

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.546 of 2019

M.S.SivaKumar

..Petitioner

vs

1. Collector  
Kancheepuram District  
Kancheepuram.
2. Block Development Officer,  
(Village Panchayat)/Special Officer  
St.Thomas Mount Panchayat Union  
At Chitlapakkam  
Chennai 600 064.
- 3.Vengaivasal Panchayat  
Vengaivasal  
Chennai 600 126.
- 4.M.J.Ruban Abraham  
Secretary  
Gowl Bazar Panchayat  
St.Thomas Mount Panchayat Union  
Gowl Bazar  
Pallavaram  
Chennai 600 043.

.. 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 concerned records from the 1<sup>st</sup> respondent, quash the order of the 1<sup>st</sup> respondent dated 28.12.2018 bearing Se.Mu.Na.Ka.No.26913/2012/Pa.B2 and consequently direct the 1<sup>st</sup> respondent to retain the petitioner in the 3<sup>rd</sup> respondent Panchayat.

For Petitioner : Mr.Balan Haridas

For Respondents: Mr.R.S.Selvam  
Government Advocate for RR1 to 3.  
Mr.K.Venugopal  
for R4.

O R D E R

The order dated 28.12.2018 transferring the writ petitioner from Vengaivasal Panchayat to Injambakkam Panchayat is under challenge in the present writ petition.

2. The order of transfer states that the same was issued on account of the administrative grounds. The learned counsel for the writ petitioner states that the District Collector has no jurisdiction to issue an order of transfer, transferring the writ petitioner within the block. The said contention is disputed by the learned Additional Government Pleader appearing on behalf of the respondents by stating that Section 104 of the Tamil Nadu Panchayats Act empowered the District Collector to pass an order of administrative transfer and Section 104 which reads as under:

104. Transfer of officers and servants of Village Panchayats and Panchayat Union Councils-(1) Any officer or servant of a Village Panchayat may be transferred to the service of any Panchayat Union Council of any other Village Panchayat by the Inspector:

Provided that no officer or servant shall be so transferred except after consulting the Commissioner of the Executive Authority concerned:

Provided further that in making a transfer under this sub-section, the Inspector may issue such general or special directions as may in his opinion be necessary for the purpose of giving due effect to such transfer.

(2) Notwithstanding anything contained in this Act of the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), any officer or servant of a Panchayat Union Council (including the Commissioner) may be transferred by the Government to the services of any other Panchayat Union Council or any Municipality constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920):

Provided that no officer or servant (other than the Commissioner) shall be so transferred except after consulting the Panchayat Union Councils or Municipal Councils concerned:

Provided further that the Government while making a transfer under this Sub-section may issue such general or special directions as may in their opinion be necessary for the purpose of giving due effect to such transfer.

3. The learned counsel appearing on behalf of the 4<sup>th</sup> respondent also disputes the contention of the writ petitioner, by stating that the Division Bench of this Court decided the issue in W.A.No.1304 of 2016 dated 04.01.2017 (M.Saraswathy vs. The District Collector and others) and paragraph No.6 is extracted here under:

6. The grievance is that the present one is a intra-Block transfer and hence, the Block Development Officer concerned ought to have made the transfer instead of the Personal Assistant to the Collector (Development). It is true that for effecting intra-Block transfers, it is the Block Development Officer, who is the competent authority and it is only for inter-Block transfer, the Personal Assistant to the Collector (Development) derives necessary authority. In a situation as is presented now, perhaps initiation of the process by the Personal Assistant to the Collector (Development), cannot be completely faulted, as he may have to explore a suitable vacancy in yet another Block. It is purely incidental that suitable vacancy became available within the same Block. Extraordinary situations call for or warrant some kind of extraordinary remedies.

4. This apart, the learned counsel for the writ petitioner is of the opinion that the reason of administrative grounds stated in the impugned order is incorrect and in order to accommodate the 4<sup>th</sup> respondent, the impugned transfer order has been passed.

5. May that it be, this Court is of the opinion that the order of transfer can be challenged on limited grounds. Even, if there is no administrative ground, the authorities competent is empowered to issue an order of transfer on certain occasions. Considering the various factors, in the present case on hand, the writ petitioner is transferred from Vengaivasal Panchayat to Injambakkam Panchayat within the same block and therefore, the transfer order will not affect the normal life of the writ petitioner as well as the service conditions are also not violated.

6. This Court is of an opinion that transfers can be issued on various grounds. On a perusal of the impugned transfer order, it is stated that the writ petitioner is transferred on administrative ground and in the interest of administration. Transfers are imminent in respect of public servants, whenever there is a wide complaint against the employee is made known to the competent authorities. In certain circumstances, there may not be an evidence to prosecute the employee or to initiate

departmental disciplinary proceedings. However, the competent authorities may of the opinion that further continuance of a public servant in a particular place would cause inconvenience as well as cause some difficult situation for the peaceful functioning of the public administration. Thus, in those circumstances, transfers alone are the remedies in the interest of public administration. Therefore, it is not necessary that there must be a transfer only after conducting an enquiry or initiation of disciplinary proceedings.

7. Administrative transfers are issued on various circumstances and on various grounds. For instance, continuance of certain public servants in a particular post, may not be conducive for the peaceful administration or their further continuance may cause certain troubles to the people, who all are the beneficiaries in the Department. There are various such administrative aspects, which all are the reasons for the administrative transfers. Courts would not be in a position to scrutinize or conduct an enquiry in respect of those reasons for such issuance of the administrative transfers.

8. Administrative transfers are the prerogative of the Department concerned and the competent authorities are the best persons to assess and act accordingly. However, those competent authorities should act in the interest of public and in the event of any illegality or some personal motive, then alone, the employee can approach the Court of law for appropriate remedy. In other words, if an order of transfer is issued with a mala fide intention or in violation of the statutory rules, then a writ petition can be entertained. Even in such cases, the allegation of mala fide intention must be substantiated in the writ proceedings and the official concerned must be impleaded as party respondents in the writ proceedings. In the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. Transfer is an incidental to service, more so, a condition of service. Public servant is liable to work wherever he is posted in the interest of public administration. On accepting the offer of appointment, a person is agreeing for the conditions of service and transfer being incidental, he must be in a position to work, wherever he is posted.

9. Place or post can never be claimed as a matter of choice by the public servants. All public servants are duty bound to perform their duties diligently and with utmost care and devotion. This being the basic principles to be followed and erosion in this regard can never be tolerated either by the officials or by the Courts. High Court cannot interfere with the routine administration of the State or its organization. In the event of such routine interference in administration, more specifically, in transfer cases, the very discipline and the

functioning of the administration would be paralyzed. Thus, the judicial review of administrative transfers must be exercised with restraint and only on exceptional circumstances, such orders of transfers can be interfered with by the High Courts and not otherwise. This being the scope of the judicial review of administrative transfers issued by the competent authorities, this Court is of an undoubted opinion that the writ petitioner has not established any such strong acceptable ground for the purpose of interference in the order of transfer.

10. The Government employees are entitled to enforce their legal rights ensured under the Act and statutory Rules. However, they are not entitled to claim right based on certain facilities and concessions shown by the Government by way of Government letters/instructions. The State, being the model employer, time and again providing certain concessions/ facilities for the welfare of its employees and to encourage them, so as to run the administration in an effective manner. But those concessions/ facilities can never be a matter of legal right to the Government employees. The Constitutional Courts need not extend any consideration based on such facilities/instructions/guidelines extended by the Government in order to motivate the Government employees for running the State administration more effectively.

11. A mere forthcoming retirement or short tenure, cannot constitute a ground to attack the administrative orders of transfers. No doubt, certain difficulties may arise in the family of the Government servants in the event of an order of administrative transfer. But the interest of administration and the public interest alone are the paramount importance and this Court cannot extend any leniency to the Government employee on such pleadings of personal grievances. It is for the Competent Authorities to consider those grievances and even in case, such grievances are not considered by the original authority, it is left open to the Government employees to approach the higher authorities or the Government in this regard, but certainly not before this Court under Article 226 of the Constitution of India.

12. This Court is of the firm opinion that administrative transfers are never to be interfered with under Article 226 of the Constitution of India. This being the consistent view taken by the Hon'ble Supreme Court of India as well as the High Courts, no further consideration or adjudication needs to be entertained in this writ petition on the grounds raised in the affidavit.

13. Thus, the writ petitioner has not established any acceptable legal ground for the purpose of interference with the administrative order of transfer and accordingly, the writ

petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-  
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

ssb

To

1. The Collector  
Kancheepuram District  
Kancheepuram.
  2. Block Development Officer,  
(Village Panchayat)/Special Officer  
St.Thomas Mount Panchayat Union  
At Chitlapakkam  
Chennai 600 064.
  - 3.Vengaivasal Panchayat  
Vengaivasal  
Chennai 600 126.
- +1 CC to Mr.BAlan Haridas, Advocate sr 36394.  
+1 CC to Govt. Pleader sr 36281.  
+2 Ccs to Mr.K.Venugopal, Advocate sr 36044.

W.P.No.546 of 2019

PP (CO)  
SP (22/04/2019)

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