



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)No.470 of 2020

and

C.M.P. (MD)Nos.3358 and 3359 of 2020

S.Tamilselvi

... Appellant / Petitioner

-Vs-

1.The Commissioner of Labour,
Labour Department,
DMS Compound, Teynampet,
Chennai-600 006.

2.The Joint Commissioner of Labour,
Collector's Office Complex,
Dindigul.

... Respondents / Respondents

Prayer: Writ Appeal - filed under Clause 15 of the Letters Patent Act, against the order dated 08.06.2020 made in W.P.(MD)No.6449 of 2020 on the file of this Court.

Prayer in WP(MD). 6449/ 2020 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari or appropriate Writ or order or direction in the nature of Writ, Calling for the records pertaining to the impugned order passed by the 1st respondent in E2/1646/2020-7 dated 18.5.2020 quash the same.

For Appellant	: Mr.G.Thalaimutharasu
For Respondents	: Mr.K.P.Krishnadoss, Special Government Pleader.

JUDGMENT

[Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.,**]

The appellant is the writ petitioner.

2.The appellant / writ petitioner made a challenge to the



impugned proceedings of the first respondent dated 18.05.2020, wherein she has been transferred from Assistant Commissioner of Labour (Enforcement) to Assistant Commissioner of Labour (Social Security Scheme), Thiruvavur, by way of transfer of service for deputation.

WEB COPY

3.The Writ Petition, after contesting, was disposed of, vide order dated 08.06.2020. Challenging the legality of the same, the present Writ Appeal is filed.

4.The petitioner was appointed as Labour Officer on 29.12.2008 in Thanjavur and in the year 2016, the said post was abolished and new post was created by the Government called as "Assistant Commissioner of Labour". During March, 2010, the appellant was transferred from Thanjavur to Nagercoil on her own request and during January, 2012, she was transferred from Nagercoil to Chennai and in the same year, during March, she was transferred from Chennai to Tirunelveli. During April, 2016, she was transferred from Tirunelveli to Tuticorin and during March, 2017, from Tuticorin to Chennai and in November, 2017, she was transferred to Madurai and in February, 2019, she was transferred from Madurai to Theni. The appellant's / petitioner's children were studying at Kendira Vidyalaya at Nagercoil. Her permanent residence is Tirunelveli and after completion of work, she used to go to Nagercoil to take care of her children.

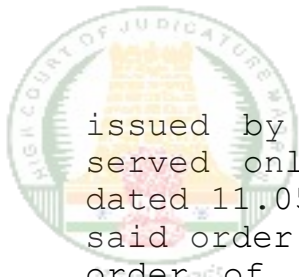
5.The petitioner made a challenge to the order of transfer on two grounds:-

"(a) In terms of G.O.No.249, Finance (Budget General-I) Department, dated 21.05.2020, which can be issued for minimizing the expenditure during 2020-2021, the general transfers can be kept on hold for the year 2020-2021 to minimize expenditure on transfer travel expenses. Only transfers on administrative grounds by an authority higher than the authority normally empowered to transfer and mutual request would alone be allowed.

(b)Consequently, the impugned order of transfer is in violation of Rule 110(a) of Tamil Nadu Government Fundamental Rules."

6.The learned Judge, after taking note of the arguments advanced by the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents, has disposed of the Writ Petition with certain directions and aggrieved by the same, the present Writ Appeal is filed primarily on the ground that the impugned order has not been rightly interfered with.

7.The learned counsel appearing for the appellant / writ petitioner would submit that though the order of transfer has been



issued by the first respondent on 18.05.2020, the appellant was served only on 26.05.2020, wherein it refers to the proceedings dated 11.05.2020, that copy of the same has not been enclosed in the said order furnished by the first respondent, till date and also the order of transfer came to be ordered based upon some anonymous reports sent by the Joint Commissioner and also procedural violation is pointed out for non-compliance of Rule 110(a) of the Tamil Nadu Government Fundamental Rules for the reason that when any Government servant has been transferred on foreign service, the first respondent ought to have got necessary willingness from the appellant and also the prior consultation with the Personnel and Administrative Department is also mandatory. Since it has not been complied with, the impugned order of transfer wants interference.

8.The learned counsel appearing for the appellant also made an equitable ground for the reason that the children of the appellant / writ petitioner are studying in Nagercoil. For the purpose of continuing studies, atleast taking note of the said aspect, she may be accommodated in a nearby district.

9.The first respondent has filed counter affidavit in this Writ Appeal and took a stand that the Labour Department is doing the work of registration of construction workers and of workers engaged in various unrecognized sectors. Various welfare measures and relief measures given to them and the same is done through the Assistant Commissioner of Labour (Social Security Scheme) functioning in every Districts all over Tamil Nadu and on account of Pandemic Covid-19 and Lock down situation, G.O.No.77, Labour and Employment (12), dated 24.03.2020 came to be passed for free supply of certain essential articles and in the light of the same, the service of the appellant / writ petitioner is imminently inevitable and accordingly, she has been transferred. It is also pointed out in the counter affidavit that the orders of transfer have also been passed to various Assistant Commissioner of Labours. It is also pointed out that 17 welfare boards are under the purview of Social Security Scheme, which are carried out by the respective Assistant Commissioner of Labour and as such, there is no necessity or willingness to transfer the concerned officials to occupy the said post and as such Rule 110 of Fundamental Rules, there is no application to the case on hand and prayed for dismissal of the Writ Appeal.

10.This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

11.Now, coming to the first ground of attack as to the non-following of G.O.No.249, dated 21.05.2020, this Court can take judicial notice that there were demand arisen by the unrecognized sectors, including the persons registered with the concerned welfare



boards as to the provisions of the supply of needy articles as well as cash. Taking note of the same, the beneficial articles were distributed to the registered unrecognized workers employed in the said welfare boards. Though it is argued by the learned counsel appearing for the appellant that the welfare boards are independent, the fact remains that the financial and other supports are provided by the Government only and the said welfare boards cannot be constituted as independent for the reason that the distribution of concerned welfare measures as well as needy articles had been done through the Assistant Commissioner of Labours (Social Service Scheme).

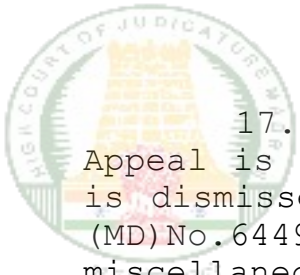
12.It is also to be noted that in the light of the catena decisions taken by the Hon'ble Supreme Court of India, which are followed by this Court, transfer is an incidental to service, more so, a condition of service and unless it is done by punishment or *mala-fide*, the same cannot be interfered with.

13.The appellant while joining the service in the Labour Department, is also very well aware of the fact that she is liable for transfer throughout the State of Tamil Nadu and no doubt, she has been transferred to various places either on her own request or administrative reasons.

14.Paragraph No.8 of the counter affidavit filed by the first respondent also enumerates the reasons for the transfer and it cannot be said that the said reasons are *mala-fide* or tainted with notice.

15.Now, coming to the second argument of the learned counsel appearing for the appellant / writ petitioner, Chapter 12 of the Fundamental Rules reads about Foreign Service and as per sub-clause 110(a), "*No Government servant may be transferred to foreign service against his will: Provided that this sub-rule shall not apply to the transfer of a Government servant to the service of a body incorporated or not, which is wholly or substantially owned or controlled by the Government or Co-operative institutions or Local Bodies:*". Though it is vehemently and forcefully argued by the learned counsel appearing for the appellant / writ petitioner that welfare boards are independent, this Court in the earlier paragraph has recorded the finding that it is not actually so and as such, the said rule is not having application to the case on hand.

16.Though the first respondent in Paragraph No.10 of the counter affidavit refers to the punishment imposed upon the appellant, this Court is not inclined to go with the same for the reason that the order of transfer came to be issued not on those grounds and it is purely on administrative grounds.



17. In the light of the reasons assigned above, this Writ Appeal is liable to be dismissed. In the result, this Writ Appeal is dismissed, confirming the order dated 08.06.2020 passed in W.P. (MD) No. 6449 of 2020. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Myr

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Commissioner of Labour,
Labour Department,
DMS Compound, Teynampet,
Chennai-600 006.
2. The Joint Commissioner of Labour,
Collector's Office Complex,
Dindigul.

Judgment Made in
W.A(MD) No. 470 of 2020
24.09.2020

SJ(CO)
AP(07/10/2020) 5P 3C