

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No. 34624 of 2018

and

W.M.P.Nos. 40137 & 40138 of 2018

A.Valarmathi

.. Petitioner

Vs.

1. The Commissioner of Labour
Office of the Commissioner of Labour
DMS Building, Teynampet
Chennai - 600 006.

2. S.Sivakumar
Adminsitrativ Officer
Tamil Nadu Labour Welfare Board
Chennai - 600 006.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the proceedings of the 1st respondent in No.E2/40624/18 dated 21.12.2018, published in the website on 22.12.2018, and quash the same.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.D.Suriya Narayanan

Additional Government Pleader
for R1

Mr.L.Chandrakumar

for Mr.P.K.Rajesh Praveen Kumar
for R2

ORDER

The order of transfer issued in proceedings dated 21.12.2018, transferring the writ petitioner from the post of Deputy Commissioner of Labour at Thiruvallur to the Tamil Nadu Labour Welfare Board, Chennai as Administrative Officer, is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that earlier, the writ petitioner was transferred vide proceedings dated 15.09.2015, from Labour Officer, Thiruvallur to Vellore.

Once again, she was transferred vide proceedings dated 25.09.2017 from Vellore to Thiruvallur. Therefore, the present transfer, transferring the writ petitioner from Vellore to the Tamil Nadu Labour Welfare Board at Chennai is on extraneous considerations.

3. The learned counsel for the writ petitioner states that the 2nd respondent is not qualified to hold the post of Deputy Commissioner, Vellore, as he was not possessing the qualifications prescribed for the post i.e., completion of Legal Metrology (General) Rules, 2011. In other words, he is qualified to deal with the cases, which all are having certain legal implications and the qualification prescribed for legal Metrology Officer is not possessed by the 2nd respondent. It is further contended that in order to entertain the request of the 2nd respondent, proceedings dated 20.02.2018, the impugned transfer order has been passed on the next day on 21.12.2018. Thus, the impugned order is liable to be scrapped.

4. The learned counsel appearing on behalf of the 2nd respondent would submit that the 2nd respondent is fully qualified to hold the post of Deputy Commissioner of Labour at Thiruvallur. This apart, in respect of the administrative transfers, the writ petitioner cannot plead about the qualifications and other aspects which all are connected with the Service Rules in force. The order of transfer was issued on administrative grounds and this apart, the 2nd respondent also had submitted a representation to transfer him from the post, in which he is working.

5. The learned counsel appearing on behalf of the 1st respondent relying on the counter statement stated that the petitioner was appointed by recruitment by transfer of service as Inspector of Plantations and the 2nd respondent was appointed by direct recruitment as Labour Officer (Social Service Scheme) which are later re-designated as Assistant Commissioner of Labour. They were not appointed as Deputy Controller of Legal Metrology. The post of Assistant Commissioner of Labour is governed by the Special rules for Tamil Nadu Labour Service.

6. It is further stated in the counter affidavit as follows

3. As per rule 28(1) of the Legal Metrology (General) Rules, 2011, the educational qualifications prescribed for appointment as Legal Metrology Officer are degree of the recognised university in science (with physics as one of the subjects), technology or engineering or a recognized diploma in engineering with three years professional experience. There are no such educational qualifications prescribed in the

Special Rules for Tamil Nadu Labour Service for appointment to the post of Assistant Commissioner of Labour as prescribed in Rule 28(1) of the Legal Metrology (General) Rules, 2011. However, the officials appointed as Assistant Commissioner of Labour in Labour Department of Tamil Nadu are notified as Deputy Controller of Legal Metrology under the Legal Metrology Act 2009. They are also assigned with the following statutory functions:

1. Licensing officers under the Contract Labour (Regulation and Abolition) Act, 1970 (in respect of establishments other than Factories)

2. Licensing Officer under Motor Transport Workers Act, 1961.

3. Inspectors under the following Labour Enactment's:

a) Tamil Nadu Shops and Establishments Act, 1947

b) Tamil Nadu Catering Establishments Act, 1947

c) Tamil Nadu Industrial Establishments (National & Festival Holidays) Act, 1958

d) Tamil Nadu Labour Welfare Fund Act, 1972

e) Tamil Nadu Industrial Establishments (Conferment of permanent Status of Workmen) Act, 1981

f) Payment of Wages Act, 1936

g) Minimum Wages Act, 1936

h) Motor Transport Workers Act, 1961

i) Beedi and Cigar Workers (Conditions of Employment) Act, 1966

j) The Maternity Benefit Act, 1961

k) Contract Labour (Regulations and Abolition) Act, 1970

l) Tamil Nadu Payment of Gratuity Act, 1972

m) The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979

n) Equal Remuneration Act, 1976

o) Sales Promotion Employees (Conditions

of Services) Act, 1976

p) The Working Journalists & Other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

It is also submitted that as far as the state of Tamil Nadu concerned, there is no separate department to enforce the Legal Metrology Act and Rules. An Assistant Commissioner of Labour (Enforcement) is implementing the Legal Metrology Act and rules, besides various other labour enactments mentioned above.

4. It is submitted that Rule 2 of Special Rules for Tamil Nadu Labour Service stipulates the following qualifications for promotion to the post of Deputy Commissioner of Labour, i.e., the next higher post.

- i. Must possess the minimum general educational qualification;
- ii. Must have passed the Departmental Tests of Labour and Factories, Parts A and B;
- iii. Must be an approved probationer;
- iv. Must have experience in the posts as specified in any three of the four items as noted below excluding the period spent on leave in the respective posts-

(1) in the post of Assistant Commissioner of Labour or Administrative Officer or Public Relations Officer for a period of not less than 12 calendar months;

(2) in the post of Assistant Commissioner of Labour (Plantations) for a period of not less than 12 calendar months;

(3) in the post of Assistant Commissioner of Labour (Enforcement) or Assistant Commissioner of Labour (Women Welfare) for a period of not less than 12 calendar months;

(4) in an equivalent post on deputation or on foreign service for a period of not less than 12 calendar months.

It is submitted that as per the above said rule, the petitioner was already served in the

following posts till 24.09.2015.

1. Assistant Commissioner of Labour (Plantations)
2. Assistant Commissioner of Labour
3. Assistant Commissioner of Labour (Enforcement)

Further it is submitted that in order to acquire knowledge and experience in an equivalent post on deputation, the petitioner was transferred to the post of Assistant Commissioner of Labour (SSS), Vellore on deputation basis vide proceedings No.E2/32581/2015, dated 15.09.2015. On receipt of the transfer order and relieving order from the post of Assistant Commissioner of Labour (Enforcement), Tiruvallur on 25.09.2015 forenoon, the petitioner entered on Medical Leave from 25.09.2015 upto 31.12.2015 and after availing the holiday permissions for 01.01.2016 to 03.01.2016, joined on 04.01.2016 in the transferred post.

It is submitted that it shows it is the usual practice of the petitioner to go on Medical Leave to avoid the transfer whenever she was posted on deputation.

5. It is submitted that the second respondent was appointed as Labour Officer by direct recruitment as he possessed the educational qualifications prescribed for appointment to the said post in the special rules for Tamil Nadu Labour Service.

Here it is pertinent to note that as per Rule 2 of the Special Rules for Tamil Nadu Labour Service, an officer in the cadre of Assistant Commissioner of Labour can be transferred to some other post in the same cadre even on completion of 12 months in his/her present post.

As per rule 2 of the Special Rules for Tamil Nadu Labour Service, he was transferred and posted to the statutory posts mentioned in the said rules. Since he acquired service qualifications in the statutory posts, while he was working in the post of Assistant Commissioner of Labour (Enforcement),

Tiruvallur during 2017, he was transferred and posted as Administrative Officer, Tamil Nadu Labour Welfare Board, Chennai, on the administrative grounds.

6. It is submitted that as per the consolidated guidelines issued in Annexure-I to the letter No.11541/FR-II/2015-1, personnel & Administrative Reforms (FR-II) Department, dated 17.04.2015, under the heading Norms for Deputation in item No.(ii), it has been stated if the senior had already been on foreign service, his next junior should be considered for deputation. In this instant case, Thiru.N.K.Dhanabalan, Assistant Commissioner of Labour, the immediate senior to the petitioner was transferred and posted as Labour Welfare Officer, Directorate of Stationary and Printing, Chennai on deputation and joined on 24.11.2017. Therefore, there was no need to get consent from the petitioner and the petitioner was transferred and posted as Administrative Officer, Tamil Nadu Labour Welfare Board, Chennai by the transfer order which is challenged by the petitioner.

Further it is submitted that Fundamental rule 112 says that "if a Government Servant is transferred to foreign service while on leave, he ceases, from the date of such transfer, to be on leave and to draw leave salary". The petitioner on seeing the transfer order, went on medical leave and without exhausting the remedy available with the department, approached the Hon'ble Court.

It is submitted that the transfer order challenged by the petitioner has been issued neither on the pressure of the second respondent nor on the political pressure as alleged by the petitioner.

7. It is submitted that the second respondent, on completion of 1 year 2 months in the post of Administrative Officer, Tamil Nadu Labour Welfare Board, Chennai and the petitioner, on completion of 1 year 2 ½ months of service in the post of Assistant Commissioner of Labour (Enforcement), Tiruvallur were transferred and posted vice-versa vide proc.No.E1/40624/2018, dated

21.12.2018 of the first respondent which is challenged by the petitioner. Since the said transfer order was issued on administrative grounds and the second respondent herein is fully qualified to hold the post of Assistant Commissioner of Labour (Enforcement), Tiruvallur as per Special Rules for Tamilnadu Labour Service which governs the post.

7. Though, the learned counsel for the petitioner states that the order of transfer impugned was issued on extraneous considerations and with a mala fide intention, the petitioner has not impleaded the competent authority in his personal capacity to establish the mala fide intention. This apart, there is no substantial allegation set out in the affidavit filed in support of the writ petition. In the absence of any such specific allegations and averments in the writ petition, this Court would not be in a position to appreciate the contentions, in respect of the mala fide intention, the order of administrative transfers can be issued on various grounds.

8. Even in the present case on hand, the impugned order states that, it is on administrative grounds. If an inference of mala fide is drawn on the ground that the 2nd respondent submitted his request transfer application on 20.12.2018 and the impugned order of the transfer has been issued on 21.12.2018, even in such cases, the petitioner has to establish that the order of transfer has been issued on mala fide intention or on any other extraneous consideration.

9. Administrative transfers are issued on various circumstances and on various grounds. For instance, continuance of certain public servants in a particular post may not be conducive for the peaceful administration or their further continuance may cause certain troubles to the people, who all are connected with the Department. There are various such administrative aspects, which all are the reasons for the administrative transfers. Courts would not be in a position to scrutinize or conduct an enquiry in respect of those reasons for such issuance of the administrative transfers.

10. Administrative transfers are the prerogative of the Department concerned and the competent authorities are the best persons to assess and act accordingly. However, those competent authorities should act in the interest of public and in the event of any illegality or some personal motive, then alone, the employee can approach the Court of law for appropriate remedy. In other words, if an order of transfer is issued with a mala fide intention or in violation of the statutory rules, then a writ petition can be entertained. Even in such cases, the

allegation of mala fide intention must be substantiated in the writ proceedings and the official concerned must be impleaded as party respondents in the writ proceedings. In the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. Transfer is an incidental to service, more so, a condition of service. Public servant is liable to work wherever he is posted in the interest of public administration. On accepting the offer of appointment, a person is agreeing for the conditions of service and transfer being incidental, he must be in a position to work, wherever he is posted.

11. Place or post can never be claimed as a matter of choice by the public servants. All public servants are duty bound to perform their duties diligently and with utmost care and devotion. This being the basic principles to be followed and erosion in this regard can never be tolerated either by the officials or by the Courts. High Court cannot interfere with the routine administration of the State or its organization. In the event of such routine interference in administration, more specifically, in transfer cases, the very discipline and the functioning of the administration would be paralyzed. Thus, the judicial review of administrative transfers must be exercised with restraint and only on exceptional circumstances, such orders of transfers can be interfered with by the High Courts and not otherwise. This being the scope of the judicial review of administrative transfers issued by the competent authorities, this Court is of an undoubted opinion that the writ petitioner has not established any such strong acceptable ground for the purpose of interference in the order of transfer.

12. The learned counsel for the writ petitioner states that the order of transfer was issued on extraneous consideration. If the petitioner is of the opinion that the impugned transfer order has been issued on extraneous consideration, the petitioner is at liberty to approach the appellate authority by way of filing complaint, setting out all the grievances and grounds, enabling the Appellate Authority to deal with the matter appropriately. In such case, the Appellate authority is empowered to adjudicate the grievances as well as the grounds raised and pass appropriate orders on merits and in accordance with law. However, this Court, under Article 226 of the Constitution of India would not interfere with the routine administration of the state or its organisation and transfer being an incidental to service, only on exceptional cases, the High Court can exercise the power of Judicial Review and not otherwise.

13. This being the principles, the present writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

Kmm

To

1. The Commissioner of Labour
Office of the Commissioner of Labour
DMS Building, Teynampet
Chennai - 600 006.

2. Administrative Officer
Tamil Nadu Labour Welfare Board
Chennai - 600 006.

+1 CC to Mr.V.Vijay Shankar, Advocate sr 23232.

+1 CC to Mr.P.K.Rajesh Praveen Kumar, Advocate sr 22427.

W.P.No.34624 of 2018

VGII (CO)
SP(02/04/2019)

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