

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.31314 of 2019 and
W.MP.No.31479 of 2019

N. Vishnuvardhan

..Petitioner

Vs

1. The District Collector (PD Section)
Krishnagiri district,
Krishnagiri.
2. The Block Development Officer (PD Section)
(Special Officer) Village Panchayat,
Hosur Panchayat Union, Krishnagiri District,
Krishnagiri.
3. Mr.Ravi,
Panchayt Secretary,
Mugalur Panchayat,
Hosur Union,
Krishnagiri District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or order or direction like nature to call for records pertaining order bearing Se.Mu.Na.Ka.No.19372/2019/M3 dated 01.11.2019 of the first respondent herein in so far it relates to the petitioner and quash the same.

For Petitioner : Mr.P.Saravanan

For Respondents : Mr.R.S.Selvam,
Government Advocate for R1
: Mr.M.Jothikumar for R2

O R D E R

- 1.This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorari, to call for records pertaining order bearing Se.Mu.Na.Ka.No.19372/2019/M3 dated 01.11.2019 of the first respondent herein insofar it relates to the petitioner and quash the same.

- 2.The case of the petitioner is that the petitioner was appointed as Panchayat Assistant in the second respondent panchayat union. By proceedings dated 11.01.2017, the second respondent transferred the petitioner from Kobanapalli village panchayat to Nallur village panchayat and also transferring one Madhesh from Bekappalli village panchayat to Anchettippalli village panchayat. Challenging the transfer order the said Madhesh has filed a writ petition in WP.No.1429/2017, which was dismissed. While so, by proceedings dated 10.10.2019 the District Collector transferred the petitioner from Nallur village panchayat to Anchettippalli village panchayat and also transferring the said Madhesh from Anchettippalli village to Nallur village panchayat. Challenging the transfer order the petitioner filed a writ petition in WP.No.30023/2019 which came to be dismissed by this Court on 21.10.2019. Thereafter, again within a short span, the District Collector, by proceedings dated 01.11.2019, transferred the petitioner from Nallur village panchayat to Mugallur village panchayat and also transferring the third respondent Thiru.Ravi from Mugallur village panchayat to Nallur village panchayat.
- 3.According to the petitioner, there is no valid grounds much less administrative grounds necessitating the transfer of the petitioner and generally the Panchayat Assistants should not be transferred but under exceptional circumstances since they are entrusted with the work of maintenance of properties of village panchayat. Aggrieved by the transfer order, the petitioner has come forward with the present writ petition.
- 4.The learned counsel appearing for the petitioner would submit that on an earlier occasion the petitioner was transferred from Nallur village panchayat to Anchettippalli village panchayat by proceedings dated 10.10.2019 and while he was settling his family in the transferred place, again all of a sudden by proceedings impugned in the writ petition dated 01.11.2019, the first respondent again transferred the petitioner to Nallur village panchayat. He would submit that there is absolutely no necessity or administrative reason to transfer the petitioner from Nallur village panchayat and the said transfer order cannot be sustained since no valid reason has been assigned and merely citing administrative ground is not sufficient and hence the learned counsel seeks this Court to quash the same.
- 5.The learned Government Advocate appearing for the respondents conceded to the request as submitted by the learned counsel appearing for the petitioner. The learned counsel would submit that if this Court directs the respondents to consider and dispose of the representation made by the petitioner, the same would be complied with and the representation would be disposed of in accordance with law.

6. In fact transfer is not only an incident but an essential condition of service and the issue a transfer and posting has been considered time and again by the Hon'ble Apex Court and entire law has been settled by catena of decisions. Generally when the transfer order was made on administrative grounds or in the public interest, should not be interfered with unless there are strong or pressing grounds rendering a transfer order is illegal on the ground of violation of statutory rules or on grounds of mala fides. In Gujarat Electricity Board v. Atmaram Sungomal Poshani, reported in (1989) 2 SCC 602, the Hon'ble Supreme Court has observed as under:-

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the another is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration."

7. In Union of India v. H.N. Kirtania, , the Hon'ble Apex Court observed as under:-

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide."

8. In Union of India v. S.L. Abbas reported in 1989 (3) SCC 447, the Apex Court has observed that the Government instructions on transfer are mere guidelines without any statutory force and the Court or Tribunal cannot interfere with the order of transfer unless the said order is alleged to have been passed by malice or where it is made in violation of the statutory provisions.

9. Similar view has been reiterated by the Supreme Court, in "Bank of India v. Jagjit Singh Mehta reported in 1992 (1) SCC 306", observing that the terms incorporated in the transfer policy for posting of both the spouses, if in service, at the same place, require to be considered by the authorities "along with exigencies of administration" and " without any detriment to the administrative need and claim of other employees".

10. In *State Bank of India v. Anjan Sanyal*, reported in AIR 2001 SC 1748, the Apex Court held as under:-

"4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.

(Emphasis supplied).

11. In *Rhone-Poulenc (India) Ltd. v. State of U.P.* reported in (2000) 7 SCC 675, the Hon'ble Supreme Court held as under.-

"the mere fact that after the order of transfer had been issued and when Respondent 3 had failed to report for duty, he was also asked by the Corporate Manager, who was competent to order his transfer, to join the duties at Kanpur will not validate 'the order of transfer issued by an authority not competent to do so.'"

12. A relieving order could be passed when certain functional responsibilities are to be carried out by the transferred employee. For example, handing over of the charge, classified documents, registers, commercial documents, cash etc., as the case may be (*Vide Raj Bahadur Sharma v. Union of India*).

13. Thus, it is clear that the transfer policy does not create any legal right in favour of the employee. It is settled law that a writ petition under Article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by an employee that there is a breach of a statutory duty on the part of the employer. Therefore, there must be a judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the Court that he/ she has a legal right to insist on such performance. The existence of the said right is a condition precedent for invoking the writ jurisdiction.

14. In the present case though the petitioner had challenged the present order, miserably failed to point out that any mala fides tainted with the present order. Therefore, in the absence of mala fides attributed in respect of the present transfer order, there is no scope to interfere with the same. Hence, this writ petition is liable to be dismissed. Accordingly dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The District Collector (PD Section)
Krishnagiri district,
Krishnagiri.
2. The Block Development Officer (PD Section)
(Special Officer) Village Panchayat,
Hosur Panchayat Union, Krishnagiri District,
Krishnagiri.

+1 cc to Mr.M.P.Saravanan, Advocate, S.R.No.91766

W.P.No.31314 of 2019 and
W.MP.No.31479 of 2019

RGN(CO)
SSM(07/11/2019)

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