

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.04.2019

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

W.P.No.10682 of 2019

and

W.M.P.No.11157 of 2019

Tmt.Rukmani

..Petitioner

vs

The Commissioner of Labour,
Office of the Commissioner of Labour,
DMS Building, Teynampet,
Chennai - 600 006.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the proceedings of the respondent in E2/21122/2018 dated 31.05.2018 and quash the same thereby direct the respondent to post the petitioner a lady officer to any non-sensitive post which are vacant at Deputy Inspector of Labour (Storage Tank) Coimbatore or Deputy Inspector of Labour Palani instead of Deputy Inspector of Labour(on OD) Manager(Labour), TASMACHennai.

For Petitioner : Mr.M.Liagat Ali

For Respondent : Mr.A.N.Thambidurai
Special Government Pleader

ORDER

The order of transfer, transferring the writ petitioner from the Post of Deputy Inspector Labour-I, Coimbatore to Deputy Inspector Labour(on OD)Manager(Labour), TASMACHennai in proceedings dated 31.05.2018 is under challenge in the present writ petition.

2.The learned counsel for the writ petitioner made a submission that the petitioner is working as Deputy Inspector of Labour-I at Coimbatore. The petitioner is having short span of service and therefore, the present transfer order will affect the normal life of the writ petitioner.

3.It is further contended that the respondents have discriminated the writ petitioner by posting her in a sensitive post and the writ petitioner is willing to work in a non-sensitive post. This apart, some other colleagues of the writ petitioners are able to cancel the order of Administrative transfer issued by the respondents and the case of the writ petitioner alone is not considered. Thus, the writ petitioner is constrained to move the present writ petition.

4.This Court is of the considered opinion that the writ petitioner is working in a responsible post of Deputy Inspector of Labour and as a Senior officer, she is bound to serve wherever she is posted. An order of transfer can be questioned on certain limited grounds and judicial review against the order of transfer is certainly restricted. High Courts are bound to exercise restraint in exercising the powers of judicial review against the orders of Administrative transfers.

5.The impugned order of transfer states that the transfer and postings are issued on administrative reasons and in accordance with the guidelines issued in G.O.Ms.No.51, Labour and Employment dated 21.03.2017.

6.This being the nature of the order of transfer impugned, this Court is of an opinion that judicial interference is certainly uncalled for.

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.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.

13.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.

14.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.

Sd/-

Assistant Registrar (Insp Cell)

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Sub Assistant Registrar

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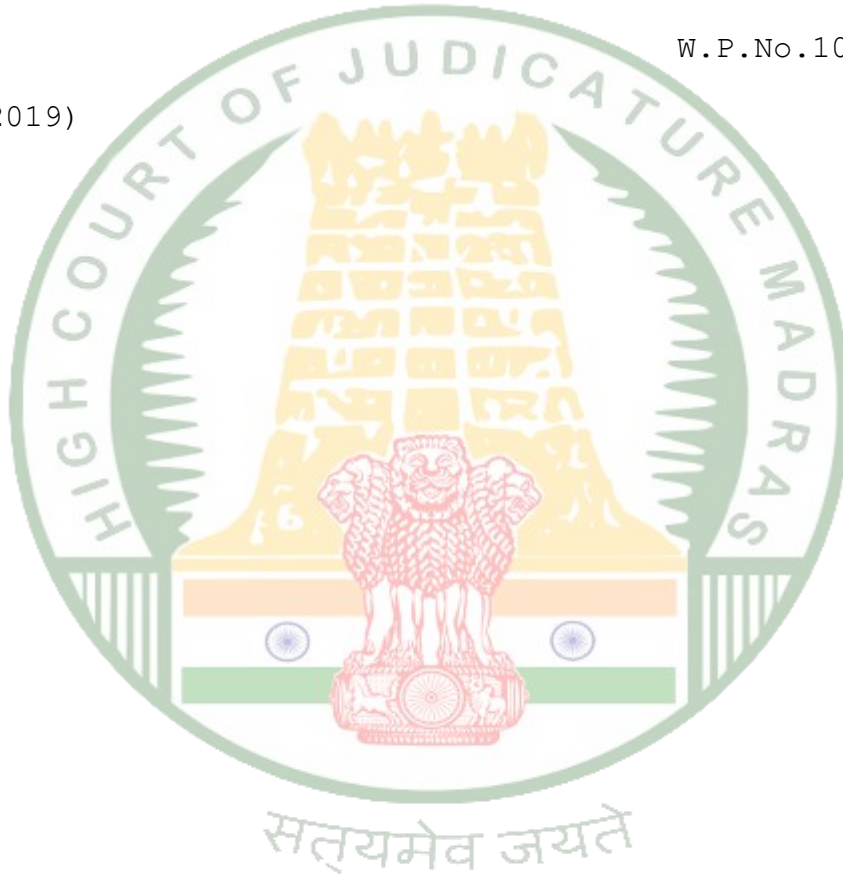
To

The Commissioner of Labour,
Office of the Commissioner of Labour,
DMS Building, Teynampet,
Chennai - 600 006

+lcc to Mr.M.Liagat Ali, Advocate, S.R.No. 34395
+lcc to the Government Pleader, S.R.No. 35310

W.P.No.10682 of 2019

LN(CO)
GN(06/05/2019)



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