



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.9559 of 2021

and

W.M.P(MD)Nos.7313, 7314 & 8436 of 2021

V.Vinoth Kumar

... Petitioner

vs.

1.The Managing Director,
Milk Production and Dairy Development,
Aavin Illam, TCMPP Limited,
3A, Pasumpon Muthuramalinganar Salai,
Nandanam,
Chennai - 600 035.

2.The General Manager,
Tirunelveli District Co-operative Milk Producers'
Union Limited,
Reddiarpatti Road,
Perumalpuram Post,
Tirunelveli - 627 007.

... Respondents

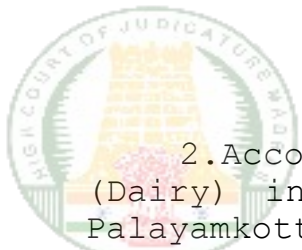
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned transfer order in Na.Ka.No.0015/Administration-1/2021, dated 17.05.2021 on the file of the second respondent and quash the same as illegal to the extent of transferring the petitioner.

For Petitioner : Mr.N.Louis
for Mr.K.Thirumalsamy

For Respondents : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.M.Sengu Vijay

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned transfer order passed by the second respondent, dated 17.05.2021.



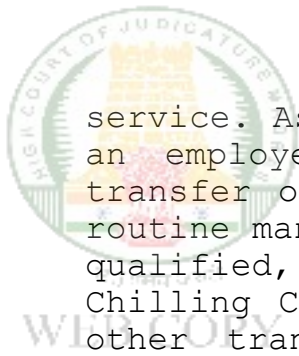
2. According to the petitioner, he was working as Deputy Manager (Dairy) in Tirunelveli. His wife is employed at Bank of India, Palayamkottai Branch. Both are from Vellore District and residing in Tirunelveli in a rented house with their 8 months old baby without any elders. The petitioner suffered severe cough, cold and slight fever, he had to take medical leave for a few days from 05.04.2021 to 18.04.2021 and further from 21.04.2021 to 05.05.2021. The petitioner availed medical leave with proper application enclosing the necessary medical certificate. As per the proceedings, dated 03.05.2021, the leave was sanctioned as earned leave by the second respondent. When the petitioner joined on 06.05.2021, he was asked to serve in the Fluid Milk Section (shift) from 06.05.2021 in Tirunelveli and he took charge and working as such. While so, on 10.05.2021, the second respondent issued a show-cause notice to the petitioner to give explanation within 3 days as to why disciplinary proceeding should not be taken against the petitioner for decrease in production of milk products, due to his medical leave. The petitioner immediately, after receiving the said show-cause notice, the second respondent, by impugned order, dated 17.05.2021, transferred the petitioner to Sankarankovil. Challenging the same, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the impugned order of transfer is punitive in nature. The second respondent issued a show-cause notice and before the petitioner submit his explanation, he was transferred to Sankarankovil. It is a frequent transfer and the petitioner was earlier transferred on 30.12.2019 and 21.01.2021.

4. The learned counsel appearing for the petitioner further submitted that the petitioner, at his request, was transferred in January, 2021 from Dairy Section to Shift unit. The person, who was transferred to dairy unit did not join and hence, the then General Manager, asked the petitioner to continue in the same section. Due to his ill-health, he availed medical leave. The second respondent, after sanctioning medical leave to the petitioner, has issued a show-cause notice, dated 10.05.2021, alleging that the decrease in production of dairy products due to the petitioner taking leave. The petitioner is having 8 months old baby and his wife is working in Bank of India, Palayamkottai Branch and prayed for considering his request sympathetically and for setting aside the order of transfer.

5. The respondents filed counter-affidavit along with vacate stay petition.

6. The learned Senior Counsel appearing for the respondents submitted that the impugned order is not a malafide, not a punitive and it is only a routine transfer. At the time of appointment itself, it was made clear that the petitioner will be transferred to Sankarankovil. The petitioner accepted the same and joined in

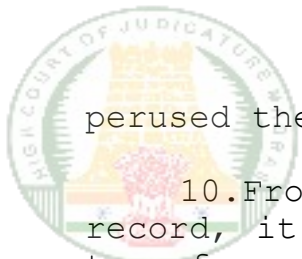


service. As per the by-laws of the respondents-Milk Producers Union, an employee can be transferred from one unit to another. The transfer of the petitioner is part of chain of transfer made in a routine manner along with others. The petitioner, who is technically qualified, had been transferred to Sankarankovil to the Milk Chilling Centre as Technical Assistant. Except the petitioner, all other transferred officials accepted the order of transfer and joined in the transferred place.

7.The learned Senior Counsel appearing for the respondents submitted that the petitioner has suppressed many materials and filed the present Writ Petition. The petitioner anticipating his transfer, applied medical leave. As per the by-law, application for medical leave should be accompanied by a medical certificate issued by the medical practitioner not below the rank of Assistant Civil Surgeon. The petitioner did not comply with the said Rule and hence, leave was treated as earned leave. The reason given by the petitioner for medical leave in leave application, medical certificate and affidavit filed in support of the present Writ Petition are different. Due to the petitioner often taking leave, the production in the dairy by-product section has been decreased. Because of the dereliction of duty, the production in milk by-products decreased during this pandemic situation and hence, the petitioner was given a memo seeking for explanation and there is no other motive for transferring the petitioner.

8.The learned Senior Counsel further submitted that one R.John Sunil, who is looking after the duties of Deputy General Manager (I/C), by order dated 17.05.2021, had been transferred to the post of dairy by-product section, wherein the present writ petitioner was working and he had joined on 20.05.2021 to the said post and he had also reported to superior officers about his joining duty. In view of the same, the Writ Petition has become infructuous. Suppressing the same, the petitioner has filed the present Writ Petition. The petitioner was intimated about the order of transfer on 18.05.2021 by telephone, since he reported to duty at night on 18.05.2021. The petitioner immediately, purposely and wantonly applied for medical leave to evade the order of transfer. The reason given by the petitioner to set aside the order of transfer is not valid. The convenience of the petitioner will not be a ground for not transferring him. In Sankarankovil, there is a separate well furnished residential quarters for the petitioner to occupy and to work conveniently. Moreover, the petitioner is a technically qualified person to occupy the said post at Sankarankovil, which is essential for able handling the said post at Sankarankovil. He need not travel from Sankarankovil to Tirunelveli daily and he can stay at well furnished residential quarters at Sankarankovil and prayed for dismissal of the Writ Petition.

9.Heard the learned counsel appearing for the petitioner and Senior Counsel appearing for the respondents and



perused the entire materials available on record.

10.From the perusal of the entire materials available on record, it is seen that the petitioner is challenging the order of transfer, dated 17.05.2021, transferring him from Tirunelveli to Sankarankovil. According to the learned counsel for the petitioner, the order of transfer is punitive in nature and not for administrative reason. The learned counsel for the petitioner referred to a show-cause notice which was issued to the petitioner stating that production of dairy products considerably reduced due to the petitioner often taking leave and therefore, the petitioner was transferred and thereby was called upon to submit his explanation. According to the petitioner, within 7 days of the said notice, the petitioner was transferred. The main contention of the learned counsel for the petitioner is that after issuing show-cause notice, the order of transfer is punitive in nature. On the other hand, the learned Standing Counsel appearing for the respondents referring to the averments in the counter-affidavit submitted that the transfer of the petitioner is a routine transfer and transfer is a condition of service and the petitioner agreed for such condition and accepted the appointment. The learned Senior Counsel appearing for the respondents also submitted that transfer of the petitioner is not isolated transfer, but it is a chain of transfer. The learned Senior Counsel further submitted that the petitioner suppressed the fact that on the same day one R.John Sunil was transferred to the place of the petitioner and the said R.John Sunil joined duty on 18.05.2021 in the place where the petitioner was working. The respondents filed typed set of papers enclosing copy of the joining report of R.John Sunil, dated 18.05.2021 in the place of the petitioner.

11.From the above materials, it is seen that even after the person transferred to the place of the petitioner and joining in the said place on 18.05.2021 itself, the petitioner suppressing the said fact, filed the writ petition on 25.05.2021, alleging that the order of transfer is punitive in nature. After R.John Sunil joined in the place of the petitioner, the petitioner applied for further medical leave. The reason given by the petitioner to set aside the order of transfer is his wife is working in Palayamkottai Branch and they are having a 8 months old baby and it will be difficult for him to travel from Sankarankovil to Tirunelveli daily. The petitioner has not denied the contention of the learned Senior Counsel for the respondents that the well furnished residential quarters is available at Sankarankovil and there is no need for the petitioner to travel from Sankarankovil to Tirunelveli.

12.Considering all the above materials in its entirety, it cannot be said that the transfer of the petitioner is punitive in nature, only because of show-cause notice issued to the petitioner. The reason given by the petitioner for quashing the transfer order



transfer. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

WEB COPY

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Sub Assistant Registrar(CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Managing Director,
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Tirunelveli - 627 007.

+1 CC to M/s.M.SENGUVIJAY, Advocate (SR-23372[F] dated 20/07/2021)

+1 CC to M/s.K.THIRUMALAISAMY, Advocate (SR-23545[F] dated 22/07/2021)

W.P (MD) No. 9559 of 2021
20.07.2021

RK (04.08.2021) 5P 5C