

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.05.2021

CORAM:

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE Mr. JUSTICE C.SARAVANAN

W.A.No1422 of 2021
and C.M.P.No.8829 of 2021

V.Subramanian ... Appellant/Petitioner

Vs.

1.The Deputy Inspector General of Police
Salem Range
Salem 636007

2.The Deputy Superintendent of Police
In-Service Training Centre
Salem 636002

3.T.S.Kailasam
Inspector of Police
Naillipalayam P.S.
Namakkal District

... Respondents /Respondents

Writ appeal filed under Clause 15 of the Letters Patent, to set aside the conditional interim order passed in WMP. No.1254 of 2021 in WP.No.1126 of 2021.

Prayer in WP.No.1126 of 2021: To grant an interim stay of the operation of the order issued by the First Respondent in CC.NO.A1/E-87435/2020-Ro.No.10/2020 dated 08/01/2021, so as to enable the petitioner to continue to serve in the present post, pending disposal of this writ petition, writ of Certiorarified Mandamus calling for the records on the file of the first Respondent herein in C.C.No.A1 / E-871135 / 2020 R.O.No.10 / 2021 dated 8.1.2021 and quash the same in and to consequently direct the Respondents herein to allow the petitioner to continue to serve as Inspector of police Ins-service Training Centre in Salem District till the date of his retirement i.e 31/05/2021.

For Appellant : Mr.M.Ravi

For Respondents : Mr.P.Muthukumar
Government Advocate

J U D G M E N T
(Judgment delivered by Dr.G.JAYACHANDRAN, J.)

The writ petition in WP.No.1126 of 2021 is filed by the petitioner, who has been serving as Inspector of Police at In-Service Training Centre (ISTC), Salem. On 08.01.2021, he was transferred from ISTC, Salem to Range Vacancies Reserved. Immediately, the petitioner has approached this Court by filing W.P.No.1126 of 2021, challenging the transfer order on the ground that the G.O.Ms.No.10 (P&AR) Department, dated 07.01.1994, prohibits transfer of a Government servant within a year of his superannuation and further the person, who has passed the transfer order has no authority to transfer him. This Court passed an interim order, at the time of admission on 21.01.2021, as below :

"3. It is represented by the learned counsel for the petitioner that the petitioner is going to retire on 31.05.2021. Hence, there shall be an order of interim stay. The petitioner is permitted to continue in the present station till 31.05.2021. In case of any extension of age of retirement, the petitioner will have to get himself relieved and join in the transferred place and he will not be allowed to continue in the same place. If the petitioner refuses to go out after 31.05.2021, in case the age of retirement is increased, he will not be provided with employment in the same place and this period can be treated as 'no work no pay' and shall be excluded for the purpose of gratuity and pension, if any.

4. It is made clear that Private Notice shall be despatched within three postal working days excluding today either through Speed Post or Registered Post and at the first instance, it is absolutely necessary to file the postal receipt into the Registry to show the despatch of private notice, within two working days from the date of despatch, without waiting for the fate of delivery. On the other hand, the receipt of acknowledgement card/returned cover is the second course of action for the purpose of filing a proof of service so as to hear the matter, after the service is complete and it has got nothing to do with the proof of despatch of private notice at the initial stage. The private notice shall be served by enclosing a copy of the affidavit and the prayer in the Writ Petition, so that as and when parties enter appearance, typeset can be served either on them or counsel representing them. Learned counsel for the Petitioner shall also pay batta within three Court working days excluding

today into the Registry in order to enable them to send Court notice to the Respondents. Failure to comply with the above will result in automatic cancellation of the interim order now granted, without further reference to this Court.

5. Post the matter on 01.06.2021."

2. Thereafter, the Inspector General of Police, Salem Range has cancelled the transfer order and the petitioner was retained in ISTC, Salem. This cancellation of transfer and posting order was issued on 02.02.2021. Now, anticipating that the petitioner will be transferred on 01.06.2021, this writ appeal is filed, challenging the interim order passed by this Court on 21.01.2021.

3. The learned counsel appearing for the appellant submitted that the 1st respondent has no authority to transfer the petitioner and the interim order dated 21.01.2021 giving protection till 31.05.2021, is now bound to be extended for another one year, since the age of superannuation has been extended by the Government from 59 to 60 years vide G.O.Ms.No.29 (P&AR) Department, dated 25.02.2021.

4. This Court is not able to understand how a writ appeal is maintainable, when the writ petition and the interim order passed therein, has already become infructuous, in view of the transfer order being cancelled by the 1st respondent on 02.02.2021. This Court finds that the petitioner herein, who wants to circumvent or defeat the administrative exercise of powers by the authorities, wants to sustain the interim order taking advantage of the extension of the superannuation period. This Court cannot be privy to such conduct. Hence, this Writ Appeal is dismissed. Connected Miscellaneous Petition stands closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

gya/kp

To

1.The Deputy Inspector General of Police
Salem Range
Salem 636007

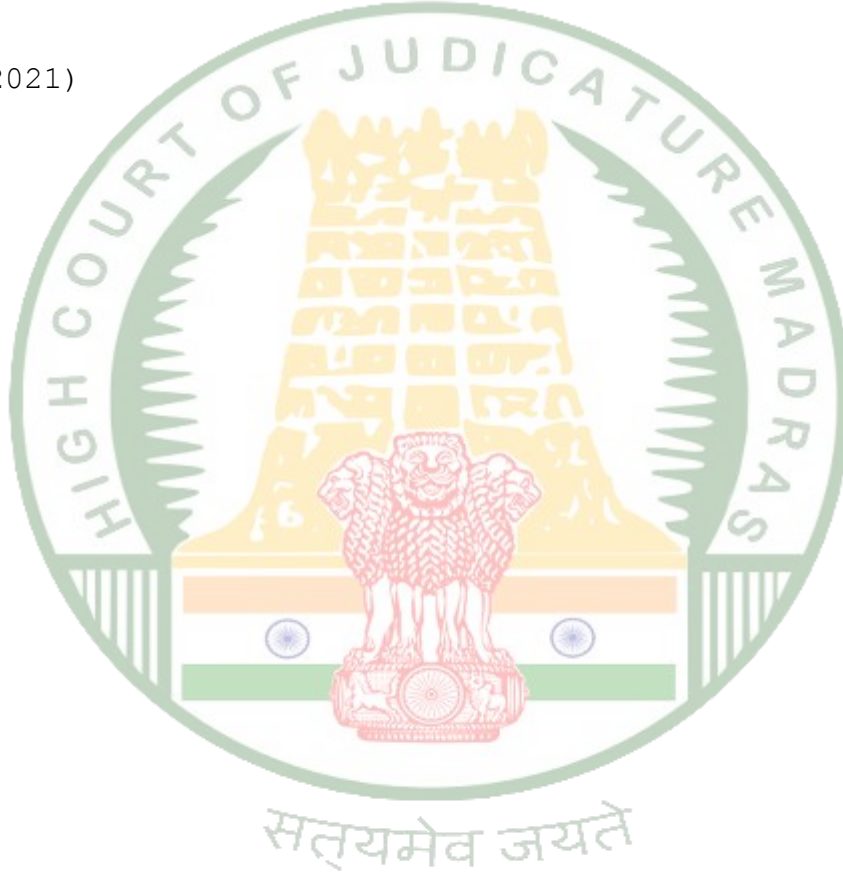
2.The Deputy Superintendent of Police
In-Service Training Centre
Salem 636002

3.The Inspector of Police
Naillipalayam P.S.
Namakkal District.

+lcc to the Government Pleader, S.R.No.27302

W.A.No1422 of 2021

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