



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.11972 of 2020

and

W.M.P. (MD)Nos.10318 and 10319 of 2020

S.Hemasundari

... Petitioner

Vs.

1.The Managing Director,
Tamilnadu Civil Supply Corporation,
Chennai-10.

2.The Deputy Collector/ Regional Manager,
Tamilnadu Civil Supply Corporation,
Madurai Region.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the first respondent in his proceedings in Proc.No.AE7/2459/2020 dated 08.09.2020 and to quash the same as illegal.

For Petitioner : Mr.N.Satheeshkumar

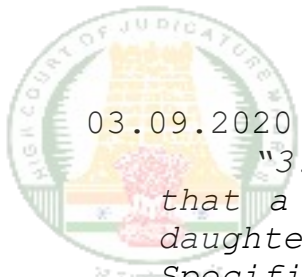
For Respondents : Mr.R.Vijayakumar
Standing Counsel

ORDER

The prayer sought for in this Writ Petition is for a Writ of Certiorari calling for the records relating to the impugned order passed by the first respondent, in his proceedings in Proc.No.AE7/2459/2020 dated 08.09.2020 and to quash the same.

2.The petitioner was appointed as Assistant Manager at the respondent Corporation in the year 2011 and was posted at Theni. According to the petitioner, after serving nine years, now the petitioner has been working as Deputy Manager (Accounts) at the office of the second respondent. The petitioner also would submit that she is a physically disabled person and she married in the year 1999 and gave birth to a male child in the year 2001 and he is a mentally retarded child. Therefore, the petitioner, being a differently-abled person, have to survive with her husband and the mentally retarded child. Therefore, on these sympathetic grounds, she challenges the impugned order of transfer made against the petitioner, by which she has been transferred from Madurai to Thirunelveli.

3.Mr.N.Satheeshkumar, learned counsel for the petitioner would submit that, the Government has recently passed an order in G.O.(Ms) No.107, Personnel and Administrative Reforms(S) Department, dated



03.09.2020 and the import of the Government Order reads thus :

"3. After careful consideration, the Government direct that a government employee who is a caregiver of dependent daughter / son/ parents / spouse / brother / sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer, subject to the administrative constraints, during the transfer period namely, between the 1st April and the 31st May, every year. This exemption is, however subject to the following conditions:

(i) A Government servant must be a caregiver of differently abled dependent such as daughter / Son/ parents / spouse / brother / sister.

(ii) A Government servant who is a caregiver of differently abled dependent should furnish a certificate, certified by the certifying authority that the dependent is a Person with Benchmark Disability as defined under Section 2 (r) of the Rights of Persons with Disabilities Act, 2016.

4. The Government also directs to follow the instructions issued in the Government letter second read above while considering the Government Servants who are having mentally ill or differently abled children for transfer."

4. By relying upon the said Government Order, the learned counsel for the petitioner would submit that, the person like the petitioner who is a caregiver of a differently abled dependent such as daughter / Son/ parents / spouse / brother / sister, with specified disability, can very well be exempted from transfer, after serving a period of five years in that station. Therefore, the petitioner, since she is a caregiver of her mentally retarded male child, the benefit of the G.O.(Ms)No.107 dated 03.09.2020 can be very well be extended to the petitioner and on that ground, the impugned order can very well be interfered with and also on the basis of the sympathetic ground where the petitioner is placed.

5. However, Mr.R.Vijayakumar, learned standing counsel for the respondent, on instructions would submit that, the petitioner was posted on her initial appointment as Assistant Manager at Theni on 25.05.2011. After working for sometime, the petitioner made a request of transfer to Madurai. Accordingly, by order dated 18.08.2012, the petitioner was posted at Madurai, where, she was working as Assistant Manager. At that time, the petitioner was given promotion as Deputy Manager on 17.12.2013. After getting promotion as Deputy Manager, she was transferred and posted at Pudukottai on 17.01.2014, where, she joined on 21.01.2014. However, she again made a request on similar grounds and therefore requested to be reposted at Madurai, which was also sympathetically considered by the respondent corporation and on 24.01.2014 on her request again

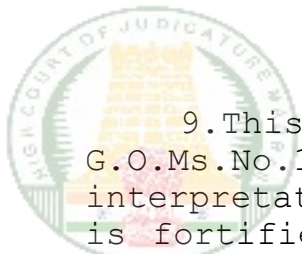


the petitioner was reposted at Madurai as Deputy Manager and she continuously working. Thereafter, after three years from the date she joined duty at Pudukottai on 17.01.2014 and transferred to Madurai on 24.01.2014, the petitioner was transferred on 20.04.2017 to Thoothukudi, where also the petitioner immediately after joining at Thoothukudi, made a request of transfer. Accordingly, on 24.04.2017, again reposting order was given retransferring the petitioner from Thoothukudi to Madurai and have been continuously working.

6. Therefore, the fact remains that, according to the learned counsel for the respondents, from 18.08.2012 till date, about eight (8) years, both in the capacity as Assistant Manager as well as Deputy Manager, the petitioner has been continuously working at Madurai only. During these period, though transfer was given twice, when the petitioner was promoted as Deputy Manager at the first time in the year 2014 to Pudukottai and second time in the year 2017 to Thoothukudi and at both occasions, within a span of few days, not even working for one week, the petitioner made a request and accordingly her request was considered by the respondent and she was reposted to Madurai.

7. Therefore, this time also, when transfer order has been made, due to administrative reasons or grounds, to Tirunelveli, the petitioner, instead of joining there, has chosen to challenge the transfer on the very same ground, additionally referring to G.O.Ms.No.107 dated 03.09.2020. The said Government Order may not be applicable to the petitioner in view of the long stint, the petitioner enjoyed at Madurai.

8. I have considered the said submission made on either side and perused the materials. As has been rightly pointed out by the learned counsel for the respondent corporation, the petitioner, for about eight years and more, has been continuously working at Madurai, under both capacity as Assistant Manager as well as Deputy Manager of the respondent Corporation. Assuming that she gave birth to a Mentally retarded child in the year 2001 and on that ground, the benefit conferred under G.O.Ms.No.107 dated 03.09.2020 is invoked by the petitioner, on perusal of the Government Order, this Court feels that, as per the conditions imposed in the said Government Order, the petitioner has not fulfilled the conditions. In other words, even under the G.O.Ms.No.107, dated 03.09.2020, the benefit of not subjecting to the transfer to a caregiver of dependent daughter / son / parents / spouse / brother / sister with specified disability, can be extended only from the routine transfer, ofcourse, subject to the administrative constraints. So, such a benefit of Government Order can be extended to those who are in a same station in less than five years. In other words, beyond 5 years, such a concession cannot be extended.



9.This view of this Court flow from the language used in G.O.Ms.No.107 dated 03.09.2020 and it must only be a purposive interpretation of the said Government Order and that the same also is fortified because of the order passed in W.A.(MD)No.713 of 2020 dated 18.09.2020.

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10.Moreover, the petitioner during the eight years period, has been continuously working at Madurai, though was transferred twice to Pudukottai and Thoothukudi, as within a span of few days, she made a request and got re-transfer to Madurai and in both occasions, the respondent has shown the gesture sympathetically towards the petitioner and such kind of gesture cannot be expected by the petitioner till the retirement of the petitioner on superannuation. For any such reasons stated in the Government Order, an employee cannot be expected to be retained in the same station for the whole service period that is exactly requested by the petitioner. Therefore, this Court feels that absolutely there is no plausible reason available to successfully challenge the impugned order.

11.In that view of the matter, this Court does not want to interfere with the impugned order, as it is fully justifiable and sustainable and can never be considered as against the import of G.O.Ms.No.107 dated 03.09.2020. Therefore, the said impugned order is sustained and this writ petition stands dismissed. However, there is no orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

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Sub Assistant Registrar(CS)

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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 Managing Director,

Tamilnadu Civil Supply Corporation, Chennai-10.

2.The Deputy Collector/ Regional Manager,

Tamilnadu Civil Supply Corporation, Madurai Region.

+1CC to Mr.R.Vijayakumar, Advocate, SR.No.18031 dated 25/09/2020

W.P. (MD)No.11972 of 2020

24.09.2020

SR (CO)

KB(20.01.2021) 4P 4C

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