



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2018

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.18021 of 2018

and

W.M.P.(MD).No.15906 & 15907 of 2018

Charly Fedrick Alwin

.. Petitioner

Vs.

The PA to the District Collector (Development)
District Collectorate,
Karur District,
Karur.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the respondent relating to his impugned transfer order in Naka.Pava4/1848/2018 dated 02.08.2018 and quash the same.

For Petitioner	:	Mr.S.Deenadhayalan
For Respondent	:	Mr.S.Dhayalan
		Government Advocate

O R D E R

The petitioner has come forward with this writ petition, challenging the impugned transfer order, issued by the respondent in Naka.Pava4/1848/2018, dated 02.08.2018 and quash the same.

2.The case of the petitioner is that he has joined the Government service on 10.08.2007 and that he has been transferred on 20.07.2017, while working as Junior Assistant at Thogamalai Panchayat Union to the present Kulithalai Panchayat Union. According to the petitioner, he has been transferred several times during the last 10 years of service. According to him, his father was 75 years old, his mother has passed away and he has to take care of his family, at Trichy, including two children. G.O.Ms.No.10 (Personnel and Administrative Reforms (Personnels) Department, dated 07.01.1994 has clear instructions to be followed while effecting transfers of Government servants in Group A, B and C, which reads as follows:

"I. GENERAL TRANSFERS TO BE EFFECTED DURING A SPECIFIC PERIOD ONLY.

i)As a general policy, all transfers due shall be effected only during the "transfer period", namely, between



the 1st April and the 30th June, every year. But the transfer mutual transfers may be processed and kept ready for issue of orders towards the end of, or immediately after the close of, the financial year. In cases where orders of transfer are to be issued by the Government under normal procedure, the Heads of Department should send proposals sufficiently in advance so as to effect the transfers during the transfer period.

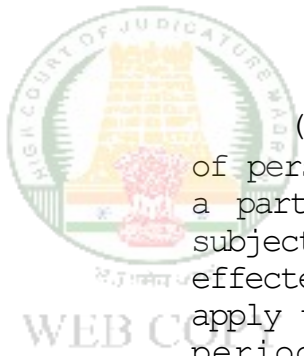
ii) (a) During the "non-transfer period", namely, between the 1st July and the 31st March next, transfers necessitated on account of promotion including recruitment by transfer (which has the effect of promotion) may be ordered, i.e. direct to the place where vacancy already exists. Similarly transfers, if any, necessitated by reversion may also be ordered, i.e. direct to the place where the junior most in that category is working or where vacancy already exists.

(b) Persons returning from leave or on revocation of suspension who have to be given postings shall be posted to vacant posts only, and if vacant posts are not available, they shall be posted to the place where the junior most person is working, so that the junior most person can be reverted. Such reverted person also shall be given posting following a similar procedure.

(iii) Vacancies arising during the "non-transfer period" shall be managed by making local additional charge arrangements until the next transfer period or until the post is filled up by promotion including "recruitment by transfer" or by direct recruitment, whichever is earlier (but not by transfer from equivalent category).

II. GENERAL POLICY OF TRANSFER OR CHANGE OF POST ONCE IN 3 YEARS.

(iv) During the "transfer period", persons who have already completed a service of 3 years or who would complete a service of 3 years as on 30th June next, shall be subjected to transfer to another seat or post, as the case may be subject to the condition that the transfer is to a vacant seat or post or the incumbent of the latter seat or post is also due for transfer under these instructions. Where a person has completed a service of 3 (three) years in a particular post or seat and he has no other post outside to be transferred to (as in the Secretariat), a change in the seat or post within the same office/ institution shall be given. In the case of junior officials like Junior Assistants, Typists, Assistants, etc. transfer to a different station may generally be considered only if there is no other suitable post in the same station to accommodate them under these guidelines.



(V) However, the three-year-rule may be relaxed in the case of persons holding certain posts for specified periods as a part of the requirement of training or for similar reasons, subject to the condition that their transfers also shall be effected only during the normal transfer period. This will not apply to persons who are deputed for mere training for specified periods.

(vi) Specific orders of Government shall be obtained if transfers of the following types are considered essential; and proposals therefor shall be submitted sufficiently early for issue of orders during the transfer period:-

- (a) Cases of transfers of State Service Officers who have not completed a service of one year in the same station. Specific and valid reasons for such transfers should be reported.
- (b) Cases of State Service Officers who are proposed to be retained in the same post beyond the "transfer period" when transfers are normally due in their case as per these instructions. The period upto which further retention is required should be specified with valid reasons.
- (c) Cases of Subordinate Service Officers who are proposed to be retained in the same seat/post/station beyond 5 (five) years. The period Upto which retention beyond 5 (five) years is required should be specified with valid reasons.
- (d) Cases of Subordinate Service Officers who have not become due for transfer from their post as per these instructions but who are proposed to be transferred. Specific and valid reasons for such transfers should be reported.
- (e) Cases of State Service Officers for whom the Head of Department has been delegated with powers to order transfer, where the officers have not become due for transfer but it is proposed to transfer them. Specific and valid reasons for such transfers should be reported.
- (f) Cases of subordinate Service Officers who are proposed to be retained in the same seat/post/station beyond their normal transfer period but upto five years. Specific and valid reasons for such transfers should be reported.

The Heads of Department should ensure that the subordinate Transferring Authorities do not violate the above requirements. Any violation should be brought to the notice of the Government immediately.



(vii) These guidelines do not apply to transfers of the following types of officers/cases:

(a) Officers of the All India Services;

(b) Heads of Department (non I.A.S.) or equivalent Officers.

(c) Personal staff of the Governor, the Chief Minister and other Ministers,

(d) Government servants in Group 'D' posts.

(e) Transfers within the same office Provided that a person is not allowed to continue in the same seat for more than three years.

(f) In cases where severe allegations are pending enquiry, when it is considered necessary in the public interest, and sufficient in lieu of suspension; that the officer may be transferred. In that case, transfer shall be effected to a vacant post in another station or to the post where the junior most person of the same category is working.

g) Transfers necessitated on account of any emergency or natural calamity when existing manpower in any area is not adequate to handle the situation, or surplus manpower has to be moved out.

(viii) Cases of the following types need not be submitted to Government unless required under any rules/other orders in force:

a) Mutual transfers.

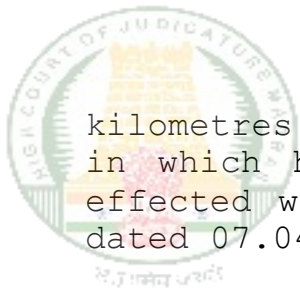
b) Request transfers to stations where vacant posts exist.

c) Reposting on expiry of leave, on revocation of suspension, etc.,

d) Transfers necessitated on account of promotion/ reversion of the individual concerned.

However, mutual transfers and request transfers shall also be effected only during the transfer period."

3. It is stated by the petitioner that part II of the above G.O deals with General Transfers and that transfer will have to be effected once in three years and it is very unfortunate that after completion of one year (less than three years), the present impugned order has been issued, transferring the petitioner to some other place. Travel to the present place from Trichy is approximately 50



kilometres and that he has to travel 75 kms from Trichy to the place in which he has been transferred. Hence, the transfer has been effected with *malafide* intention and not in terms of G.O.Ms.No.10, dated 07.04.1994 and the same has got to be interfered with.

4.The case of the respondent is that the transfer is purely on administrative ground and that the amount that may be collected by the petitioner has to be deposited at the Panchayat Head and Government Head and that not even a single person is working in Thogamalai. He further submitted that G.O.M.S.No.10/1994 may not be applicable to the present case, as exemption can be drawn. In view of the same, the order of transfer need not be interfered with.

5.It is an admitted fact that the petitioner was transferred by way of the present impugned order and he was on earlier occasion transferred in the year July 2017. Though the General Transfer from the same post is once in three years, there is an exemption in General Transfer. Even though it is contended by the petitioner that he has been transferred even within non-transfer period, the transfer necessitated on account of vacancy that exists can be made during non-transfer period also. That apart the Honourable Apex Court, in the case of **Rajendra Roy Vs Union of India and Another** reported in (1993) 1 SCC 148, held that malafides has got to be noted and proved. But in the present case, the same has not been done. Hence, this Court is of the view that the order of transfer is purely on administrative ground. Hence, the same need not be interfered with.

6.Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-II)

To:

The PA to the District Collector (Development)
District Collectorate,
Karur District,
Karur.

+ 1 CC TO Mr.S.DEENADHAYALAN, ADVOCATE IN SR No. 79335
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 79135

VS

TE/RSK/SAR-2 : 24/09/2018 : 5P/4C

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

W.P. (MD) No.18021 of 2018
16.08.2018