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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No.1965 of 2019

V.Kamalakaran ... Appellant/Petitioner

Vs.

1. The Director of Elementary Education,
College Road, DPI Complex,
Chennai - 600 006.
2. The District Elementary Education,
CEO Office Campus,
Villupuram. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by the learned single Judge of this Court in W.P.No.29614/2014 dated 06.03.2019.

Prayer in WP No.29614 of 2014 : Writ Petition filed under Article 226 of the Constitution of India, to call for the records on the file of the second respondent in connection with the order passed by him in his Proc.Na.Ka.No.3101 A1 2014 dated 06.11.2014 and quash the same.

For Appellants : Mr.R.Singaravelan,
Senior Counsel
for Mr.R.Jayaprakash

For Respondents: Mr.C.Munusamy,
Special Government Pleader.

J U D G M E N T

(Judgment of the Court was made by K.K.SASIDHARAN, J.,)

Heard the learned senior counsel appearing for the appellant. We have also heard the learned Special Government Pleader appearing on behalf of the respondents. By consent and taking into account the relief now claimed by the appellant, the intra Court appeal is taken up for final disposal during the time of admission.



2. The appellant was initially appointed as Junior Assistant on 04.02.2013. He was posted at Vazhudavur, Villupuram District. Thereafter, he was transferred to Vanur, again in the Villupuram District. The said transfer was on 13.01.2014. Subsequently, he was once again transferred, by order dated 06.11.2014 from Vanur to Olakkur, which is about 80 Kms from the place of his original posting. The appellant therefore, filed a Writ Petition before the Writ Court, challenging the order of transfer. There was an interim order in favour of the appellant and on the strength of the said order, he continued in the original place. However, the Writ Petition was ultimately dismissed by the learned single Judge by order dated 06.03.2019 with an observation that the transfer was purely administrative in nature and it was not issued with a malafide intention. Feeling aggrieved by the said order, the appellant has come up with this intra Court appeal.

3. The learned senior counsel for the appellant submitted that the appellant has already joined the service after the dismissal of the Writ Petition on 06.03.2019 and as such, the very prayer in the Writ Petition has become infructuous. According to the learned senior counsel, the appellant would be prejudiced, in case, the observation made by the learned single Judge with regard to the absence of malafides in the order of transfer is allowed to stand. The learned senior counsel further submitted that the appellant should be permitted to submit a representation for the purpose of payment of salary for the intervening period.

4. The learned Special Government Pleader submitted that nothing survives for adjudication in view of the dismissal of the Writ Petition and the subsequent events relating to joining of service by the appellant at the transferred place.

5. There is no dispute that the appellant was transferred very frequently from one place to another. The appellant has urged malafides in the matter of transfer. The learned single Judge without any counter affidavit, proceeded on the basis of the submission made on behalf of the Government that there was no malafides in the order of transfer. It is the grievance of the appellant that the observation made by the learned single Judge would give an opportunity to the respondents once again to transfer him from one place to another.

6. We are of the view that there was no occasion for the learned single Judge to decide the malafide nature of the transfer order issued by the respondents. When it is found by the learned single Judge that the transfer was on administrative grounds, the question to decide the malafides would not arise



and that too, on the basis of the submission made by the learned Special Government Pleader. We therefore expunge the remarks made by the learned single Judge with regard to the malafide manner of transfer made by the authority.

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7. We are informed that during the currency of the Writ Petition, the appellant has joined at the transferred place. We permit the appellant to submit a comprehensive representation for payment of salary for the period in question. In case, any representation is given by the appellant, the same shall be considered and disposed of on merits and as per law. Such exercise shall be concluded within a period of two (2) months from the date of receipt of representation.

8. The intra Court appeal is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

vsi

To

1. The Director of Elementary Education,
College Road, DPI Complex,
Chennai - 600 006.
2. The District Elementary Education,
CEO Office Campus,
Villupuram.

+1cc to Mr.R.Jayaprakash, Advocate SR.No.54328

+1cc to Government Pleader, High Court, Madras SR.No.54535

W.A.No.1965 of 2019

VG II(CO)
GMY(02/08/2019)