



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON : 08.06.2022

DELIVERED ON : 10.06.2022

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THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.5514 of 2021

and

WMP.No.6133 of 2021

N.Karthi Ganesh

.. Petitioner

vs.

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
144, 10th Floor, NPKRR Maaligai,
Anna Salai, Chennai-600 002.
2. The Joint Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
144, 10th Floor, NPKRR Maaligai,
Anna Salai, Chennai-600 002.
3. Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
144, 8th Floor, NPKRR Maaligai,
Anna Salai, Chennai-600 002.
4. Chief Engineer/Distribution,
Chennai Region/North,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
144, NPKRR Maaligai,
Anna Salai, Chennai-600 002.
5. M.Vijayakumar,
Assistant Engineer/Electrical,
Chennai EDC/West,
Industrial Estate, Ambattur Division,
Chennai.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the



impugned order issued by the 3rd respondent in Letter No.004863/56/G.11/G.111/2021-6 dated 26.02.2021 and to quash the same and consequently, directing the respondents 1 to 4 to pass orders for transfer of petitioner as Assistant Executive Engineer at Ambattur Division in consideration of Request Transfer Application No.RT 012021 3885.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.P.Subramanian,
Standing Counsel for R1 to R4
For Respondent 5 : No Appearance

ORDER

Challenge in the writ petition is to the impugned order of the third respondent dated 26.02.2021, in and by which the fifth respondent was posted as Assistant Executive Engineer [AEE] in Ambattur Division, in modification of the earlier promotion order and for a consequential direction to the respondents 1 to 4 to pass orders for transfer of the petitioner as AEE at Ambattur Division in consideration of Request Transfer Application No.RT 012021 3885.

2. The petitioner is working as Assistant Executive Engineer (AEE), Operation and Maintenance, Sowcarpet Sub Division, Egmore Division, Chennai and he has made a representation to the respondents requesting transfer to Ambattur Division since last two years and his representation was not considered in the absence of any vacancy to the post of AEE, Ambattur Division. The petitioner has submitted the representation on the premise that the incumbent to the post of AEE in Ambattur Division, namely Mr.I.Vetrivel is getting promoted to the post of Divisional Engineer and therefore, he has requested to accommodate him in the resultant vacancy to the post of AEE on transfer, as per the Request Transfer application seniority. While that being so, the fifth respondent Mr.M.Vijayakumar, who was working as Assistant Engineer, has been given promotion to the post of AEE, vide proceedings of the third respondent dated 20.02.2021, by which the fifth respondent has been promoted to the post of AEE in CEDC/Central. However, to the shock and surprise, the fifth respondent was issued with a revised order (impugned herein) dated 26.02.2021, posting the fifth respondent as AEE in Ambattur Division at his instance, in modification of earlier promotion order. Challenging the same, the present writ petition is filed.



3. Mr.G.Sankaran, learned counsel for the petitioner submits that the fifth respondent has been promoted as AEE, Chennai EDC/Central, vide proceedings of the third respondent dated 20.02.2021 and without joining in the said post, the said order has been modified vide the impugned order dated 26.02.2021, posting him as AEE in Ambattur Division and as such, the petitioner has been deprived of his right to get transfer based on the Request Transfer Seniority and therefore, the impugned order is liable to be set aside.

4. Mr.P.Subramani, learned Standing Counsel for the respondents 1 to 4 has drawn the attention of this Court to the counter affidavit of the third respondent wherein it has been stated that online applications were received from the officials requesting transfer to Chennai Electricity Distribution Circle / West during January, 2021 and for considering the request of the applicants, performance report were called for from the concerned authorities, which is mandatory and further, the petitioner has withdrawn his Request Transfer Application to CEDC/West on 24.02.2021 and therefore, the petitioner does not have the right to seek transfer to CEDC/West through Request Transfer Application and prays for dismissal of the writ petition.

5. Heard the learned counsel for the parties and also perused the materials on record.

6. The fact remains that the petitioner has submitted online application for transfer to Ambattur Division for the last two years as per the Request Transfer Guidelines of TANGEDCO and according to the petitioner, he has submitted the said transfer request much earlier to the promotion of the fifth respondent on the premise that the present incumbent in the post of AEE in Ambattur Division is getting promoted to the post of Divisional Engineer. In the counter affidavit the third respondent has specifically stated that online applications were received from officials requesting transfer to CEDC/West during January, 2021 and for considering the request of the applicants, it is mandatory to call for performance reports from the concerned authorities and the petitioner has withdrawn his Request Transfer Application to CEDC/West on 24.02.2021 and therefore, the petitioner has lost his right to seek transfer to CEDC/West through Request Transfer Application. Though the counter affidavit said to have been filed on 20.04.2021, the petitioner has not chosen to deny the above averments made in the counter affidavit by way of reply affidavit. It has been



further stated in the counter affidavit that the fifth respondent has been transferred and posted as AEE/O&M/Ambattur on administrative convenience and further the petitioner has applied for transfer to CEDC/West through online mode and not to Ambattur as claimed by the petitioner.

7. No doubt, on exceptional circumstances, the Court can entertain writ petitions, where an order of transfer is under challenge on certain limited grounds. If any order of transfer has been passed without jurisdiction or allegations of malafides are raised or in certain exceptional circumstances, where materials are available to establish that the transfer is punitive, then the Courts can interfere, in order to mitigate the exceptional circumstances advanced. However, the scope of interference is undoubtedly limited and in the event of frequent interference by the Constitutional Courts in the matter of administrative transfer, the executives may not be in a position to run the administration in a smooth manner.

8. The next question arises, whether transfer gives a right to a government employee. The answer would be that transfer would not provide any right to a Government employee. Transfer is an incidental to service, more so a condition of service. When an offer of appointment is issued by the competent authorities, the acceptance of appointment is implied that the transfers are agreed and the employment is a contract between the employer and employee and the transfer being incidental, the scope for challenge is in narrow campus. Thus, when there is no right in the matter of transfer and transfers are not affecting the service conditions of an employee, then the entertainability of the writ petition is to be considered. Entertainability rests on limited grounds viz., (i) without jurisdiction; (ii) mala fide; and (iii) punitive, if established with sufficient materials to the satisfaction of the Courts.

9. However, in the case on hand, the petitioner has challenged the impugned transfer and posting of the fifth respondent as AEE / Ambatur Division, which has been made on administrative reasons, vide proceedings of the third respondent dated 26.02.2021. It is also informed to the Court that the distance from Ambattur Division to the present station of the petitioner is 28 Kms and the petitioner has also pointed out several personal reasons in the affidavit, based on which he sought for a direction to the respondents to consider the petitioner's request, which in the opinion of this Court cannot be a ground for interference. This Court finds no merit in the writ petition and deserves dismissal.



10. In the result, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

Jvm

To

1. The Chairman,
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(TANGEDCO),
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+1cc to Mr.P.Subramanian, Advocate, S.R.No.34110

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PL[co]
NSK/21/06/2022