipality, the posting order given to the petitioner to Coimbatore at the Institute, which is admittedly, a far off place either from the place, where the petitioner is working now or from his native place and therefore, the said placement of the petitioner cannot be approved.



20. In the result, the writ petition is disposed of with the following directions:

(i) That the order relieving the petitioner dated 22.01.2018 is sustainable and therefore, it requires no interference. However, the order dated 16.02.2018 in G.O.(D) No.68, placing the petitioner at the Tamil Nadu Institute of Urban Studies on deputation basis as Faculty is quashed ;

(ii) Resultantly, there shall be a direction to the respondents to consider the petitioner's candidature for placing him in any of the station, preferably, in the nearby areas of the native place of the petitioner or in any place, which may not be a far off place from his station.

(iii) In this regard, the petitioner can give a request immediately to the respondents giving the name of some stations as his preference. However, on receipt of the same, as far as possible, depending upon the administrative contingency, the respondents shall consider the same and may give posting to any of such station, provided, if the respondents still are not able to give or accommodate the petitioner in any of the station as per preference to be given by the petitioner, the respondents shall give posting to the petitioner to any other station, at the same time, the same shall not be far away from his original station.

(iv) The needful, on receipt of such request shall be done by the respondents within a period of two weeks and on receipt of such posting from the respondents, the petitioner shall forthwith join in the newly transferred place without any delay.

(v) This order is passed taking into account the physical condition of the petitioner. Therefore, this order shall not be taken as a precedent by any other employee, who is similarly placed like, the petitioner, pursuant to the DVAC proceedings initiated now.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Municipal Administration and Water Supply (ME.1) Department,
Secretariat, Chennai.

2. The Commissioner of Municipal Administration, Chepauk, Chennai-5.
+1CC to M/s. Ajmal Associates, SR.No. 62089

+1CC to the Special Government Pleader SR.No. 62167, 62189

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