



W.P(MD)No.12285 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2024

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

W.P(MD)No.12285 of 2019 and  
WMP(MD) Nos.9195, 9196 & 22516 of 2019

V.Magesh

... Petitioner

Vs

1.The Engineer in Chief WRO(Water Resources Organization),  
Cum Chief Engineer (General),  
PWD, Chepak, Chennai.

2.The Director,  
Fisheries Department,  
Integrated Office Complex,  
Animal Husbandry and Fisheries Department,  
Nanthanam, Chennai.

3.The Chief Engineer,  
Fisheries Department,  
Integrated Office Complex,  
Animal Husbandry and Fisheries Department,  
Nanthanam, Chennai.

4.The Executive Engineer,  
Fishing Harbour Project Division,  
Collectorate Compound,  
Nagercoil.

...Respondents



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**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to impugned order passed by the 3rd respondent vide in Na.Ka.851/E2/2014 dated 16.04.2019 and quash the same as illegal and consequently may direct the respondents not to disturb the service of the petitioner till the finality of the Criminal Appeal 101 of 2017, pending on the file of Additional District and Sessions Judge (Fast Track) Nagercoil.

For Petitioner : Mr.K.P.Narayanakumar  
For Respondents : Mr.K.Balasubramani  
Special Government Pleader

### **ORDER**

The case of the petitioner is that he was appointed as a Junior Assistant cum Typist in Public Works Department (Water Resource Organization) on 06.06.2000, on compassionate ground. On 17.07.2013, he was transferred to Fisheries Department as per the proceedings of the first respondent in S3(3)/2002/2012, dated 17.07.2013. While the petitioner was serving in the Fisheries Department, a case in Crime No.440 of 2012 was registered as



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against this petitioner and others for the offences punishable under Sections 147, 148, 452, 294(b), 307 and 506(ii) r/w 149 of IPC, by the Ethamozhi Police Station and the same was charge sheeted before the Principal Assistant Sessions Court in S.C.No.131 of 2013. Though the petitioner was acquitted by the trial Court for the offences under Sections 147, 148, 307, 506(ii) r/w 149 IPC, he was convicted under Sections 452 and 294(b) of IPC and he was sentenced to undergo two years simple imprisonment and a fine of Rs.1,000/-, each. Challenging the judgement rendered by the trial Court, the petitioner has preferred an appeal in C.A.No.101 of 2017 before the Additional District and Sessions Court, Nagercoil. He has also filed an application in CrI.MP.2073 of 2019 in C.A.101 of 2017, for suspension of sentence. The substantive sentence of imprisonment has been suspended by the first Appellate Court, till the disposal of the appeal in C.A.No.101 of 2017. The Chief Engineer, Fisheries Department, by his proceedings in Na.Ka. 851/E2/2014 dated 16.04.2019, has transferred this petitioner to his parent Department, namely PWD Department for the purpose of



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initiating departmental proceedings. Challenging the order, dated 16.04.2019, the petitioner has filed this writ petition in the year 2019.

2. This Court has entertained this writ petition and also granted an order of interim stay on 22.05.2019, thereby, the petitioner is still continuing to work in the Fisheries Department.

3.The learned counsel appearing for the petitioner submits that the impugned order has been passed only based on the criminal case, which was registered as against this petitioner. According to the learned counsel, though he was convicted by the trial Court, the substantive sentence of imprisonment has been suspended by the first Appellate Court till the disposal of the appeal in C.A.101 of 2017 preferred by this petitioner. Therefore, the impugned order needs to be interfered with.



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4.The learned Special Government Pleader appearing for the respondents submits that the petitioner was originally appointed in the PWD Department. However, in the year 2013, he has been deputed to the fourth respondent Fisheries Department for a period of three years. Therefore, he cannot claim it as a matter of right to continue in the deputation Department. According to the learned Special Government Pleader, the impugned order has not only been passed, based on the criminal case, which was registered as against this petitioner, but also on the basis of the communication received from the Chief Engineer, PWD Department, dated 25.01.2019.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The petitioner, who was appointed as a Junior Assistant cum Typist in the Public Works Department (Water Resource Organization) has been deputed to the fourth



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respondent/Fisheries Department in the year 2013, for a period of three years and subsequently, it was extended periodically. In the meantime, for his involvement in a criminal case, he was reverted to his parent Department for the purpose of initiating departmental proceedings, by the order impugned in this writ petition. Since an order of stay has been granted by this Court, while entertaining this writ petition, he was allowed to continue in the deputation (Fisheries) Department for the past five years. It is to be noted that the petitioner has been transferred to the Fisheries Department for a period of three years on deputation basis and he has also served in the deputation Department for nearly 11 long years. In fact, it is the duty of the respondents to initiate departmental proceedings as against this petitioner for his involvement in the criminal case and since the parent Department is the competent authority to initiate departmental/disciplinary proceedings, the order of transfer, reverting him back to the parent Department came to be passed. Therefore, the petitioner cannot claim it as a matter of right that he can continue in the Fisheries Department forever.



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7.In view of the above, this Court is not inclined to entertain this writ petition. Accordingly, this writ petition is dismissed. However, the PWD Department as well as the Fisheries Department shall take a decision as to whether the petitioner can be retained in the Fisheries Department or to revert him back to the parent Department, within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC:Yes/No

Index:Yes

vrn



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**B.PUGALENDHI, J.**

vrn

**Order made in**  
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