



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.07.2018
CORAM
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.[MD]No.11137 of 2018
and

W.M.P.[MD]Nos.10191 & 10192 of 2018

P.Prema : Petitioner

Vs.

1.The Vice Chancellor,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.
Coimbatore District.

2.The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.
Coimbatore District.

3.The Dean,
Agricultural College and Research Institute,
Madurai - 625 104. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to impugned proceedings in No.R3/04088 (CSC) 2018 dated 13.05.2018 on the file of the second respondent and quash the same as illegal and arbitrary and consequently direct the respondents to allow the petitioner to continue the third respondent's college within the time limit that may stipulated by this Court.

For Petitioner : Mr.Veera Kathiravan
Senior Counsel
for Mr.A.D.Ganeshamoorthi
For Respondents : Mr.A.Thirumurthy
Standing Counsel

ORDER

The prayer sought for in this Writ Petition is for a Writ of Certiorarified Mandamus, to call for the records relating to impugned proceeding in No.R3/04088 (CSC) 2018 dated 13.05.2018, on the file of the second respondent and quash the same as illegal and arbitrary and consequently to direct the respondents to allow the petitioner to continue in the third respondent's college.

2.Heard Mr.Veera Kathiravan, learned Senior Counsel for Mr.A.D.Ganeshamoorthi, learned Counsel appearing for the petitioner and Mr.A.Thirumurthy, learned Standing Counsel appearing for the respondents.



3. Challenging the order of transfer dated 13.05.2018, issued by the respondent University, the present writ petition has been filed.

4. The petitioner was appointed as Assistant Professor in Computer Science at the respondent university college at Madurai. From the said appointment, the petitioner had been continuously working for the past eleven years only at Madurai and she has never been subjected to any transfer, so far.

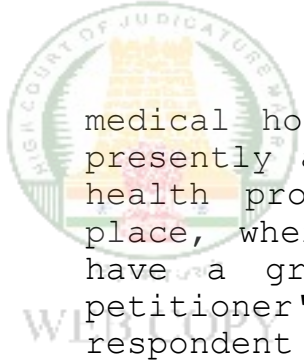
5. While that being so, some of the teaching faculties like the petitioner, were entitled to and eligible to get academic elevation to get higher grade pay from Rs.7000/- to Rs.8000/- in the same pay band of Rs.15,6000 - 39,100. Such a financial elevation with academic grade pay had been conferred on those faculties including the petitioner.

6. In view of such elevation, the faculties, including the petitioner had been subjected to transfer or posting. Accordingly, the impugned order dated 13.05.2018, was issued, where 10 faculties had been either posted in the same institute in the same post or had been transferred and posted in different institutes under the first respondent university.

7. In the said order dated 13.05.2018, the petitioner, being the Assistant Professor (Computer Science), Department of Agricultural Economics, AC&RI at Madurai had been transferred as Assistant Professor (Computer Science), to Kudumiyamalai, Pudukottai District. Challenging the said order only, the petitioner has approached this Court.

8. I have heard Mr. Veera Kathiravan, learned Senior Counsel for the petitioner who would submit that, the impugned order of transfer is challenged on two grounds. According to the petitioner, the first ground of challenge is that, in the impugned order, ten such faculties who had also been given similar financial elevation like the petitioner had been given either transfer or posting. In this regard, except the petitioner and another person, all other faculties, after financial elevation, had been posted in the same place. Only in respect of the petitioner and another person, transfer and posting had been given and therefore, the learned Senior Counsel for the petitioner would submit that, if the yardstick adopted in respect of others is adopted, the petitioner could not have been transferred and the respondents by way of pick and choose had chosen, the petitioner and another person only from the present place to post some other place and in respect of all others, they maintained the status quo that is, even after financial elevation, they have been posted in the same institute. Therefore, learned Senior Counsel for the petitioner would submit that, the order impugned is arbitrary, as it violates Article 14 of the Constitution of India.

9. The second ground raised by the learned Senior Counsel for the petitioner in assailing the impugned order is that, the petitioner has been suffering with some nephrology problems and as a result, she had been continuously taking treatment. Since best



medical hospitals are available in Madurai, where she is working presently and where she can take treatment regularly for the said health problem, if the petitioner is transferred to some other place, where such medical facilities are not available, that will have a great impact on her health condition. That apart, the petitioner's husband is working in the institute under the first respondent at Kudumiyamalai and therefore, the petitioner's husband had already given a request for transferring him to Madurai to join with his family but, the respondents had chosen to transfer the petitioner from Madurai to Kudumiyamalai. These are all the two grounds mainly raised on the petitioner's side for attacking the impugned order of transfer.

10. Per contra, Mr. A. Thirumurthy, learned Standing Counsel appearing for the respondent University would submit that, the petitioner, admittedly had been in the same institute and the same station from the date of her appointment i.e., from 2007. For the past 11 years, the petitioner had been working in the said institute without subjected to any transfer. At the time of financial elevation, the respondent University had given an option to each of the faculties, who have been benefited with the financial elevation, to give postings / transfer to various institutions run by the first respondent University and in this regard, the three institutions with order of priority had been sought for from each of such faculties including the petitioner. Pursuant to the said option, the petitioner had exercised her option by giving an undertaking on 11.05.2018, which reads thus:

"UNDERTAKING"

If I am elevated to the Higher Academic Grade Pay from Rs.7000/- to Rs.8000/- [i.e., stage 2 to 3], I am willing to work anywhere in Tamil Nadu Agricultural University [i.e., Constituent Colleges of TNAU] as per Sl.No.5 (9) [under "Qualification and Methods of Recruitment] of Chapter-III of ASR of TNAU irrespective of my domestic / official reasons.

Sl.No.	Constituent Colleges of TNAU / Station
1.	Agricultural College & Research Institute, Madurai
2.	Community Science College & Research Institute, Madurai.
3.	Horticulture College & Research Institute, Periyakulam

Signature with date : Sd/-

Name & Designation

with present office : P.PREMA

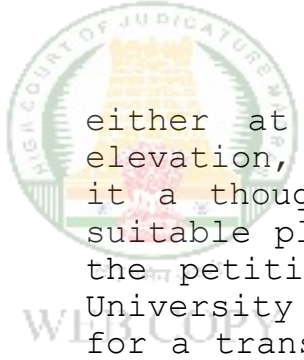
Assistant Professor (Computer Science)
Dept. of Agrl. Economics AC&RI, Madurai

Mobile No. : 9486824421

E-mail ID : pp76@tnau.ac.in"

<https://hcservices.ecourts.gov.in/hcservices/>

11. Eventhough, the petitioner had given three options either at Madurai or at Periyakulam, since there had been no vacancy available



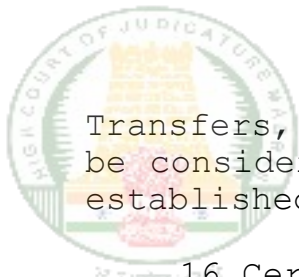
either at Madurai or at Periyakulam, because of the financial elevation, given to the petitioner, the respondent University given it a thoughtful consideration to accommodate the petitioner in a suitable place. In this regard, it is note worthy to mention that, the petitioner's husband also working under the first respondent University college, at Kudumiyannmalai, from where he already sought for a transfer to Madurai. Since both husband and wife are working under the respondent organisation and the petitioner's husband already sought for transfer from Kudumiyannmalai to Madurai, which was not feasible of compliance, in order to enable the spouse to join together, the petitioner has been transferred and posted at Kudumiyannmalai, where the petitioner's husband is already working. Therefore, after having considered the difficulty expressed by the petitioner, the transfer and posting has been given to the petitioner, through the impugned order, at Kudumiyannmalai, which is the place of her husband.

12.The learned Standing Counsel appearing for the respondent University would further submit that, since the petitioner has been working in the very same institute for the past eleven years, she cannot claim any immunity from transferring her from the present station. The transfer is one of the service condition and no one can avoid the same. The transfer is not made out of any mala fide intention nor for any ulterior motive and the transfer is necessitated because of the elevation given to her, which the petitioner knowingly accepted by giving an undertaking on 11.05.2018, that on giving such elevation, the petitioner can be transferred to some other place for which the petitioner had already given option. Merely because the petitioner had given an option to a place where she is already working or a nearest place where there is no vacancy, there is no compulsion for the employer to accommodate the petitioner only in that place where she had given option.

13.The learned Standing Counsel appearing for the respondent University would submit that, taking into consideration the overall scenario and taking into account that the spouse of the petitioner is working in yet another institute run by the respondent university, it had decided to give transfer to the petitioner to Kudumiyannmalai and therefore, the said transfer has been given to the petitioner only as a beneficial transfer and therefore, the same cannot be assailed for any of the reasons cited by the petitioner in the writ petition.

14.I have considered the submissions made by both sides and I have perused the materials placed before this Court.

15.Before toiling the issue raised in this writ petition, this Court wants to emphasize that the Courts would normally be slow in interfering with transfer matters. Transfer is one of the inevitable service condition of any employee and no one can escape from the clutches of transfer throughout his or her service carrier.



Transfers, if made on any administrative exigencies, the same cannot be considered to be an order which is in violation of any procedure established in this regard.

16. Certain exceptions are there on this general Rule which is that transfer can be interfered on three major grounds:

- i) Want of jurisdiction.
- ii) Violation of statutory provision.
- Iii) Mala fide transfer.

17. If the present order is not fit in any of these three major grounds, then it cannot be construed that the transfer is liable to be interfered with. Herein the case on hand, the transfer order was issued by the competent authority and since no statutory rule has been violated, the transfer order cannot be stated as an order issued out of any mala fide.

18. Merely because some of the faculties have been retained in the same institute, the petitioner cannot claim similar position by invoking Article 14 of the Constitution of India. If similarly placed persons are treated unequally without any plausible reason that too in an arbitrary and unjustifiable manner, then only question of invoking of Article 14 would arise. Herein in the case on hand, the impugned order which is the order of transfer that too after having given the financial elevation to the petitioner, it had been given. Before such elevation, the petitioner has been put on notice that on conferring such financial elevation, certainly, the petitioner would be subjected to transfer and therefore, option was give to the petitioner to express her willingness to be transferred to various places according to her priority. Pursuant to which, the petitioner also had given her undertaking, where the first and second option though was given by the petitioner to be retained at Madurai, it cannot be stated that the petitioner should be retained only at Madurai.

19. Moreover, while considering the request of the petitioner, the respondents, since they were not able to give postings as preferred by the petitioner either at Madurai or at Periyakulam, they have consciously decided to post the petitioner at Kudumiyamalai, where the petitioner's husband is working already in the institute where the petitioner is going to join. Therefore, it cannot be treated as a mala fide transfer also. Therefore, the three grounds under which the transfer order can be assailed is not available to the petitioner. On the side of the health ground, eventhough it was pleaded by the learned Senior Counsel for the petitioner that she has to take periodical treatment from the hospital at Madurai, since it is a routine nephrological health problem treatment can be taken from any hospital available in this regard. The petitioner can very well take treatment either at the hospital nearby to the present station where she is posted or she can take the very same treatment from any other best hospital available either at Trichy or at Madurai. Since the place where the



petitioner now posted is not to be considered as a far of place, the said transfer cannot be considered to be a prejudicial transfer to the petitioner. Therefore, this Court is of the firm view that the impugned order of transfer cannot be challenged. Therefore, the said order cannot be considered to be an order which requires interference from this Court. Accordingly, the challenge fails.

20. During the hearing, if at all the petitioner for the health ground or for the reason of children studying in the schools and that in the middle of the academic year, if the petitioner is disturbed, since already the father of the children also is working in Kudumiyamalai station, the young children who are going to school would get affected, therefore, in this regard, when this Court wanted a clarification from the respondent side that whether the petitioner can be retained in the present station till May 2019, the learned Standing Counsel appearing for the respondent University submitted that, since it is an elevation given to the petitioner, of course, by way of financial elevation of Rs.7,000/- to 8,000/- unless the petitioner relinquish her elevation, it may not be possible to retain the petitioner at Madurai.

21. In this regard, the learned Senior Counsel appearing for the petitioner, after having obtained instructions from the petitioner submitted that, the petitioner would be willing to relinquish the present financial elevation through which the grade pay has been enhanced from Rs.7,000/- to 8,000/-.

22. At the same time, the learned Senior Counsel for the petitioner would submit that, merely because the present financial elevation is relinquished, it shall not affect the future promotional avenues and service benefits throughout her carrier.

23. In this regard, the learned Standing Counsel appearing for the respondent University has obtained written instructions, which read thus:

"Sir,

The opinion of the University sought for over phone today in respect of W.P.(MD)No.11137 of 2018, the following remarks are submitted by the University for favourable consideration.

- In case, the individual Mrs.Prema, Assistant Professor is prepared to forego the present elevation to next stage given (i.e. from Academic Grade Pay)AGP) Rs.7000/- to Rs.8,000/-), she will be permitted to continue in the same-post in the same place (AC & RI, Madurai).
- In the coming year, she will be transferred to Kudumiyamalai for administrative reasons since there is necessity of Computer Science teacher at AC & RI, Kudumiyamalai.



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- In case, the individual foregoes the present elevation, she has to apply afresh for elevation and appear for interview for her elevation from AGP Rs.7000/- to Rs.8000/- while advertised for the said purpose in future, to consider her for elevation to next stage.
- In respect of the possibility of continuation of the individual in the same place till superannuation in case of foregoing all the promotion aspects of her career, it is submitted that the Tamil Nadu Agricultural University is restrained to consider the said option for administrative reasons, since keeping an employee in the same place for ever is detrimental to the academic / administration.
- Hence, it is submitted to inform that in the present case the Tamil Nadu Agricultural University is prepared to consider the first option alone. (i.e.) permitting the individual to continue in service at AC & RI, Madurai during this academic year (i.e.) upto March / April 2019 year if the individual foregoes and relinquishes her elevation from AGP Rs.7000/- to Rs.8000/- and for her further elevation, her service in the AGP of Rs.8000/- shall be considered only from the next elevation.

Sd/-
REGISTRAR"

24. In view of the said position, as has been clarified by the respondent University that the first option i.e., if the petitioner relinquish or prepare to forego the present elevation to next stage given, i.e., from academic grade pay Rs.7,000/- to 8,000/-, she will be permitted to continue in the same post in the same place for the current academic year i.e., upto March 2019, would be accepted.

25. When this was specifically placed before the petitioner, the learned Senior Counsel for the petitioner on having gone through the same on behalf of the petitioner has agreed that the petitioner is ready and willing to accept the said proposal submitted by the respondent University.

26. In view of the said development, this Court, while rejecting the challenge made by the petitioner to the impugned order, passes the following order taking into account the aforesaid development and the agreement reached between the petitioner and the respondent:

26.1. The undertaking given by the petitioner through the learned Senior Counsel for the petitioner that she will forego the present elevation to the next stage i.e., Rs.7,000/- to Rs.8,000/-, is hereby recorded.



26.2. In view of such relinquishment of the financial elevation, as set out above, by the petitioner, the respondent shall permit the petitioner to continue at the present station and at the present position ie., at Madurai, till May 2019.

26.3. With regard to the future financial elevation, or for further promotional or other service benefits, the petitioner shall make fresh request to the respondents after one year and the same at that time shall be considered by the respondent University on merits and decision would be taken thereon.

26.4. In view of the aforesaid orders, the impugned order issued by the respondent University insofar as the petitioner is concerned shall not be given effect to.

26.5. It is made clear that after 31st May 2019, it is open to the respondent University to take any decision with regard to the transfer of the petitioner.

27. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

+1CC to Mr.A.D.Ganeshamoorthi, Advocate, SR.No.70966

+1CC to Mr.A.Thirumurthy, Advocate, SR.No.70880

W.P.[MD]No.11137 of 2018

03.07.2018

MR

ES/SKN/RSK/SAR 1/08.11.2018/8P/3C