

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:19.11.2020

Delivered on: 24.11.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.12548 of 2020

and

W.M.P.Nos.15461 & 15464 of 2019

and

W.M.P.No.16267 of 2020

U.Sudha

...Petitioner

Vs

1. The District Collector (Development Section)
Chengalpet District,
Chengalpet.

2. Personal Assistant to
The District Collector (Development Section)
Chengalpet District,
Chengalpet.

3. Additional Director (Panchayat, Audit)
Chengalpet District,
Chengalpet.

4. Block Development Officer,
(Village Panchayat/ Special Officer)
St.Thomas Mount Panchayat Union
at Chitalpakkam,
Chengalpet District.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call lfor the records and to quash the impugned transfer order passed by the 4th respondent herien in his proceedings Na.Ka.No.0005/2019/p-1 dated 24.08.2020 and further direct the 4th respondent herein to allow this petitioner to work as a Village Panchayat Secretary in the present Station (i.e.) Ottiyampakkam.

For Petitioner : Mr.P.Gurunathan

For Respondents : Mr.S.R.Rajagopalan
Additional Advocate General
assisted by Mr.M.Dig Vijay Pandian
Additional Government Pleader

ORDER

The matter is taken up through web hearing.

2. This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to call for the records and to quash the impugned transfer order passed by the 4th respondent herein in his proceedings Na.Ka.No.0005/2019/p-1 dated 24.08.2020 and further direct the 4th respondent herein to allow this petitioner to work as a Village Panchayat Secretary in the present Station (i.e.) Ottiyampakkam.

3. The case of the petitioner is that she is working as Village

Panchayat Secretary. She is aggrieved by the transfer order passed against her, transferring her from Ottiyampakkam Village Panchayat to Madhurapakkam Village Panchayat. According to her, she has been subjected to frequent transfer to different panchayats without specifying what was the administrative reasons for such frequent transfers. In her affidavit, she cited transfer orders dated 31.07.2020, 14.08.2020 and 24.08.2020 and the last being the subject matter of challenge in the present writ petition.

4. This Court, while entertaining the writ petition has granted interim stay of the impugned transfer order, as this Court *prima facie* found the order was not passed on any administrative requirement in the absence of any reasons spelt out in the order itself. The governing rules of transfer, mandate that the transfer of Panchayat Secretary shall be made only on administrative ground supported by valid reasons and after proper enquiry by the authorities concerned.

5. In fact, this Court in a number of cases interfered with the orders of transfer only on the ground that the authority, who passed the orders of transfer did not follow the transfer rules governing transfer as provided in Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013.

6. After notice, Mr.M. Dig Vijay Pandian, learned Additional Government Pleader entered appearance and a vacate stay petition was filed in W.M.P.No.16267 of 2020. In fact, learned Additional Advocate General appeared on a couple of occasions on behalf of the respondents and impressed upon this Court that this petitioner is not entitled to any relief from this Court, since the earlier orders of transfer passed against her were not obeyed at all and every time, when an order was issued, she refused to accept the orders. In fact, an affidavit filed in support of the vacate stay petition, it has been narrated, how the petitioner was exhibiting contumacious conduct towards her superiors, in not obeying the lawful orders of the authority.

7. This Court is not inclined to go into the factual controversies as between the conduct of the petitioner and the panchayat administration in the present challenge, as this Court is called upon to decide the 'lis' whether the transfer order impugned is valid or not with reference to the relevant rules on the subject matter. However, as far as the impugned transfer order is concerned, no reason has been spelt out in support of the administrative requirement. In that view, the transfer order *per se* suffers from patent illegality and the same is liable to be set aside. In fact, on similar ground, recently, an order was passed on 21.08.2020 by this

Court in W.P.No.10484 of 2020. Operative portions of the order in Paragraph Nos.7 and 8 passed in the said writ petition are extracted hereunder.

7. In consideration of Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, this Court is of the view that the transfer order is unsustainable in law. When Rule 11 mandates stipulation of reasons, followed by enquiry by the authorities concerned, mere mentioning of expression "administrative reason" in the transfer order does not conform to the requirement of the Rule. Therefore, the order of transfer is per se illegal and has to be set aside. The objective of the Rule palpably is to ensure that transfers are free from whimsicalities and arbitrariness and such objective cannot be undermined by ignoring the requirement of the Rule.

8. In the said circumstances, the impugned Proceedings in Na.Ka.No.985/2020/Aa.3, dated 26.06.2020, is hereby set aside only insofar as the second petitioner is concerned and the writ petition is allowed. The Writ Petition stands dismissed in respect of the first petitioner is concerned. No costs. Connected miscellaneous petitions are closed."

8. Rule 11 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, reads as under.

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 Development 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.*

In the circumstances, the present transfer order is liable to be set aside.

9. For the above stated grounds, the impugned transfer order passed by the 4th respondent in Proceedings Na.Ka.No.0005/2019/p-1 dated 24.08.2020 is hereby set aside as illegal, being contrary to the rules. However, it is clarified that the setting side the order of transfer is only on the ground that no administrative reasons have been spelt out in terms of

the rules governing the transfer. It is always open to the Panchayat administration to effect transfer and post the Panchayat servants in a larger interest of the administration, provided such action is in conformity with the governing rules and not actuated by any extraneous consideration.

10. The Writ Petition is allowed with the above observations. No costs. Connected miscellaneous petitions are closed.

24.11.2020

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

To

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V.PARTHIBAN.J.,
vsi



**Pre-delivery order made in
W.P.No.12548 of 2020**

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