

Madras High Court

U.Rajan vs Tamil Nadu Electricity Board on 30 January, 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.7061 of 2010

and

M.P(MD)No.1 of 2010

U.Rajan

... Petitioner

Vs

1.Tamil Nadu Electricity Board
rep by its Chairman,
No.144, Anna Salai,
Chennai-02.

2.The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai-2.

3.The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Thoothukudi.

4.Mr.V.Sokkalingam,
Assistant Executive Engineer/Mechanical,
Office of the Superintending Engineer/Generation,
Kundha,
Nilgiris District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of transfer in Memo, No.038491/670/G.15/G.152/2010, dated 11/19.05.2010 on the file of the Respondent No.2 and quash the same as illegal.

!For Petitioner :Mr.T.Lajapathi Roy

^For R1 to R3 :Mr.Dhayalan

For R4

:Mr.Hemakarthiskeyan

: ORDER

The order of transfer issued by the second respondent vide proceedings, dated 19.05.2010 transferring the writ petitioner from Tuticorin Thermal Power Station to Kundha in Nilgiris District is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the petitioner states that the writ petitioner is a differently abled person and therefore, he cannot be transferred to the Hill Station, more specifically to Kundah and the mode of transport available to that particular place is only by way of winch. No transport facilities are available since Kundha Power Station is situated in a Hill place at Nilgris District. By virtue of an interim order granted in this writ petition, the writ petitioner is continuing in Tuticorin Thermal Power Station.

3. The learned counsel for the petitioner states that even as per the provisions of The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995, the case of the petitioner ought to have been considered before passing the impugned order of transfer. He further states that as per Section 38(1)(d) of the said Act, the writ petitioner cannot be posted to any place where there is no transport facilities are available. The petitioner being a differently abled person has to be considered and the benefits accorded under the provisions of the Act to be extended to the petitioner.

4.The learned counsel appearing on behalf of the respondents states that the writ petitioner is continuing in the same station at Tuticorin Thermal Power Station for more than 10 years. The writ petitioner is holding the post of Assistant Executive Engineer and therefore, he has to be transferred within a reasonable period from one post to another post. The post is a transferable one and therefore, the petitioner cannot seek absolute exemption from administrative transfers.

5.Considering the arguments as advanced by the learned counsel for the petitioner and the respondents, this Court is of an opinion that the writ petition is filed more specifically challenging the transfer order, dated 19.05.2010 on the ground that the writ petitioner was transferred to Kundah Power Station, where there is no transport facilities are available. Thus, the impugned order of transfer is bad in law. This apart, the writ petitioner being differently abled person cannot be posted to a place, where there is no adequate facilities are available. This being the circumstances to be considered by the competent authorities, this Court is of an opinion that the impugned order is liable to be set aside.

6. However, it is made clear that the transfer is an incidental to service, more so, a condition of service. The writ petitioner is working in the cadre of Assistant Executive Engineer, which is a responsible position and the duties and responsibilities are to be performed with complete devotion. Further, it is a transferable post, thus, the writ petitioner cannot seek absolute exemption from the administrative transfers. It is further brought to the notice of this Court that the writ petitioner is continuing in the same post for about 10 years. Certainly, it is not preferable in the interest of administration. Thus, it is for the competent authority to review the situation and if necessary, transfer the writ petitioner to any other place other than Kundha where adequate transport facilities

are available and more suitable for differently abled persons.

7.The learned counsel for the petitioner states that the Government issued a Letter(Ms) No.92/S/09, dated 22.07.2009 providing the instructions in respect of transfer of physically handicapped Government Servants. These guidelines are provided to facilitate the competent authorities to consider the case. However, it is made clear that the Government letter issued in the form of instructions can never be construed as a legal right in respect of transfer of Government servants on administrative grounds. Instructions issued in this regard cannot have any legal enforceability and these guidelines are issued only in the form of instructions and violation if any, will not provide any cause of action for the Government employees to claim any right from and out of the instructions so issued by the Government in the form of the letter. Thus, it is for the competent authorities to consider all these aspects and take a decision and pass orders.

8.Accordingly, the impugned order passed by the second respondent in Memo No.038491/670/G.15/G.152/2010, dated 19.05.2010 is quashed and the writ petition stands allowed. However, there shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

To

- 1.Tamil Nadu Electricity Board rep by its Chairman, No.144, Anna Salai, Chennai-02.
- 2.The Chief Engineer (Personnel), Tamil Nadu Electricity Board, No.144, Anna Salai, Chennai-2.
- 3.The Superintending Engineer, Purchase and Administration, Tuticorin Thermal Power Station, Thoothukudi.
- 4.Mr.V.Sokkalingam, Assistant Executive Engineer/Mechanical, Office of the Superintending Engineer/Generation, Kundha, Nilgiris District.

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