



WEB COPY



W.P.No.24221 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.24221 of 2023

and

W.M.P.No.23683 of 2023

D.Selva Kumar

... Petitioner

Vs.

1.The Director,
Department of Horticulture &
Plantation Crops,
Ezhilagam, Chepauk,
Chennai – 5.

2.The Deputy Director of Horticulture,
O/o. Deputy Director of Horticulture Office,
Room No.538, 5th Floor,
Collectorate Complex,
Tirupur & District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned transfer order in Proc.No.GES1/101/2023 dated 09.08.2023 issued by the 1st respondent and quash the same and consequently to direct the respondents to retain the petitioner in the current working station.



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For Petitioner : Mr.P.Vijendran

For Respondents : Mr.E.Vedabagath Singh
Special Government Pleader

ORDER

This writ petition has been filed challenging the transfer order passed by the 1st respondent, dated 09.08.2023, transferring the petitioner from Tiruppur District to Tenkasi District.

2.It is the case of the petitioner that he was working as Assistant Director of Horticulture at Moolanur Block, Tiruppur District and he has been transferred from the said place to Kelapavur Block, Tenkasi District, by the 1st respondent vide order dated 09.08.2023, which is put to challenge in the present writ petition. The impugned transfer order is challenged mainly on the ground that the distance between the two Stations is more than 400 km. Further, the petitioner's mother is aged about 66 years and the petitioner has to take care of his ailing mother. It is the further contention of the petitioner that, earlier, he was transferred frequently to various Stations. Hence, according to the petitioner, the present transfer, impugned in this writ petition, has to be set aside.



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3.Mr.P.Vijendran, learned counsel for the petitioner, submitted that, from 2008 onwards, the petitioner has been frequently transferred to various places and now, he is transferred from Tiruppur District to Tenkasi District, which is more than 400 km away. The learned counsel contends that the frequent transfers itself clearly indicates that it is *mala fide*. The learned counsel also submitted that the petitioner's mother is age-old and ailing and therefore, the petitioner's case may be considered. It is the contention of the learned counsel for the petitioner that, in the impugned transfer order, reasons have not been assigned properly. In support of his arguments, the learned counsel also relied on a judgment of the Hon'ble Supreme Court in the case of *Dr.Nagorao Shivaji Chavan v. Dr.Sunil Purushottam Bhamre and others* reported in *CDJ 2018 SC 1351*.

4.Heard the learned counsel for the petitioner and Mr.E.Vedabagath Singh, learned Special Government Pleader, who takes notice for the respondents.

5.On a perusal of the entire affidavit filed in support of this writ petition, it is seen that no specific ground as to *mala fides* has been raised in the affidavit, except raising a ground that the petitioner is being



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frequently transferred from one place to another. This Court is of the view

that, merely on the basis of frequent transfers, *mala fides* cannot be

presumed. The burden of establishing the *mala fides* is heavy on the

person alleging the same. Mere allegations alone are not sufficient to infer

or presume the alleged *mala fides* in transfer. Except making a bare

allegation of frequent transfers, the petitioner, in his affidavit, has not even

specifically stated the nature of places of transfer previously made.

Transfer, being a condition of service and incidence of service, one cannot

contend that he should be posted or allowed to retain in particular place.

Government Servants are at the disposal of the Government. Their

services might be utilized anywhere by the Government and they are

supposed to work in the Station as ordered by the Government. Transfer

orders cannot be interfered by the Courts in a routine manner, unless the

transfer orders are punitive in nature or attached with *mala fides*. As

stated above, *mala fides* cannot be inferred merely on the basis of surmises

or conjectures and it must be established with sufficient materials. In the

case on hand, the entire affidavit does not even contain allegations of *mala*

fides, except the allegation of frequent transfers. The judgment relied upon

by the learned counsel for the petitioner is not applicable to the set of facts

of the given case.



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6. Such being the position, I do not find any merit in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2023

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Internet : Yes
Index : Yes / No
Neutral citation : Yes / No
Speaking order / Nonspeaking order

To

1. The Director,
Department of Horticulture &
Plantation Crops,
Ezhilagam, Chepauk,
Chennai – 5.
2. The Deputy Director of Horticulture,
O/o. Deputy Director of Horticulture Office,
Room No.538, 5th Floor,
Collectorate Complex,
Tirupur & District.

N. SATHISH KUMAR, J.



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