

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Third day of March Two Thousand Twenty One

PRESENT

THE HON `BLE MR JUSTICE S.VAIDYANATHAN

WMP No.4768 of 2021

in WP.No.4178 of 2021

S.SENTHIL KUMAR [PETITIONER]

Vs

1 THE MANAGING DIRECTOR [RESPONDENTS]
TAMIL NADU FOREST PLANTATION
CORPORATION LTD., KARUR ROAD, MALLACHIPURM,
KAMBARASAMPETTAI, TRICHY 620 101.

2 THE REGIONAL MANAGER,
TAMIL NADU FOREST PLANTATION CORPORATION LTD.,
HOSPITAL ROAD, TIRUKOILUR,
KALLAKURICHI DISTRICT.

3 S.KAIRONRAJ

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation of the impugned order of the 1st respondent in M.Ds.S.O.No.01/2021/E1 dated 15/02/2021 in Ref.No.844/2020/E1 dated 23/12/2020, (in WMP.No.4768/2021) pending disposal of the above WP.No.4178/2021.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of G.JEREMIAH, Advocate for the petitioner and of MR.S.PRABHU, Additional Government Pleader for the respondents 1 and 2 the court made the following order:-

Mr.S.Prabhu, learned Additional Government Pleader takes notice for respondents 1 and 2.

2. This writ petition has been filed, seeking to quash the proceeding of 1st respondent in M.D's S.O.No.01/2021/E1, dated 15.02.2021 in Ref.No.844/2020/E1, dated 23.12.2020.

3. The case of the petitioner is that the petitioner was initially appointed as Forest Guard in Seedeve beat in the year 2011 and the 1st respondent transferred the petitioner from Seedeve Section to Chital Section in the post occupied by the 3rd respondent in the year 2020. Subsequently, the 3rd respondent was transferred to Athipakkam West Section. The 2nd respondent also confirmed the transfer in his proceedings dated 23.12.2020 and on the same day the petitioner was relieved from Seedeve beat. In this circumstance, the 1st respondent, by his proceedings M.D's.S.O.No.01/2021/E1, dated 15.02.2021, stated that the earlier order of transfer dated 23.12.2020 had been kept in abeyance due to administrative reasons. Hence, the petitioner has preferred the Writ Petition to quash the order dated 15.02.2021.

4. Mr.S.Prabhu, learned Additional Government Pleader appearing for the respondents would submit that the Foresters ought to have served in any place in terms of service and the impugned order has been kept in abeyance due to some administrative reasons on the request made by the 3rd respondent herein.

5. Mr.S.Prabhu, learned Additional Government Pleader has also referred to a judgment of the First Bench of this Court **dated 08.01.2021 passed in W.A.No.1142 of 2020** in the case of **State of Tamilnadu and another vs. P.Subbuthai and ors**, wherein, it was held that, judicial review cannot be exercised with regard to transfer. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"8. In the impugned judgment, the learned Single Judge exercised veritable appellate authority in going into the reasons for the transfer of the writ petitioner from the Corporation to the Municipality. Ordinarily, such is not the nature of the power of judicial review that is exercised under Article 226 of the Constitution. The exercise of judicial review in such context has more to do with the decision-making process than the reasons for the decision. If the decision-making process is found to be permissible and the employer cites administrative grounds to be the basis for the transfer, there is hardly any scope for interference by the writ Court in such a scenario.

9. Certain imaginary grounds appear to have weighed with the learned Single Judge while allowing the writ petition. At several places the writ Court has found that there must be compelling grounds for a transfer of the present kind to be effected or there must be unavoidable necessity for such purpose. Nothing in the applicable law or the governing guidelines provides any of such grounds which have been read into the provisions.

10. For the reasons aforesaid, the judgment and order impugned dated September 10, 2020 cannot be sustained. Unless exceptional grounds are made out, an order of transfer ought not to be interfered with in the extraordinary jurisdiction under Article 226 of the Constitution. The judgment and order impugned stand set aside. W.A.No.1142 of 2020 succeeds. The writ petition stands dismissed. There will, however, be no order as to costs. Consequently, C.M.P.No.14023 of 2020 is closed."

Hence, the learned Additional Government Pleader prays for dismissal of the Writ petition.

6. The learned counsel for the petitioner would submit that the petitioner has already joined the place where he got transferred pursuant to the earlier order and he shifted his house. According to the petitioner, the 1st respondent had inspected the Chethal section control nursery along with 2nd respondent and found that the nursery was not being maintained properly and posted the petitioner in that place by transfer. Thereafter, it appears that the 3rd respondent who is a high ranking staff union official has pressurized respondents 1 and 2 to reconsider the earlier decision. Upon insistence of the 3rd respondent, the 1st respondent has kept the transfer order of the petitioner in abeyance.

7. Admittedly, there is no dispute with regard to the principle laid down in P.Subbuthai case referred by the learned Additional Government. In the present case, transfer has already been given effect to and the Petitioner has joined the place of transfer. In such a situation, the decision relied on by the learned Additional Government Pleader would not be applicable to the facts of this case, as the case of the Petitioner herein stands on a different footing.

8. Considering the fact that the petitioner has already joined the place of transfer pursuant to the order of the respondents, this Court is of the view that the impugned order should be stayed. Accordingly, there will be an order of interim stay till 31.03.2021.

9. It is needless to mention that it is open to the respondents 1 and 2 to file a petition to vacate the interim order, if so advised.

10. Notice to 3rd respondent, returnable by 31.03.2021. Private notice is also permitted. Post this WMP for hearing on 31.03.2021.

-sd/-

03/03/2021

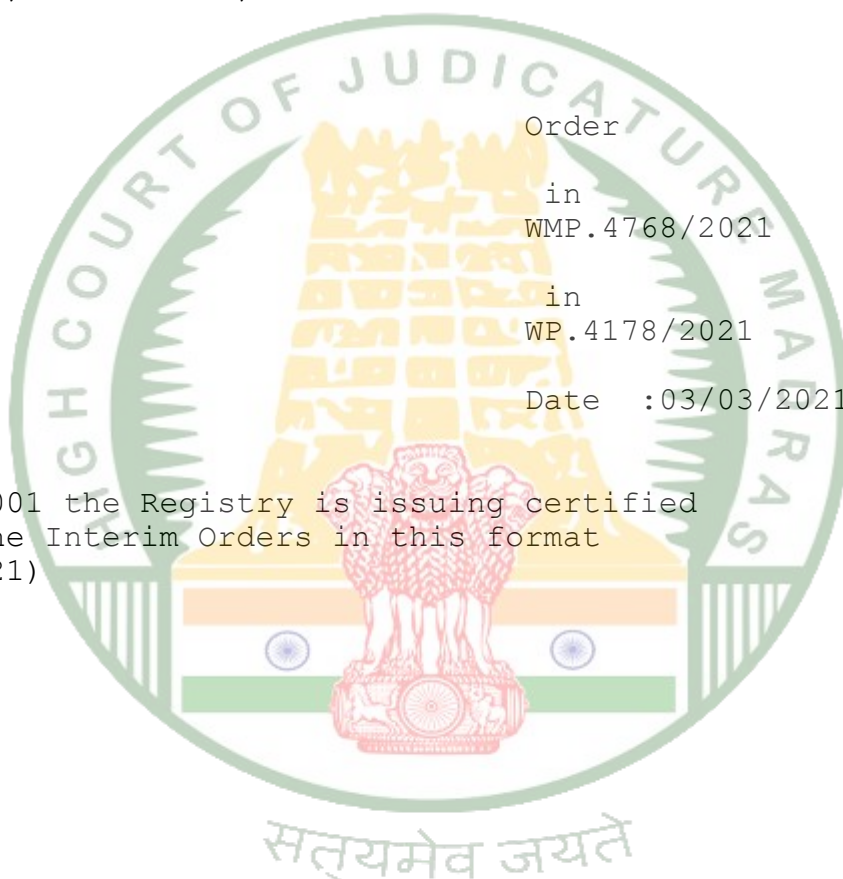
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Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE MANAGING DIRECTOR
TAMIL NADU FOREST PLANTATION CORPORATION LTD.,
KARUR ROAD, MALLACHIPURM, KAMBARASAMPETTAI,
TRICHY 620 101.

2 THE REGIONAL MANAGER,
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HOSPITAL ROAD, TIRUKOILUR, KALLAKURICHI DISTRICT.



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