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W.A.No.1145 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.05.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

AND

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

WA.No.1145 of 2023 & CMP.No.11514 of 2023

&

W.P.No.15618 of 2023 & WMP.No.15112 of 2023

Saravanan

... Petitioner

Vs

1. The Secretary to Government,
Differently Abled Welfare Department,
Secretariat, Chennai – 600 009.

2. The Commissioner of Differently Abled
Welfare, Chennai – 600 005.

... Respondents

Prayer:- Writ Petition filed under Clause 15 of the Letter Patent Act to allow this Writ Appeal by setting aside the Order dated, 18.05.2023 made in WMP.No.15112 of 2023 in W.P.No.15618 of 2023 passed by this court.



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For petitioner : Mr.M.Gnanasekar

For Respondents : Mrs.R.Anitha,
Special Government Pleader

ORDER

This Writ Appeal has been filed to set aside the Order of this Court passed in WMP.No.15112 of 2023 in W.P.No.15618 of 2023 dated 18.05.2023 refusing to grant interim stay of the Order of the second respondent dated 13.05.2023.

2. The issue raised in the Writ Petition is limited, the Writ Petition itself is taken up for consideration, with the consent of both the parties.

3. The writ petition got diploma in Prosthetic and Orthotic Engineering and was appointed as Orthotic Technician and promoted as District differently Abled Welfare Officer in the year 2016 at Dindigul. Thereafter, it seems that he has been transferred from Tuticorin and later transferred to Tiruvannamalai and from Tiruvannamalai, he has been



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transferred to Ariyalur in the year 2021. Hence, the petitioner gave a representation dated 10.05.2021 requesting mutual transfer to his native place, viz., Vellore. One Srinivasan, who is the then District Differently Abled Officer in Vellore also gave his willingness to get transferred to Ariyalur in the place of the writ petitioner.

4. The Writ Petitioner would further submit that his mother is suffering from Tuberculosis and is undertaking treatment in Christian Medical College, Vellore. He would also point out that his sister is suffering from dysplasia and also suffering from mental illness. He also produced a certificate from the Department of Psychiatry Unit – I, Christian Medical College to show that the disability is very severe and she is also suffering from 70% disability. The certificate also show that the disability is permanent. The petitioner is aged about 52 years.

5. The petitioner relied upon the Government Order in G.O.Ms.No.107 dated 03.09.2020 issued by the Government of Tamilnadu wherein the following instructions have been given by the Government :



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“After careful consideration, the Government direct that a government employee who is a caregiver of dependent daughter/son/parents/spouse/ brother/ sister with specified disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2[r] of the Rights of Persons with Disability Act, 2016 may be exempted from the routine exercise of transfer, subject to the administrative constraints, during the transfer period namely, between the 1st April and the 31st May, every year. This exemption is however subject to the following conditions :

i. A Government Servant must be a caregiver of differently abled dependent such as daughter/son/parents/spouse/brother/sister.

ii. A Government Servant who is a caregiver of differently abled dependent should furnish a certificate, certified by the certifying authority that the dependent is a person with Benchmark Disability as defined under Section



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2 [R] of the Rights of Person with Disabilities
Act, 2016.

4. The Government also directs to follow the instructions issued in the Government letter second read above while considering the Government Servants, who are having mentally ill or differently abled children for transfer.”

By the impugned Order, the petitioner was transferred from Vellore to Tirunelveli and the same was put to challenge before the learned Single Judge, who had refused to grant an interim Order as against which the present appeal has been preferred.

6. We have carefully gone through the Government Order and we are satisfied that the Government Order has been passed to help the disabled officers, who are care givers for the persons, who are suffering from disability. The Order itself states that the person must be a care giver of differently abled dependent such as daughter/son/parents/spouse/brother/sister. The petitioner comes under these categories and the



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certificate has also been produced by him and he has also satisfied the requirements of Section 2 [r] of Rights of Person with Disabilities Act, 2016. The Order of transfer of a care giver from Vellore to Tirunelveli is contrary to the Government Order. The serious objections of the learned Special Government Pleader that the transfer being incidental in service of a Government Servant does not appeal to us in the light of the aforesaid Government Order passed by the Government.

7. Accordingly, the Writ Appeal is allowed by setting aside the Order of this Court in WMP.No.15112 of 2023 in W.P.No.15618 of 2023. Subsequently, the Writ Petition in W.P.No.15618 of 2023 is also allowed and the impugned Order passed by the second respondent dated 13.05.2023 is set aside. Consequently, connected miscellaneous petitions are closed No costs.

B.P., J. V.L.N.,J.
25.05.2023

vrc



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To,

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1. The Secretary to Government,
Differently Abled Welfare Department,
Secretariat, Chennai – 600 009.
2. The Commissioner of Differently Abled
Welfare, Chennai – 600 005.



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B.PUGALENDHI, J.
AND
V.LAKSHMINARAYANAN, J

vrc

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25.05.2023