IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.1891 of 2019
and
WMP.No.2093 of 2019

R.Ezhilbabu ... Petitioner

Vs

1. The Chief Engineer,
Tamil Nadu Electricity Board (TANGEDCO),
8th floor, Administrative Branch,
NPKRR Maligai, 144, Anna Salai,
Chennai - 2.

2. The Superintending Engineer (TANGEDCO),
Vellore Electricity Distribution Circle (VEDC),
Vellore - 6. ... 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, calling for the records on the file of the 1st respondent in proceedings Memo.No.085078/2267/G.13/G.132/2018-2 dated 05.12.2018 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mrs.R.Poornima

For Respondent : Mr.M.Fakkir Mohideen

O R D E R

The impugned order dated 05.12.2018, cancelling the transfer order issued in proceeding dated 17.10.2018 is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that, the cancellation order has been passed within a period of 1½ months, from the date of issuance of the transfer order on 17.10.2018. The transfer order itself was issued on administrative grounds and once again the impugned cancellation

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order was also issued on administrative grounds. Thus, there is no genuinity in the order of cancellation which is impugned in the present writ petition.

3. The learned counsel for the writ petitioner further states that, the modification of the transfer orders must be issued only with the approval of the Chairman of the Tamil Nadu Electricity Board and the prior approval from the Chairman is required. In this regard, the writ petitioner submitted a circular dated 12.11.1982, stating that the transfer orders issued from the administrative branch should not be cancelled or modified without the prior approval of the Chairman. The then Chairman issued such a circular during the year 1982 – 1983 and the said circular need not be relied upon now after a lapse of many decades for the purpose of considering the cancellation of transfer orders on administrative grounds. In view of the fact that such circulars are not having the force of law or Rules. The same need not be considered for the purpose of quashing the cancellation of transfer orders issued on administrative grounds.

4. The writ petitioner was transferred in proceeding dated 17.10.2018, from Uthukottai, Kanchipuram District to Vellore Electricity Distribution Circle as Assistant Engineer. In this regard, the learned counsel for the respondent states that, there were frequent allegations and complaints against the writ petitioner regarding a demand of bribe from the customers. The Superintending Engineer, Kancheepuram, wrote letters on 23.09.2017 and 16.10.2018, to the first respondent stating that the office is receiving complaints against the writ petitioner that he is demanding bribes from the consumers and that the same had caused a lot of inconvenience to the consumers/general public, that the petitioner has brought down the image of the board in the eye of the general public and requested the first respondent to cause transfer of the petitioner from Kancheepuram electricity distribution circle, without further loss of time.

5.This apart, even during the year 2015 itself, the Director General of Police, Vigilance had written a letter to the Board on 12.01.2015, stating that, the Vigilance Department also has received complaints against the writ petitioner when he was working at Arakkonam Vellore Electricity Distribution Circle.

6. At the outset, it is contended that, the complaints of demand of corruption is frequently receiving against the writ petitioner and therefore, the respondents have chosen not to post the writ petitioner at Vellore District and accordingly, cancelled the transfer order dated 17.10.2018 and posted the writ petitioner to Ramanathapuram.

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7. 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.

8. 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.

9. 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.

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10. 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.

11. 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.

12. This apart, the allegations against the writ petitioner is corruption. It is not once, on many occasions such complaints are received from the consumers of electricity. The Director General of Police, Vigilance, also had written a letter to the Board, regarding the allegations of corruption against the writ petitioner. The learned counsel for the respondent also states that, the Board is receiving frequent complaints against the writ petitioner regarding the demand of bribe and under these circumstances, the writ petitioner was transferred to Ramanathapuram district.

13. This Court is of an opinion that, when there are frequent allegations of corruption from the public at large, then the authorities are bound to conduct an enquiry thoroughly and those officials should not be posted in a sensitive posts.

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Even if the allegations are not established, if there are frequent allegations and there is no sufficient evidence or proof to establish the corruption allegations, then also the authorities must consider the overall performance of these officials and accordingly, post them in a non-sensitive post in the interest of public at large.

14. In certain circumstances, allegations of corruptions are there from the public against the public servants. However, the said allegations cannot be proved with sufficient evidence. If frequent corruption allegations are received and if there is any reason to believe that such allegations are truthful, then the Competent Authorities in lieu of disciplinary proceedings, can transfer the employees or post them in non-sensitive posts in the interest of public administration. These all are the administration grounds, which all are available for the Competent Authorities to transfer the employees to other station or to post them in a non-sensitive post.

15. Under these circumstances, this Court is of an opinion that, the impugned order passed by the respondents are at administration grounds and the respondents are able to establish the administration grounds, since the department is receiving frequent allegations of corruption against the writ petitioner from the customers.

16. Under these circumstances, the claim of the writ petitioner deserves no merit consideration and accordingly, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Chief Engineer,
   Tamil Nadu Electricity Board (TANGEDCO),
   8th floor, Administrative Branch,
   NPKRR Maligai, 144, Anna Salai,
   Chennai - 2.

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2. The Superintending Engineer (TANGEDCO),
Vellore Electricity Distribution Circle (VEDC),
Vellore - 6.

+1 cc to M/s.R.Poornima, Advocate, Sr.No. 40961

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