

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A.(MD)No.618 of 2020

and

C.M.P.(MD)No.3931 of 2020
(Through Video Conferencing)

- 1.The Chairman
Tamil Nadu Generation and
Distribution Corporation Limited
No.144, Anna Salai
Chennai – 600 002.
- 2.The Secretary to the Government
Tamil Nadu Generation and
Distribution Corporation Limited
No.144, Anna Salai
Chennai – 600 002.
- 3.The Superintending Engineer
Karur Electricity Distribution Circle
Karir.

... Appellants/
Respondents

-Vs-

S.Velmurugan

... Respondent/
Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside
the order dated 27.11.2019 passed in W.P.(MD)No.14293 of 2018.

For Appellants : Mr.T.Sakthikumaran

For Respondent : Mr.G.Thalaimutharasu

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

The Official respondents in W.P.(MD)No.14293 of 2018 are the appellants.

2. The respondent/writ petitioner made a challenge to the order of transfer dated 29.06.2018 passed by the second appellant/second respondent with a consequential direction to retain him in the post of Executive Engineer, Karur Electricity Distribution Circle, Karur. The said writ petition, after contest, came to be allowed on 27.11.2019 and aggrieved by the same, the present writ appeal is filed.

3. The respondent/writ petitioner was appointed as an Assistant Engineer in the office at Trichy South Circle on 29.05.1988 and got his promotion as Assistant Executive Engineer and posted as Tiruvannamalai Circle in the year 2002 and got further promotion as Executive Engineer and posted at Kumabkonam, Thanjavur Circle on 19.07.2012. Subsequently, respondent/writ petitioner was posted as Executive Engineer (General), Trichy on 01.11.2013

and subsequently, transferred and posted as Executive Engineer (Operation and Maintenance) Rural, Karur Circle on 12.07.2017 and according to the respondent/writ petitioner, till the filing of the writ petition, he has rendered hard, sincere and unblemished service to the satisfaction of the superior Officer.

4. It is the case of the respondent/writ petitioner that first appellant published the seniority list of Class I Officers (Technical and Non-Technical) as on 01.01.2016 and his name was found at Serial No.326 and the name of one Mr.Sivakumar was placed at Serial No.399 and the grievance is that under the impugned order of transfer, he has been transferred and posted as Executive Engineer at Kundah Generation Circle, Kundah, Nilgiris District and Mr.Sivakumar has been accommodated in his place.

5. It is the specific case of the respondent/writ petitioner that apart from the fact that Mr.Sivakumar is junior to him, he has been subjected to departmental proceedings and as such, he can be posted only to the non-sensitive posts and without properly applying the Transfer and Posting Guidelines, dated 02.01.2017, issued by Secretariat Branch of Tamil Nadu Generation and Distribution Corporation Limited, (TANGEDCO) Chennai - 2, he has been transferred to a far-off and difficult place, solely for the purpose of accommodating Mr.Sivakumar and prays for interference.

6. The writ petition was entertained and counter affidavit has been filed on behalf of the appellants/respondents. The appellants/respondents took a stand that the petitioner is liable to be transferred to anywhere in the State depending upon the exigencies and the respondent/writ petitioner, being a Class- I Officer, cannot rely upon to his own cause and he should be an example for a few hundred employees working under him and he is not supposed to invent one reason or other to evade the transfer from one place to another and also relied upon the various decision rendered by the Honourable Supreme Court of India, which deals with the incidental transfer and prays for dismissal of the writ petition.

7. The respondent/writ petitioner in response to the counter affidavit, filed his reply also. The learned Judge, after taking into consideration the materials and on appreciation of rival submissions, found that the facing of departmental proceedings by Mr.Sivakumar have not been denied by the appellants/respondents in the counter affidavit and in the reply affidavit to the counter affidavit, the respondent/writ petitioner also took a stand that Mr.Sivakumar worked for 22 years in the same Division and in the same station for more than five years and whereas, the petitioner, who was transferred to Karur Circle as Executive Engineer on 12.07.2017, was transferred within 11 months from the date of earlier transfer. The learned Judge also taking note of

the legal position found that the order of transfer is normally cannot be interfered with, unless it is actuated by *mala fide*, arbitrary and punitive in nature and having taken note of the above facts and circumstances found that the impugned order of transfer of the respondent/writ petitioner from Karur to Kundah at Nilgiris District within a period of 11 months is not due to administrative reasons and accordingly, quashed the impugned order of transfer with a further direction permitting the petitioner to join in Karur Circle.

8. Mr.T.Sakthikumar, the learned counsel appearing for the appellants/official respondents has drawn the attention of this Court to page No. 38 of the typed set of documents, which pertains to personal information of Mr.K.Sivakumar and would submit that though, at some point of time, between 04.03.1998 and 28.05.2013, the said officer has been accommodated at Karur and subsequently, between 17.06.2013 and till date, once again, he has been accommodated at Karur in different Division and since the transfer is incidental to service, the findings rendered by the learned Judge, in this regard, warrant interference.

9. *Per contra*, Mr.G.Thalaimutharasu, learned counsel appearing for the respondent/writ petitioner would submit that the impugned order of transfer came to be passed only to accommodate Mr.Sivakumar and also drawn the

attention of this Court to page No.38 of the typed set of documents filed by the appellants herein and would submit that the personal information pertaining to Mr.Sivakumar is detailed for the reason that he has been continuously accommodated at Karur from 04.03.1998 to 28.05.2013 and though he was transferred to Tuticorin on 29.05.2013, he did not join and within one month he has been again transferred to Karur on 17.06.2013 and worked till 01.07.2018 in terms of the impugned order and therefore, the learned Judge, taking into consideration the relevant facts and circumstances, rightly passed the impugned order of transfer and prays for dismissal of the writ petition with exemplary costs.

10. This Court has carefully considered the rival submissions and also perused the materials placed on record.

11. The respondent/writ petitioner in ground (e) at page No.4 of the affidavit filed in support of the writ petition took a stand that Mr.Sivakumar is very much junior to him and he has been subjected to departmental proceedings and such an employee can be posted only to the non-sensitive post and without complaining the same, he has been accommodated at Karur. In the counter affidavit filed on behalf of the appellants/Official respondents, said ground (e)

raised by the petitioner have not been answered. The respondent/writ petitioner in response to the counter affidavit of the respondents has also filed his reply, wherein he took a stand that Mr.Sivakumar had worked for 22 years in the same Division and in the same Station for more than five years in the same post, from which, the respondent/writ petitioner has been transferred to Kundah, at Nilgiris District, which is also a hard post.

12. In the considered opinion of this Court, the Official respondents have failed to come with any plausible explanation, as to the continuous accommodation of Mr.K.Sivakumar at Karur and it is relevant to extract the Personal Information, which pertains to Mr.Sivakumar, made available at page No.38 of the typed set of papers:

PERSONAL INFORMATION

<i>Employee No.</i>	<i>AE8802564</i>
<i>Name</i>	<i>SIVAKUMAR.K</i>
<i>Designation</i>	<i>EE/O&M</i>
<i>Station</i>	<i>KARUR</i>
<i>Circle</i>	<i>KARUR EDC</i>
<i>Post Code</i>	<i>330801</i>
<i>Date of Birth</i>	<i>17-APR-1966</i>
<i>Sex</i>	<i>Male</i>
<i>Religion</i>	<i>Hindu</i>
<i>Community</i>	<i>Backward</i>

Martial Status *Married*
Mother Tongue *Tamil*
Permanent Address *64, Bramma Theertham Road*
Karur – 639 001.
Native Place *----*
Taluk *Karur*
District *Karur*
State *Tamil Nadu*
Languages Known *English*
Hindi

POSITION HELD

1. ASSISTANT ENGINEER 05/10/1988 11/12/1990 Dhayanur
2. A.E/110 KV SS 12/12/1990 17/01/1993 Coonoor
3. ASSISTANT ENGINEER 18/01/1993 14/07/1994 Chennai
4. ASSISTANT ENGINEER 15/07/1994 27/07/2001
Spl.Maintenance, Erode
5. ASSISTANT ENGINEER 11/10/1995 03/03/1998 Velliyantai
6. A.E/110 KV SS 04/03/1998 01/06/1999 Karur
7. A.E/GENERAL 02/06/1999 26/12/1999 Karur
8. MANAGER/PERSONNEL
INFORMATION 27/12/1999 21/01/2003 Karur
9. SR.MANAGER/
INFORMATION
SYSTEM 22/01/2003 28/05/2013 Karur
10. EE/O&M/RURAL 29/05/2013 16/06/2013 Tuticorin
- 11.EE/O&M/URBAN 17/06/2013 01/07/2018 Karur
- 12.EE/O&M/RURAL 02/07/2018 TILL DATE Karur

13. A perusal of Serial Nos.6 to 9, would disclose that Mr.Sivakumar continuously got accommodated at Karur between 04.03.1998 and 28.05.2013 and he was transferred to Tuticorin and in Tuticorin the period of posting was between 29.05.2013 and 16.06.2013 and he was in Tuticorin only for 18 days and again he got transferred to Karur from 17.06.2013.

14. The continuous accommodation of Mr.Sivakumar at Karur, despite the specific allegation made by the respondent/writ petitioner both in the writ petition as well as the reply statement to the counter affidavit, has not at all been answered by the appellants/respondents.

15. It is very pertinent to point out, at this juncture, that it is the stand of the appellants/respondents in their counter affidavit that the petitioner is liable to be transferred anywhere in the State and even elsewhere depending upon the exigencies by the first appellant and it appears that the Rule is applicable only to the respondent/writ petitioner and not to Mr.Sivakumar. This Court has also gone through the Transfer Policy issued by the Secretariat Branch of the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) dated 02.01.2017 and it also appears that the said transfer also is selectively enforced/implemented.

16. It is also brought to the knowledge of this Court by the learned counsel appearing for the respondent/writ petitioner that on entertainment of the writ petition, interim orders were granted and despite that he has not been accommodated at Karur and therefore, he filed Contempt Petition No.1351 of 2018 and the respondent/contemnor had entered appearance and it is still pending and on 13.10.2019, one Mr.Premkumar has been posted as Executive Engineer at Kundah, Nilgiris District and the learned counsel appearing for the appellants/respondents would submit that he did not have any instructions, in this regard.

17. It is a well settled position of law that the transfer is incidental to service and it can be put to challenge, if it is *mala fide* or arbitrary or punitive in nature. In the considered opinion of this Court, the impugned order of transfer passed by the second appellant, falls within the said parameters and the learned Judge, taking note of the factual aspects and legal decision, has rightly interfered with the order of transfer and quashed the same.

18. This Court, on an independent application of the mind to the entire materials and on consideration of the rival submissions, is of the considered view that there is no error apparent or infirmity in the reasons assigned for interfering with the order of transfer and finds no merit in this Writ appeal.

19. In the result, this **writ appeal is dismissed**, confirming the order dated 27.11.2019 made in W.P.(MD)No.14293 of 2018.. The appellants/Official respondents, as a consequent upon dismissal of the Writ Appeal and thereby confirming the order dated 27.11.2019 made in W.P.(MD)No.14293 of 2018, are directed to act in compliance of the order in conferring the consequential and other attendant benefits to the respondent/writ petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

[M.S.N. J.,] [P.R.M. J.,]
24.08.2020

Index : No
Internet : Yes

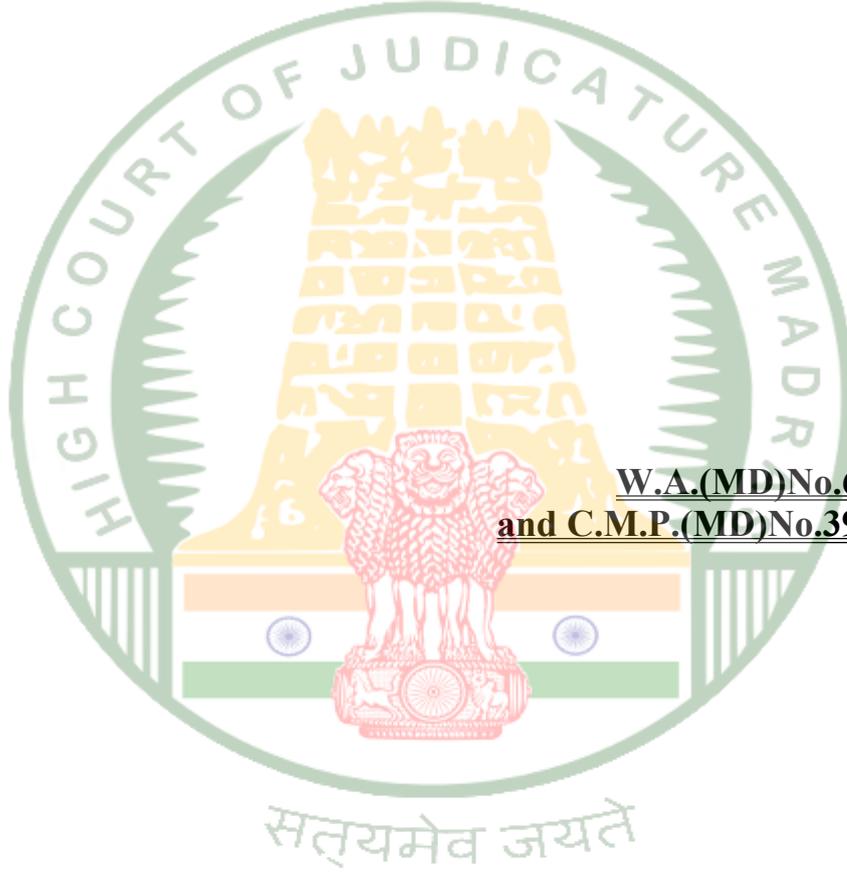
vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

W.A.(MD) No.618 of 2020

M.SATHYANARAYANAN, J.,
and
P.RAJAMANICKAM, J.,

vsm



W.A.(MD)No.618 of 2020
and C.M.P.(MD)No.3931 of 2020

WEB COPY

24.08.2020