

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2020

CORAM:

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.8592 of 2020

and

WMP Nos.10383 & 10384 of 2020

K.Narayanan

.. Petitioner

Vs

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

2. The District Revenue Officer,
Tiruvannamalai,
Tiruvannamalai District.

3. The Revenue Divisional Officer,
Kalasapakkam Taluk,
Tiruvannamalai District.

4. The Block Development Officer,
Kalasapakkam Taluk,
Kalasapakkam,
Tiruvannamalai District.

5. The Tasildhar,
Kalasapakkam Taluk,
Tiruvannamalai District.

6. N.Narayanaswamy.

.. Respondents



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PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for records in Letter Na.Ka.ou.A4/182/2020 dated 17.06.2020 on the file of 4th respondent and quash the same.

For Petitioner : Mr.R.Rajarajan

For Respondents : Mr.P.S.Sivashanmugasundaram
Spl.Govt. Pleader (for R1 to 3 & 5)
Mr.R.Vijayakumar (for R4)
Additional Government Pleader.

ORDER

This matter is taken up through Web hearing.

2. The writ petition has been filed seeking for the following prayer:

“for issuance of Writ of Certiorari, calling for records in Letter Na.Ka.ou.A4/182/2020 dated 17.06.2020 on the file of 4th respondent and quash the same.”

3. The petitioner was appointed as Village Clerk at Siruvalluvar Panchayat in 2002 and has been continuing in that position as on date. According to him, he has been enjoying unblemished service and no disciplinary proceedings are pending against him.

4. The petitioner is now aggrieved by the order of transfer dated 17.06.2020, transferring him from Siruvallur Panchayat to Kandhampalayam Panchayat in the place of one Narayanaswamy, who is the 6th respondent. The 6th respondent is posted in the place of the petitioner, instead. According to the transfer order, the interchanging of the petitioner and the 6th respondent was due to administrative reasons.

5. The order of transfer is challenged on the ground that the 4th respondent is not the competent authority to issue the transfer order. According to Rule 12 of the Tamil Nadu Village Servants Rules, 1980 in so far as the Village Clerk / Village Servant, is concerned, only Revenue Divisional Officer, is empowered to effect transfer.

6. Moreover, it is also stated in the affidavit that no reasons were spelt out in the transfer order, as per the requirement and therefore, the order is illegal being contrary to the rule. Even otherwise, during pandemic crisis, the Government has issued orders prohibiting routine transfer and only in exceptional circumstances, transfer can take place, that too, by the authority higher than the authority empowered to transfer

normally.

7. At the time of admission of the writ petition, this Court has passed an order of status quo on 29.06.2020. Thereafter, the case was adjourned on couple of occasions.

8. When the matter was listed earlier, the learned counsel appearing for the petitioner submitted that the interim order was not complied with, as the petitioner was not allowed to rejoin in his original place of work at Siruvallur Panchayat. Therefore, this Court was constrained to issue notice of appearance on 03.09.2020 to the 4th respondent, who passed the impugned order, vide this Court proceedings dated 31.08.2020.

9. Today, when the matter is taken up for hearing, the 4th respondent appeared before this Court, through video conferencing. Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the official respondent No.4, would submit that when the status quo order was issued on 29.06.2020, the petitioner by then was relieved from the post, as the transfer order was dated 17.06.2020 and the 6th respondent had also by then joined the Siruvallur Village Panchayat in

terms of the transfer order.

10. However, a counter affidavit has been filed on behalf of 4th respondent. In the counter affidavit, it is clearly mentioned that the 4th respondent is the competent authority and the impugned order of transfer was passed in pursuance of Rule 11 of Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013. The said Rule reads as under:

“11. Transfer: (1) Transfer of a person holding the post shall be made only on administrative grounds supported by valid reasons and after proper enquiry by the authorities concerned.

(2) Transfer and postings within the Block shall be made by the Block Develop Officer (Village Panchayats) of the Panchayat Union concerned. Transfer and postings to other Blocks within the District shall be made by the Personal Assistant (Development) to the Collector. All transfers and postings within the Block and the District shall be done in consultation with the Executive Authority of the Village Panchayat concerned. The Commissioner / Director of Rural Development and Panchayat Raj is the competent authority to make transfer from one District to another District based on the specific report from the Collector.”

11. According to Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the 4th respondent, the Block

Development Officer is the competent authority to transfer Village Servants within the Block and since the present transfer was within the Block, the competence of the 4th respondent, cannot be questioned. Therefore, he would submit that the writ petition is without any merits.

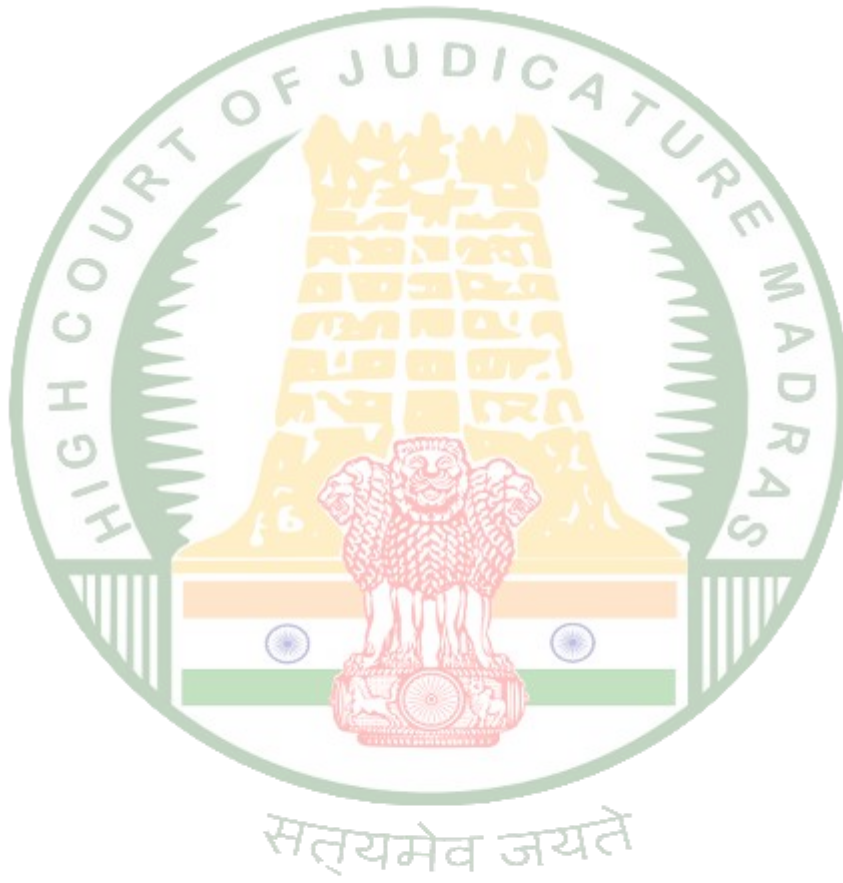
12. However, when a specific question has been put to the learned Additional Government Pleader as to the compliance of Rule 11(1) of Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, which specifically stipulates that transfer on administrative grounds must be supported by valid reasons and after proper enquiry by authorities concerned, the learned Additional Government Pleader has merely submitted that there was administrative requirement, which necessitated the transfer.

13. This Court is unable to appreciate as to how the transfer could be termed as a valid order in the teeth of specific stipulation in Rule 11(1) of Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 that any administrative ground which is the basis of transfer, must be supported by valid reasons and after proper enquiry by the authorities concerned. Merely couching the transfer order with

expression “administrative reason” does not suffice or satisfy the rule requirement. Such stipulation is also provided even in Rule 12 of the Tamil Nadu Village Servants Service Rules, 1980, which was relied on by the learned counsel for the petitioner. Therefore, in all fours, the position is that transfer order on administrative grounds governed by the above rules must be supported by valid reasons and after an enquiry.

14. In so far as this case is concerned except stating that the transfer order was on administrative grounds, no material has been produced before this Court, in support of the transfer order on behalf of the respondents. Except the oral submissions, learned counsel appearing for the 4th respondent was unable to submit even an iota of reason in support of the transfer order. Obviously, the 4th respondent who has passed the order of transfer, has not passed the order for administrative reasons, but for reasons extraneous to the legitimate administrative requirement.

15. Therefore, this Court can safely conclude that the impugned transfer order is not only contrary to the rule position as explained above, but also lacks in bonafides. Therefore, the same has to be set aside.

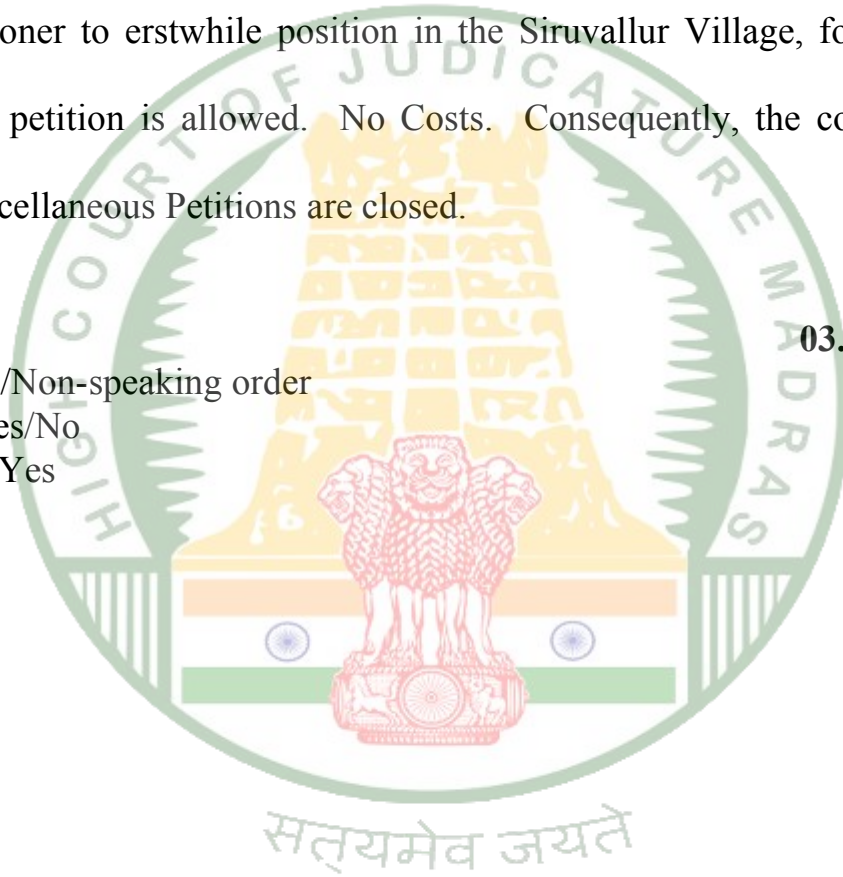


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16. In the above circumstances, the impugned order of transfer passed by the 4th respondent vide Letter Na.Ka.ou.A4/182/2020 dated 17.06.2020, is hereby set aside and the respondents are directed to restore the petitioner to erstwhile position in the Siruvallur Village, forthwith. The writ petition is allowed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

03.09.2020

Speaking/Non-speaking order
Index: Yes/No
Internet: Yes
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