

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 1153 of 2018

and

W.M.P.Nos. 1432 & 1433 of 2018

N.Kandan

..petitioner

Vs

1. The District Collector,
Villupuram District

2. The Executive Officer,
Valavanur Town Panchayat,
Villupuram Taluk and District

3. The Executive Officer,
Ulundurpettai Town Panchayat
Ulundurpettai,
Villupuram District.

4. V.Veeraraghavan,
Sanitary Worker,
Valavanur Town Panchayat,
Villupuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 15.09.2017 bearing Na.Ka.No.1092/2017/ngU2 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to permit the petitioner to join in the 2nd respondent panchayat.

For Petitioner : Mr.Ramadoss
for M/s.A.K.Manojkumaar

For Respondents : Mr.R.S.Selvam
Government Advocate
for R1 & R3

Mr.E.Balamurugan
Government Advocate
for R2

O R D E R

The order of transfer issued in proceedings dated 15.09.2017, transferring the writ petitioner from Ulundurpettai within the District is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner states that the impugned order has been issued at the instance of the 4th respondent and therefore, the said order is punitive in nature. It is further stated that the writ petitioner has to travel daily from Valavanur to Ulundurpettai. In this regard, a public servant is expected to reside near by the place, where he is posted. The writ petitioner is not supposed to travel everyday from Valavanur to Ulundurpettai and serve for the public.

3. Under these circumstances, such a ground raised that the writ petitioner has to travel daily from Valavanur to Ulundurpettai can never be considered at all. In general, Government employees are supposed to serve, wherever they are posted.

4. This apart, the Learned Government Advocate appearing on behalf of the respondent states that the writ petitioner was transferred and posted on the complaints given by the Executive Officer of the Valavanur, a selection Grade Town Panchayat. The Executive Officer has addressed a letter in proceedings dated 26.06.2017 to the Assistant Director of Town Panchayats stating that the writ petitioner is involved in investigating other employees and is acting against the interest of the public administration and on account of his investigation the town panchayat is unable to execute their works peacefully. Under these circumstances, the District Collector has passed the order of transfer, transferring the writ petitioner from Valavanur to Ulundurpettai.

5. In certain circumstances, an order of administrative transfer can be issued in view of suspension and such transfers can be considered as punitive in nature only to avoid certain circumstances and to do the public duties efficiently, such transfers are also warranted. Thus, all such transfers issued on complaints cannot be considered as punitive in nature.

6. Undoubtedly, punitive transfers are bad in law. However, the Court has to examine, whether such transfers are genuinely punitive or not. A mere complaint resulted in transfer, would not amount to punitive transfer. This apart, in certain circumstances, transfer is permissible in lieu of an order of

suspension. Thus, all transfers, which all are issued on certain complaints from the public or otherwise, cannot be construed as punitive transfers. Those transfers or complaints are to be construed as administrative transfers. Administrative transfers are issued in order to maintain effective and effective public administration. If this official in a particular post is not conducive to carry on public affairs and on receipt of such complaints from the public, the authorities competent are empowered to issue transfer orders in the interest of public administration and to run the administration in a peaceful manner, so as to serve the public effectively.

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.

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 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 petitions are closed.

Sd/-
Assistant Registrar (Ad-IV)

//True copy//

Sub Assistant Registrar

ssb/kmm

To

1. The District Collector,
Villupuram District
2. The Executive Officer,
Valavanur Town Panchayat,
Villupuram Taluk and District
3. The Executive Officer,
Ulundurpettai Town Panchayat
Ulundurpettai,
Villupuram District.

+1cc to Government Pleader SR.No.34109

W.P.No. 1153 of 2018

RSV(CO)
GMY(31/05/2019)