



W.P(MD)No.15809 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15809 of 2023

and

W.M.P(MD)Nos.13199 & 13202 of 2023

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

... Petitioner

Vs

1.The District Collector,
Virudhunagar District.

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

3.D.Kathiresan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned first respondent dated 12.06.2023 in Na.Ka.No. R1/5544/2022 and quash the same.



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For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.G.Suriyananth
Additional Government Pleader
for R.1 and R.2

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 2.

2. The third respondent was holding the post of Panchayat Secretary in Mettumalai Panchayat. He was involved in a vigilance case. He was suspended from service. While revoking the suspension, the Inspector of Panchayat felt that he should not be allowed to serve in the original place. Such a decision in my view is reasonable and well founded. He was transferred to Kanjampatti village panchayat. Challenging his transfer, Kathiresan filed W.P(MD)No.14771 of 2023. I declined to interfere with the transfer order and disposed of the writ petition in the following terms:

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



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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 (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*



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transferred place. Whether transfer order was passed by the District Collector in his capacity of the Inspector of Panchayats in 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.”

3. Now the president of Kanjampatti village panchayat has filed the writ petition impugning the order of transfer. The learned counsel appearing for the petitioner drew my attention to Rule 11 of the Tamil Nadu Village Panchayat



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Secretaries (Conditions of Service) Rules, 2013 and contended that the petitioner has not been consulted before passing the impugned order. He pressed for setting aside the order on the ground of breach of Rule 11(2) of the said Rules.

4. The contention is no doubt attractive. But there is one impediment in accepting the said contention. The operation of Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 has been stayed by this Court. The stay has been in force for more than 10 years. When the operation rules have been stayed and the Government is also proposing to bring new Rules, we have to go by the previous position. Under the 2007 Rules, there is no scope for transfer. However, the District Collector in his capacity as Inspector of Panchayat is very much competent to transfer a Panchayat employee in the interest of administration. So long as his order is not arbitrary, the writ Court will not interfere with the same. Even under Rule 11(2) of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, what is contemplated is that the Executive Authority must be consulted. This requirement of consultation will have been necessary if the order had been passed by the Personal Assistant (Development) to the Collector. But where the Collector himself passed the order; in my view the requirement of consultation may not be necessary. I wanted to know if there is vacancy in the post of



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Secretary in Kanjampatti village Panchayat. The answer is in the affirmative.

Therefore, when there is a vacancy in Kanjampatti panchayat, the Inspector of Panchayat rightly posted the third respondent in that place. If there are any other administrative issues, it is always open to the President of Kanjampatti Village Panchayat to address the District Collector in that regard. But I am certain that the concerns that may be expressed by the petitioner will be duly addressed. The impugned order is sustained.

5. This writ petition is dismissed. There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

30.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

- 1.The District Collector,
Virudhunagar District.
- 2.The Block Development Officer,
(Village Panchayat),
Sattur Panchayat Union,
Virudhunagar District.



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G.R.SWAMINATHAN, J.

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