
(2012) 01 MAD CK 0317

In the Madras High Court

Case No : Writ Petition (MD) No. 11513 of 2011 and M.P. (MD) . No's. 1, 1, 1, 2, 2, 2 and 3, 3, 3 of 2011

M. Sundarrajan

APPELLANT

Vs

The District Collector Dindigul District Dindigul and Tahsildar

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 243
Tamil Nadu Panchayats Act, 1994 — Section 239
Tamil Nadu Village Assistant Service Rules, 1980 — Rule 53(11), 53(7)
Tamil Nadu Village Servants Service Rules, 1980 — Rule 12, 12(2), 2, 3, 4

Citation : (2012) WritLR 575

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : A. Natarajan, for Mr. K. Elangovan, for the Appellant;
T.R.Janarthanam, Additional Government Pleader for R1 and Mr. D. Venkatesh for R2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice T. Raja

1. The present writ petitions are filed by the petitioners individually challenging the impugned order of transfer passed by the second respondent-Tahsildar of Palani Taluk, Dindigul Taluk in Na. Ka. No. 6/2011/Aa2, dated 21.09.2011 and to quash the same as illegal and consequently direct the second respondent to consider the petitioners' representation dated 02.10.2011 and pass further orders. (i) By the impugned order, petitioner in W.P. No. 11513/2011-M. Sundarrajan, Village Assistant wastransferred from Palani to Melkaraipatti; petitioner in W.P. No. 11514/2011-T. Mahendran, Village Assistant wastransferred from Iyyampulli to East Ayakkudi; and the petitioner in W.P. No. 11515/2011-S. Michael, Village Assistant was transferred from Palani to Iyyampulli.

(ii) The learned senior counsel appearing for the petitioners submitted that all

the petitioners we reappointed as Village Assistants. Rule 53(7)(c) of the Tamil Nadu Village Assistant Service Rules 1980 prescribes that "the person appointed to the post shall belong to the Village to which he is appointed or the adjoining village if no suitable candidate is available from that village". This rule itself has been made taking into account the nature of work required to be discharged by the Village Assistants who are extensively mingling with the people of the concerned village and they should also be in a position to attend 24 hours of village duty which ranges from taking care and informing to the police about the anonymous dead body to any prejudicial act against the State and the nature of post is maintaining law and order. Only under this premise, the State Government has allowed the Village Assistant to work in the native village which is one of the conditions of appointment. When the post is permanent and is not transferable, the impugned order transferring the petitioners from one village to another village as against Rule 53(7)(c) of the Tamil Nadu Village Assistant Service Rules 1980, is not valid.

(iii) The learned senior counsel further added that at the time of election, including the State Assembly Election or Parliamentary Election or Local Body Election, their services are in the hands of Tamil Nadu State Election Commission. Therefore, when the Local Body Elections were declared on 21.9.2011, the second respondent-Tahsildar without any power vested on him cannot transfer any Village Assistant. As the second respondent has transferred the petitioners as against the Election Code, forgetting the fact that the petitioners are under the control of Tamil Nadu State Election Commission, it amounts to victimization of the petitioners and therefore, the impugned order on the date of election to the Local Body notified by the Tamil Nadu State Election Commission is required to be interfered with.

(iv) The learned senior counsel further contended that the impugned transfer order passed by the second respondent suffers the authority to pass the transfer order, inasmuch as Rule 12(2) of the Tamil Nadu Village Servants Service Rules, 1980, vests the power of transfer with the Revenue Divisional Officer, the Tahsildar has no power to issue the transfer order. Since the second respondent-Tahsildar has no power to transfer for the reason that on the date of passing the impugned order on 21.9.2011 his power to transfer the petitioners ceased to exist since the notification for the Local Body Election was published by the State Government. Therefore, the power is vested with the Tamil Nadu State Election Commission under Rule 53(7) of the Tamil Nadu Village Assistant Service Rules, 1980.

(v) Finally, the learned senior counsel contended that the impugned order is illegal and arbitrary since the second respondent has passed the same with mala fide intention as against the existing Rule 53(7)(c) of the Tamil Nadu Village Assistant Service Rules, 1980.

(vi) Under these circumstances, the learned senior counsel submitted that the petitioners have filed these writ petitions praying to set aside the impugned order

with further direction to the second respondent to consider their representations and also to pass further orders.

2. (i) Per contra, the learned counsel appearing for the second respondent contended that the impugned transfer orders passed by the second respondent-Tahsildar is fully justifiable as it has been passed in terms of Tamil Nodulation Commission Circular issued in Rc. No. 310/2011/ME1,dated 5.8.2011. As per the said Circular that has been issued in order to ensure free, fair and peaceful conduct of elections in all the districts of Tamil Nadu, the Tamil Nadu State Election Commission in exercise of powers vested in it under Article 243 K and 243 ZA of the Constitution and also u/s 239 of Tamil Nadu Panchayats Act,1994 has decided to prescribe the following norms to ensure that officers who are connected or are likely to be connected with the conduct of elections in the districts, should not serve in their home Local Bodies/places where they have served for long duration and directed that no such officer connected with elections, directly or indirectly, should be allowed to continue in the same Local body/districts:

(a) if she/he is posted in her/his home Local body; or

(b) if she/he has completed three years in that Local body during the last four years or would be completing 3 years on or before 31st August 2011.

(ii) These instructions will cover officers appointed for specific election duties like Returning Officers, Assistant Returning Officers and any other officer proposed to be used for election work.

The impugned order has been served transferring the petitioners on the ground that the petitioners are continuing at Palani Village from 2006-2011 for more than 3 years period, and hence the impugned transfer order invalid and further since the petitioners are transferred only within the same talk limits from the erstwhile working place, no prejudice would be caused to them.

(ii) The learned counsel for the second respondent further contended that Rule 53(7)(c) of the Tamil Maquillage Assistant Service Rules 1980 deals only with the qualification for appointment, but not for transfer and posting of the Village Assistants since Rule 53(11) has dealt with transfer and postings. Therefore, it is not correct to state that the post of Village Assistants are permanent in nature and non-transferable one since it comes under the category of non-standard scale of pay.

(iii) The learned counsel for the respondents also submitted that the petitioners are placed in the revised scale of Rs. 3,500-6,000 with the grade pay of Rs. 600/-; and now, the petitioners are getting the basic pay of Rs. 5,610/- with the grade pay of Rs. 600/- as per the standard scale of pay and therefore, the impugned order transferring the petitioners is justifiable.

(iv) The learned counsel for the second respondent further contended that when the transfer order is passed on administrative ground, it is not open to the

petitioners to challenge the transfer order and equally, it is not open to this Court to interfere with the impugned order since the petitioners have been posted within the talk limits from their erstwhile working place.

(v) Again, the learned counsel for the second respondent further contended that the petitioners were retransferred by the impugned transfer order and others were relieved on 30.9.2011, 5 days prior to the order of status-quo passed by this Court on 4.10.2011, therefore, after the transfer order, when the petitioners, except T. Mahindra, were relieved from the erstwhile office, the order of status-quo granted by this Court after they were relieved shows that they have wrongly obtained interim order from this Court without properly bringing to the notice of this Court the correct fact, hence, the petitioners are not entitled to get any relief under Article 226 and prayed for dismissal of the writ petitions.

3. Heard the learned counsel for the respective parties.

4. (i) The petitioners while serving as Village Assistants on the date of the impugned order of transfer have completed more than three years of service and further, they have been transferred within the talk limits from their erstwhile working places.

(ii) In the circular issued by the Tamil Nadu State Election Commission in Rc. No. 310/2011/Me1, dated 5.8.2011 it is mentioned that

In order to ensure free, fair and peaceful conduct of elections in all the districts of Tamil Nadu, the Tamil Nadu State Election Commission in exercise of powers vested in it under Article 243 K and 243 ZA of the Constitution and also u/s 239 of Tamil Nadu Panchayats Act, 1994 has decided to prescribe the following norms to ensure that officers who are connected or are likely to be connected with the conduct of elections in the districts, should not serve in their home Local Bodies/ places where they have served for long duration and directed that no such officer connected with elections, directly or indirectly, should be allowed to continue in the same Local body/districts:

(a) if she/he is posted in her/his home Local body; or

(b) if she/he has completed three years in that Local body during the last four years or would be completing 3 years on or before 31st

August 2011.

(ii) These instructions will cover the officers appointed for specific election duties like Returning Officer, Assistant Returning Officers and any other offices proposed to be used for election work.

(iii) It is also relevant to extract Rules 2, 3 and 4 of the Tamil Nadu Village Servants Service Rules 1980 hereunder:

2(a) In these rules, "Village Servant" means any person appointed as Talayari (jiyahhp) Vetti(btl;o) Nirganti(eph;fe;jp)

(b)"Competent authority" means

(i) in the Madras district, the personal Assistant(General) to the Collector of Madras and

(ii) in other districts, the Revenue Divisional officer having jurisdiction over the revenue villages within his jurisdiction.

3. Method of recruitment.-Appointment to the posts shall be made by direct recruitment.

4. Appointing Authority.-The appointing authority for the posts shall be the Tahsildar or the Deputy Tahsildar in independent charge, within his jurisdiction.

Though the post of "Village Servant" means any person appointed as Talayari (jiyahhp) Vetti(btl;o) Nirganti(eph;fe;jp), the word "competent authority" means

(i) in the Madras district, the personal Assistant (General) to the Collector of Madras and

(ii) in other districts, the Revenue Divisional officer having jurisdiction over the revenue villages within his jurisdiction. Rule 4 talks about "appointing authority". The appointing authority for the posts shall be Tahsildar or the Deputy Tahsildar in independent charge, within his jurisdiction. However, Rule 12 clearly mentions who is the authority to transfer Village Assistant. Sub-clause 2 of Rule 12 says any transfer can be made by the Revenue Divisional Officer within a talk and in the case of transfer within the district, the District Collector is the competent authority.

But the question to be seen is whether the impugned order passed by the second respondent-Tahsildar is valid in law. To answer this question, it is relevant to go through Rule 12 of the Tamil Nadu Village Servants Service Rules 1980 and the said rule 12 is extracted as hereunder:

Transfer.-(1) Village Servant may be transferred either on administrative grounds or on request amounting to mutual transfer within the district but such transfer shall be made on valid grounds to be recorded in writing.

(2) Any transfer under sub-rule (1) shall be made by the Revenue Divisional Officer within a talk and the District Collector within the district.

A cursory reading of Rule 12 makes it clear that a Village Assistant can be transferred either on administrative grounds or on request amounting to mutual transfer within the Taluk by the Revenue Divisional Officer and the District Collector within the district. But in the present case, though all the petitioners were transferred within the same talk, the Tahsildar has no power to effect transfer order as the power is vested only with the Revenue Divisional Officer. Since Rule 12 says to effect transfer of Village Assistant within the same talk, the Revenue Divisional Officer is the competent authority and in the case of effecting transfer within the same district, the District Collector is the competent authority.

But, in the present case, the impugned order of transfer has been passed by the Tahsildar, who has no power or authority to effect such transfer. Hence, the transfer order passed by the incompetent authority is non-est in the eye of law. Therefore, on this sole ground the impugned order is liable to be interfered with.

(iv) It is well settled by this Court as well as Apex Court that no Court shall interfere with transfer since transfer is not only a condition of service but an incident of service. The Apex Court in *Mrs. Shilpi Bose and Others v. State of Bihar and Others* AIR 1991 SCC 532 has highlighted the importance of slow interference with the transfer order in the following words:

Where a competent authority issues transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered with by the court merely because the transfer orders were passed on the request of the employees concerned.

The Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department.

Above reading of the Apex Court ruling clears that as to why the Court should not interfere with the transfer order, which are made in public interest and for administrative interest. But, however, it is equally settled that if transfer order is passed in violation of any statutory rules or with mala fide intention, the courts can interfere with such an incompetent order. Applying this principle, if we look at the present impugned transfer order, as per Rule 12(2) of the Tamil Nadu Village Servants Service Rules 1980, as the Revenue Divisional Officer is the only competent authority to effect transfer of the Village Assistant, the petitioners herein, within a talk and the District Collector within the district, the Tahsildar has no authority to pass the impugned transfer order. Therefore, the present impugned order having been passed without authority, and in violation of statutory Rule 12(2) is liable to be interfered with. Accordingly, for the reasons mentioned above, this Court is constrained to set aside the impugned transfer orders, hence they are set aside.

5. The petitioners have moved M.P. (MD). Nos. 3, 3, 3/2011 individually seeking leave of this Court to amend the cause title for the 2nd respondent as "Tahsildar, Palani Taluk, Palani" instead of "Mr. T. Manoharan, Tahsildar, Palani Taluk, Dindigul District". Though the said prayer was opposed by the learned counsel for the respondents, as the impugned order of transfer transferring the petitioners has been passed by the Tahsildar who has no authority to effect

transfer, in the light of Rule 12(2) of the Tamil Nadu Village Servants Service Rules 1980, in the interest of justice being satisfied with the challenge made by the petitioners that an incompetent authority has passed the order of transfer, the amendment applications are ordered accordingly. All these three writ petitions are allowed accordingly. No costs. M.Ps are disposed of.