

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

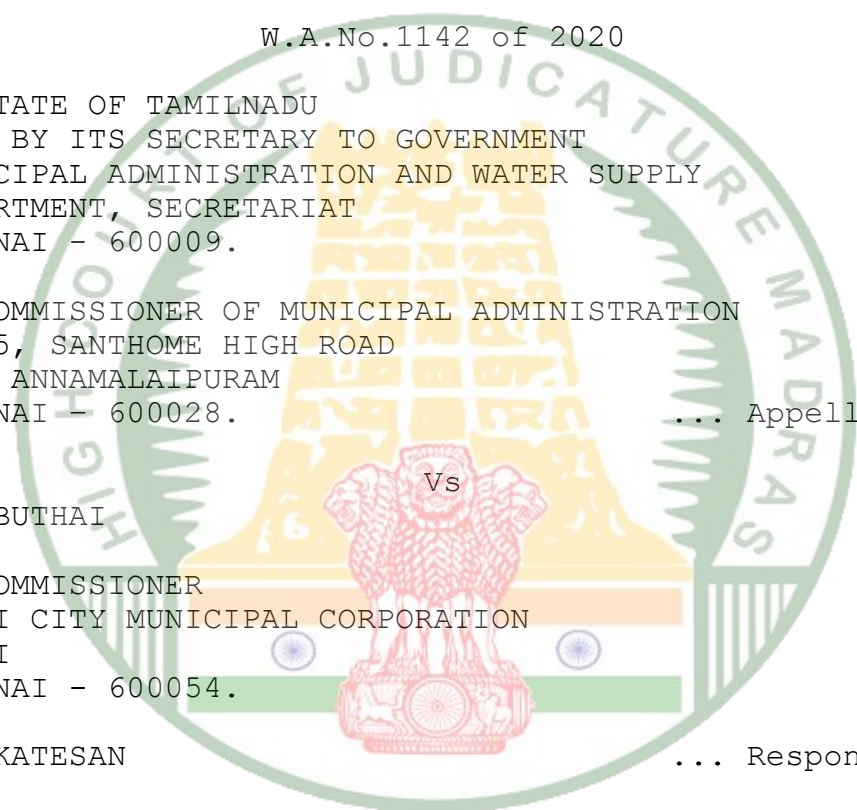
CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.1142 of 2020

- 
- 1 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY TO GOVERNMENT
MUNICIPAL ADMINISTRATION AND WATER SUPPLY
DEPARTMENT, SECRETARIAT
CHENNAI - 600009.
- 2 THE COMMISSIONER OF MUNICIPAL ADMINISTRATION
NO.75, SANTHOME HIGH ROAD
RAJA ANNAMALAI PURAM
CHENNAI - 600028. ... Appellants
- Vs
- 1 P.SUBBUTHAI
- 2 THE COMMISSIONER
AVADI CITY MUNICIPAL CORPORATION
AVADI
CHENNAI - 600054.
- 3 M.VENKATESAN ... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 10.9.2020 in W.P.No.7692 of 2020 passed by the learned Single Judge.

Prayer In W.P.No.7692 of 2020:

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 orders issued by the 1st Respondent in GO (D) NO. 158 (ME-3) Municipal Administration and water supply department dated 08.05.2020 and the consequential orders issued by the 2nd respondent in NA.KA.No. 5703/ 2020 /F4/ dated 08.05.2020 and by the 3rd Respondent in NA.Ka.No. 2907/ 2020/ CI dated 08.05.2020 and quash the same and

consequently retain the petitioner in the 3rd respondents corporation in accordance with the provisions under section 9 (6) of the Ordinance Issued by the Government dated 17.06.2019 as per the provisions under Rule 110 of Fundamental Rules and Rule 38 of the Tamilnadu Municipal Corporations Service Rules 1996.

For Appellants : Mr.V.Jayaprakash Narayanan
State Government Pleader

For Respondents : Mr.S.N.Ravichandran
for 1st respondent

Mr.P.Srinivas
for 2nd respondent

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appeal arises out of an order dated September 10, 2020 by which the writ petitioner/respondent's transfer from Avadi Municipal Corporation to Kancheepuram Municipality has been annulled.

2. There is no dispute that the writ petitioner was an employee of the erstwhile Avadi Municipality. The Municipality was thereafter converted into a Corporation and, in accordance with Section 9(6) of the applicable notification, all employees of the erstwhile Municipality were deemed to be employees of the Corporation. By an office memorandum of May 8, 2020, the writ petitioner was transferred and posted as Town Planning Officer in the Kancheepuram Municipality "on deputation basis due to administrative reason." It is such memorandum of transfer that was challenged by way of the petition under Article 226 of the Constitution. In passing the judgment and order impugned, the learned Single Bench noticed the provisions of the Tamil Nadu Municipal Corporation Service Rules, 1996 and particularly a rule therein that recognised that for the purpose of appointment, promotion, reversion, transfer and discharge from service, each Municipal Corporation ought to be regarded as a separate unit. The learned Single Bench also referred to Rule 110 of the Tamil Nadu Fundamental Rules, 1922 which mandates as follows:

"No Government servant may be transferred to foreign service against his will."

3. The principal ground urged on behalf of the appellants herein before the Court of the first instance was the limited

extent of the authority available to the employer under Section 116 of the Coimbatore City Municipal Corporation Act, 1981. The entire provision is set out in the impugned judgment and only the material part thereof may be noticed herein:

"116. Power of Government to transfer officers and servants of the corporation or municipalities:-

Notwithstanding anything contained in this Act or in the Tamil Nadu District Municipalities Act 1920 (Tamil Nadu Act V of 1920), the Government shall have power -

(a)

(b)

(c) to transfer any Officer or servant of the Corporation to the service of any Municipality constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) or

(d)"

4. It is evident, on a plain reading of the aforesaid provision, that any officer or servant of any Corporation may be transferred to a Municipality and for such purpose the employer does not require the permission or the consent of the concerned officer or employee.

5. It appears that a case was made out before the learned Single Bench that the fourth respondent to the writ petition had been accommodated in the Municipality and, as a consequence, the writ petitioner had to be thrown out and parked in the municipality. It also appears that a completely unnecessary case was run in the affidavit filed by the State or the relevant Corporation to the effect that there were certain complaints against the writ petitioner, which necessitated the transfer of the writ petitioner from the Corporation to the Municipality. It is elementary that transfer cannot be used as a tool of oppression or punishment and it is only for the better administration of the functioning of the employer that a transfer may be effected.

6. The office memorandum of May 8, 2020 duly cited "administrative reason" as the ground for transfer. When an employer, even a government employer, cites administrative reasons for effecting a transfer and such transfer is otherwise not impermissible in law, such transfer is scarcely justiciable unless an egregious case of malice or hostile discrimination is made out. A mere allegation or a speculation that someone else had to be accommodated in the place of the transferred employee would not be such a ground that would excite a Court in exercise of its authority under Article 226 of the Constitution to interfere into the functioning of a government body and sit in

judgment over the administrative reasons for which the government employer seeks to transfer any employee.

7. In the light of the clear power given for any officer or servant of a Corporation to be transferred to a Municipality and such power being without any fetters, the 1922 Rules or guidelines could not have been used as a mechanism to create any impediment in the way of such unbridled authority as conferred by Section 116 of the guiding statute.

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.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

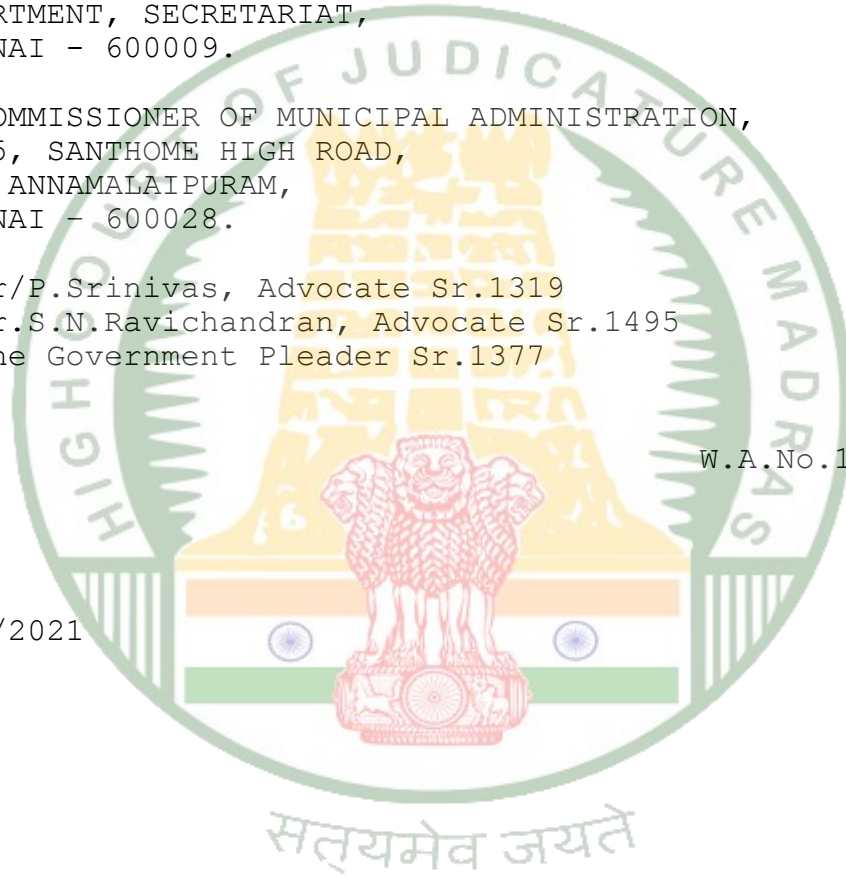
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To:

- 1 THE COMMISSIONER
AVADI CITY MUNICIPAL CORPORATION
AVADI
CHENNAI - 600054.
- 2 THE SECRETARY TO GOVERNMENT,
STATE OF TAMILNADU
MUNICIPAL ADMINISTRATION AND WATER SUPPLY
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- 3 THE COMMISSIONER OF MUNICIPAL ADMINISTRATION,
NO.75, SANTHOME HIGH ROAD,
RAJA ANNAMALAIPURAM,
CHENNAI - 600028.

+2cc to Mr/P.Srinivas, Advocate Sr.1319
+1cc to Mr.S.N.Ravichandran, Advocate Sr.1495
+1cc to the Government Pleader Sr.1377

W.A.No.1142 of 2020

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