

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.28035 of 2018

and

W.M.P.No.32633 of 2018

M.Rangasamy

..Petitioner

vs.

1.The Chairman / Managing Director,
TANGEDCO / TNEB,
Anna Salai,
Chennai - 600 002.

2.The Chief Engineer (Personnel),
TANGEDCO / TNEB,
Anna Salai,
Chennai - 600 002.

3.The Chief Engineer / HYDRO,
TANGEDCO / TNEB,
Anna Salai,
Chennai - 600 002.

4.The Superintendent Engineer,
Erode Generation Circle,
TANGEDCO/TNEB,
Erode.

5.The Executive Engineer,
Mettur Power Houses, सत्यमेव जयते
TANGEDCO / TNEB,
Mettur Dam - 636 401.

6.Mr.V.Venkidusamy,
The Assistant Executive Engineer,
Operation / Tunnel Power House,
TANGEDCO / TNEB,
Mettur Dam - 636 401.

7.Mr.J.Janarthanam,
The Assistant Engineer,
Operation / Tunnel Power House,
Erode Generation Circle,

TANGEDCO / TNEB,
Mettur Dam - 636 401.

8.The Superintendent Engineer,
Kundha Power Generation Circle,
TANGEDCO / TNEB,
Kundha,
The Nilgiris District.

..Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records of the impugned order dated 15.10.2018 made in Memo No.000470/1187/M18/M184/2018-1, passed by the 3rd respondent and quash the same, consequently, direct the respondents 3 to 7 to allow the petitioner to work at Mettur Tunnel Power House, Mettur Dam.

For Petitioner ... Mr.M.R.Jothimanian

For Respondents ... Mr.S.Santhanaraman
for Mr.P.R.Dhilip Kumar,
Standing Counsel RR1 to 5.

ORDER

This writ petition has been filed seeking for issuance of a writ of Certiorarified Mandamus, to call for the records of the impugned order dated 15.10.2018 made in Memo No.000470/1187/M18/M184/2018-1, passed by the 3rd respondent herein, quash the same and consequently, direct the respondents 3 to 7 to allow the petitioner to work at Mettur Tunnel Power House, Mettur Dam.

2. The petitioner was appointed as Helper by the second respondent on 30.11.1994. He was promoted as Line Inspector on 02.01.2006. According to the petitioner, that he has been enjoying unblemished record of service through out his career. The first respondent has, in fact recorded his appreciation for the meritorious services rendered by the petitioner on 30.01.2005, by awarding "Letter of appreciation".

3. According to the petitioner, that he had made complaints against respondents 6 and 7, as they were involved in certain irregularities in discharge of their duties as Assistant Engineer and Assistant Executive Engineer respectively. The petitioner being a member of Tamilnadu National Electricity Workers Federation had also forwarded a representation to the Superintendent Engineer on 12.07.2018, regarding the functioning of the respondents 6 and 7. While the complaints preferred against the respondents 6 and 7 were pending, the impugned order

of transfer was issued on 15.10.2018, transferring the petitioner from Erode Hydro Generation Circle to Kundha Power Generation Circle, which is about 260 kilometers away. The petitioner therefore challenged the transfer on the ground that the same was issued with a malafide intention and not on administrative grounds. This Court admitted the writ petition and passed an interim order on 24.10.2018, restraining the respondents from taking any coercive action against the petitioner in case, the petitioner did not choose to join in the transferred place and also restraining the respondents from evicting the petitioner from the quarters. In view of the same, it appears that no action has been initiated against the petitioner, as the petitioner has not chosen to join in the transferred post.

4. In the writ petition, notice has been ordered to the respondents on 24.10.2018 and the counter affidavit has been filed.

5. Mr.M.R.Jothimanian, learned counsel appearing for the petitioner would submit that the basis and the foundation for the transfer is, because of the complaints preferred by the petitioner against the higher officials of the Board namely the 6th and 7th respondents and the transfer order was issued not for any administrative exigency or requirement. He would draw the attention of this Court to the complaint given by the petitioner to the Superintendent Engineer, against the officials concerned in regard to certain irregularities committed by them while discharging their duties as Assistant Engineer and Assistant Executive Engineer respectively. Immediately, on the heels of complaints being filed, the transfer order came to be issued on 15.10.2018 transferring the petitioner from Erode Hydro Generation Circle to Kundha Power Generation Circle, which is 260 kilometers away.

6. The learned counsel would also submit that already the writ petitioner relinquished his right to promotion to the next higher post viz., Foreman, due to family circumstances and despite his relinquishment the transfer order has been issued transferring him to a far away place. By transferring the petitioner to such a far away place is unfair and contrary to the very relinquishment of his right by foregoing his promotion as Foreman and therefore, the learned counsel would submit that the said transfer order is liable to be interfered with. According to the petitioner, he was disturbed and posted to a far away place despite his foregoing promotion in order to remain in same station. According to the learned counsel, the transfer order is tainted with mala fides and the same is therefore liable to be interfered with.

7. Per contra, the learned counsel appearing for the respondents 1 to 5 would submit that there is shortage of hands in Kundha Generation Circle and the services of the petitioner were required and hence, he was transferred to Kundha Generation Circle on the basis of administrative requirement. According to the learned counsel, it is a routine order of transfer on administrative grounds and the same cannot be construed as an order issued on mala fide consideration. Moreover, the learned counsel would submit that the in Kundha Generation Circle 60% of the posts were lying vacant and therefore, there was manpower requirement and hence, the petitioner was transferred and posted in that place.

8. This Court considered the submissions made by the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1 to 5 and perused the materials placed on record.

9. From the circumstances and the facts of the case, it could be safely inferred by this Court that the transfer order has been issued ostensibly on the ground that the petitioner had submitted complaints against the higher officials in regard to their discharge of duties. Closely on the heels of the complaints being made by the petitioner against the higher officials, the present transfer order was issued on 15.10.2018. Although the justification of the transfer order is sought to be made in the counter affidavit about man power requirement in the transferred place, but such requirement is not reflected in the transfer order at all. The transfer order in fact, is a non-speaking order and did not disclose any administrative requirements or exigencies mandating posting of the petitioner to a far away place.

10. Moreover, the petitioner himself has relinquished his right due to the family circumstances for promotion to the higher post of Foreman which meant that he could stay in the same place due to family circumstances. Once such relinquishment of his right was given by the petitioner foregoing his promotion, the petitioner cannot be made to suffer by transferring him to a far away place. Though some reasons have been stated in the counter affidavit that for certain administrative requirement, transfer of the petitioner was made, on the whole, it appears that the transfer order is not based on any administrative exigency or requirement but probably due to certain extraneous consideration which prompted the authority concerned to abruptly transfer the petitioner in the middle of the academic year to work in the Kundha Power Generation Circle, on 15.10.2018.

11. Therefore, this Court is of the considered view that the transfer order issued against the petitioner is not on a bonafide consideration or for any administrative requirement but on an extraneous consideration and hence, the same is liable to be interfered with.

12. In the circumstances, the writ petition is allowed and the impugned order dated 15.10.2018 made in Memo No.000470/1187/M18/M184/2018-1, passed by the 3rd respondent, is hereby set aside. The respondents are directed to restore the petitioner to his position as Line Inspector in Mettur Tunnel Power House, Mettur Dam, where he was working before the order of transfer. As regards the period of his absence from the date he being relieved from the Mettur Tunnel Power House, Mettur Dam and till the date he being restored, the authorities are directed to pass appropriate orders regularizing the period in terms of the service regulations.

13. In view of the above observations, the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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To

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Chennai - 600 002.

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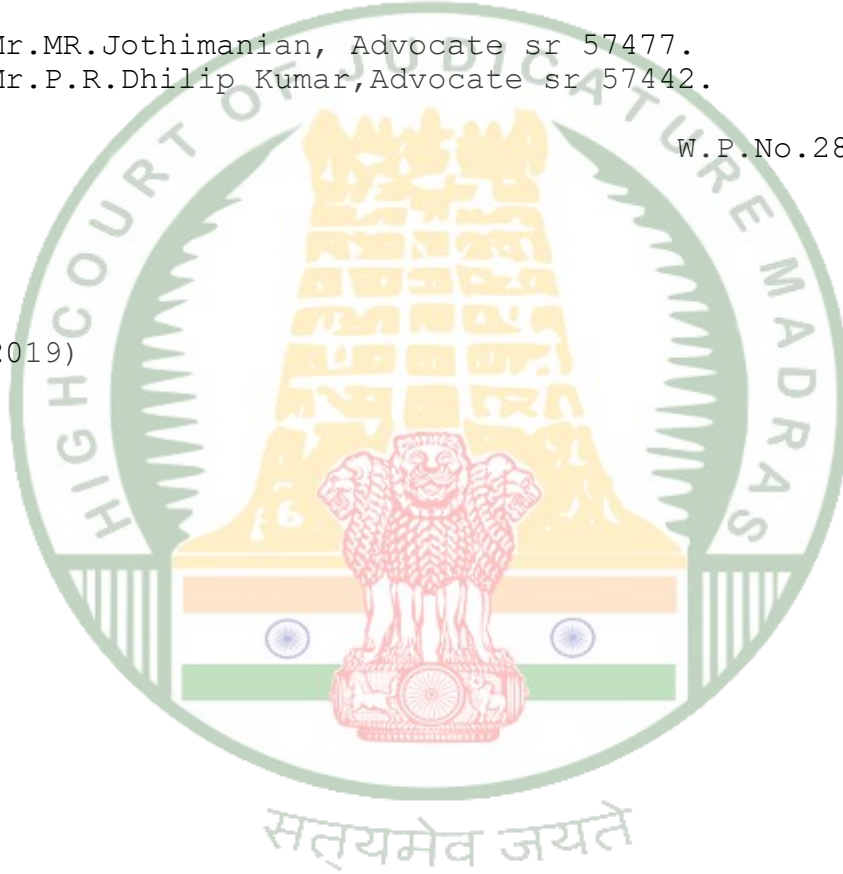
6. The Superintendent Engineer,
Kundha Power Generation Circle,
TANGEDCO / TNEB,
Kundha,
The Nilgiris District.

+1 CC to Mr.MR.Jothimanian, Advocate sr 57477.

+1 CC to Mr.P.R.Dhilip Kumar,Advocate sr 57442.

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SVI (CO)
SP (29/07/2019)



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