



WEB COPY

W.P.(MD).No.7697 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD).No.7697 of 2020

and

W.M.P.(MD) No.7186 & 7188 of 2020

Dr.Paramasivan

... Petitioner

Vs.

1) State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Department of Agriculture,
Fort St.George, Chennai.

2) The Vice-Chancellor,
The Tamil Nadu Agricultural University,
Coimbatore - 641 041

3) The Registrar,
The Tamil Nadu Agricultural University,
Coimbatore - 641 041

4) The Head of the Department,
Department of Soil Science & Agricultural Chemistry,
Agricultural College and Research Institute,
Killikulam, Vallanadu,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned transfer order passed by the third respondent in No.A1/5753-VIRK2020 dated 19.06.2020 and the consequential relieving order passed by the fourth respondent in No.P&H/SS&AC/AC&RI,KKM/Dr.M.P./Asst.Prof.(SS&AC)/ Relieving Order / 2020 dated 20.06.2020, quash the same as arbitrary and unconstitutional.

For Petitioner

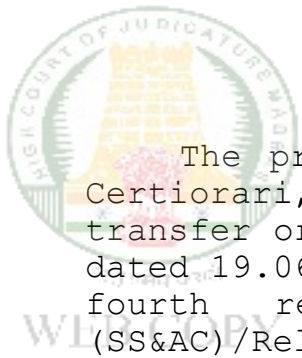
: Mr.P.Samuel Gunasingh

For R-1

: Mrs.J.Padmavathi Devi,
Special Government Pleader

For RR 2 to 4

: Mr.A.Thirumurthy,
Standing Counsel



O R D E R

The prayer sought for in this Writ Petition is for a Writ of Certiorari, seeking to call for the records relating to the impugned transfer order passed by the third respondent in No.A1/5753-VIRK2020 dated 19.06.2020 and the consequential relieving order passed by the fourth respondent in No.P&H/SS&AC/AC&RI,KKM/Dr.M.P./Asst.Prof.(SS&AC)/Relieving Order/ 2020 dated 20.06.2020 and quash the same.

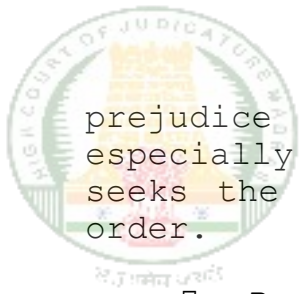
2. The case of the petitioner is that, the petitioner joined in the fourth respondent College and Research Institute as an Assistant Professor on 04.01.2010 and since then, he has been working as Assistant Professor in the Department of Soil Science and Agriculture Chemistry in the fourth respondent College and Research Institute.

3. The learned counsel for the petitioner submitted that, the petitioner is residing at Tuticorin along with his family members, including his female child of 14 years as of now, and she is a special child with 70% mental retardation. Therefore, in order to get the medical treatment, the petitioner has to go to the Chitrai Tirunal Institute for Medical Sciences and Technology, Trivandrum and constantly, such treatment has to be given to the child of the petitioner.

4. While that being the position, the present impugned order of transfer dated 19.06.2020 has been issued whereby, along with the petitioner two more incumbents have been transferred to various places and accordingly, the petitioner has been transferred from Killikulam, Tuticorin District to Vrinjipuram in Vellore District. Challenging the said transfer order, dated 19.06.2020, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner would submit that, during the COVID-19 period, normally general transfer on administrative reasons would not be permitted due to austerity measures taken by the Government in this regard and the learned counsel in support of this contention, relied upon G.O.MS.No.249 dated 21.05.2020, Finance (Budget General-I) Department and also relied upon an interim order passed by a learned Judge of this Court in W.P.(MD) No.8650 of 2020, dated 30.06.2020, where also, by relying upon G.O.MS.No.249, the transfer order in that case has been intervened by the learned Judge.

6. The learned counsel appearing for the petitioner would also submit that, there are vacancies in the nearby districts viz. Kanyakumari and Tirunelveli and if in those places, the petitioner is posted, he will be ready and willing to join in that place instead, he has been posted in a remote northern district of Tamil Nadu (i.e.) at Vellore. Therefore, if he is suddenly asked to go and join in the northern district (i.e.) Vellore, while having his special child with 70% of mental retardation, then, it will greatly



prejudice the interest of the petitioner and his family members, especially the child. Therefore, on these grounds, the petitioner seeks the indulgence of this Court to interfere with the impugned order.

7. Per contra, the learned Special Government Pleader and the standing counsel appearing for the respondents, on instructions would submit that, first of all, the petitioner has been working from the date of appointment at the present station for nearly about 10 years without being subjected to any transfer. Secondly, he would submit that, the post at Vellore, where he has now been transferred, is a special sanctioned post sanctioned by the ICAR (i.e.) Indian Council of Agriculture Research for some research purposes and the said post, since sanctioning has been kept vacant, and if it is continued to be kept vacant, the post would liable to be withdrawn by the ICAR and to avoid such eventuality, it became necessary for the respondents to place some experienced hand like the petitioner. Therefore, the said transfer which is impugned herein, so far as the petitioner is concerned, is purely out of administrative exigency. Therefore, the said transfer need not be interfered with.

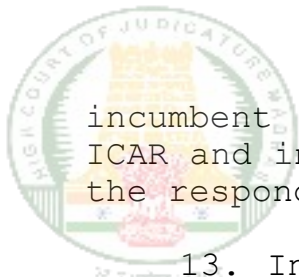
8. However, Mr.P.Samuel Gunasingh, the learned counsel for the petitioner would submit that, since it is COVID-19 pandemic period and due to the said crisis, if all of a sudden, the petitioner's locality along with his family members, where a special child is also there, is disturbed, that will have an impact on the health conditions of the family members, especially the special child. Therefore, on that ground, at least for the time being, the impugned order can be interfered with or deferred.

9. I have considered the said submissions made by the learned counsel appearing on both sides and have perused the materials placed before this Court.

10. It is a well settled principle that, transfer is one of the inevitable service condition for any employee and that is the reason why the law courts are very slow in interfering in transfer matters. If at all the transfer order is made malafidely or for want of jurisdiction, only on those specific grounds, if it is established before the Court of law, then the Law courts would interfere with those transfer orders. In all other cases, normally transfer orders would not be interfered with by the Court of Law.

11. Here in the case in hand, it is an admitted fact that the petitioner from the date of appointment has been working, for nearly more than 10 years in the same Station and he has never been subjected to any transfer so far.

12. Now, he has been transferred to an Institute, where a specialised post has been sanctioned long back by the ICAR for research purposes and if the said post is kept vacant without an



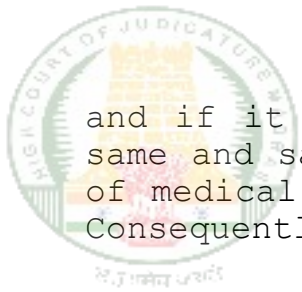
incumbent for a a longer time, it is liable to be withdrawn by the ICAR and in that case, it will be a great loss to the Institution of the respondents and therefore, that has to be born in mind.

13. Insofar as the difficulty expressed by the learned counsel for the petitioner that, the petitioner has to give treatment and continuous medical care to his special child is concerned, it is pointed out by Mr.A.Thirumurthy, learned standing counsel appearing for the respondents 2 to 4, that, even according to the medical documents filed in the typed set of papers, last such review has been made on the child of the petitioner some time in March 2020, where it is specifically mentioned that the next review would be after one year and *prima facie* it discloses that, the next review would come after one year. Therefore, the immediate medical attention on the part of the child of the petitioner may not arise at this point of time.

14. Further, the learned standing counsel appearing for the respondents would submit that, though G.O.Ms.No.249 dated 21.05.2020 is there, taking into consideration of the said G.O., special permission was obtained from the respondent University to make some unavoidable transfer due to administrative exigencies and this is one of such transfer, where the petitioner has been placed in the transferred place, which is a special post, in order to retain the said post. Therefore, that reason stated by the learned counsel appearing for the petitioner also cannot be countenanced and the interim order cited by the learned counsel in a related writ petition W.P.(MD) No.8650 of 2020 dated 30.06.2020 may not be applicable in the present case.

15. For all these reasons, this Court is not inclined to interfere with the impugned order on any acceptable legal grounds. However, it is to be noted that COVID-19 pandemic situation is still persisting in the country, especially in the State of Tamil Nadu , where every part of the State is affected. Therefore, during this juncture, if all of a sudden the petitioner with his family, which includes his special child, is driven to pack up and go to the transferred place without giving a breathing time, that will cause great prejudice to the family members of the petitioner. Therefore, in order to balance the situation and in order to give a protective cover for the family members of the petitioner during the COVID-19 period, this Court is inclined to give a direction to the respondents to give some breathing time to join in the transferred post, which this Court feels that, upto 31st August 2020, the petitioner can be given time to join in the transferred post.

16. Accordingly, the writ petition stands disposed of with the above observation that the petitioner shall join the transferred post on or before 31.08.2020 and once he joins in the transferred post, thereafter, if the petitioner seeks any special medical services for his child and for the said purpose, if he needs leave



and if it is so applied, then, the respondents shall consider the same and sanction the leave for the petitioner only for the purpose of medical reasons. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sts

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 Principal Secretary to Government,
Department of Agriculture,
Fort St.George, Chennai.
- 2.The Registrar,
The Tamil Nadu Agricultural University,
Coimbatore - 641 041
- 3.The Head of the Department,
Department of Soil Science & Agricultural Chemistry,
Agricultural College and Research Institute,
Killikulam, Vallanadu,
Thoothukudi District.

Order made in
W.P. (MD) .No.7697 of 2020

Dated:
23.07.2020

AP(25/08/2020) 5P 4C