



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.21092 of 2019

P.Nambulakshmi

... Petitioner

Vs.

1.The Revenue Divisional Officer,
O/o.The Revenue Divisional Officer,
Collectorate Buildings, Madurai District.

2.The Thasildar,
Madurai North Taluk,
Madurai District.

3.S.C.Revathi

4.Anjali Devi

5.Muthuharikrishnan

6.Munuchamy

7.Saravanadevi

8.Abirami

9.Muthukannan

10.Sethuraman

11.Mohankumaran

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent under the proceedings No.Na.Ka.No.A/4845/2019-4 dated 29.08.2019 and quash the same as void, illegal, unlawful and consequently direct the first respondent to prepare true, correct seniority list of Village Administrative Officers in respect of Madurai North Taluk, Madurai Division and to transfer/appoint the petitioner as the Village Administrative Officer of Tallakulam-A Village at Tallakulam, Madurai North Taluk, Madurai District by considering her application dated 30.08.2019 and by strictly following the guidelines given under G.O.Ms.No.515-Revenue Department dated 25.08.2008 within a time frame as may be fixed by this Court.

For Petitioner : Mr.M.Ponniah
For Respondent : Mr.M.Ramesh,
Government Advocate
for RR1 and 2
No-appearance for RR4 to 11

ORDER

The transfer counselling conducted by the first respondent is disputed by the petitioner in the present writ petition.



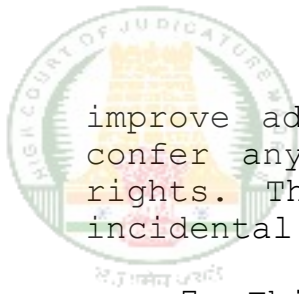
2. The learned counsel for the petitioner mainly contended that the instruction/guideline issued by the Government for conducting general transfer counselling in G.O.Ms.No.515, Revenue Department dated 25.08.2008 has not been followed by the Official respondents and the petitioner is deprived of working in A village. The learned counsel for the petitioner made a submission that the petitioner was working in A village for short period. Contrarily, her juniors are allowed to work in A village in violation of the guideline issued for general transfer counselling. The petitioner is of the opinion that the Seniority list prepared for the purpose of counselling itself has not been properly prepared nor implemented as per the guideline issued by the Government. Thus, the order impugned of transfer dated 29.08.2019 is to be set aside.

3. The petitioner is working as Village Administrative Officer, Anaiyur I Bit which is 'A' Village. He was appointed as Village Administrative Officer in the year 2010. However, the petitioner has now been transferred to 'B' Village.

4. This Court asked a question what is the difference between 'A' Village and 'B' village to the learned counsel for the petitioner.

5. In reply, the learned counsel for the petitioner made a submission that less number of villages are covered under 'A' Village and more number of villages are covered under 'B' village. However, 'A' village is a developed Village, which is classified as urban and more number of populations are there.

6. However, this Court is of the considered opinion that there is no alteration of service conditions attached to the post of Village Administrative Officer. Villages are classified as 'A' Village and 'B' Village for administrative convenience. Such administrative convenience would not confer any right on the employee to claim a particular post or place as a matter of choice. Public servant is expected to work in a place where he/she is posted. Only on limited grounds, transfer can be challenged. A better post or status can never be claimed as a matter of right by public servants. Therefore, status would not provide a ground to consider the transfer or posting. Villages are classified for certain administrative purposes. Therefore, a Village Administrative Officer, wherever he/she is posted, is expected to perform the public services in the manner known to law. When the right of posting is not established in 'A' Village or 'B' Village, the relief cannot be granted by the High Court in a writ proceedings. Certain guidelines issued for grant of concession cannot be construed as a service right. Right is distinguishable with the concession. A concession would not confer right and such concession is granted to facilitate the employees to work in a smooth manner. The Government is expected to provide the facilities to the Government employees to



improve administrative efficiencies and such facilities would not confer any right nor to be construed as infringement of service rights. Therefore, transfer itself is not a right as it is an incidental to service, more so, a condition of service.

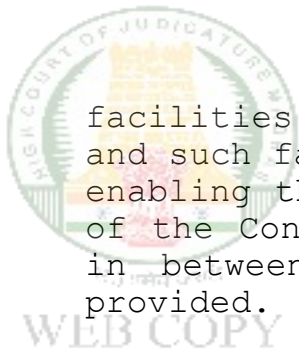
7. This Court is of the considered opinion that the rights of the petitioner regarding posting and transfer of his choice is to be first considered and secondly, disobedience of the instructions of the higher officials is to be considered.

8. With reference to the above two issues, it is relevant to consider Section 48 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which contemplates posting and transfer. Sub-section (1) states that a member of a service or class of service may be required to serve in any post borne on the cadre of such service or class for which he is qualified. Sub-section (3) stipulates that notwithstanding anything contained in this Act or in any special rules or adhoc rules, the Government may transfer any Government servant from one Revenue District to another Revenue District within the State, on administrative grounds.

9. Thus, the power of transfer and posting conferred under the Act on the Government is an absolute one. Any guidelines or instructions cannot supersede the provisions of the Act. The guidelines or instructions are issued only for the administrative convenience and to provide certain concessions to the Government employees. Such concession or choice provided to the employees can never be construed as a legal right for the purpose of instituting a writ proceedings under Article 226 of the Constitution of India.

10. Concessions and facilities are provided only for the purpose of efficient public administration and not for providing absolute right in the matter of transfers. Therefore, the instructions and guidelines are issued by the Government for following uniformity in the matter of extending the concession and certainly not to confer any right on the Government employees. In other words, in the absence of any instructions / guidelines, the Sub-ordinate Authorities may be exercised their powers in a whimsical manner and on some occasions, based on favouritism and nepotism. Therefore, the instructions and guidelines for transfer and posting are certainly necessary for the purpose of maintaining the consistency and uniformity. However, such instructions or guidelines would not confer any legal rights for the Government servant to seek a place or post as a matter of choice.

11. A distinction is to be drawn in between the service rights and the concession extended to the Government servants. A service right is a right which is conferred under the provisions of the Act or through the Government Orders in the matter of governing the services of the employees. However, while taking certain decisions



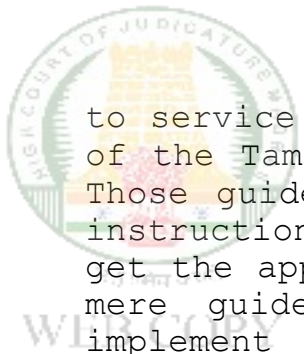
facilities and concessions are extended to the Government employees and such facilities or concessions would not provide a service right enabling the employees to approach the High Court under Article 226 of the Constitution of India. Thus, the distinction is to be drawn in between the service rights and the concessions / facilities provided.

12. The Hon'ble Supreme Court of India consistently took decisions that the instructions / guidelines provided in the matter of transfer for effective administration would not confer any right on the employees. However, the order of transfer can be challenged on the ground of lack of jurisdiction or malafide. No doubt, if any transfer is issued on malafide ground, then the Court can interfere. If it is issued by the incompetent authority having no jurisdiction, then also, appropriate relief can be granted. But, in all other circumstances, the transfer *per se* would not confer any right on the Government servants.

13. The facilities / concessions provided by way of transfer counselling is being taken as a cause for the purpose of filing Writ Petitions. Several Writ Petitions are filed in respect of transfer counselling. In the event of interference by the High Court, it would be difficult for the public administration to issue transfer and posting to the employees. The seniority plays no role in the matter of administrative transfers. Therefore, in all circumstances, the authorities are bound to exercise the power of transfers judiciously and for efficient public administration. The transfers cannot be issued on extraneous considerations. Even in the case where the Subordinate Authorities violated certain instructions, the employees may submit a complaint before the higher authorities against the wrong implementation of the instructions issued by the Head of the Department and the Head of the Department may initiate appropriate action against the authorities, who have violated the instructions including the departmental disciplinary proceedings. Contrarily, the High Court cannot interfere with such day-to-day administration of the Government Departments. The power of judicial review need not be extended for the purpose of interfering with the day-to-day administration of the Government Department.

14. The power of judicial review under Article 226 of the Constitution of India to the High Court is to ensure the process through which a decision is taken by the Competent Authority in consonance with the statute or not, but not the decision itself. Therefore, such administrative decision taken in the matter of concession / facilities would not be construed as a cause for the purpose of entertaining the Writ Petition nor would confer the right on the Government employee to seek the place or post as a matter of choice.

15. Therefore, this Court is of an opinion that certain
<https://hcservices.mca.gov.in/hcservices/> in the matter of promotion, seniority or relating



to service conditions were issued in consonance with the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act. Those guidelines get an approval of statutory force and all other instructions issued in the matter of transfer and posting would not get the approval of statutory enforceability. Such instructions are mere guidelines for the purpose of Subordinate Authorities to implement the instructions given by the Higher Authorities and violation of such instructions may provide circumstances for an employee to submit a complaint against the Authority for initiation of action, but certainly not the Writ Petition for the High Court to interfere and adjudicate the disputes in such matters. Thus, the distinctions are to be drawn by the Court in such matters, where service rights, concessions and facilities are provided to the Government employees. In the absence of drawing such distinction, every such Government Order will be taken as a cause for the purpose of filing the Writ Petition and the High Court cannot interfere in such matters regarding the routine administration of the Government and such interference is absolutely not contemplated to exercise the power of judicial review under Article 226 of the Constitution of India.

16. This Court is of the considered opinion that the transfer can never be claimed as a matter of right and the petitioner cannot claim either 'A' Village or 'B' Village as in view of the fact that the guidelines/instructions issued for administrative convenience cannot be construed as an enforceable instructions. However, it is made clear that the Authorities are bound to prepare the Seniority list in accordance with the Rule of Seniority which is to be followed as per the Rules in-force. In other words, in the event of any error brought to the notice of the Authorities in preparation of seniority, that is to be rectified in the manner known to law.

17. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

ssb

To

1.The Revenue Divisional Officer,
O/o.The Revenue Divisional Officer,
Collectorate Buildings, Madurai District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Thasildar,
Madurai North Taluk,
Madurai District.

+1 CC to M/s.M.PONNIAH, Advocate (SR-6594[F] dated 16/02/2022)

+1 CC to M/s.SPL GP (SR-6849[F] dated 17/02/2022)

W.P.(MD) No.21092 of 2019

16.02.2022

NSN(CO)

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