

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.1087 of 2019

and

WMP.Nos.1223 & 1225 of 2019

P.Chellapandiyan

... Petitioner

Vs

1. The Principal Secretary,
Adi Dravidar & Tribal Welfare,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Managing Director,
Tamil Nadu Adi Dravidar Housing & Development
Corporation Limited,
Teynampet, Chennai - 600 018.
3. The General Manager (Technical),
Tamil Nadu Adi Dravidar Housing & Development
Corporation Limited,
Teynampet, Chennai - 600 018.
4. Mr.P.Azhagumani,
The Executive Engineer,
Tamil Nadu Adi Dravidar Housing & Development
Corporation Limited,
Salem Division, Seelanaickenpatti,
Erumapalayam, Salem.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorari, to call for records in proceedings in C.Mu.Order.No.A2/266/2018, on the file of the 2nd respondent, dated, 07.01.2019 and quash the same as illegal, unconstitutional, arbitrary.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.A.N.Thambidurai,
Spl.Govt.Pleader for R1 to R3

O R D E R

The order of transfer issued by the 2nd respondent in proceedings dated 07.01.2019, transferring the writ petitioner from the post of Executive Engineer, Salem Division to Madurai Division is under challenge in the present writ petition.

2. The writ petitioner is now working as an Executive Engineer at Tamil Nadu Adi Dravidar Housing & Development Corporation Limited Division at Salem. The learned counsel appearing on behalf of the writ petitioner states that earlier the writ petitioner was transferred in proceeding dated 02.07.2018 and the writ petitioner was posted at Salem Division. Therefore, within a short span of period, the impugned order of transfer has been issued in proceedings dated 07.01.2019. It is contended that the impugned transfer order has been issued in order to accommodate the 4th respondent in the place of the writ petitioner. The 4th respondent is working in the post of Assistant Executive Engineer in Salem.

3. It is pertinent to note that the writ petitioner is working as Executive Engineer and the 4th respondent is working as Assistant Executive Engineer which is a lower post than that of the post of Executive Engineer. Therefore, the question of accommodating the 4th respondent in the place of the writ petitioner does not arise at all.

4. The learned counsel for the writ petitioner further states that, a transfer order has been issued even without completion of three years in the present station and therefore, the impugned order is liable to be scrapped.

5. The learned Special Government Pleader appearing on behalf of the respondent, produced the copy of the instructions provided by the respondents 1 to 3. As per the instructions, it is stated that the writ petitioner in his capacity as the Executive Engineer had not attended the work progress meeting conducted in the Head Office on 29.10.2018 by the Managing Director. This apart, the writ petitioner has not registered his attendance in the bio-metric system and he is committed certain lapses.

6. It is pertinent to note that the transfer has been issued on administrative grounds, certain routine lapses are found in the place in which the writ petitioner is now working and in order to improve the efficiency in administration, the writ

petitioner is transferred from Salem division to Madurai division.

7. This Court is of an undoubted opinion that, if at all any negligence, lapses or dereliction of duty or any other misconduct, the Authorities Competent are bound to initiate appropriate disciplinary proceedings. However, the present writ petition is filed challenging the order of transfer and the instructions provided by the respondents states that the order of transfer has been issued on administrative grounds. Some times, the order of administrative transfers are issued if the performance of the Government officials are not satisfactory in a particular place and post. Such administrative transfers can never be interfered by the Courts.

8. The writ petitioner is working in the cadre of Executive Engineer which is the responsible posts. He is liable to be transferred and he is bound to work wherever he is posted. The post of the Executive Engineer is an important post in the respondent corporation and therefore, transfer is an inevitable one as far as such higher cadres are concerned.

9. 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.

10. 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.

11. 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.

12. 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.

13. Section 48, of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 contemplates that, " A member of a service or class of service may be required to serve in any post borne on the cadre of such service or class for which he is qualified. Sub-clause 3 stipulates that, Notwithstanding anything contained in this Act or in any special rules or adhoc rules, the Government may transfer any Government servant from one revenue district to another revenue district within the State, on administrative grounds."

14. The statutory provision is unambiguous that a public servant is liable to work wherever he is posted. A public servant is expected to develop a character in the interest of public and the public administration. Nothing wrong in addressing the personal grievances by the Government servants. However, those personal grievances are to be considered only by the Competent Authorities and certainly not by the Constitutional Courts. If at all the writ petitioner is having any personal grievances, he is at liberty to submit a representation. However, the transfer in higher posts, that of the post of Executive Engineer is inevitable and the post of the Executive Engineer is a responsible post and the writ petitioner is bound to serve wherever he is posted and if he is not interested in performing the public duties, it is left open to him to take a decision in respect of his career.

15. Even recently, Indian Air Force had shown their bravery by compromising their lives. Such is the patriotic devotion shown by Army officials at Indian Air Force personnel. But for a transfer from Salem to Madurai, an Officer in the cadre of Executive Engineer is fighting by filing the present writ petition under Article 226 of the Constitution of India.

16. The level of attitude and the range of devotion to duty shown by such Wing Commander of the Indian Air Force and the Executive Engineer is uncomparable. The spirit of those personnel to be at least realised by the writ petitioner, who is working in the cadre of Executive Engineer and more specifically, in Tamil Nadu Adi Dravidar Housing & Development Corporation Limited, which is constituted to provide welfare activities to the poor people belong to certain communities.

17. Under these circumstances, the impugned order transferring the writ petitioner from Salem to Madurai on administrative grounds deserves no interference and accordingly, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

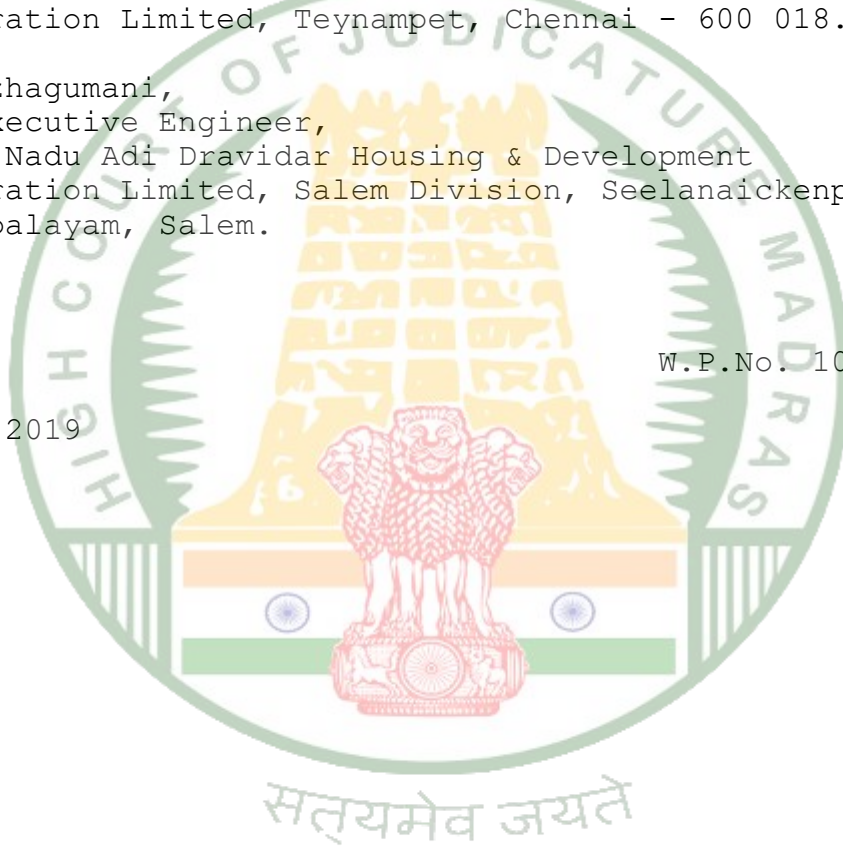
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To

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EV (CO)
CSL/25.04.2019

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