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W.P.Nos.10377 and 6839 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.10377 and 6839 of 2024
and W.M.P.Nos.11369, 11370, 7628 and 7629 of 2024

In W.P.No.10377 of 2024 :

R.Selvi

.. Petitioner

Versus

1. The Principal Secretary/Commissioner of Labour,
Labour Department, DMS Complex,
Teynampet, Chennai - 600 006.
2. The Assistant Commissioner of Labour (Enforcement),
District Collectorate Building,
Room No.645, 6th floor, Palladam Road,
Tiruppur District - 641 604.

3. K.Selvakumar

.. Respondents

In W.P.No.6839 of 2024 :



W.P.Nos.10377 and 6839 of 2024

K.Selvakumar

.. Petitioner

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Versus

1. The State of Tamil Nadu
Represented by Additional Chief Secretary to Government,
(Labour Welfare & Skill Development Department),
Fort St. George,
Chennai - 600 009.
2. The Principal Secretary/Commissioner of Labour,
Labour Department,
DMS Complex, Teynampet,
Chennai - 600 006.
3. The Joint Commissioner of Labour,
Office of Joint Commissioner of Labour,
No.43, Dr.Balasundaram Road, ATT Colony,
Coimbatore - 600 018.
4. The Assistant Commissioner of Labour (Enforcement),
District Collectorate Building,
Room No.645, 6th floor,
Palladam Road,
Tiruppur District - 641 604.

5. R.Selvi

.. Respondents

Prayer in W.P.No.10377 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus



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calling for the records pertaining to the proceedings in E4/118/2024, dated 15.03.2024 issued by the 1st respondent quash the same and direct the respondents 1 and 2 to permit the petitioner to continue to discharge her duties as Stamping Inspector, II Circle, Thiruppur.

Prayer in W.P.No.6839 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Proceedings No.E4/118/2024-1, dated 04.03.2024 and the consequential order of the 2nd respondent in Proceedings No.E4/118/2024-2 and to quash the same and accordingly direct the respondents to permit the petitioner to continue in his present station at Tiruppur.

In W.P.No.10377 of 2024 :

For Petitioner : Mr.R.Subramanian
and Mr.V.Sukumar

For Respondents : Mr.Stalin Abhimanyu,
Additional Government Pleader,
for RR-1 and 2

: Mrs.Dakshayani Reddy,
Senior Counsel,
Asst. by Mr.M.Kabilesh, for R3



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In W.P.No.6839 of 2024 :

For Petitioner : Mrs.Dakshayani Reddy,
Senior Counsel,
Asst. by Mr.M.Kabilesh

For Respondents : Mr.Stalin Abhimanyu,
Additional Government Pleader,
for RR-1 to 4

: Mr.R.Subramanian
and Mr.V.Sukumar, for R5

COMMON ORDER

These two Writ Petitions are related to each other and as such, are taken up together for final disposal by way of this common order.

2. *K.Selva Kumar*, the petitioner in W.P.No.6839 of 2024, has approached this Court being aggrieved by the order of transfer, dated 04.03.2024 transferring him from the post of Stamp Inspector – II, Tiruppur to Statistical Inspector, Erode.



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3. The case of the petitioner, *K.Selvakumar*, is that he was transferred to the present place on his request only from December, 2022. Only one year and eight months have elapsed since he has been transferred to the present place. The petitioner was discharging his duties without any blemish whatsoever. When he was deputed to attend a workshop on Legal Metrology for Calibration and Testing of Weighing and Measuring Instrument at Gurugram, Haryana State, hurriedly, by only sending a WhatsApp message, the transfer was effected. On the same day, the fifth respondent in the Writ Petition namely, *R.Selvi*, was transferred to his post and even without him handing over the charge or being relieved properly, the said individual was permitted to join the post. According to the petitioner, his very transfer was effected only to accommodate the request of the fifth respondent, *R.Selvi*. Such a transfer is held to be malafide and not on administrative grounds. The petitioner cannot be put to prejudice only to accommodate the wish of the other individual namely, the fifth respondent.



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4. When the matter was moved before this Court, this Court had also granted an order of interim stay on 13.03.2024, on the strength of which, the petitioner is continuing in the said post.

5. The second Writ Petition in W.P.No.10377 of 2024 is filed by the fifth respondent mentioned above. The case of the petitioner, *R.Selvi*, is that she has been working in Musiri. Her two children are studying in Tiruppur. She is a Widow and there is nobody else to take care of her children. Therefore, she sought for a request transfer and has been waiting for more than one year for her request to be complied with. While so, by the order, dated 04.03.2024, in the resultant vacancy, which arose on account of the transfer of the said *K.Selvakumar*, she was accommodated. However, when the said *K.Selvakumar* approached this Court and got an order of interim stay, without any reason or logic whatsoever, by yet another order, dated 15.03.2024, the petitioner was transferred to the vacant place in Coonoor.



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The petitioner is on continuous leave till date. When only an interim order is granted, further transfers ought not to have been effected by the respondents.

6. The counter-affidavits have been filed in respect of both the Writ Petitions. It is the case of the official respondents that the post of Statistical Inspector has been lying vacant in Erode for more than one and half years. There is an administrative necessity to fill up the post. Therefore, they have decided to transfer *K.Selvakumar* to the said post and in the meanwhile, since the request application of *R.Selvi* was also pending, by a common proposal, both requests were considered. In the proposal as well as transfer orders, it can be seen that the transfer was not effected to accommodate *R.Selvi*. The main purpose of the transfer of *K.Selvakumar* is to fill up the post of Statistical Inspector. His presence was needed there in Erode for administrative reasons. Only in the resultant vacancy, *R.Selvi* is considered. When, by way of administrative efficiency, the consequential orders have been passed on the same day, no malafide can be attributed. It can be seen



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that the first order of transfer is that of *K.Selvakumar* and only as a consequence, in the next order, *R.Selvi* was transferred. As far as the further order of transfer of *R.Selvi* to Coonoor is concerned, the same is made only to implement the interim order of this Court and it is not a permanent transfer and the second Writ Petition by *R.Selvi* is on a misplaced belief as if further transfer has been made.

7. Heard *Mrs.Dakshayani Reddy*, learned Senior Counsel for the petitioner in W.P.No.6839 of 2024; *Mr.R.Subramanian* and *Mr.V.Sukumar*, learned Counsels for the petitioner in W.P.No.10377 of 2024; *Mr.Stalin Abhimanyu*, learned Additional Government Pleader for the respondent Nos.1 to 4 in W.P.No.6839 of 2024 and for the respondent Nos.1 and 2 in W.P.No.10377 of 2024 and considered the material records of the case.

8. On a perusal of the transfer order issued to *K.Selvakumar* as well as the said *R.Selvi*, it can be seen that firstly, a decision is taken to transfer



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K.Selvakumar and only in the resultant vacancy, *R.Selvi* is sought to be accommodated. The same would be clear on a perusal of both transfer orders. Only because the proposal as well as the orders have been titled as if it is in consideration of *R.Selvi*'s request, at the first blush, it gives rise to an impression as if the entire exercise is undertaken to accommodate *R.Selvi*. Therefore, on a careful perusal of the impugned orders as well as the proposal, it can be seen that the decision is first taken to shift *K.Selvakumar* from Tiruppur to Erode and only in the resultant vacancy, *R.Selvi* is accommodated. In view thereof, no exception can be made to the said exercise. Therefore, the first contention that the transfer is effected only to accommodate *R.Selvi* is not factually correct.

9. The second contention of the learned Counsel for the petitioner, *K.Selvakumar* is that he is entitled to continue in the instant station for three years and even without completion of a minimum period of two years, the petitioner is transferred. The petitioner is indeed transferred within three



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years and the petitioner has also not completed even the minimum period of two years. Even though the said periods are indicated in the guidelines, time and again it has been held by this Court that those are guidelines and not enforceable rights. However, the respondents are supposed to deviate from the same only for good and valid reasons. In the instant case, since the reason which is adduced is that the other post of Statistical Inspector is lying vacant for one year and six months, this Court is inclined to accept the same as a valid administrative reason for deviation from the guidelines.

10. The final contention of the learned Counsel for the petitioner is about the manner, in which, the transfer order is served and the petitioner is sought to be relieved. As far as the said contention is concerned, the learned Additional Government Pleader submits that the transfer order was not served by WhatsApp but was sent by Email through the official email Id. When the petitioner was sent for an academic training programme and when he was away from home in Gurugram, Haryana, there was no pressing or



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grave urgency in the instant matter to have communicated the order of transfer, when the employee was undergoing a training session. That would also impact the state of mind of the employee who is away from home and in an academic session. Certainly the same was not in public interest. Further, relieving him when he is not even on duty in the post and without even handing over of the charge, permitting *R.Selvi* to occupy the said post is incorrect and smacks of arbitrariness. Though it is within the domain of the respondents to make transfers concerning their place of work, they are bound to act as per the Rules. In view thereof, the claim of relieving etc., and the service of the transfer order are all not treated as valid.

11. In view thereof, both the Writ Petitions are disposed of as follows

:-

(i) The order of transfers in E4/118/2024 - 1, dated 04.03.2024 and E4/118/2024 - 2, dated 04.03.2024 are held to be valid;



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(ii) The respondents shall serve the order of transfer to the petitioner *K. Selvakumar*, once again after the receipt of the copy of this order and duly pass a relieving order afresh;

(iii) In view of the decision upholding the orders of transfer, dated 04.03.2024, in view of the stand of the respondents, the subsequent order of transfer, dated 15.03.2024 which was passed only to implement the interim order of this Court, the said order transferring *R.Selvi* to Coonoor shall lapse automatically and after due relieving of *K.Selvakumar*, *R.Selvi* can be permitted to join the said post at Triuppur;

(iv) As far as the interregnum period is concerned, as far as *K.Selvakumar* is concerned, he must be treated to be on duty continuously and the period should be regularised as on duty with all monetary benefits. As far as *R.Selvi* is concerned, since she has applied for leave, it is for the respondents to consider the same in accordance with Rules;

(v) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



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Neutral Citation : no
grs

To

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Labour Department, DMS Complex,
Teynampet, Chennai - 600 006.
2. The Assistant Commissioner of Labour (Enforcement),
District Collectorate Building,
Room No.645, 6th floor, Palladam Road,
Tiruppur District - 641 604.
3. The Additional Chief Secretary to Government,
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