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W.A.Nos.2266 of 2021 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.Nos.2266 and 2270 of 2021 and
W.A.Nos.611 and 612 of 2023 and
C.M.P.No.6023 of 2023 and
C.M.P.Nos.4662 & 4685 of 2022 and
C.M.P.No.6012 of 2023 and
C.M.P.Nos.14427 & 14432 of 2021

W.A.No.2266 of 2021:

M.Moorthi

... Appellant

Vs.

1.P.Velmurugan

2.The Director,
The Local Fund Audit Department,
Amma Complex, 4th Floor,
Veterinary Hospital Complex,
Nandanam, Chennai – 35.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order made in W.P.No.4799 of 2021 dated 30.07.2021.

For Appellant	: Mr.L.Chandrakumar
For R1	: Mr.R.Singaravelan Senior Counsel
For R2	: Mr.M.Bindran Additional Government Pleader



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W.A.No.2270 of 2021:

P.Kavitha

... Appellant

Vs.

1.L.Kullappan

2.The Director,
The Local Fund Audit Department,
Amma Complex, 4th Floor,
Veterinary Hospital Complex,
Nandanam, Chennai – 35.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order made in W.P.No.4803 of 2021 dated 30.07.2021.

For Appellant : Mr.L.Chandrakumar

For R1 : Mr.R.Singaravelan
Senior Counsel

For R2 : Mr.M.Bindran
Additional Government Pleader

W.A.No.611 of 2023:

The Director,
The Local Fund Audit Department,
Amma Complex, 4th Floor,
Veterinary Hospital Complex,
Nandanam, Chennai – 600 035.

... Appellant

Vs.

1.L.Kullappan

2.P.Kavitha

... Respondents



W.A.Nos.2266 of 2021 etc. batch

Prayer : Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order made in W.P.No.4803 of 2021 dated 30.07.2021.

For Appellant : Mr.M.Bindran,
Additional Government Pleader

For R1 : Mr.R.Singaravelan
Senior Counsel

For R2 : Mr.L.Chandrakumar

W.A.No.612 of 2023:

The Director,
The Local Fund Audit Department,
Amma Complex, 4th Floor,
Veterinary Hospital Complex,
Nandanam, Chennai – 600 035. ... Appellant

Vs.

1.P.Velmurugan
2.M.Moorthi ... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order made in W.P.No.4799 of 2021 dated 30.07.2021.

For Appellant : Mr.M.Bindran,
Additional Government Pleader

For R1 : Mr.R.Singaravelan
Senior Counsel

For R2 : Mr.L.Chandrakumar



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COMMON JUDGMENT

WEB COPY(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

These batch of writ appeals since arisen out of the common order passed by the Writ Court dated 30.07.2021 made in W.P.Nos.4799 and 4803 of 2021, with the consent of the learned counsel appearing for both sides, all these writ appeals were heard together and are disposed of by this common order.

2. The respondents viz., P.Velmurugan and L.Kullappan had been working as Inspectors in the office of the Assistant Director of Local Fund Audit, Namakkal. By virtue of the transfer order dated 17.02.2021 separately issued, these respondents had been transferred in whose place the appellants viz., M.Moorthi and P.Kavitha had been posted. Challenging the said transfer orders, the respondents viz., Velmurugan and Kullappan filed the respective writ petitions.

3. The learned Judge who heard both the writ petitions had disposed the same by common order dated 30.07.2021. In the said order, the learned Judge found that the transfers suffer from malice in law and



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also the orders of transfer are liable to be set aside for want of bonafide and competence.

4. The said order passed by the Writ Court dated 30.07.2021 had been put under challenge in all these writ appeals as the first two writ appeals are filed by the private respondents in the writ petitions and other writ appeals have been filed by the Department.

5. Heard Mr.L.Chandrakumar, learned counsel appearing for the appellants in W.A.Nos.2266 and 2270 of 2021, Mr.M.Bindran, learned Additional Government Pleader appearing for the appellants in W.A.Nos.611 and 612 of 2023 and Mr.R.Singaravelan, learned Senior Counsel appearing for the 1st respondent in all the writ appeals.

6. Since the issue raised in the writ petitions and consequently in this batch of writ appeals is only in respect of the transfer that has been effected whereby the appellants viz., Moorthi and Kavitha had been posted in the place of Velmurugan and Kullappan and even though the said transfer orders found to be malice in law and accordingly set aside by the Writ Court, thereafter in view of the interim order granted by a



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Division Bench of this Court in this intra Court appeals, the appellants had been continuing all along in the post from where they have been transferred. Resultantly, Moorthi and Kavitha had been continuing whereas Velmurugan and Kullappan did not join in the transferred place.

7. It is further to be noted that, as stated by Mr.R.Singaravelan, learned Senior Counsel appearing for the respondents viz., Velmurugan and Kullappan that, all these years from 2021 till date for want of getting posting orders or to get a disposal of these writ appeals, where, already vacate stay petition had been filed by these two people to vacate the interim order of stay obtained by the writ appellants, the said two respondents could not join in any place, therefore their service for the past though hindered it is not their fault, therefore it has to be regularised.

8. On the other hand, Mr.M.Bindran, learned Additional Government Pleader appearing for the appellants in W.A.Nos.611 and 612 of 2023 has submitted that, because of the pendency of these writ appeals where interim order of stay had been granted and the same since has not been vacated, there has been no scope for the respondents to seek posting orders in the very same place where they have been posted which



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is the order impugned before the Writ Court.

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9. Hence, the Department having considered these peculiar circumstances had come forward to issue posting orders on 15.09.2023 under which Kullappan was posted at Salem and Velmurugan has been posted at Erode. Despite the said orders have been passed on 15.09.2023 they have not joined in the newly posted place also.

10. Insofar as the writ appellants are concerned, though they suffered before the Writ Court, however by virtue of the interim order of stay they secured from this Court during the pendency of the writ appeals they had been continuing in the original place itself and even in the original place they have completed the three years of service.

11. As per the transfer policy of the Government, once in three years normal and routine transfers would be effected, apart from intermediate transfer based on administrative exigency.

12. When that being the factual matrix of these cases, after having



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heard the learned respective counsel appearing for the parties and taking note of the further developments during the pendency of these appeals, we feel that, instead of going to the merits of the order passed by the learned Judge and the reasoning given by him in allowing those writ petitions through the impugned order, we feel that, appropriate directions can be given to the Government to consider the case of both sides for giving transfer in an appropriate place according to their wish subject to the availability of vacancies.

13. If this arrangement is made, that would not cause any disadvantage to any of these parties as the appellants have admittedly completed the three years period in the present station, therefore taking the totality of the factual matrix and the issue raised in this batch of cases, we are of the view that, the following directions can be given by disposing these appeals.

- (i) that there shall be a direction to the Department who is the appellants in W.A.Nos.611 and 612 of 2023 and 2nd respondent in W.A.Nos.2266 and 2270 of 2021 to consider the request of transfer and posting of both the appellants as well as the contesting respondents individually based on the



inter se merit.

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(ii) While considering the same, the appellants i.e. M.Moorthi and P.Kavitha since have completed the three years period in the present Stations, they may be considered to be shifted or posted in some other place without prejudice their interest and in this regard a counseling can also be conducted by the transferring authority calling all the four persons and accordingly suitable placement and posting orders by way of transfers can be issued through the general transfer in the month of April or May 2024.

(iii) In so far as the three years period where the respondents Velmurugan and Kullappan since had not been working, because of the pendency of these appeals, where, the stay had been granted, even though they succeeded in the respective writ petitions before the Writ Court, their plea to condone the non duty may also be considered by the Government sympathetically by taking into account the special circumstances of the case and accordingly regularise their service, of course on the basis of the rule which is in vogue.



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(iv) These directions shall be complied with by the appellants in

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W.A.Nos.611 and 612 of 2023 / 2nd respondent in W.A.Nos.2266 and 2270 of 2021 who are the transferring authority or leave sanctioning authority to whom necessary request for transfer and regularising the period of out of duty shall be made by the respective parties, within a period of two weeks from the date of receipt of a copy of this judgment and on receipt of such representation, the needful as indicated above shall be undertaken by the Department and necessary orders shall be passed thereon.

14. With these directions, all the Writ Appeals are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K., J.] [K.B., J.]
26.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

Sgl

R. SURESH KUMAR, J.



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W.A.Nos.2266 of 2021 etc. batch

and
K.KUMARESH BABU, J.

Sgl

W.A.Nos.2266 and 2270 of 2021
and
W.A.Nos.611 and 612 of 2023

26.03.2024