



WEB COPY



W.P. No. 12160 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No. 12160 of 2020

and

W.M.P.No. 14894 of 2020

P. Radhakrishnan

...Petitioner

Vs.

1. The District Officer,
Salem District
Salem - 636 001
2. The Executive Officer,
Kolathur Special Grade Town Panchayat
Kolathur - 636 303
Salem District
3. The Executive Officer,
PN Patty Town Panchayat
PN Patty,
Salem District

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorarified mandamus, to call for the records relating to the impugned order made in Na.Ka.No.7939/2019/Pe.2 dated 14.02.2020 passed by the first respondent, quash the same, consequently direct the first respondent to retransfer the petitioner from the third respondent to the second respondent panchayat by considering his representations dated 18.11.2019 and 09.12.2019

<https://www.mhc.tn.gov.in/judis>



W.P. No. 12160 of 2020

For Petitioner : Mr. N. Manoharan
For Respondents : Mrs. S. Anitha
Special Government Pleader

WEB COPY

ORDER

The writ petition is filed for the issuance of a writ of certiorarified mandamus, to call for the records relating to the impugned order made in Na.Ka.No.7939/2019/Pe.2 dated 14.02.2020 passed by the first respondent, quash the same, consequently direct the first respondent to retransfer the petitioner from the third respondent to the second respondent panchayat by considering his representations dated 18.11.2019 and 09.12.2019.

2. According to the petitioner, while he was working as Sanitary worker in the second respondent panchayat, his name was included in the seniority list dated 01.01.2017, which is Serial No.1 in respect of the second respondent municipality for the next avenue of promotion. Thereafter, the first respondent has passed the transfer order in Na.Ka.No. 7939/2019/pe2 dated 06.11.2021 by transferring the petitioner to the third respondent panchayat. Therefore, the petitioner made a representation on 12.11.2019 to the second respondent by explaining the difficulties for joining in the transferred place and to re-consider the transfer order. Since the representation dated 12.11.2019 was not considered by the second respondent, the petitioner again submitted a representation dated 18.11.2019 to the first respondent with a request to revoke



W.P. No. 12160 of 2020

the order of transfer dated 06.11.2019 and the same was not considered by the first respondent. Therefore, petitioner filed a Writ Petition in W.P.No. 34039 of 2019 to quash the transfer order and other reliefs. By order dated 02.12.2019, this court directed the second to consider the representation made by the petitioner dated 12.11.2019. Subsequently, the petitioner joined the transferred place/third respondent on 09.12.2019 and sent a detailed representation dated 20.12.2019 to the respondents 1 and 2 as well to the higher authorities. Pursuant to the order passed by this court in the aforesaid writ petition, the first respondent has rejected the request of the petitioner. Challenging the impugned order, the petitioner has filed the instant writ petition by raising several grounds by stating that the his seniority is deprived due to transferring him to other panchayat. Now, the petitioner's name is placed at the bottom of the seniority list in the transferred place/third respondent. Therefore, the said order is liable to be quashed and seeks for re-transfer to the same.

3. Counter affidavit is filed by the respondents, in which, it is clearly stated that the said allegations are incorrect. The petitioner seniority has not been affected by transferring him from second respondent panchayat to the third respondent panchayat. According to the respondents, the seniority is district wide base and not based on single town panchayat entity. Therefore, the contention of the petitioner is totally incorrect and therefore, the said contention



W.P. No. 12160 of 2020

of the petitioner is liable to the rejected. As far as other contentions are concerned, the said transfer order was passed only on administrative grounds.

Hence, it has no merits in seeking for dismissal of the writ petition.

4. At this juncture, it is pertinent to rely upon the decision of the Hon'ble Supreme Court in the case of *Mrs. Shilpi Bose Vs. State of Bihar* reported in *AIR 1991 SC 532*, has held that the Courts should not interfere with the transfer orders made on administrative reasons unless there is violation of any mandatory statutory rule or on the ground of malafide. The relevant portion of the judgment is extracted below:

“In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher



W.P. No. 12160 of 2020

authorities in the Department....”

WEB COPY

5. Further in the case in ***W.P.(MD) Nos. 24247 & 24250 of 2019, LM.Salim & another Vs. Principal Chief Security Commissioner, Railway Protection Force, Southern Railway Chennai & 3 others***, reported in ***2021 SCC Online Mad 13363***, I had an occasion to deal with the similar issue in detail by relying upon various decisions of the Hon'ble Supreme Court and held that in the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. The relevant portion is extracted hereunder;

“7. That apart, administrative transfers are the prerogative of the Department concerned and the competent authorities are the best persons to assess and act accordingly. However, those competent authorities should act in the interest of public and in the event of any illegality or some personal motive, then alone, the employee can approach the Court of law for appropriate remedy. In other words, if an order of transfer is issued with malafide intention or in violation of the statutory rules, then alone a writ petition can be entertained. Even in such cases, the allegation of malafide intention must be substantiated in the writ proceedings and the official concerned must be impleaded as party respondents in the writ proceedings. In the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. Transfer is an incidental to service, more so, a condition of service. Public servant is liable to work wherever he is posted in the interest of public administration. On



accepting the offer of appointment, a person is agreeing for the conditions of service and transfer being incidental, he must be in a position to work, wherever he is posted.

.....

9. In ***State of U.P. and others vs. Siya Ram and others [(2004) 7 SCC 405]***, the Honourable Supreme Court has held that unless the order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer / management, as against such orders passed in the interest of administrative exigencies of the service concerned.

10. Further, in ***Airports Authority of India vs. Rajeev Ratan Pandey and others [(2009) 8 SCC 337]***, the Honourable Supreme Court has held that in the matter of transferring Government employees, the scope of judicial review is limited and the High Courts should not interfere with an order of transfer lightly.

11. In the instant case, on perusal of the materials available on records, this Court does not find any mala fide exercise or violation of any statutory provision on the part of the respondents and therefore, the impugned transfer orders and the consequential relieving orders do not warrant any interference of this Court and the writ petitions are therefore liable to be dismissed.”

6. Considering the said submission made by the parties concerned and in

view of the statement made in the counter affidavit that the seniority is district



W.P. No. 12160 of 2020

wide base and not based on single town panchayat entity, and the decision cited *supra*, the contention made by the petitioner is liable to be rejected and the transfer order has been passed by the respondents for the administrative reasons and transfer is an incident to the service. Therefore, this court cannot interfere with the transfer order unless it is malafide or without jurisdiction.

7. With the above observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.04.2022

Index : Yes / No
Internet : Yes/ No
mrn

To

1. The District Officer,
Salem District
Salem - 636 001
2. The Executive Officer,
Kolathur Special Grade Town Panchayat
Kolathur - 636 303
Salem District
3. The Executive Officer,
PN Patty Town Panchayat
PN Patty,
Salem District



WEB COPY



W.P. No. 12160 of 2020

D.KRISHNAKUMAR, J.

(mrn)

W.P. No. 12160 of 2020
and
W.M.P.No. 14894 of 2020

19.04.2022