

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :06-03-2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 2938 of 2018
W.M.P.No.3600 of 2018

A.Siva Kumar

... Petitioner

Vs

1. Chairman Cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited, (TANGEDCO)
No.144, Anna Salai, Chennai-600 002.
 2. Chief Engineer(Personnel)
Tamil Nadu Generation and Distribution
Corporation Limited, (TANGEDCO),
No.144, Anna Salai, Chennai-600 002.
 3. Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited, (TANGEDCO),
Tiruvannamalai District Generation and Distribution Circle,
Tiruvannamalai-606 602.
- ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent, Chief Engineer(Personnel) in Memo No.104159/1307/G.33/G.331/2017-1, dated 14.12.2017 transferring the petitioner from Tiruvannamalai Electricity Distribution Circle to Generation Circle/Kundha and the relieving order of the 3rd respondent in Memo.No.17244/Adm.I/A.4/F.Asst (Adm)/2018, dated 03.02.2018 and quash the same and consequently direct the 2nd respondent to retain him in the Thiruvannamalai District Circle.

For Petitioner : Mr.P.Raja
For Respondents : Mr.P.R.Dhilip Kumar
Standing Counsel

O R D E R

The order of transfer issued by the Chief Engineer (Personnel) in proceedings dated 14.12.2017, transferring the writ petitioner from Thiruvannamalai Electricity Distribution

Circle to Generation Circle/Kundha, against the existing vacancy, on an administrative ground, is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner vociferously contended that the order of transfer was issued with some personal vengeance. The writ petitioner was performing his duties and responsibilities as per the rules in force. Based on the certain false and anonymous complaints made against the writ petitioner, the authorities have issued the impugned order of transfer. The allegations made in the anonymous complaints are false and far from truth. The administrative ground stated for transfer is false and there is no genuinity in the reasons stated in the impugned order. The learned counsel for the writ petitioner made an attempt to advance his arguments on the ground that the impugned transfer order was issued with some ulterior motive and the higher officials have taken personal vengeance against the writ petitioner. Thus, the order of transfer is liable to be scrapped.

3. The anonymous letter sent to the second respondent on 04.10.2017, cannot be considered for the purpose of issuing the transfer order in view of the fact that no enquiry was conducted in respect of the allegations stated in the said anonymous letter. Even as per the writ petitioner, a police enquiry was sought to be conducted by the Inspector of Police, Thiruvannamalai Police Station and the Inspector of Police has written a letter to the Superintending Engineer on 11.10.2017 asking three employees, including the writ petitioner to appear for an enquiry on 12.10.2017 at 11 A.M. Thus, it seems to me that there is a complaint and is now pending before the police station.

4. The learned counsel for the respondent states that personal complaints were given by some person against the writ petitioner before the police station and that is not the reason for issuance of the impugned transfer order. The department cannot take any suo motu action, in view of the fact that no records are available with the department in respect of the registration of complaint against the petitioner and/or against the other members of the electricity board.

5. The learned counsel for the respondent further stated that the vigilance department has conducted certain confidential enquiry and sent a letter to the electricity board. In order to maintain peace in the administration of the office and taking note of certain prevailing circumstances and also to improve efficiency of the administration in the work place, the writ petitioner was transferred on administrative grounds. No disciplinary proceedings are initiated against the writ

petitioner so far. If at all any materials are received, based on the police enquiries or otherwise, then only the vigilance department would be empowered to take departmental proceedings. However, as of now, there is no departmental proceedings initiated against the writ petitioner, based on the anonymous complaint or based on the letter sent by Inspector of Police to the Superintending Engineer. It is contended that the transfer order was issued on administrative grounds, for effective public administration and based on certain observations made by the vigilance department. There is no infirmity as such in respect of the order of transfer against the petitioner.

6. This Court is of the opinion that the writ petition filed against the transfer order can be entertained only on limited grounds. Judicial review against the order of transfer is certainly limited. If an order of transfer was issued by the administrative authority having no jurisdiction, or if any allegation of malafide raised and substantiated, or if the order of transfer is in violation, as per the rules in force, in the absence of any one of the allegations, no writ petition could be maintainable against the order of transfer.

7. Though the learned counsel for the writ petitioner has made certain allegations of personal vengeance, relying on the anonymous letters and the letter sent by the Inspector of Police, this Court is of the opinion that no action was taken based on such anonymous letter and based on the letter of the Inspector of Police. This apart, there is no reference, or any such allegations set out in the impugned transfer order. In the absence of any such reason in the impugned administrative transfer order, this Court need not draw factual inference about any such personal vengeance or malafide. In the event of raising malafide intention on the part of the competent authority, the writ petitioner should implead, those authorities in their personal capacity and the allegations must be substantiated, enabling this Court to arrive at a conclusion that the impugned order of transfer has been issued on malafide intention. Mere statement, is insufficient to consider the plea of malafide intention on the part of the competent authority.

8. In all such cases of the administrative transfer, the transferred employee will make an attempt to establish that such transfer order was issued by the administrative authority with certain personal vengeance. However, such allegations should be substantiated with sufficient evidence before this Court for the purpose of quashing the order of an administrative transfer. Unless the employee comes out with evidence to substantiate his contentions of any malafide, Courts would not normally interfere with the order of transfer.

9. Transfer is incidental to service, more so a condition of service. Public servants are bound to be transferred for effective and efficient public administration. At the time of appointment, all the employees are accepting the service conditions and also the conditions regarding the transfer. Thus, the employees are bound by the service conditions, more specifically, transfer. Transfer not being a punishment, this Court cannot interfere with it in the administration of the State or its organisations. This Court cannot run such public administration by unnecessarily interfering with the order of administrative transfer. Only on exceptional circumstances where the Court is able to come to a conclusion that such order of transfer was issued with malafide intention or authorities have no jurisdiction, then alone, the writ petition can be considered, or not otherwise.

10. Undoubtedly, in the present case on hand, certain anonymous letters were received against the writ petitioner. The Inspector of Police sent a letter to the Superintending Engineer, directing three employees to appear before him for an enquiry. All these affairs are not taken into account, at the time of issuing the order of administrative transfer. As per the submission of the learned counsel for the respondent, the authorities wanted to maintain peace in the administration and only on administrative ground, the writ petitioner was transferred to the Generation Circle/Kundha.

11. Thus, the reasons stated in the affidavit are untenable and in no way connected with the impugned administrative transfer order. This being the factum of the case, the writ petitioner has not made out any acceptable legal principle for interfering with the order of administrative transfer. The writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VIII)

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WEB COPY
Sub Assistant Registrar

ssb

To

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Tiruvannamalai District Generation and Distribution Circle,
Tiruvannamalai-606 602.

+1cc to Mr.P.Raja, Advocate sr.20715

+1cc to Mr.P.R.Dhilip Kumar, Advocate sr.21566

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ssd(co)
nr 23/04/2019



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