

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-04-2019

CORAM

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

W.P.No.15033 of 2018

And

W.M.P.Nos.17799, 17800 and 25921 of 2018

S.Devanathan ... Petitioner

vs

1.The Government of Tamil Nadu,
Represented by Additional Chief Secretary
to Government/Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai-9.

2.The Director,
Rural Development and Panchayat Raj Department,
Panagal Building,
Chennai-15.

3.Tmt.P.Vijayalakshmi ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent relating to order in G.O.(D) No.348, Rural Development and Panchayat (E1) Department, dated 11.6.2018, to quash the same and to issue directions to the respondents to allow the petitioner to continue to serve in the present post and Station.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader.

O R D E R

The order of transfer issued by the first respondent in G.O.(D)No.348, Rural Development and Panchayat Department, dated 11.6.2018, is under challenge in the present writ petition.

2. The writ petitioner states that he was initially appointed as Assistant Director of Rural Development by direct recruitment through Tamil Nadu Public Service Commission (TNPSC) and subsequently, promoted to the post of the Joint Director of Rural Development during the year 2015.

3. The order of transfer is questioned on the ground that the local Member of Legislative Assembly (MLA) Thiru R.Tamil Selvan had often contacted the writ petitioner and other officials through his supporters and pressurised the officials to include the names of the persons of his choice in the list of the beneficiaries under Amma Two Wheeler Scheme for Working Women.

4. The writ petitioner along with other officials consistently declared that the eligible persons alone are to be included in the list of beneficiaries and it is not possible to include the ineligible persons as per the terms and conditions of the scheme.

5. The local MLA, in his telephone conversation, threatened the writ petitioner of dire consequences. Various allegations of usage of unparliamentary language against the writ petitioner are also averred in the present writ petition.

6. The writ petitioner joined in the present Station only on 26.2.2018 and within the period of four months, the present transfer has been issued by the first respondent. Thus, the order of transfer is unnecessary.

7. It is contended that in view of the fact that the writ petitioner has no circumvention to the illegal demand of the local MLA of his transfer from Perambalur to Chennai. Thus, the impugned order of transfer was issued not in the interest of administration but on extraneous reasons.

8. In support of such allegations, the writ petitioner has enclosed the newspaper extract in the typed set of papers filed along with the present writ petition.

9. This Court is of the considered opinion that the writ petitioner is working in State Services, more specifically, in a responsible post of Joint Director / Project Director. If at all such pressures and the allegations are true, it would be better both in the interest of the administration as well as in the interest of the present writ petition, the writ petitioner would have joined in the transferred place. The writ petitioner, who is working in the cadre of Joint Director, is liable to be transferred in any post in any place.

10. This apart, the mere allegations of the newspaper extracts are insufficient to extract the mala fide allegations on the part of the first respondent-Government. The impugned order of transfer has been issued by the Government. There is a possibility that on account of frequent disturbances in the public administration in view of certain disputes between the officials and the local MLA, the Government thought fit to transfer the writ petitioner. The said circumstances are also can be considered as administrative reasons. Ultimately, it is duty mandatory on the part of the Government to ensure smooth and peaceful public administration and to provide service to the public at large without any hindrances.

11. Even in case of raising an allegation of mala fide, the authorities against whom such an allegation is to be impleaded as party respondent in his personal capacity in the present writ petition. Though the writ petitioner has raised certain allegations against the MLA Thiru R.Tamil Selvan, the MLA has not been impleaded as party respondent, so as to defend the allegations. In the absence of impleading the MLA Thiru R.Tamil Selvan against whom such serious allegations are made, this Court would not be in a position to adjudicate the issues and arrive a conclusion in respect of the truthfulness of the allegations set out by the writ petitioner. In the absence of providing an opportunity to the persons against whom such an allegation of mala fides are raised, this Courts would not be in a position to come to a conclusion based on the statement made by the writ petitioner in an unilateral manner.

12. Undoubtedly, the allegations made in the affidavit are to be adjudicated only by providing an opportunity to the persons against whom such allegations are made. In the absence of providing such opportunities to the persons concerned, neither the judicial process can be concluded, nor the truth against the allegations can be trusted.

13. Under these circumstances, the mere allegations set out in the affidavit are insufficient to establish the mala fide intention against the first respondent-Government. The impugned order of transfer is issued by the Additional Chief Secretary to Government/Secretary to Government. However, the local incidents now set out in the writ affidavit cannot be the basis for drawing an inference, so as to attribute the mala fide intention against the Government.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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 in general 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.

20. 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.

21. 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 also dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

Svn

To

1. The Additional Chief Secretary
to Government/Secretary to Government,
Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-9.

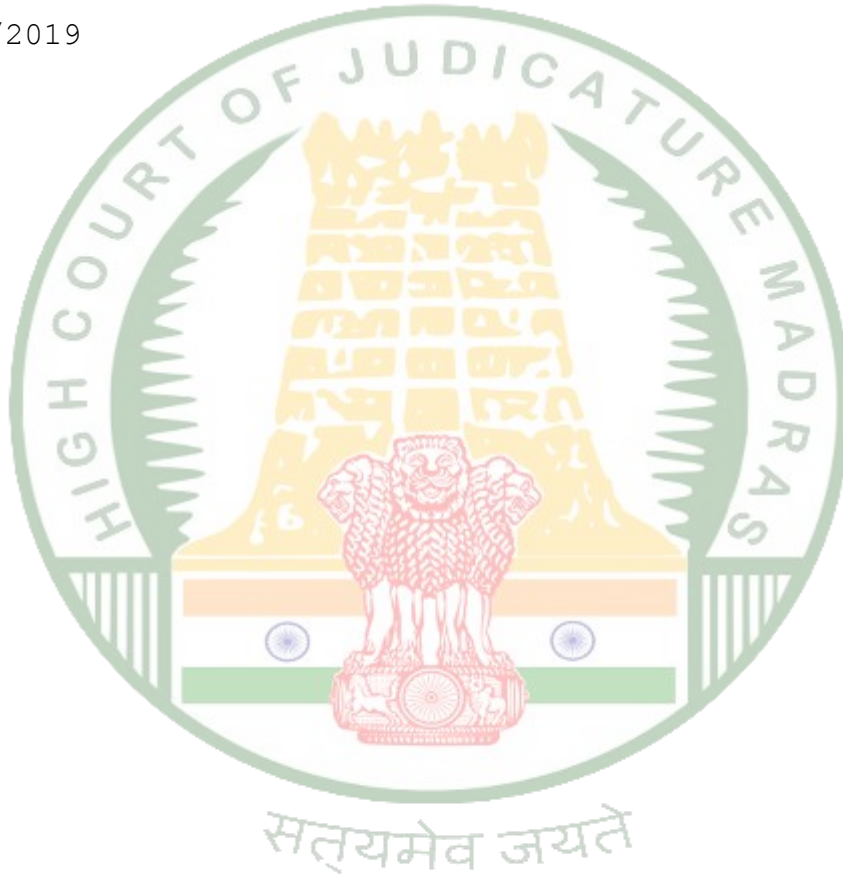
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2.The Director,
Rural Development and Panchayat Raj Department,
Panagal Building,
Chennai-15.

+ 1 cc to Mr.M.Ravi, Advocate Sr.No.37909

W.P.No.15033 of 2018

SSI (CO)
RRI 30/05/2019



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