



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.14293 of 2018

and

W.M.P (MD)Nos.12953,12954 & 14623 of 2018

WEB COPY

S.Velmurugan

... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
No.144, Anna Salai,
Chennai-600 002.

2.The Secretary to the Government,
Tamil Nadu Generation and Distribution
Corporation Limited,
Secretariat Branch, 144, Anna Salai,
Chennai-600 002.

3.The Superintending Engineer,
Karur Electricity Distribution Circle,
Karur.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent in his proceedings in Memorandum No.833/A1/A11/2018-1 dated 29.06.2018 and quash the same in so far as the petitioner is concerned placed at Serial No.49 and consequently direct the respondents to retain the petitioner in the post of Executive Engineer, Karur Electricity Distribution Circle, Karur.

For Petitioner : Mr.A.L.Kannan
for Mr.S.Sumesh
For Respondents : Mrs.S.Srimathy

ORDER

The petitioner while working as Executive Engineer (Operation and Maintenance) Rural, Karur Circle, by impugned order, dated 29.06.2018 transferred and posted as Executive Engineer, EE/PH 19/Karur District Generation Circle/Kundah in Nilgiris District.



2. According to the petitioner, as per the guidelines issued by the first respondent, an employee who have served in a particular station for three years, can be transferred before academic year. The learned counsel appearing for the petitioner contended that petitioner was transferred and posted at Karur Circle on 12.07.2017 and within 11 months from such transfer, the petitioner is transferred to EE/PH 1/Kundah Generation Circle/Kundah in Nilgiris District, by impugned order dated 29.06.2018, which is 350 kms away from the present station and 8000 feet above sea level in the hill area. The petitioner is bachelor and he is looking after his mother, who is aged 72 years and it will be difficult for him to look after his mother in isolated hilling station. He is not having any female and male help to look after his mother. One Sivakumar, who is junior to the petitioner, is transferred and posted in the place of the petitioner. The said Sivakumar has served for 22 years in the same division in various capacities and he has served in the same station for more than 5 years. The said Sivakumar is facing the departmental proceedings and he cannot be posted in the sensitive post, in which, the petitioner is working. Transfer of petitioner is only to accomodate the said Sivakumar and hence, the impugned order with regard to transfer is malafide and arbitrary and it is not for administrative reason. The petitioner has given representation on 05.07.2018 to the first respondent. The first respondent did not consider the said representation. Many of the persons transferred along with the petitioner did not join in the transferred place and the respondents subsequently, cancelled the order of transfer in some cases and posted them in some other place.

3. The learned counsel appearing for the petitioner referred to such orders filed in the additional typed set of papers. In the present petition, this Court, by order dated 03.07.2018, granted interim stay of transfer, to the petitioner, but the respondents did not permit the petitioner to join in the same place and the petitioner filed a contempt petition in Cont.P.(MD) No.1361 of 2018, as the respondents have deliberately disobeyed the order of this Court, dated 03.07.2018 and relied on the order of this Court in W.P.(MD)No.9454 of 1995 and W.M.P(MD)No.15013 of 1995, dated 18.01.1996.

4. The respondents filed counter affidavit along with vacate stay petition. Mrs.S.Srimathy, learned counsel appearing for the respondents submitted that the petitioner is Class-1 Officer and guidelines referred to by the petitioner is not applicable to the petitioner. The petitioner as Class-1 Officer has power to transfer his subordinates. Transfer of employees of respondents is an incident of service and employees can be transferred anywhere in the State of Tamil Nadu and even elsewhere depending

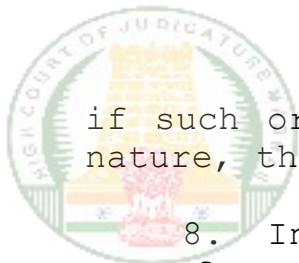


upon the exigencies by the first respondent. The service of the respondents comes under public utility service. For administrative reason and for benefit of general public, the employees can be transferred from one place to another place. The reason given by the petitioner for challenging the transfer order is not valid. The reason given in the guidelines only an example and it will not curtail the power of the respondents to consider the case of transfer due to administrative exigencies. The seniority in the post is not a criteria in the case of transfer and prayed for dismissal of the writ petition.

5. The petitioner filed reply affidavit and denied all the averments made in the counter affidavit and filed additional typed set of papers and referred to orders cancelling the order of transfer to some of the Executive Engineers and given posting and also referred to the representation given by the petitioner.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

7. From the materials on record, it is seen that the petitioner was posted as Executive Engineer, (Operation and Maintenance) Rural, Karur Circle, on 12.07.2017. He was transferred by the impugned order, dated 29.06.2018, within 11 months from the date of such transfer. According to the learned counsel for the petitioner, generally, an employee will be transferred after he served in a particular place for three years, as per the guidelines issued by the respondents and before academic year and the same was admitted by the respondent in paragraph 5 of the counter affidavit. It is the contention of the learned counsel for the respondents that the guidelines issued is only general guidelines and it is not applicable to the petitioner, who is Class-1 Officer and for administrative exigencies, an employee can be transferred even before completion of three years. In the present case, it is the contention of the learned counsel for the petitioner that the petitioner was transferred in order to accomodate one Sivakumar, who is junior to him. The petitioner has stated in the affidavit that the said Sivakumar facing Departmental proceedings. The said contention is not denied by the respondents in the counter affidavit. In the reply affidavit, the petitioner contended that the said Sivakumar worked for 22 years in the same Division and in the same station for more than 5 years in the same post, from which, the petitioner is now transferred by the impugned order dated 29.06.2018. The said contention is not denied by the respondents. It is now well settled that transfer is an incident of service and an employee can be transferred due to administrative exigency at any time. Courts will not generally interfere in the order of transfer. But,



if such order of transfer is malafide, arbitrary and punitive in nature, the Courts can interfere with such transfer.

8. In the present case, even though the petitioner is transferred along with others, there is no reason is stated by the respondents for transferring the petitioner, within 11 months from the date of his earlier transfer. Further, it is pertinent to note that, the petitioner has given representation and the respondents have not considered the same and not passed any orders on the representation. The contention of the respondents in the counter affidavit that the petitioner, without giving representation, approached this Court, is contrary to the facts, as the petitioner has filed the copy of the representation in the typed set of papers and the learned counsel for the petitioner referred to the same. From the order filed in the Additional typed set of papers, it is seen that the respondents have cancelled the transfer order in respect of some of the Executive Engineers transferred along with the petitioner, by impugned order and posted them in other place.

9. Considering the above materials, I am of the view that the impugned order of transfer of petitioner from present place, within 11 months is not due to administrative reason and it is not valid and it is liable to be set aside.

10. For the above reasons, the impugned order of transfer dated 29.06.2018 in sofaras relates to the petitioner alone is set aside. The respondents are directed to permit the petitioner to join in the same place, within a period of one week from the date of receipt of a copy of this order. The learned counsel for the respondent submitted that non-employment period will be regularised as duty period.

11. With the above observations and directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)



TO

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Karur.

+1 CC to MR.SM.S JOHNNY BASHA, Advocate (SR-102002[F] dated
28/11/2019)

+1 CC to MR.C. GANGAI AMARAN, Advocate (SR-102245[F] dated
28/11/2019)

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