

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.3.2008

CORAM:

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

W.P. No. 1782 of 2008

and

M.P. Nos. 1 and 2 of 2008

S.Sankaralingam .. Petitioner

vs.

1. The Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Chennai.
2. The Commissioner of Municipal Administration, Chepauk, Chennai 5. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified mandamus as stated therein.

For petitioner : Mr. V. Vijay Shankar

For respondents : Mrs. C.K.Vishnu Priya
Government Advocate

ORDER

The prayer in the petition is for issuance of a writ of Certiorarified Mandamus, to quash the proceedings of the 1st respondent in G.O.Ms.No.4 dated 10.1.2008 and the consequential order Na.Ka.No.54577/07/S2 dated 12.1.2008 of the second respondent and to direct the respondents to retain the petitioner as Executive Officer, Special grade in Kuruchi 3rd Grade Municipality, Coimbatore.

2. Mrs. C.K. Vishnupriya, learned Government Advocate takes notice for the respondents.

3. The petitioner joined the service as Junior Assistant in the year 1974. Later he was promoted as Head Clerk, Executive officer Grade II, Grade I and subsequently promoted as Executive

Officer, Special Grade in 2005. His date of superannuation is 30.4.2008. On 9.11.2007, he was promoted as Assistant Director, Town Panchayat and posted to Salem Zone.

4. The petitioner has submitted a representation to the second respondent on 14.11.2007 informing that he was not in a position to accept the promotion to the post of Assistant Director as he had only few months of left over service, he is suffering from Diabetes, besides, his son is studying in First year B.Com., in a College at Coimbatore. The second respondent forwarded the said representation in his proceedings Na.Ka.54577/07/S2 dated 19.11.2007 to the first respondent, but the first respondent has passed the impugned order rejecting the request of relinquishment, which is challenged in this writ petition.

5. The learned counsel appearing for the petitioner submitted that considering the couple of months of left over period of service, his ill health and family circumstances, besides his son is studying in First year B.Com., in a College at Coimbatore, the petitioner has decided to relinquish his further promotion as Assistant Director, but the first respondent without considering those valid reasons has rejected the request of the petitioner and prayed for quashing the impugned order.

6. The learned Government Advocate for the respondents relying on the counter submitted that the first respondent is the competent authority either to accept or reject the request of relinquishment made by the petitioner. The request of the petitioner for relinquishment is made only on 14.11.2007 not prior to the drawing of panel. In view of the fact that no request was made by the petitioner prior to the drawing of panel, his name alone was included in the panel. Moreover in Salem District, important schemes like Urban Infrastructure Development Scheme has to be implemented immediately. In view of the fact that any delay in implementation would affect the scheme as well as public, the request made by the petitioner for relinquishment was rejected. Further, the petitioner was relieved on 14.01.2008 itself and prayed for dismissal of the writ petition.

7. This Court considered the argument of the counsel for both sides and perused the materials placed. The act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and conditions governing it. If the act of relinquishment is of unilateral in character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication. In

cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish by itself would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, example acceptance of the said request to relinquish the office and in such cases, the relinquishment becomes effective or operative till such action is taken. As to whether the act of relinquishment of office is unilateral or bilateral in character would depend upon the nature of the office and conditions governing it. Followed (Moti Ram vs. Param Dev and another) AIR 1993 SC 1662.

8. In this case, in both the impugned communications, nowhere it is stated that any such provisions of Law or Regulation or Guidelines is in force to say that relinquishment is bilateral in character. Even assuming it is bilateral that some action is required to be taken on the communication of the petitioner of his intention to relinquish, valid reasons has to be assigned by the respondents for rejecting it. As mentioned above, the petitioner has assigned valid reasons, which are mentioned supra, in which one of the reasons is his date of superannuation is 30.04.2008, if he accepts the promotion and join in the transferred place for a short duration, it would dislocate his family. Even normal transfers also being stayed when superannuation intervenes in short interval. When we look into the impugned orders, those factors were not at all considered by the respondents.

9. The argument of the respondents that the name of the petitioner alone is empanelled for the said promotional post, hence, he is bound to join the transferred place is rather strange, as if no other officer in the respondents department is available to perform the said job, which is also not a valid or proper reasons to be accepted.

10. For the said reasons, the impugned orders are quashed. The respondents are directed to permit the petitioner to continue his service as Special Grade Executive Officer, Kuruchi 3rd grade Municipality forthwith till his retirement.

11. The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Rpa

To

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai.
2. The Commissioner of Municipal
Administration, Chepauk, Chennai 5.

1 cc to Mr.V. Vijay Shankar, Advocate, Sr. 18067
1 cc to Government Pleader, Sr. 18106

AKR (CO)
kk 10/4

W.P. No. 1782 of 2008



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