

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 25.07.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.8444 of 2019  
and  
W.M.P.No.8970 of 2019

S.Sannasi

...Petitioner

Vs.

1.The District Collector,  
Salem, Salem District.

2.The Block Development Officer,  
(Village Panchayat), Attur,  
Salem District - 636 102.

3.The Block Development Officer,  
(Block Panchayat), Attur,  
Salem District - 636 102.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorari calling for the records of the 3<sup>rd</sup> respondent in Proceeding No.Na.Ka.No.163/2019/Thi2 dated 01.03.2019 and quash the same.

For Petitioner : Mr.Kandhan Duraisami

For Respondents : Mr.J.Pothiraj,Spl.G.P.

ORDER

The petitioner is working as Panchayat Secretary in Seeliampatti Village Panchayat, Attur Panchayat Union, Salem District from the year 1986. According to him, from the date of his original appointment, he has been discharging his duties without any room for complaints. The petitioner is working on a consolidated pay. While so, the third respondent has passed an order dated 01.03.2019 transferring the petitioner from Seeliampatti Village Panchayat, Salem District to Punkavadi Village Panchayat, Salem District. According to the petitioner, as per Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, the second respondent is the Competent

Authority to transfer Village Panchayat Secretaries. The third respondent is incompetent to pass any orders of transfer, as per Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013. Therefore, the transfer order is per se illegal, suffers from want of jurisdiction and the same is liable to be interfered on that ground alone.

2.Mr.Kandhan Duraisami, the learned counsel appearing for the petitioner would submit that the transfer is directly in contravention of Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013. Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 reads as under;

"Transfer:-

(1)Transfer of a person holding the post shall be made only on administrative grounds supported by valid reasons and after proper enquiry by the Authorities concerned.

(2)Transfer and postings within the Block shall be made by the Block Development Officer (Village Panchayats) of the Panchayat Union concerned. Transfer and postings to other Blocks within the District shall be made by the Personal Assistant (Development) to the Collector. All transfers and postings within the Block Block and the District shall be done in consultation with the Executive Authority of the Village Panchayat concerned. The Commissioner/Director of Rural development and Panchayat Raj is the competent authority to make transfer from one District to another District based on the specific report from the Collector."

3.The learned counsel for the petitioner would assail the order of transfer stating that the third respondent cannot delegate his power, as no such delegation is permissible under the above Rules. Moreover, he would submit that the transfer order did not contain any administrative reasons supported by valid materials and therefore, on these two grounds, the transfer order is liable to be interfered with.

4.The learned counsel appearing for the petitioner would straight away draw the attention of this Court to the order passed by the learned Judge of this Court, dated 15.12.2017, in W.P.(MD).No.3980 of 2017 (S.Vellaisamy vs. 1.The Block Development Officer (Rural Union), Office of Block Development Officer and two others), wherein the learned Judge of this Court has interfered with the order of transfer on the ground of violation of Rule 11 of the Rules, which is extracted above. The order of the learned Judge in Paragraph Nos.2 to 8 are extracted

hereunder in order to appreciate the challenge made in the writ petition in regard to the ground that the impugned order is violative of one limb of Rule 11 of the Rules.

"2.The main grievance of the petitioner in the writ petition is that the transfer of the petitioner is against the Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, which reads as follows;

"Transfer:-

(1)Transfer of a person holding the post shall be made only on administrative grounds supported by valid reasons and after proper enquiry by the Authorities concerned.

(2)Transfer and postings withing the Block shall be made by the Block Development Officer (Village Panchayats) of the Panchayat Union concerned. Transfer and postings to other Blocks within the District shall be made by the Personal Assistant (Development) to the Collector. All transfers and postings within the Block Block and the District shall be done in consultation with the Executive Authority of the Village Panchayat concerned.

3.It is evident from the said Rule that the transfer of a person holding the post of Panchayat Secretary shall be made only by an administrative grounds supported by valid reasons and after proper enquiry by the authority concerned.

4.In the said circumstances, this Court, by an order dated 08.11.2017, directed the first respondent to produce the file regarding the decision making process of the impugned order for perusal of this Court.

5.On a perusal of the file, it has to be noticed, as rightly submitted by the learned Government Advocate that there has not been any

consultation with the Executive Authority of the Village Panchayat concerned as required under the said Rule and the impugned order does not contain any valid reasons and there is no evidence for proper enquiry having conducted by the concerned authorities before passing the impugned order.

6.The learned counsel appearing for the petitioner would submit that at the time of admission of the writ petition, an order of interim stay of the impugned order had been passed. The learned counsel for the third respondent would submit that the interim order has been passed only on 08.03.2017, while the third respondent had joined duty at Velvarkottai on 03.03.2017 itself for which he has got the report and the same had also been produced before this Court. However, it is admitted by the petitioner as well as the third respondent that after the interim order has been passed, the petitioner had rejoined the duty in Velvarkottai, while the third respondent went back had joined duty at Vellayuthampalayam.

7.In the said circumstances, the impugned order cannot be sustained and hence, the same is set aside on the ground that violation of the aforesaid conditions mentioned in Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013. However, it is made clear that it is open to the concerned authorities to pass a fresh order on merits in accordance with law.

8.With the above directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed."

5.As regards the other limb of Rule 11, the learned counsel for the petitioner would submit that the first respondent has no power of delegation and such thing is not authorized by the Rule. Therefore, he would submit on these two grounds alone the impugned transfer is liable to be set aside.

6.On behalf of the respondents, a counter affidavit has been filed. In the counter affidavit, it is stated that the petitioner was transferred within the Block and the petitioner was transferred by the third respondent Block Development

Officer, which is covered under Sub-Clause (1) of Rule 11. Therefore, there is nothing wrong in the order passed by the third respondent in transferring the petitioner. As regards the non-mentioning of administrative reasons in the affidavit, the said issue has not been addressed in the counter affidavit at all. In fact, even during the course of oral submissions, the learned counsel, who represented the respondents, was not able to convincingly answer the said issue/ground raised on behalf of the petitioner.

7. Considered the rival submissions of the counsels and perused the material records made available.

8. The impugned transfer order does not disclose any administrative grounds supported by valid reasons as provided under Rule 11(1) of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013. It is evident from the Rule that the transfer could be made only on administrative grounds supported by valid reasons and after proper enquiry by the Authority concerned. No such enquiry appears to have been undertaken nor conducted nor any administrative ground has been disclosed with the supporting material in the transfer order. Therefore, on this short ground alone, the writ petition is liable to be allowed.

9. In fact, the learned Judge of this Court has relied on the said Rule and interfered with the transfer order passed in identical circumstances. This Court does not think that this case can be viewed from different angle from the decision of the learned Judge, which is extracted extensively supra.

10. As regards the contention regarding the power of delegation by the third respondent, it appears from the counter affidavit that the petitioner was transferred within the Block and therefore, the third respondent was competent to pass transfer orders. Although this Court is not convinced about the statement of the respondents, nevertheless, without entering into that area of controversy, this Court is of the view that as far as the first ground of attack, viz., that the transfer order ought to contain valid reasons and to be followed by enquiry, which is absent in the impugned order of transfer, and therefore the same cannot be sustained at all both on facts as well as in law. Merely mentioning that the transfer is for administrative ground is not enough to sustain the order of transfer. As per Rule 11, the respondents have to satisfy this Court about the existence of administrative requirement with supportive materials and also the enquiry ought to have been conducted before such transfer is effected. In the absence of these criteria, the transfer order cannot be held to be valid.

11.For the above said reasons, this Court is of the considered view that the petitioner has made out a case for intervention and hence the impugned order passed by the third respondent in Na.Ka.No.163/2019/Thi2 dated 01.03.2019 is hereby set aside and the writ petition is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mrm

To

1.The District Collector,  
Salem, Salem District.

2.The Block Development Officer,  
(Village Panchayat), Attur,  
Salem District - 636 102.

3.The Block Development Officer,  
(Block Panchayat), Attur,  
Salem District - 636 102.

+1cc to Mr.Muthumani Doraisami, Advocate SR.No.63710

W.P.No.8444 of 2019

RV(CO)  
GMY(20/08/2019)

सत्यमेव जयते

WEB COPY