



W.A(MD)Nos.334, 1145 and 1146 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation	29.08.2023
Date of Judgment	.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A(MD)Nos.334, 1145 and 1146 of 2022
and
C.M.P.(MD)Nos.3334, 9028 and 9030 of 2022

W.A(MD)No.334 of 2022

1.K.Arun Nehru
2.N.Mohan
3.M.Karthikeyan

: Appellants/Third parties

Vs.

1.G.Kathirvel
2.The State of Tamil Nadu
Represented by its Principal Secretary,
Revenue Department, Secretariat,
Chennai-9.
3.The Additional Chief Secretary cum
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai-5.
4.The District Collector,
Pudukkottai District.
5.The District Revenue Officer,
Pudukkottai District.

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6.The Revenue Divisional Officer,
Aranthangi,
Pudukkottai District.

7.V.Bhuvaneswari,
Village Administrative Officer,
Kummakadu, Aranthangi,
Pudukkottai District. : Respondents 2 to 7/Respondents 1 to 6

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 05.01.2022 made in W.P.(MD)No.19266 of 2021 on the file of this Court.

For Appellant	: Mr.K.P.S.Palanivel Rajan Standing Counsel for Mr.B.Jameel Arasu
For R1	: Mr.S.Rajasekar for M/s.T.Lajapathiroy and Associates
For R2 to R6	: Mr.Veera Kathiravan Additional Advocate General assisted by Mr.M.Lingadurai Special Government Pleader
For R7	: Mr.K.Baala Sundaram Senior Advocate for Mr.A.Arul Jenifer

W.A(MD)No.1145 of 2022

1. State of Tamil Nadu
Represented by its Principal Secretary,
Revenue Department, Secretariat,
Chennai-9.



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2.The Additional Chief Secretary cum
Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai-5.

3.The District Collector,
Pudukkottai District.

4.The District Revenue Officer,
Pudukkottai District.

5.The Revenue Divisional Officer,
Aranthangi,
Pudukkottai District.

: Appellants/Respondents 1 to 5
Vs.

1.G.Kathirvel : 1st Respondent/Writ Petitioner

2.V.Bhuvaneswari,
Village Administrative Officer,
Kummakadu, Aranthangi,
Pudukkottai District. : 2nd Respondent/6th Respondent

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 05.01.2022 made in W.P.(MD)No.19266 of 2021 on the file of this Court.

For Appellants	: Mr.Veera Kathiravan Additional Advocate General assisted by Mr.M.Lingadurai Special Government Pleader
For R1	: Mr.S.Rajasekar for M/s.T.Lajapathiroy and Associates
For R2	: Mr.K.Baalasundaram Senior Advocate for Mr.A.Aruljenifer



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W.A(MD)No.1146 of 2022

1. State of Tamil Nadu
Represented by its Principal Secretary,
Revenue Department, Secretariat,
Chennai-9.
 - 2.The Additional Chief Secretary cum
Commissioner of Revenue Administration,
Ezhilagam, Chempauk,
Chennai-5.
 - 3.The District Collector,
Pudukkottai District.
 - 4.The District Revenue Officer,
Pudukkottai District.
 - 5.The Revenue Divisional Officer,
Aranthangi,
Pudukkottai District.
- : Appellants/Respondents 1 to 5
- Vs.

1.S.Senthilkumar

2.V.Siva

3.K.Thandayuthapani : Respondents 1 to 3/Writ Petitioners

4.V.Bhuvaneswari,
Village Administrative Officer,
Kummakadu, Aranthangi,
Pudukkottai District. : 4th Respondent/6th Respondent

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 05.01.2022 made in W.P.(MD)No.20575 of 2021 on the file of this Court.



W.A(MD)Nos.334, 1145 and 1146 of 2022

For Appellants : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.M.Lingadurai
Special Government Pleader

For R1 to R3 : Mr.S.Rajasekar
for M/s.T.Lajapathiroy and Associates

For R4 : Mr.K.Baalasundaram
Senior Advocate
for Mr.A.Aruljenifer
Additional Government Pleader

COMMON JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.,

These Writ Appeals are directed against the order passed by the learned Single Judge made in W.P(MD)Nos.19266 of 2021 and 20575 of 2022 dated 05.01.2022.

2. The brief facts leading to the filing of these writ appeals are that the Government has been issuing orders periodically regarding the posting and transfers of the Village Administrative Officers. In order to provide better administration, weed out the corruption and ensuring transparency, the Government consolidated its guidelines regarding transfers and posting of Village Administrative Officers vide



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G.O.Ms.No.515 dated 25.08.2008. As per the guidelines framed under the said Government Order, the Village Administrative Officers have to be transferred between 'A' villages (villages within the urban limits) and 'B' villages (rural) alternatively for a period of one year and three years respectively. It is further laid down that in order to ascertain the eligibility of the Village Administrative Officers to participate in the general counseling seeking transfer to the place of their choice, first of July of the respective year should be taken as the cut off date.

3. In this background, for the year 2021, the counseling for general transfers of the Village Administrative Officers within the Aranthangi Revenue Division, Pudukottai District could not be conducted in time and the reasons stated are that there was election duty in the month of July and thereafter, the office of the competent authority namely, the Revenue Divisional Officer was vacant. After the incumbent was posted, he proposed to conduct the counseling for transfer on 28.08.2021. While so conducting, accepting the representation of the association of the Village Administrative Officers, the cut off date was fixed by the authority as 26.08.2021 instead of 01.07.2021.



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4. Based on the said cut off date and conduct of counseling, as many as 8 transfers were made by the proceedings dated 31.08.2021. It is stated that out of the 8 persons, some of the transferred employees became eligible subsequent to the cut off date fixed by the G.O. ie., 01.07.2021.

5. In this scenario, W.P.(MD)No.19766 of 2021 was filed by one of the Village Administrative Officers namely, G.Kathirvel, the first respondent in W.A.(MD)No.334 of 2022 with a prayer calling for the records of the said order and also the consequential order issuing transfer to the party respondent on 30.09.2021 and to quash the said orders and for a direction to conduct the transfer counseling strictly in accordance with the G.O.Ms.No.515, dated 25.08.2008.

6. Similarly the second writ petition in W.P.(MD)No.20575 of 2021 was filed by three other Village Administrative Officers. Pending the writ petitions, there was no interim order and the transfers were given effect and the individuals were working in the transfer places. Thereafter, the writ petitions were came to be heard by the learned Single Judge and was finally disposed of by Judgment dated 05.01.2022.



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7. The learned Single Judge after considering the case of the parties held that the Revenue Divisional Officer could not have fixed the cut off of his choice, when the G.O.Ms.No.515 prescribes the cut off date as 01.07.2021 and therefore allowed the writ petitions by setting aside the impugned orders of transfer.

8. Aggrieved by the same, the State filed W.A(MD)No.1145 of 2022 and 1146 of 2022 while three of the Village Administrative Officers whose transfers were also quashed and who were not made as parties in the above writ petitions filed W.A(MD)No.334 of 2022. Pending the writ appeals also, there was no any interim stay of the order of the learned Single Judge. But till date the orders of the learned Single Judge were not implemented. Citing the non-implementation of the orders of the learned Single Judge it is further represented that the Village Administrative Officers of the division have been protesting and were not co-operating for the general transfer counseling for the years 2022 and 2023 also. Accordingly, the matters are pending.



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9. *Mr.Veerakathiravan*, the learned Additional Advocate General appearing for the State would submit that the Village Administrative Officers have no right to demand for posting in 'A' village or 'B' village or for posting in a particular place. The Government order is nothing but guidelines and as such taking into consideration the circumstances, in which, it was belatedly implemented, the cut off date was fixed that too only on the request of the association of the officers and not at the behest of the appellants/Government or its authorities. He would therefore submit that the learned Single Judge ought not to have interfered with the counseling and in any event he would submit that there was no justification on the part of the Village Administrative Officers in stalling the counseling even for the years of 2022 and 2023.

10. *Mr.K.P.S.Palanivel Rajan*, the learned Senior Counsel representing *Mr.B.Jameel Arasu*, learned counsel appearing for the appellants in W.A.(MD)No.334 of 2022 would submit that the third parties/appellants' transfers have been set aside without even making them as parties and without even hearing them. He would further submit that a reading of the Government order in G.O.Ms.No.515 it



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would be clear that in an appropriate case, the cut off date can also be refixed or altered.

11. Per contra *Mr.S.Rajasekar*, learned counsel representing *M/s.T.Lajapathi Roy and Associates*, appearing on behalf of the writ petitioners would submit that only to promote transparency and avoid favouritism and arbitrariness the Government has fixed a cut off date. When the writ petitioners were very much eligible for transfers, only because the ineligible persons who have completed the one year/3 years period after the cut off date were considered, the writ petitioners lost their chance. Therefore, when there was no stay of the order of the learned Single Judge, the appellants cannot take advantage of their own non-implementation. He would submit that in any event atleast notionally the transfers have to be carried out and re-worked for the year 2021 and on that basis, the counseling for ensuing years of 2022 and 2023 have to be carried out.

12. *Mr.K.BaalaSundaram*, the learned Senior counsel representing *Mr.A.Arul Jenifer*, learned counsel appearing on behalf of the 6th respondent in the writ petitions also adopting the submissions

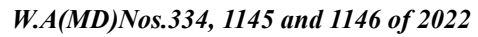


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would submit that the order of the learned Single Judge in quashing the order has to be upheld by this Court in appeal and accordingly, the transfer counseling should be ordered to be conducted.

13. We have considered the rival submissions made on either side and perused the material records of the case.

14. Before advertng to the facts of this case, it is to be noted that no Government servant has got a right to demand for transfer. Transfer is not a condition of service, but is an incidence of service. The Village Administrative Officers are duty bound to work wherever they are posted. As a matter of fact, the criteria laid down in G.O.Ms.No.515 are nothing but guidelines and do not have any statutory force. The Village Administrative Officers have no vested right to claim as a matter of right to be posted in 'A' village or 'B' village. In a given case for a proper administrative reason, any Village Administrative Officer can be posted anywhere. A perusal of the recitals of the G.O.Ms.No.515, would only show the anguish of the Government in containing corruption and reigning better administration.



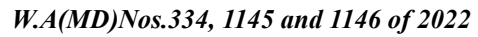
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16. But however, when the learned Single Judge has quashed the impugned order thereby which has to effect of undoing the transfer of 8 persons, it is just and necessary that the said persons be parties to the writ petitions and they be heard before passing the order. On the sole ground, the order of the learned Single Judge cannot be sustained.

17. Having held that the order of the learned Single Judge unsustainable, it is the contention of the learned counsel for the writ petitioners that the appellants/State can notionally be directed to conduct the counseling by fixing the cut off date as 01st July from the year 2021 onwards. We are afraid that such a request cannot be considered. Unlike promotion or pay scale, transfer is not a condition of service. Therefore, when the year itself is over, there is no question of notionally or retrospectively conducting a review transfer counseling and fictionally deeming that a particular person to have been worked in a particular village and thereafter redo the exercise for the consequent years. Such a thing is illogical and without any legal basis.



19. In view thereof, we dispose of the writ appeals on the following terms:

(ii) The appellants in W.A(MD)Nos.1145 and 1146 of 2022 shall strictly adhere to the cut off date of the 1st July as prescribed by G.O.Ms.No.515 dated as far as possible;

(iii) The appellants in W.A(MD)Nos.1145 and 1146 of 2022 will be at liberty to forthwith conduct the counseling for the current year 2023 again by taking the cut off date as 01.07.2023 and proceed with a matter for the current year and the same procedure shall be followed without fail for the ensuing years;



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(v) However there shall be no order as to costs;

(vi) Consequently, connected miscellaneous petitions are closed.

(S.S.S.R.,J.) (D.B.C.,J)

.09.2023

NCC : Yes / No

Index:Yes/No

Index:Yes/No

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To:

1.The Principal Secretary,
State of Tamil Nadu,
Revenue Department,
Secretariat, Chennai-9.

2.The Additional Chief Secretary cum
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
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S.S.SUNDAR, J.
AND
D.BHARATHA CHAKRAVARTHY,J.

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Pre-Delivery Judgement made in
W.A(MD)Nos.334, 1145 and 1146 of 2022
and
C.M.P.(MD)Nos.3334, 9028 and 9030 of 2022

.09.2023