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W.P.No.6200 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.6200 of 2015

and

M.P.Nos.1 & 2 of 2015 and W.M.P.No.6237 of 2017

S.Vinumahesh

... Petitioner

Vs.

1. The Tamil Nadu Civil Supplies Corporation,
Represented by its Managing Director,
Old No.42, New No.12, Thambusamy Road,
Kilpauk, Chennai – 600 010.

2. Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Industrial Estate, Konam,
Nagercoil – 621 004,
Kanyakumari District.

3. Regional Manager,
Tamil Nadu Civil Supplies Corporation,
St.Thomas Road, Maharaja Nagar,
Tirunelveli – 627 011.

4. Smt.Mariammal

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the proceedings bearing AE5/85297/2014 dated 07.01.2015 and quash the same insofar as the petitioner sought to be posted in Tirunelveli instead of Kanyakumari region and direct the first respondent herein to post the petitioner to the Kanyakumar Region as Junior Assistant.

For Petitioner : Mr.V.Prakash, Senior Counsel
for Mr.K.Sudalai Kannu

For Respondents : Mr.R.Neelakandan,
Additional Advocate General
assisted by Dr.K.Thirugnanam,
Standing Counsel for
Tamil Nadu Civil Supplies Corp.,
assisted by Mr.R.Hariharan

ORDER

This writ petition has been filed aggrieved by the proceedings No.AE5/85297/2014 dated 07.01.2015, whereby the petitioner was issued posting orders appointing him as a Junior Assistant in the Tirunelveli Region on administrative grounds by the Managing Director of the respondent Corporation.



2. The brief facts that are relevant for disposal of this writ petition are as under:

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2.1. The petitioner herein initially appointed as Bill Clerk on 20.11.2006 on compassionate grounds and thereafter, he was promoted to the post of Junior Assistant in the region of Kanyakumari District. The Region is the unit for the purpose of seniority, promotion, etc. While the petitioner was working as Junior Assistant, he was subjected to disciplinary proceedings by issuing a charge memo dated 11.10.2013, and he was also placed under suspension on 12.10.2013. The said suspension was revoked by an order dated 01.12.2014 and consequently, the petitioner was directed to report before the General Manager (Administration), Head Office of the respondent Corporation. It is on the petitioner reporting to the General Manager (Administration), Head office, the petitioner who was working as Junior Assistant in Kanyakumari Region by then was posted as Junior Assistant in Tirunelveli Region through proceedings dated 07.01.2015. It is aggrieved by the said proceedings dated 07.01.2015 issued by the 1st respondent, the petitioner filed the present writ petition.



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3. Mr.V.Prakash, learned Senior Counsel appearing for the petitioner contended that the impugned order was issued at the instance of 4th respondent for malafide reasons. It is also contended that the petitioner being the Regional Secretary of the recognized Union namely, Tamil Nadu Civil Supplies Corporation Employees Union affiliated to Labour Progressive Federation i.e., Labour wing of Dravida Munnetra Kazhagam, he was targeted. Further, it is also contended that the charge memo that was issued to the petitioner on 11.10.2013 is also a result of malafide exercise of power by the respondent No.4 holding the post of Regional Manager, and the respondent No.4 has been acting in favour of the another Union which was affiliated to the party in power at the relevant point of time namely, AIADMK. Further, it is also contended that the Kanyakumari Region is the Unit for all purposes including seniority, promotion, etc., but the transfer of the petitioner beyond the region is without power or authority and the same would have adverse effect on the seniority of the petitioner as well. He also further contended that inspite of making specific allegation of malafide against the respondent No.4, the respondent No.4 failed to file any counter affidavit in the present writ petition and therefore, the allegations that are



levelled against the respondent No.4 are to be treated as true and the impugned order is liable to be set aside.

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4. On the other hand, Mr.R.Neelakandan, learned Additional Advocate General appearing for the Tamil Nadu Civil Supplies Corporation contended that there were no extraneous reasons involved in issuing the impugned order, but it is purely on administrative grounds the impugned order came to be issued considering the fact that the disciplinary proceedings are pending against the petitioner. Further, it is also contended that there is no prohibition or restriction on transfer from one region to other region, and in terms of Regulation, 17 of the Tamil Nadu Civil Supplies Corporation Employees' Service Regulations, 1989(in short 'Regulations, 1989'), the seniority of the employee transferred to the another region is protected and therefore, the question of causing any prejudice to the petitioner does not arise. He also further contended that the transfer is an incidence of service and therefore, the same cannot be interfered with by this Court, once such an order of transfer was issued on administrative grounds and by the competent authority. According to learned Additional Advocate General, the Managing Director is the competent authority to effect transfer from one region to other



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region under the relevant Regulations. He also placed reliance on the decision of a learned Single Judge of this Court in W.P.No.23753 of 2004 dated 10.11.2009 and another decision reported in 1979(1)SLR 309. He also further contended that the relief sought in the present writ petition has practically become infructuous, as the petitioner was again re-transferred to the Kanyakumari region through proceedings No.AE6/18729/2021 dated 16.07.2021. Hence, the writ petition is liable to be dismissed on the ground that it has become infructuous.

5. However, Mr.V.Prakash, learned Senior Counsel, contended that consequent upon issuance of the impugned order, the petitioner has not joined in the Tirunelveli region and therefore, the disciplinary proceedings have been initiated. Therefore, the validity of the impugned order is required to be decided by this Court in the present writ petition.

6. This Court has carefully considered the submissions made on either side and also perused the entire material on record.



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7. It is settled law that the transfer is an incidence of service and the same cannot be interfered with by this Court once the same was issued by the competent authority on administrative grounds, without there being any extraneous consideration. In the instant case, malafides have been attributed against the respondent No.4 stating that she has been acting in favour of the political party in power in the state of Tamil Nadu and in favour of the Union affiliated with the said party in power, and it is only in that context the disciplinary proceedings were initiated against the petitioner resulting in issuance of the impugned transfer order. Though it is stated that the impugned order came to be issued only at the instance of the respondent No.4, there is no material that is placed before this Court to show that the respondent No.4 is responsible for the issuance of the impugned proceedings posting the petitioner to Tirunelveli region. The impugned proceedings has been issued by the Managing Director of the respondent Corporation but not by the respondent No.4. There is no malafides attributed against the Managing Director of the respondent Corporation in issuing the impugned proceedings. Therefore, any amount of malafides attributed against the respondent No.4 is of no consequence.



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8. Admittedly, the disciplinary proceedings were pending against the petitioner, and he was also placed under suspension and it is only on revocation of such suspension, the petitioner is sought to be posted to Tirunelveli region from Kanyakumari region. As the disciplinary proceedings were pending against the petitioner in Kanyakumari region, that itself can be an administrative ground for transferring the petitioner to Tirunelveli region. Such a transfer or posting orders issued to Tirunelveli region cannot be said to be the one having punitive in nature.

9. Then, coming to the contention of Mr.V.Prakash, learned Senior Counsel stating that the seniority of the petitioner would be adversely affected on his posting to Tirunelveli region is concerned, the same appears to be not having any substance for the simple reason that the Regulation 17 of the Regulations, 1989 deals with seniority and categorically protects the seniority of an employee posted from one region to another region in terms of the provisions contained in Regulation 17 (b) (i) of the Regulations, 1989.

The said Regulation 17(b)(i) of the Regulations, 1989 reads as under:

“17.Seniority: (a) The Seniority of a person in a class category shall unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the



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Appointing Authority, subject to the rule of reservation of appointments wherever it applies.

The seniority shall be maintained irrespective of the actual date of joining. The unit of seniority shall be the Region (Head Office to be a separate Unit) in respect of the post for which Regional Manager/General Manager A(Admn.) are appointing authorities. For all other posts, the State is the unit for seniority.

b. Seniority in Certain cases of Transfers: (i) where an employee for whom the Appointing Authority is Regional Manager/General Manager (Admn.) is transferred from one region to another on administrative ground, he shall not forego seniority in the region to which he is transferred, but retain it with reference to his/her regular service in that category”.

10. From the perusal of the above Regulation, it is evident that an employee can be transferred from one region to another and there is no prohibition on such transfer and posting orders. Further, there is no dispute that the Managing Director of the respondent Corporation is competent to issue the transfer orders or posting orders posting the employees from one region to the other region. In respect of Junior Assistant, the appointing authority is the Regional Manager or the General Manager (Admn.) of the concerned region. The Managing Director, being the superior officer to that of the appointing authority, is very much authorized in terms of Regulation



24 of the Regulations, 1989, to effect transfer from one region to the other region. As a matter of fact, the impugned order cannot be construed as an order of transfer; instead, it is an order issuing posting orders to the petitioner, on revoking the suspension order.

11. Further, an identical issue has fallen for consideration about the competency for the transfer from one region to the another region in the respondent Corporation in W.P.No.23753 of 2004, and a co-ordinate bench of this Court, by an order dated 10.11.2009 held that such a transfer is well within the scope and power of the respondent Corporation, especially in the light of the Regulations 17 and 24 of the Regulations, 1989. Therefore, the contention raised by the learned Senior Counsel for the petitioner in this regard fails.

12. Further, the contention of the learned Senior Counsel appearing for the petitioner stating that the petitioner was subjected to disciplinary proceedings because of non-joining in Tirunelveli region is concerned, that is a matter which has to be dealt with independently and that cannot be mixed up with the issue in the present writ petition. Once an order of posting or



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transfer is issued, it is for the employee to obey the said order and in case, if he is aggrieved by such an order, it is always open for the petitioner to challenge the same after complying with the same. But under no circumstances, an employee can be said to be have any discretion not to join pursuant to the transfer order or posting order issued by the competent authority. Therefore, if the petitioner has violated the orders issued to him and failed to join the post, it is for the petitioner to defend such an action in accordance with law. As the petitioner has already been re-transferred to the Kanyakumari region from Tirunelveli region thorough proceedings dated 16.07.2021, the consequential relief sought in this writ petition has virtually become infructuous.

13. In the light of the above, this Court does not find any error or illegality in the impugned order passed by the respondent No.1 and accordingly, the writ petition is dismissed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

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Speaking order / Non-speaking order



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Neutral Citation : Yes / No

MUMMINENI SUDHEER KUMAR, J.

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To

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Tamil Nadu Civil Supplies Corporation,
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