



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2021

CORAM

WEB COPY

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE Mr. JUSTICE KRISHNAN RAMASAMY

W.A.No.1339 of 2021 and C.M.P. No.8359 of 2021

K.Velusami
Junior Engineer
Building Centre & Conservation Sector 1
PWD, Chepauk, Chennai - 600 005 ... Appellant

Vs.

1. The Engineering Chief (WRD) and
Chief Engineer (General)
PWD, Chepauk
Chennai - 600 005
2. The Engineering Chief (Buildings) and
Chief Engineer (Buildings)
Chepauk,
Chennai 600 005
3. The Administrative General &
Official Trustee of T.N.
High Court Campus
Chennai - 600 104 ... Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 09.03.2021 passed in W.P. No.5917 of 2021.

Prayer in W.P.No.5917 of 2021: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of transfer passed by the first respondent in Proc.No.S2(5) 20610/2020/102 dated 14.05.2020 and Quash the same and consequently direct the respondents 1 to 3 herein to retain the petitioner in the same post and same station till the completion of his tenure.



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For Appellant : Mr.T.Sellapandian
for Mr.K.Gajendiran

Fore Respondents : Mr.C.Jayaprakash,
Govt. Advocate for R1 & R2

JUDGMENT

PUSHPA SATHYANARAYANA, J.

The writ petitioner is the appellant, who had challenged the order of transfer by the first respondent dated 14.05.2020. The writ petition was dismissed directing the appellant to join the place of transfer.

2. The appellant was a Junior Engineer from 2004 and was transferred to PWD Buildings (C&M) Section, Maduranthagam, thereafter to Sriperumpudur and in 2017, he was transferred to PWD Buildings Centre and Conservation Section - II, Chepauk, Chennai. When the appellant was transferred to the third respondent office on 14.05.2020, on administrative reasons and was released on 15.07.2020, he applied for Earned Leave for a period of 16 days till 31.07.2020. Thereafter, he applied for Medical Leave and when he was on leave, he has challenged the order of transfer contending that it was in violation of principles of natural justice and requested for cancellation of the transfer order dated 14.05.2020.

3. The writ court, after hearing the appellant, had categorically held that his transfer to the third respondent office, which is situated within the premises of the High Court campus does not mean that he is coming under the control of the High Court, but he continues to be with his parent department. That apart, the plea of the writ petitioner that employee's consent needs to be taken for any administrative transfer, cannot be accepted. If the said contention, is accepted, it would derail any transfer to any department and that the appellant was directed to join in the transferred place, within the reasonable time and for his absence from work, there will be No Pay. However, the same may be counted for the purpose of service and consequential benefits.

4. The learned counsel for the appellant submitted that the appellant's was transferred from the parent department to the third respondent office, which is in no way connected with the functions of the appellant parent department.

5. Reliance was placed on Fundamental Rule 110(a) which states that no Government servant can be transferred to foreign



service against his will. Even considering that the appellant was sent to the third respondent on deputation, the same could not have been done without the consent of the appellant. The said argument was resisted by the Government stating that the writ petitioner/appellant had availed leave on various spells from 16.7.2020 to 10.3.2021 consequent to his order of transfer to the office of the third respondent and not joined duty, till today.

6. Upon instructions, the learned Government Advocate would submit that the transfer of the appellant to the third respondent is not on deputation basis, because, the third respondent is in-charge and maintenance of various buildings, which come under their custody. The wing of the parent department, namely PWD is functioning there. It is only the imagination of the appellant that the third respondent is a foreign department, when it is not so. Therefore, it is made clear that the transfer of the appellant to the third respondent is not on deputation basis, but on a regular transfer within the department.

7. Admittedly, the appellant had not joined the duty after the date of transfer ie. 14.05.2020. He had availed leave on various spells on different grounds. The learned counsel for the appellant made a request that the appellant may be permitted to join duty, for which, the learned Government Advocate submitted that there is no provision in the rules to prevent a Government servant from joining or rejoining the duty. Even in the cases of unauthorized absence, the delinquent is permitted to join duty. It is also conceded by the appellant that for the period he was absent from service, the learned single Judge had held that for the period of non-attending duty, the same may be treated as 'No Work - No Pay', but will be counted for the purpose of continuity of services and if the appellant fails to report for work, the period can be treated as 'dies-non'. The absence of the appellant from the date of transfer may be appropriately dealt with by the respondents 1 and 2 as per the leave rules.

8. With the above observation, the writ appeal is disposed of. However, there is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

Asr



To

1. The Engineering Chief (WRD) and
Chief Engineer (General)
PWD, Chepauk
Chennai - 600 005

2. The Engineering Chief (Buildings) and
Chief Engineer (Buildings)
Chepauk,
Chennai 600 005

3. The Administrative General &
Official Trustee of T.N.
High Court Campus
Chennai - 600 104

+lcc to M/s.K.Gajendiran, Advocate, S.R.No.36431
+lcc to M/s.T.Sellapandian, Advocate, S.R.No.38356
+lcc to the Government Pleader, S.R.No.38069

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JP-II (CO)
SU(24/08/2021)