

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.08.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.12953 of 2016
and
W.M.P.Nos.11323 of 2016
&
18685 of 2016

E.Manjula

.. Petitioner

Versus

1. The Director of Treasuries & Accounts,
Saidapet, Chennai - 600 015.
2. The Joint Director of Treasuries & Accounts,
Kancheepuram District.
3. The Assistant Treasury Officer,
Chengalpattu, Kancheepuram District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in his proceedings Na.Ka.No.38663/15/C1 dated 16.09.2015 and the charge memo issued by the second respondent in his proceedings Na.Ka.No.1638/2016/A2 dated 01.02.2016 and quash the same, and direct the respondents to sanction Un-earned leave on Medical Certificate to the petitioner and regulate the period from 14.09.2015 to 15.04.2016 and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.S.Gunnasekaran
Additional Government Pleader

O R D E R

The order of transfer issued by the first respondent in proceedings dated 16.09.2015, transferring the writ petitioner from Kancheepuram to Chennai, is under challenge in this writ petition.

2.The writ petitioner is now holding the post of Accountant in the Treasuries and Accounts Department and working at Kancheepuram. On a perusal of the impugned order, this Court is able to see that the writ petitioner is continuously working at Kancheepuram for more than 13 years, at the time of passing of the impugned order of transfer. The order impugned states that there are certain complaints from the pensioners, who are receiving pension from the Treasury office. On account of frequent complaints from the pensioners, the writ petitioner was transferred from Kanchipuram to Chennai. However, the learned counsel appearing for the writ petitioner denies such charges and made a submission that there was no allegation or complaint against the writ petitioner from the pensioners, in this regard as stated in the impugned order.

3.Be that it may, whether there is a complaint or not, this Court has to consider the scope of the writ petition filed challenging the order of administrative transfer. No writ petition can be entertained against the order of administrative transfer in a routine manner and a writ can be issued only in the event of an order of transfer was issued by an authority, having no jurisdiction or competency or an allegation of mala fides are raised or if the order of transfer is in violation of statutory rules. Even, in case of raising the allegation of mala fides, the authority, against whom, such an allegation is raised, has to be impleaded as a party in his personal capacity. In the event of not having any such ground, no administrative transfer can be interfered with by the Writ Court under Article 226 of the Constitution of India.

4.Transfer is an incidence of service. More so, there is a condition that serving employees can never claim a post or place, as a matter of choice and transfer is an administrative prerogative of the Department and the Competent Authorities ought to effect transfers for peaceful and effective functioning of the department. Thus, the order of transfer can be challenged and the writ can be entertained only on exceptional circumstances. Thus, the order impugned in this writ petition deserves no merits and consideration.

5.This apart, the writ petitioner is continuing in the same station i.e., at Kancheepuram for about 13 years and therefore, it is not preferable to keep the writ petitioner in the same station furthermore.

6.In the very same writ petition, the writ petitioner has further challenged the charge memo dated 01.02.2016, issued to the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The charges against the writ petitioner are as extracted here under:

"குற்றச் சாட்டு (1)

அலுவலக செயல்பாட்டிற்கு குந்தகம் விளைவித்ததன் காரணமாக பொது நலன் மற்றும் நிர்வாக நலன் கருதி நிர்வாகக் காரணங்களுக்காக சென்னை ஓரலகிற்கு பணியிடமாறுதல் செய்யப்பட்டு 16.09.2015 பிற்பகல் செங்கல்பட்டு சார் கருவூலத்திலிருந்து விடுவிக்கப்பட்டு 4 மாதங்களுக்கு மேலாகியும் இது நாள் வரை சென்னை ஓரலகில் பணியேற்காமல் துறைத்தலைவரின் ஆணையினை பறக்கணிப்ப, செய்வது.

குற்றச் சாட்டு (2)

பணியிடமாறுதல் பெற்றவுடன் விதிகளின்படி புதிய பணியிடத்தில் பணியேற்க வேண்டும். ஆனால் அவ்வாறல்லாமல் விதிகளை பறக்கணித்து பணியிலிருந்து விடுவிக்கப்பட்ட பின் ஈட்டிய விடுப்பு, மற்றும் பிற விடுப்புகள் கோரி, ஆவை நிராகரிக்கப்பட்ட பின்னரும் இது நாள் வரை பணியேற்காமல் வேண்டுமென்றே மறுக்கப்பட்ட விடுப்பினை நீட்டிப்ப, செய்து வருவது அடிப்படை விதி 67-ல் சொல்லப்பட்டவைக்கு மாறானதாக நடப்பது.

குற்றச் சாட்டு (3)

கருவூலக் கணக்கு இயக்குநர் அவர்களாலும், காபிபிரம் மாவட்டக் கருவூல இணை இயக்குநர் அவர்களாலும் இரு முறை உடனடியாக பணியில் சேர அறிவறுத்தப்பட்டும் உயர் அலுவலர்களின் அறிவுரையினை ஏற்காமல் பறக்கணித்து வேண்டுமென்றே தேவையில்லாத விடுப்புகள் கோருவது உயர் அலுவலர்களின் கட்டளைகளுக்கு கீழ்ப்படியாமல் இருப்பது.

குற்றச் சாட்டு (4)

மருத்துவ விடுப்பு, கோரியுள்ள நிலையில் மருத்துவக் குழுவிற்கு ஆஜராக அறிவறுத்தப்பட்டும் மருத்துவக் குழுவின் முன் ஆஜராகாமல் மருத்துவக் குழுவினைப் அலட்சியப்படுத்தியது.

குற்றச் சாட்டு (5)

பணிக்கு வராமல் இருந்ததன் மூலம் அரசுப் பணிக்கு பெரும் பாதிப்பு ஏற்படுத்தியது. இதனால் நிர்வாகத்திற்கு பெருந்த இடர்பாடுகள் விளைவித்தது.

குற்றச் சாட்டு (6)

தமிழ்நாடு அரசு பணியாளர் நடத்தை விதிகள், 1973, விதி 20(1) மற்றும் 20(2) ஆகியவற்றில் சொல்லப்பட்டவைக்கு மாறாக, கடமையில் பற்றுறுதியின்றி நடந்து கொண்டது."

7.On reading of the charges relating to the non-joining of the writ petitioner in the transferred place, the writ petitioner has violated the rules. Thus, the writ petitioner has to face the charge memo, in accordance with the rules.

8.The learned counsel appearing for the writ petitioner states that there are no complaints against the writ petitioner and further the learned counsel admits that in view of the Status quo order passed in this writ petition, the writ petitioner has not joined in the post to which she was transferred. Any Government servant, on receipt of an order of transfer necessarily should join in the transferred place.

9. Mere filing of the writ petition will not be construed that the employee can remain in leave or in absence without joining in the transferred place. The order of Status quo granted will not prevent the writ petitioner from joining in the transferred place. Further, the writ petitioner has not taken any steps for joining in the transferred post at Chennai. This being the factum of the case, the question of considering the case of the writ petitioner will not arise at all.

10. A charge memo issued under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules has to be proceeded, in accordance with the Rules. It is left open to the writ petitioner to submit her explanations/objections to prove her innocence before the enquiry proceedings under the Rules and charge memo cannot be quashed, merely on the ground that the charge is relating to the non-joining of the writ petitioner in the transferred place. Even disobedience is also a mis-conduct, contemplated under the Conduct Rules. An employee can be issued with a charge memo on the ground of disobedience of the orders of the superior also. The manner in which the misconduct of disobedience has been considered for the purpose of framing charges has to be dealt with, in accordance with the Rules by the enquiry officer so appointed, in this regard. Such being the factum of the case, no further adjudication on merits, needs to be undertaken on the grounds raised in this writ petition.

11. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ah/AT

To

1. The Director of Treasuries & Accounts,
Saidapet, Chennai-600 015.
2. The Joint Director of Treasuries & Accounts,
Kancheepuram, Kancheepuram District.

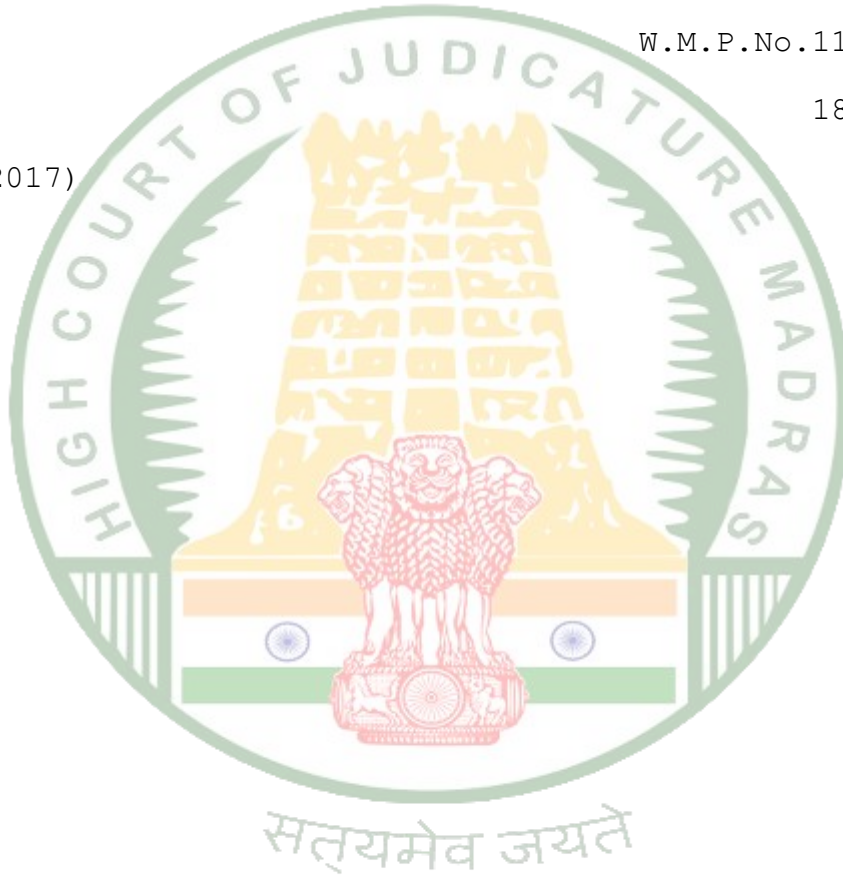
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3. The Assistant Treasury Officer,
Chengalpattu, Kancheepuram District.

+1 CC to C.S. Associates, advocate sr 63115
+1 Cc to Govt. Pleader sr 63488.

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SP(11/09/2017)



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