



W.P(MD)No.14771 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14771 of 2023

and

W.M.P.(MD)Nos.12456 & 12457 of 2023

D.Kathiresan

... Petitioner

Vs.

**1.The District Collector,
Virudhunagar,
Virudhunagar District.**

**2.The Block Development Officer (Village Panchayat),
Sattur Panchayat Union,
Virudhunagar District.**

**3.Mettamalai Village Panchayat,
Represented by its President,
Mettamalai Village,
Sattur,
Virudhunagar District.**

**4.Kanjampatti Village Panchayat,
Represented by its President,
Kanjampatti Village,
Sattur,
Virudhunagar District.**

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned



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order in Na.Ka.No.R1/5544/2022, dated 09.06.2023 signed on 12.06.2023 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy
Senior Counsel

For Respondents : Mr.T.Villavankothai
Additional Government Pleader for R1

: Mrs.K.Christytheboral
Additional Government Pleader for R2 to R4

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for R1 & R2.

2. The petitioner was working as Panchayat Secretary at Mettamalai. He was implicated in a vigilance case. Trap was successful and the petitioner was arrested and remanded to custody. The petitioner was also suspended from service on 25.04.2022. The suspension order was revoked on 05.06.2023. By the impugned order, the petitioner has been transferred and posted at Kanjampatti Panchayat. Challenging the transfer order, the present writ petition has been filed.



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3.The learned senior counsel appearing for the petitioner contended that the impugned order is not in consonance with Rule 11 of the Tamil Nadu Panchayat Secretaries (Conditions of Service)Rules, 2013. He also relied on the letter dated 21.06.2023 issued by the President, Kanjampatti Village Panchayat to the effect that the transfer order has been issued without consulting them and that they cannot accept the appointment of the petitioner. The learned senior counsel submitted that the impugned order must be set aside and the writ petition is to be allowed.

4. I heard the learned Additional Government Pleader as well as the District Collector, Virudhunagar District over whatsapp. Rule 11 is as follows:-

11.Transfer:- (1) Transfer of a person holding the post shall be made only on administrative grounds supported by valid reason and after proper enquiry by the authorities concerned.

(2) Transfer and postings within the Block shall be made by the Block Development Officer (Village Panchayats) of the Panchayat Union concerned. Transfer and postings to other Blocks within the District shall be made by the Personal Assistant



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(Development) to the Collector. All transfers and postings within the Block and the District shall be done in consultation with the Executive Authority of the Village Panchayat concerned. The Commissioner / Director of Rural Development and Panchayat Raj is the competent authority to make transfer from one District to another District based on the specific report from the Collector.

5. If the transfer order had been made without consulting the executive authority of the Village Panchayat concerned, then, the aggrieved person can only be the president of the Kanjampatti village panchayat. The argument founded on this aspect cannot be urged by the petitioner. If Kanjampatti village panchayat refuses to accommodate the petitioner and the petitioner faces difficulties in joining duty, then certainly, cause of action will arise and at that stage, the petitioner can very well come before this Court. The District Collector, Virudhunagar categorically stated that the president of the Kanjampatti Village Panchayat was involved and that he is not aware of the letter dated 21.06.2023 said to have been issued by the panchayat president. He assures that the petitioner will not have any difficulty in joining the duty at the transferred place. Whether transfer order was passed by the District Collector in his capacity of the Inspector of Panchayats in



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contravention of the requirement consultation set out in Rule 11(2) is left open. The order impugned in the writ petition is sustained. If the petitioner complies with the transfer order, the petitioner is permitted to make a request to the first respondent to accommodate him in any other nearby panchayat and the first respondent will take a call on the petitioner's request.

6. It is stated that the petitioner was paid only 50% of his salary as subsistence allowance even after the period of six months. As per Fundamental Rule 56, the salary will have to be revised and enhanced to 75% after the expiry of six months period, if the delinquent is not responsible for the delay. In this case, I am more than satisfied that the petitioner is not responsible for the delay in concluding the proceedings. Therefore, the petitioner is permitted to make a request for enhancing his subsistence allowance to 75% after the expiry of six months period till the date of his reinstatement. If such representation is filed, the same shall be allowed and the differential amount shall also be disbursed within a period of eight weeks thereafter.



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7. The Writ Petition is disposed of accordingly. No costs.

Consequently, connected miscellaneous petitions are closed.

21.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

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G.R.SWAMINATHAN, J.

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