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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No.19436 of 2021

and

W.M.P.Nos.20729 and 20730 of 2021

(Through Video Conferencing)

R.Ravichandran

..Petitioner

vs.

1.The Principal Chief Conservator
of Forests (Head of Department),
Panagal Buildings, Saidapet,
Chennai-600 015.

2.The Conservator of Forests,
Salem Circle, Salem.

3. The District Forest Officer,
Namakkal Division,
Namakkal.

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the order of transfer issued by the 1st Respondent in Ref.No.B2/1659/2020 dated 06/09/2021 and to quash the same and to direct the Respondents 1 to 3 herein to allow the petitioner to complete his normal tenure in the present post or station or to retransfer him to original place at Rasipuram Forest Range.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.

O R D E R

This writ petition has been filed for a Writ of Certiorarified Mandamus, calling for the records of the order of transfer issued by the 1st Respondent in Ref.No.B2/1659/2020 dated 06/09/2021 and to quash the same and to direct the Respondents 1 to 3 to allow the petitioner to complete his



normal tenure in the present post or station or to re-transfer him to original place at Rasipuram Forest Range. It is submitted that the transfer is malafide.

2. The learned Government Advocate for the respondents submits that the petitioner served in the same post from 1997 using his clout and therefore, the petitioner cannot question the transfer in the year 2021.

3. It is further submitted that the Hon'ble Supreme Court in Gujarat Electricity Board and another v. V.Atmaram Sungomal Poshani reported in AIR (1989)SC 1433, has held that ''Transfer from one place to another is necessary in public interest and efficiency in the public administration and whenever, a public servant is transferred, he must comply with the order and if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other''.

4. The learned Government Advocate for the respondents further submitted that this Court in W.P.No.16808 of 2018 dated 12.10.2018 has followed the above views and held that "A transfer is an incidental to service, more so, a condition of service. A regular employee, who has been transferred on administrative grounds is bound to join in the transferred place and the order of transfer can be challenged by way of writ petition only, if the same has been issued by an incompetent authority having no jurisdiction or if any allegations of malafides are raised or if the order of transfer is in violation of the statutory rules in force. Thus, the administrative transfers cannot be challenged in a routine manner and the writ proceedings cannot be entertained in the absence of any such legal grounds'' and therefore, an employee cannot ask for transfer.

5. The learned Government Advocate for the respondents further submitted that the impugned transfer is not in violation of G.O.Ms.No.10 Personnel and Administrative Reforms (Personnel-S) Department, dated 07.01.1994. He further submits that the transfer to Dharmapuri Modern Nursery Range falls within the Salem Division, and therefore, it could not be correct to assume the transfer was contrary to G.O.Ms.No.10 Personnel and Administrative Reforms (Personnel-S) Department, dated



07.01.1994 and G.O.Ms.No.687 Environment & Forest (FR II) Department, dated 01.10.1990.

6. By way of reply, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in *Somesh Tiwari v. Union of India and others* reported in (2009) 2 SCC 592, wherein, in paragraph No.16, it was held as under:

'16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved.'

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

8. Section 48 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 deals with transfer of a Government Servant. It reads as under:

'48. Posting and Transfer:-

(1) A member of a service or class of a service may be required to serve in any post borne on the cadre of such service or class for which he is qualified.

(2) All postings and transfers shall be made by the appointing authority:

Provided that where the appointing authority is not the Government, any authority to whom the appointing authority is administratively subordinate shall, in respect of any post within the jurisdiction of the appointing authority also be competent to effect postings and transfers to a post within their jurisdiction aforesaid:

Provided further that where leave not involving extra cost to the Government is granted to an officer by virtue of the delegation under Fundamental Rule 66, the Head of Department or the subordinate authority concerned may re-post the officer on return from leave granted by it to the same place.

(3) Notwithstanding anything contained in this Act or in any special rules or ad-hoc rules, the Government may, transfer any Government servant from



one revenue district to another revenue district within the State, on administrative grounds.'

9. Admittedly, in the facts and circumstances of the case, the transfer has not been made by the Administrative Authority. On the other hand, the transfer has been made by the 1st respondent, Chief Conservator of Forests. The transfer order also states that the transfer of the petitioner from Rasipuram Range, Namakkal Division, Salem Circle to Villupuram Circle was on a administrative ground in terms of G.O.(D).No.119 Environment and Forests (FR.2-(i) Department dated 04.09.2020.

10. The aforesaid G.O.(D).No.119 has been issued as an exception to G.O.Ms.No.249, Finance (BG-1) Department, dated 21.05.2020 was issued during the outbreak of Covid-19 and therefore, a restriction was placed on transfer. However, a request was made by the Principal Chief Conservator of Forests to exempt the Department as the Forest Officer actively co-ordinate, supervise, delegate in the implementation of various schemes of the Government to conserve and protect the forest lands, flora, fauna and other forestry related produce and resources. Hence, depending on the administrative needs, for effective and efficient conservation and protection of the forests at the Principal Chief Conservator of Forests (HoFF) level, orders of the transfer and postings of the Forest Range Officers are issued in a swift and dynamic manner. The Government accepted the proposal of the Chief Conservator of Forests. The relevant portion in paragraph No.2 of G.O.(D)No.119 dated 04.09.2020 reads as under:

'2.In the reference second read above, the Principal Chief Conservator of Forests has stated that notwithstanding the above instructions, the authority to order transfer and postings to the post off Forest Range Officer is the Principal Chief Conservator of Forests (HoFF). The post of Forest Range Officer plays a pivotal role in the conservation and protection of the forests. The Forest Range Officers actively co-ordinate, supervise, delegate in the implementation of various schemes of the Government to conserve and protect the forest lands, flora, fauna and other forestry related produce and resources. Hence, depending on administrative needs, for effective and efficient conservation and protection of the forests at the Principal Chief Conservator of Forests (HoFF) level, orders of the transfer and postings of the Forest Range Officers are issued in a swift and dynamic manner. However,



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in accordance with the condition as mandated in the G.O. first cited, the Principal Chief Conservator of Forests (HoFF) can no longer make the transfer and postings of the Forest Range Officers and the Government, as the authority next in the hierarchy, could only order such transfer and posts on administrative imperatives. The Principal Chief Conservator of Forests has further stated that due to the procedural protocol, the process of transfers on administrative grounds may become longer for the field staff at cutting edge level. He has further stated that 50 No. of request transfers application of Forest Range Officer and 2 No. of mutual request transfers application are pending till date.''

11. Thus what is evident from Section 48(3) of the said Act empowers only the Government to effect transfer on administrative grounds whereas G.O.Ms.No.249, Finance (BG-I) Department, dated 21.05.2020 has been modified insofar as Forest Service is concerned, G.O.(D)No.119 dated 04.09.2020.

12. That apart, the facts also indicated that the transfer of the petitioner dated 06.09.2021 from Salem Circle to Villupuram Circle though has been stated to be on an administrative grounds and the two transfers made to Salem Circle on the very same date for Thiru S.Dhanapal, Forest Range Officer and Thiru.S.Vimal Kumar, Forest Range Officer are at their request. The facts indicate that the transfer of the petitioner has been made contrary to G.O.Ms.No.10 Personnel and Administrative Reforms (Personnel-S) Department, dated 07.01.1994. As per Annexure-I and II of the aforesaid Government Order, the transfer period is between 1st April and 30th of June of each year. Annexure-II deals with general policy of transfer or change of post once in three years. It states that during the transfer period, persons who have already completed a service of 3 years or who would complete a service of 3 years as on 30th June next, shall be subjected to transfer to a vacant seat or post or the incumbent of the latter seat or post is also due for transfer.

13. It is further states that where a person has completed a service of 3 (three) in a particular post or seat and he has no other post outside to be transferred to (as in the Secretariat), a change in the seat or post within the same office/institution shall be given.



14. That apart in G.O.Ms.No.687 Environment & Forest (FR II) Department dated 01.10.1990 as amended by G.O.Ms.No.85 dated 25.08.2006, it has been clarified that Rangers may be transferred in the normal course i.e. normally after a period of 3 years from one station to another within the circle and after completion of 6 years of service to outside the Circle.

15. The transfer of the petitioner has been made only to accommodate for the other Forest Range Officers Thiru S.Dhanapal and Thiru S.Vimalkumar. The petitioner's transfer is contrary to G.O.Ms.No.10 Personnel and Administrative Reforms (Personnel-S) Department, dated 07.01.1994 as amended by G.O.Ms.No.687 Environment & Forest (FR II) Department dated 01.10.1990. Even as per Section 48(3) of the said Act, the transfer on administrative grounds can be made only by the Government.

16. In this case, the 1st respondent as the Principal Chief Conservator of Forests is not a Government to exercise power under Section 48(3) of the said Act. Since the transfer is made only to accommodate the persons named above, the impugned transfer to accommodate the other two Forest Range Officers Thiru S.Dhanapal and Thiru S.Vimalkumar is liable to be interfered. Impugned transfer order is accordingly quashed. The respondents are directed to make arrangements to re-transfer one of the two persons who had transferred to Salem Circle back to retain the petitioner. Liberty is however given to the Government to transfer the petitioner under Section 48(3) of the Act on administrative grounds.

17. This writ petition stands allowed with the above observation. No costs. Consequently, connected writ miscellaneous petitions are closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

ssn

To:

1.The Principal Chief Conservator
of Forests (Head of Department),
Panagal Buildings, Saidapet,
Chennai-600 015.



2.The Conservator of Forests,
Salem Circle, Salem.

3. The District Forest Officer,
Namakkal Division, Namakkal.

+1 CC to The Special Government Pleader(Forest) Sr 52150.

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NRJK(CO)
SP(02/11/2021)