



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

W.P. (MD) No.15530 of 2019

and

W.M.P. (MD) No.12180 of 2019

M.J.Mohan

... Petitioner

Vs.

1.The Chief Engineer,
Agricultural Engineering Department,
Nandanam, Chennai - 35.

2.The Superintending Engineer,
Agricultural Engineering Department,
Tiruchirappalli Region,
Tiruchirappalli - 20.

3.The Assistant Executive Engineer,
Agricultural Engineering Department,
Tiruchirappalli - 20.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in No.A/2163/19, dated 27.06.2019, on the file of the second respondent, insofar as the petitioner is concerned, quash the same as illegal and consequently, direct the second respondent to retain the petitioner within the Tiruchirappalli Sub-Division jurisdiction, within the time frame to be fixed by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader

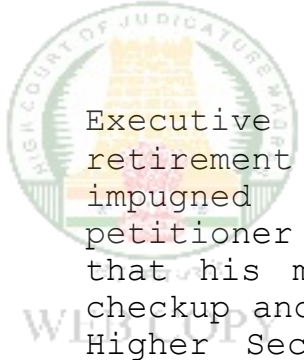
ORDER

This Writ Petition has been filed seeking to quash the impugned order of the second respondent in No.A/2163/19, dated 27.06.2019, insofar as the petitioner is concerned, and consequently, direct the second respondent to retain the petitioner, within the Tiruchirappalli Sub-Division jurisdiction, within the time frame to be fixed by this Court.

2.Mr.Aayiram K.Selvakumar, learned Additional Government Pleader takes notice for the respondents. By consent of both parties, this Writ Petition is taken for final disposal at the stage of admission itself.

<https://hcservices.ecourts.gov.in/hcservices/>

3.According to the petitioner, he is working as Assistant



Executive Engineer, Tiruchirappalli and now, at the verge of his retirement i.e., on 31.10.2020, the second respondent has issued the impugned transfer order, dated 27.06.2019, transferring the petitioner from Trichy to Musiri, without considering his grievance that his mother is aged about 75 years and she requires medical checkup and his wife is also working as P.G. Assistant at Government Higher Secondary School, Omandhur, which is also very far from Tiruchirappalli and if the said order is given effect to, the petitioner will not be in a position to take care of his aged mother. Further, according to the learned counsel appearing for the petitioner, the said transfer order has been passed in the middle of the academic year, which is against the guidelines issued in G.O.Ms.No.10, Personnel and Administrative Reforms (Per.S) Department, 07.01.1994.

4.The learned Additional Government Pleader appearing for the respondents submitted that due to administrative reasons, the said transfer order has been passed. He further submitted that transfer is an incident of service and no employee has any vested right to claim posting at a particular place of his choice. In the absence of any arbitrariness or *malafides*, it is not open to the petitioner to challenge the transfer order. He also submitted that the distance between the present place and Musiri is just 40 Kilometers and therefore, no prejudice or inconvenience would be caused to the petitioner and therefore, prayed for dismissal of the Writ Petition.

5.Perusal of the records shows that the petitioner has been transferred from Trichy to Musiri and the petitioner has been working in the present place for more than three years. The contention of the petitioner that the transfer effected in the middle of the academic year, cannot be accepted mainly on the ground that the Government Order is only a guidelines to the respondents and this Court had an occasion to consider the Government Order and held that the Courts cannot interfere with the transfer of employees from one place to another on administrative exigencies. Further, the Election Commission of India issued notification to conduct Lok Sabha election and the Model Code of Conduct was in force and the same was lifted only in the 5th week of May, 2019. Therefore, the transfer order has been passed in the month of June, 2019. On that ground also, the contention of the petitioner that transfer has been effected in the middle of the academic year is unsustainable and the same is liable to be rejected.

6.In Mohd. Masood Ahmad vs State Of U.P. & Ors. reported in (2007) 8 SCC 150, the Hon'ble Supreme Court has held as follows:

"7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in Rajendra Rao vs. Union of India (1993) 1 SCC 148; (AIR 1993 SC 1236), National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan (2001) 8 SCC 574; (AIR 2001 SC 3309), State Bank of India vs. Anjan Sanyal (2001) 5 SCC 508; (AIR 2001 SC

1748). Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh vs. State of U.P. (1997) 3 ESC 1668; (1998) All LJ 70) and Onkarnath Tiwari vs. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866; (1998 All LJ 245), has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 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 orders, were not competent to pass the orders."

7. In view of the above, this Court finds no reason to interfere with the impugned order of transfer dated 27.06.2019. However, considering the facts and circumstances of the present case, it is open to the petitioner to approach the second respondent to redress his grievance. If any representation is received from the petitioner, the second respondent shall consider the same sympathetically, by taking note of the above said facts and take a decision in one way or the other, as expeditiously as possible.

8. This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

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3. The Assistant Executive Engineer,
Agricultural Engineering Department,
Tiruchirappalli - 20.

+1cc to M/s. Special Government Pleader, SR.No. 75051

W.P. (MD) No.15530 of 2019

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