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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.1197 of 2016

and

W.M.P. (MD) Nos.981 & 6105 of 2016

M.Arivalagan

... Petitioner

Vs.

1.The Director of Municipal Administration,
Chennai - 600 005.

2.The Regional Director of
Municipal Administration,
Tirunelveli.

3.The Commissioner,
Usilampatti Municipality,
Usilampatti,
Madurai District.

4.The Commissioner,
Padmanabhapuram Municipality,
Padmanabhapuram,
Kanyakumari District.

5.R.Ganesh

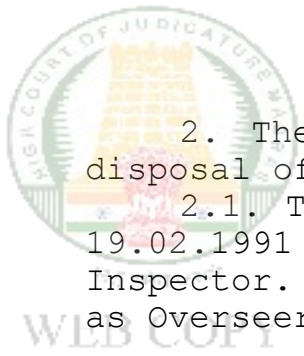
... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus calling for the records pertaining to the impugned transfer order passed by the 1st respondent in Roc.No.1377/2014/F3-1, dated 12.01.2016, quash the same, and consequentially direct the respondents 1 to 4 to permit the petitioner to continue his services in the same place.

For Petitioner : Mr.M.Siddharthan
For R.3 : Mr.K.Mahendran,
Standing Counsel

ORDER

The prayer sought for in this writ petition is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned transfer order passed by the 1st respondent in ROC.No.1377/2014/F3-1, dated 12.01.2016, quash the same, and consequentially direct the respondents 1 to 4 to permit the petitioner to continue his services in the same place.



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

2.1. The petitioner was appointed as NMR Technical Assistant on 19.02.1991 and absorbed into regular services on 20.05.2007 as Work Inspector. Thereafter, in the year 2008, the petitioner was promoted as Overseer in the Public Works Department, Alanthoor Municipality.

2.2. In the year 2012, the said Alanthoor Municipality merged with Chennai Corporation, therefore, the petitioner exercised his option to remain in the parent department, i.e., the Municipal Administration and Water Supply Department. As per the said option exercised by the petitioner, on 02.03.2012, the petitioner was posted as Public Works Overseer in the Usilampatti Municipality, i.e., the third respondent herein. From then onwards, the petitioner has been working in the said Municipality.

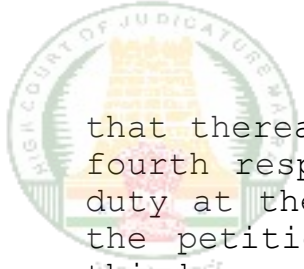
2.3. The fifth respondent, who was working as Tap Inspector in the same Municipality, was promoted as Public Works Overseer on 30.10.2015 and he was posted at the fourth respondent Municipality. Immediately after his promotion and posting at Padmanabhapuram Municipality/the fourth respondent herein, the fifth respondent, within a span of three months, has been transferred to the third respondent Municipality by the impugned order dated 12.01.2016, thereby, the petitioner was also transferred from the third respondent Municipality to the fourth respondent Municipality. Challenging the said transfer order dated 12.01.2016, the petitioner has filed this writ petition, wherein, by order dated 20.01.2016, this Court has granted an interim order of stay.

3. The case of the third respondent Municipality, who filed the vacate stay petition, is that, the petitioner joined in the third respondent Municipality in the year 2012 itself and from then onwards, he had been working in the third respondent Municipality. Therefore, after 3½ years, during the general election period in the year 2016, as per the directive of the Election Commission, those employees who had been working for more than three years in same station has to be transferred, the petitioner was considered to be transferred from third respondent Municipality and accordingly, by the impugned transfer order, he has been transferred from third respondent Municipality to fourth respondent Municipality, in turn, the fifth respondent, who was working at the fourth respondent Municipality was transferred to the third respondent Municipality.

4. It is the further case of the third respondent Municipality that, though the transfer order was passed on 12.01.2016 and on coming to know about the transfer order passed by the first respondent, whereby, the third respondent Municipality was directed to relieve the petitioner, the petitioner applied leave on 13.01.2016 with medical certificate without disclosing his residential address and left the office.

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

5. It is the further case of the third respondent Municipality



that thereafter, the fifth respondent, having been relieved from the fourth respondent Municipality on 14.01.2016, had come and reported duty at the third respondent Municipality on 18.01.2016. Therefore, the petitioner was relieved in the Forenoon on 18.01.2016 at the third respondent Municipality, where, the fifth respondent was permitted to join, accordingly, he joined on 18.01.2016, at the third respondent Municipality and has been working there.

6. It is also the case of the third respondent Municipality that since the petitioner had applied leave from 13.01.2016 onwards and he has also left without disclosing his location and residential address, the third respondent Municipality was not able to serve the relieving order dated 18.01.2016. However, the same was pasted on the residential accommodation of the petitioner at Usilampatti only on 27.01.2016.

7. In the meanwhile, the petitioner filed this writ petition on 19.01.2016 and obtained an interim order of stay on 20.01.2016. According to the third respondent Municipality, in fact, after passing the relieving order dated 18.01.2016, since the same was not able to be served on the petitioner, as his residential address at local, i.e., at Usilampatti, was not known to the third respondent, based on the address particulars available in the Service Records, the said relieving order dated 18.01.2016, had been sent through Registered Post to the petitioner to his native address, where, the said letter has been returned with an endorsement that the petitioner left.

8. Subsequently, on 23.03.2016, the third respondent filed vacate stay petition. Before taking up the vacate stay petition, the petitioner filed a contempt petition in Cont.P.(MD)No.314 of 2016 and when the contempt petition came up on 11.04.2016, on behalf of the third respondent Municipality, it was informed that before the interim order of stay granted by this Court on 20.01.2016, the petitioner was relieved on 18.01.2016 itself, therefore, the interim order could not be complied with and in this regard, since vacate stay petition was also filed by the third respondent, a request was made on behalf of the third respondent Municipality to take up both the vacate stay petition as well as contempt petition together.

9. According to the learned Standing Counsel appearing for the third respondent Municipality, though persistent effort has been taken to bring both the contempt petition along with the writ petition together for hearing, their attempt was not materialized, with the result, both the writ petition as well as contempt petition are pending before this Court.

10. On the side of the petitioner, the learned Counsel would submit that, on his part, he has also made effort to bring the main writ petition for hearing, as the interim order of stay dated 20.01.2016 was not complied with by the respondents, especially, the third respondent and the contempt petition filed in this regard by



the petitioner is also pending consideration, however, the said effort taken by the petitioner also has not been materialized. The resultant situation is that the stay granted on 20.01.2016, is continuing and/or in force till today.

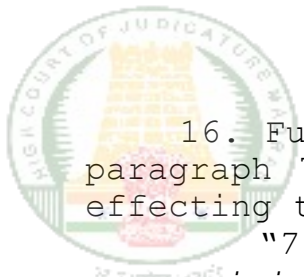
11. Only in the circumstances, the learned respective Counsel made the aforesaid submissions stating that, the impugned order of transfer passed by the respondents was not given effect to by giving any effective relieving order before he gets stay on 20.01.2016. However, the learned Counsel for the third respondent Municipality would submit that on 18.01.2016 itself, the petitioner was relieved from duty, as the fifth respondent joined the said place of the petitioner at the third respondent Municipality and the said relieving order, though was attempted seriously, could not be served because of want of residential address at local, which was not given wantonly by the petitioner and at any rate, the said relieving order was sent through Registered Post, the same could not be served, as the petitioner was also not available in the native place, therefore, the third respondent Municipality pasted the relieving order at the residential portion of the petitioner at the third respondent Municipality on 27.01.2016. Thereafter, immediately, the third respondent filed vacate stay petition in March, 2016 and the same is pending all along.

12. The learned Counsel appearing for the petitioner would submit that the impugned order of transfer was passed only to accommodate the fifth respondent in that place. He would further submit that, the fifth respondent was originally working under him and thereafter, on promotion, he was posted to fourth respondent Municipality, just 2½ months back and immediately, on his request, in order to accommodate the fifth respondent at the third respondent Municipality, this transfer order was issued and therefore, the interference of this Court in such a *malafide* transfer order is very much required.

13. I have heard the said rival submissions made by the learned Counsel on either side.

14. Admittedly, the impugned order is an order of transfer and the law is well settled in this regard. When an order of transfer is assailed before the Court of law, there are certain limitations to the Court to interfere with the transfer orders, such as, want of jurisdiction, *malafide* and also violation of statutory provision/rules.

15. Here, in the case on hand, admittedly, the petitioner joined in the third respondent Municipality in the year 2012 itself and had been working there till 2016. Therefore, he had been completed three years of service at the third respondent Municipality and moreover, on perusal of the impugned transfer order issued by the first respondent, it discloses that the said transfer order has been made on administrative contingencies.



16. Further, the third respondent, in the counter affidavit, at paragraph 7, has stated the following reasons for giving the order effecting transfer against the petitioner, which reads thus:

"7. I state that the petitioner joint 3rd respondent municipality 02.03.2012 and he has been working in the place for more than 3 years. Further in view of ensuing General Elections, Government, has instructed to transfer all the persons who have been working in the same place for more than 3 years. Accordingly the petitioner who comes under the said category and the resultant place was kept vacant since no other person opted for the place the 5th respondent was transferred to the 3rd respondent municipality vice versa the petitioner was also transferred to the 4th respondent municipality. Therefore the transfer is purely on administrative grounds and not to accommodate the 5th respondent as alleged by the petitioner."

17. On a perusal of these reasons, this Court finds no infirmity in the impugned order of transfer, as it cannot be treated as a *malafide* transfer, nor it can also be treated as an order without jurisdiction or violation of any statutory rules. When that being the position, interference in the impugned order of transfer is hardly available and therefore, no indulgence can be shown against the said impugned order of transfer.

18. Be that as it may, the fact remains that this Court has shown its indulgence as *prima facie* case made out by the petitioner at the time of admission of the writ petition stating that in order to accommodate the fifth respondent, the impugned order of transfer was issued, based on such *prima facie* case, this Court shown its indulgence and granted an order of interim stay on 20.01.2016. The said order of interim stay, admittedly, is in force till today.

19. Though, subsequently vacate stay petition was filed on behalf of the third respondent Municipality on 23.03.2016 and thereafter, the contempt petition filed by the petitioner came up for hearing some time in April, 2016, thereafter, neither the vacate stay petition nor the contempt petition had been taken up for hearing and admittedly, both the cases are pending till today. Only now, at the request of the third respondent Municipality, this Court has taken up the vacate stay petition filed in March, 2016. In this regard, even though it is submitted by the learned Counsel for the petitioner that consistent effort has been taken by the petitioner side to bring up these cases for hearing, the fact remains that these cases have not been taken up for hearing and they are pending for more than a year. In the result, the petitioner has not been working, admittedly, from the date of transfer, i.e., 12.01.2016, till date. In one side, the petitioner obtained interim stay on 20.01.2016, whereas, according to the third respondent Municipality, he was relieved on 18.01.2016, however, the petitioner maintains that no relieving order was served till he obtained an order of interim stay from this Court. There are some force on the said



submission made by the learned Counsel appearing for the petitioner, because of the fact that, admittedly, the relieving order was not served on the petitioner and well before the said order having been pasted at the residence of the petitioner, he was able to get an order of interim stay on the impugned order on 20.01.2016. Therefore, we cannot put a blame on the petitioner that he obtained the interim stay, after having been served with the relieving order. Therefore, this aspect can be decided in favour of the petitioner.

20. At the same time, since the impugned order of transfer cannot be fit in with any of the infirmities like, want of jurisdiction, *malafide* and violation of statutory rules, the impugned order can very well be sustained and therefore, the same cannot be interfered with.

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

- (i) that the impugned order is sustained and therefore, the challenge made against the said impugned order fails;
- (ii) nevertheless, since interim stay was granted against the impugned order on 20.01.2016 and admittedly, the said interim order has not been vacated, expressly, inspite of the vacate stay petition having been filed on 22.03.2016 and the said interim order against the impugned order is in force till today, no blame can be put against the petitioner for not joining duty either in the third respondent Municipality or in the fourth respondent Municipality;
- (iii) therefore, the petitioner shall report to the fourth respondent Municipality forthwith, without waiting for the orders of this Court and on such reporting, the fourth respondent Municipality shall take the petitioner into service;
- (iv) the period from 12.01.2016 till he joins in the fourth respondent Municipality, shall be regularised by the respondents with salary to the petitioner;
- (v) if the post at fourth respondent Municipality is already filled up by any incumbent during this period, it is open to the first respondent to give posting orders to the petitioner in any of the vacant place, forthwith.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar (CS-I)

To

1. The Director of Municipal Administration,
Chennai - 600 005.



2.The Regional Director of
Municipal Administration,
Tirunelveli.

+1cc to Mr.M.SIDDARTHAN, Advocate, SR.No. 62225

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