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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3867 of 2019

J.Jayachandran

.. Appellant

Vs.

The Block Development Officer
(Village Panchayats)
Kattankolathur Block
Kancheepuram District.

.. Respondent

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 18.9.2019 passed by the learned Single Judge in W.P.No.27662 of 2019.

WP.No.27662 of 2019:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for records relating to the respondent herein in Na.Ka.No.3650/2015/Aal, dated 09/09/2019 and quash the same in so far as the petitioner herein is concerned and consequently confer all the attendant benefits.

For Appellant : Mr.R.S.Anandan

For Respondent : Mr.V.Jayaprakash Narayanan
Government Pleader

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Learned counsel for the appellant has urged that the order dated 9.9.2019, which was impugned in the writ petition, transferring the appellant as a Panchayat Secretary is not in conformity with Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 (for brevity,



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"the Rules"). Rule 11 of the Rules is extracted herein under for ready reference:

"Rule 11. Transfer:-

(1) Transfer of a person holding the post shall be made only on administrative grounds supported by valid reasons and after proper enquiry by the authorities concerned.

(2) Transfer and postings within the Block shall be made by the Block Development Officer (Village Panchayats) of the Panchayat Union concerned. Transfer and postings to other Blocks within the District shall be made by the Personal Assistant (Development) to the Collector. All transfers and postings within the Block and the District shall be done in consultation with the Executive Authority of the Village Panchayat concerned. The Commissioner/Director of Rural Development and Panchayat Raj is the competent authority to make transfer from one District to another District based on the specific report from the Collector."

2. Learned counsel for the appellant has further invited the attention of the Court to the Division Bench judgment in the case of M.S.Sivakumar v. The Collector, Kancheepuram and others, reported in CDJ 2019 MHC 2067. Relying on paragraph (2) of the said judgment, it is urged that it was mandatory on the part of the authority exercising the powers of transfer to have indicated reasons as provided for in Rule 11 referred to herein above. Paragraph (2) of the Division Bench judgment, which refers to the earlier order passed on 24.4.2019 in the said appeal, so far as it is relevant is extracted herein under:

"2. This Court during the earlier hearing on 24.04.2019 had passed an order, the contents of which are self-explanatory, and the same is extracted below:-

.....

'3. The impugned order passed by the District Collector, Kancheepuram District does not contain any reference to the Rules, more particularly, Rule 11 of Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013. There is a legislative mandate to indicate the reasons for transfer in the order. There are no reasons stated in the order of transfer. The proceedings for transfer have to be issued by the Block Development Officer. However, in the subject



case, the order was issued only by the District Collector. We therefore do see a prima facie case made out by the appellant.'"

(emphasis supplied)

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3. The question therefore is as to whether the administrative reasons as indicated in the order dated 9.9.2019 would amount to valid reasons as per Rule 11 of the Rules or not and as to whether the authority is required to give separate reasons or otherwise hold an enquiry so as to contain the reasons on the file of transfer.

4. The learned Single Judge while dismissing the writ petition has observed in paragraph (5) of the impugned judgment that on a perusal of the impugned transfer order it appears to have been made on administrative grounds supported by valid reasons and after proper enquiry.

5. The aforesaid conclusion drawn by the learned Single Judge does not appear to have been on the basis of the perusal of the original records of the file relating to the transfer and is an inference drawn on a perusal of the impugned order of transfer itself. The said order dated 9.9.2019 does not indicate any holding of enquiry, but it does indicate a reference to connected records and, therefore, it is quite possible that the file relating to transfer must have been supported by documents so as to impel the authority to resort to transfer under Rule 11 of the Rules. We, therefore, do not intend to keep the matter pending and call for a counter affidavit and direct that the Block Development Officer, Kattankolathur Block, Kancheepuram District, shall pass a separate order indicating the reasons for the transfer dated 9.9.2019 and communicate the same to the appellant within a period of ten days from the date of filing of the certified copy of this order before him.

6. On a perusal of the Rule involved herein, we find that transfer being an exigency of service, it was not necessary to incorporate or legislate any conditions as spelt out therein. The State Government may consider amending the Rule accordingly, as it is giving rise to unnecessary litigation. A copy of the order may be despatched by the learned Government Pleader to the Government for its consideration.



7. The writ appeal is disposed of with the above direction.
No costs. Consequently, C.M.P.No.24322 of 2019 is closed.

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-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To:

The Block Development Officer
(Village Panchayats)
Kattankolathur Block
Kancheepuram District

2 The Government pleader
High Court, Madras-104

+lcc to Mr.R.S.Anandan Advocate sr98707
+lcc to the Government Pleader sr99456

W.A.No.3867 of 2019

aa27/12/2019