

DIRECTORATE OF MUNICIPAL
ADMINISTRATION, CHENNAI – 5

Endt.(Roc). No.59855/09/F4

Dated : 29.01.10.

Copy communicated for information and for further guidance. The receipt of the judgement copy shall be acknowledged by next mail as well as by post.

Sd/- D. Chandrasekaran,
for Director of Municipal Administration

To

- 1) All Commissioner of Corporation
- 2) All Executive of Municipalities.
- 3) All Municipal Commissioners.
- 4) All RDMA's.

/Forwarded by Order/

S. P. S. S. S.
29/1/10
Superintendent.

S.
29/01/10



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2010

CORAM

THE HON'BLE Mr. H.L.GOKHALE, CHIEF JUSTICE
and
THE HON'BLE Mr. JUSTICE R.K.SASIDHARAN

W.A.No.1545 of 2009
and
M.P.Nos.1 and 2 of 2009
and
Review Application No.5 of 2010

W.A.No.1545 of 2009

The Commissioner,
Tiruchirappalli City Corporation,
Tiruchirappalli - 620 017.

vs.

1. B.Selvan,
S/o.A.Balupillai,
Assistant Executive Engineer,
Tiruchirappalli City Corporation,
Tiruchirappalli - 620 017.
 2. The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai - 600 009.
 3. The Commissioner of Municipal Administration,
Ezhilagam Annex,
Chepauk,
Chennai - 600 005.
 4. V.Balagangadharan,
Assistant Executive Engineer,
Tamil Nadu Municipal Engineering Service,
Now in Tiruchirappalli City Municipal Corporation,
Tiruchirappalli - 620 017.
- ..Respondents.

Review Application No.5 of 2010

B.Selvan,
S/o.A.Balupillai,
Assistant Executive Engineer,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli - 620 017.

..Applicant.

F. npl / F4

Pl. Communicate the Judgments to all Corporations to all Municipalities and Report from the Status and Report from the Com. Now Put up P.O.

Put up the CMPA website also

Appellant.

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28/110

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J U D G M E N T

(Judgment of the Court was delivered by the Hon'ble the Chief Justice)

Heard Mr.S.Ramassamy, learned Additional Advocate General along with Mr.P.Srinivas, learned counsel for the appellant - Tiruchirappalli City Corporation. Mr.Vijay Narayan, learned Senior Counsel appears along with Mr.R.Parthiban, learned counsel for respondent - 1, and Mr.J.Raja Kalifulla, learned Government Pleader appears for respondents - 2 and 3.

2. The appeal seeks to challenge the order passed by a learned single Judge, whereby the learned single Judge has interfered with the order transferring the respondent - 1 from the Trichy Municipal Corporation to Arani Municipality.

3. The short facts leading to this appeal are as follows:

The respondent - 1 was working as Assistant Executive engineer in the appellant - Municipal Corporation. There were some serious allegations against him, and in a raid conducted by the Directorate of Vigilance and Anti Corruption huge cash, jewellery and various other valuable things totaling to Rs.1.5 crores were found at his residence. He was supposed to be owning a car, two motorcycles, three houses, lands, etc. In view of this raid, it appears that the Directorate of Municipal Administration deemed it fit that the respondent - 1 should be kept away from the Trichy Municipal Corporation, and an order came to be passed on 2nd February, 2009 transferring him from Trichy Municipal Corporation to Arani Municipality. That order has been passed by the Department of Municipal Administration and Water Supply. It reads as follows:

ABSTRACT

Public Servants - Corporation of Tiruchirappalli - Thiru. B.Selvam, Assistant Executive Engineer, transferred and posted as Municipal Engineer Grade II in Arani Municipality - Orders issued.

MUNICIPAL ADMINISTRATION AND WATER SUPPLY (MC.V.) DEPARTMENT

G.O. (D) No.30

Dated: 01.02.2009

Thiruvalluvar Andu 2040 Thai -20

Read:

1. G.O. (D) No.542, Municipal Administration and Water Supply Department, dated 29.12.2008.

2. From the High Court of Madras, order dated 20.01.2009 in W.P.No.285/2009 and M.P.No.2 of 2009

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3. From the Director of Municipal Administration Letter
Roc.No.49125/2008/F4, dated 29.1.2009.

O R D E R:

As per Section 116(1)(d) of the Tamil Nadu City Municipal Corporation Act, 1981 and Section 73(A)(1) of the Tamil Nadu District Municipalities Act, 1920, Government have powers to transfer any Corporation/Municipal employee to the Corporation/Municipality.

2. Government have examined the proposal of the Director of Municipal Administration in his letter 3rd read above and accordingly cancel the orders issued in the Government Order first read above posting Thiru B.Selvam, Assistant Executive Engineer, Tiruchirappalli Corporation in the vacant post of Assistant Executive Engineer (JMNURM) in the office of Regional Director of Municipal Administration, Tirunelveli.

3. The Government also direct that Thiru. B.Selvam, Assistant Executive Engineer, Tiruchirappalli Corporation be transferred and posted to Arani Municipality as Municipal Engineer Grade II (in the cadre of Assistant Executive Engineer) in the existing vacancy.

/ By Order of the Governor/

NIRANJAN MARDI,

SECRETARY TO GOVERNMENT."

4. As stated in the above order, the proposal for this transfer emanated from the Directorate of Municipal Administration, and in exercise of the powers conferred under Section 116(1) of the Tamil Nadu City Municipal Corporation Act, 1981 read with Section 73(A)(1) of the Tamil Nadu District Municipalities Act, 1920 the order of transfer was passed.

5. Learned single Judge, before whom, the respondent - 1 challenged his transfer order, has accepted the submission of the respondent - 1 that such transfer could not be made, and at the highest he could be sent on deputation, and there was no power vested with the authorities to transfer him in the manner in which he had been transferred.

6. Learned single Judge has accepted this submission, and therefore, he set aside the order of transfer. Hence, the present appeal.

7. Mr.S.Ramesamy, learned Additional Advocate General took us through the relevant provisions of the statutes i.e., Section 73(A)(1) of the Tamil Nadu District Municipalities Act, 1920 and Section 116(1)(c) of the Tiruchirappalli City Municipal Corporation Act, 1994. For ready reference, we quote Section 73(A) of the Tamil Nadu District Municipalities Act, 1920, which reads as follows:

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73-A. Power of State Government to transfer officers and servants of municipalities or corporations -

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, the State Government shall have power -

(a) to transfer any officer or servant of a municipality to the service of the Municipal Corporation of Chennai constituted under the Chennai City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919) or the Municipal Corporation of Madurai constituted under the Madurai Municipal Corporation Act, 1971 (Tamil Nadu Act 5 of 1971) or the Municipal Corporation of Coimbatore constituted under the Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981) or any municipal corporation constituted under any law for the time being in force; or

(b) to transfer any officer or servant of any of the municipal corporation referred to in clause (a), to the service of any municipality; or

(c) to transfer any officer or servant of any municipality to the service of any other municipality.

(2) The State Government shall have power to issue such general or special directions as they may deem necessary for the purpose of giving due effect to any transfer made under sub-section (1)."

6. Tiruchirappalli City Municipal Corporation Act, 1994 was constituted as per Act 27 of 1994. As per Section 8 of Act 27 of 1994 all the provisions of the Coimbatore City Municipal Corporation Act, 1981 were extended to the Tiruchirappalli City Municipal Corporation Act. Section 8 reads thus:-

"8. Application of the provisions of the 1981 Act to the Corporation.-

(1) Save as otherwise expressly provided herein, all the provisions of the 1981 Act including the provisions relating to the levy and collections of any tax or fee are hereby extended to and shall apply, mutatis mutandis to the corporation and the 1981 Act shall, in relation to the corporation be read and construed as if the provisions of this Act had formed part of the 1981 Act.

(2).....

(3).....

(4) In the 1981 Act as extended and applied to the city of Tiruchirappalli, -

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(a) any reference to the City of Coimbatore, and Coimbatore Municipality, shall by reason of this Act, be construed as a reference to the City of Tiruchirappalli and Tiruchirappalli Municipality, respectively; and

(b) any reference to the Coimbatore Corporation, Corporation of Coimbatore and Municipal Corporation of Coimbatore, shall by reason of this Act, be construed as a reference to the Tiruchirappalli Corporation, Corporation of Tiruchirappalli and Municipal Corporation of Tiruchirappalli, respectively."

9. The other relevant Section is Section 116(1)(c) of the Tiruchirappalli City Municipal Corporation Act, 1994, which reads as follows:-

"116. Power of Government to transfer officers and servants of the corporation or municipalities :- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Government shall have power -

(a) to transfer any officer or servant of the corporation to the service of the Municipal Corporation of Chennai constituted under the Chennai City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919) or the Municipal Corporation of Madurai constituted under the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15 of 1971) or any other municipal corporation constituted under any law for the time being in force; or

(b) to transfer any officer or servant of the Municipal Corporation of Chennai constituted under the Chennai City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919) or the Municipal Corporation of Madurai constituted under the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15 of 1971) or any other municipal corporation constituted under any law for the time being in force, to the service of the corporation; or

(c) to transfer any officer or servant of the corporation to the service of any municipality constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920); or

....."

10. Mr.S.Ramesamy, learned Additional Advocate General points out that reading of the two sections is very clear that as far as the employees of a Municipal Corporation are concerned the State Government has the power under Section 116 (1)(c) of the Tiruchirappalli City Municipal Corporation Act to transfer any officer or servant of the Corporation to the service of any Municipality constituted under the Tamil Nadu District Municipalities Act, and as far as the Tamil Nadu District Municipalities Act, 1920 is concerned there also there is a specific power to transfer any officer or servant of any Municipal Corporation to the service of any

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other Municipality. Both these provisions have non-obstante clause. In view of these powers, and in view of the factual background, it was the decision of the Government on the advice of the Directorate of Municipal Administration to transfer the first respondent, and since there is a power, and there was a justification for the exercise of it, the transfer could not be interfered with. It is necessary to mention at this stage that no mala fides are alleged to dispute the order of transfer.

11. Mr. Vijay Narayan, learned Senior Counsel appearing for the first respondent on the other hand submitted that this transfer should be construed as deputation. He referred to the fact that the Trichy Municipal Corporation was earlier a Municipality, and subsequently, it has been converted into a Municipal Corporation. He drew our attention to the provisions of the Tiruchirappalli City Municipal Corporation Act, 1994, and particularly, Section 9(6) which reads as follows:-

"9(6) Notwithstanding anything contained in this Act, every officer or employee who, immediately before the date of such commencement was in the service of the municipality shall, on and from the date of the commencement of this Act, be deemed to be an officer or employee of the corporation."

The learned Senior Counsel emphasized the second proviso available in Section 9(6), which states that any officer or other employee serving in the municipality shall have an option, and under that option, he may either get absorbed in the Municipal Corporation or be retained in the service constituted under Section 73-A of the District Municipalities Act, or if not, get retrenched. The submission of the learned Senior Counsel was that once the first respondent opted to remain in the service of the Municipal Corporation, he got absorbed in that service, and thereafter, he could not be transferred anywhere else. In the instant case, the transfer of the first respondent to Arani Municipality will therefore have to be construed as a deputation and that deputation will only be with the consent of the officer concerned viz., the first respondent herein. In the instant case, he has not consented, and therefore, the transfer was bad. There was no power to transfer a permanently absorbed employee to a municipality, and that could be done only by way of deputation to which the first respondent had not agreed to.

12. Mr. Vijay Narayan, learned Senior Counsel has referred to and relied upon the judgment of the Apex Court in U.P. Gram Panchayat Adhikari Sangh Vs. Daya Ram Saroj, (2007) 2 SCC 138. That was a case where the employees of the irrigation department of the State of U.P. were transferred to Gram Panchayats under Section 25 of the Act 27 of 1999. In the facts of that case, however, it was seen that the overall control was retained with the Irrigation Department. As can be seen from paragraph - 54 of the judgment the pay and allowances

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were paid by the parent department, their service conditions were governed by the service rules in their respective parent departments framed under Article 309 of the Constitution, and the overall control was vested in the respective departments. In view thereof, the Apex Court took the view that it was a case of deputation, though the word used was "transfer". In the facts of the present case, it is not possible to accept such a view. The officer concerned is transferred to another municipality; his pay and allowances will be paid by that municipality; his service conditions will also be controlled by the service rules of that municipality; and the overall control will be vested with the Commissioner of that municipality. His salary or service conditions are not being reduced in any way. Mr. Vijay Narayan, learned Senior Counsel submitted that the 1st respondent had been informed that his seniority will be maintained in the Appellant - Municipal Corporation and that shows that he will be on deputation. It is not possible to draw any such inference. The communication is only to protect the interests of the first respondent in the event he is subsequently re-transferred.

13. Mr. S. Ramasamy, learned Additional Advocate General pointed out that Sections 8 and 9 of the Tiruchirappalli City Municipal Corporation Act, 1994 were essentially provisions to deal with the situation in a transitional period. Section 9 in terms states that the present provision is made to meet the situation when the Municipality is converted into Corporation and necessary action will be required to be taken and for that purpose the provision has been made. Once an employee or the officer of a Municipality is absorbed in the Corporation, obviously he comes under the control of that Municipal Corporation, and once he is absorbed over there the relevant provisions of the Corporation Act will apply to him. Therefore, the power available for transfer under Section 116(1)(c) of the City Municipal Corporation Act will get attracted. Any other interpretation will be totally erroneous because it will mean that only because a Municipality has become a Corporation the other provisions of the City Municipal Corporation Act will not be available to the municipal administration. Once absorbed, all the employees are equal in the organization in which they are absorbed, and in the instant case, if there were serious allegations against the first respondent, it was for the authorities to decide what course of action should be taken. They decided to transfer him. We do not see any reason as to why it could be said that the authorities did not have any such power, certainly not on the ground that it would amount to deputation.

14. In the circumstances, the order of the learned single Judge cannot be sustained. We allow this appeal and set aside the order passed by the learned single Judge. The first respondent should better join at the place where he is supposed to join at the earliest. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.


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15. In view of the judgment and order passed in the above writ appeal, no order needs to be passed in the Review Application No.5 of 2010. Hence, the same is dismissed. No costs.

sm

Sd/-
Asst. Registrar

//True Copy//


Sub Asst. Registrar

Copy to:-

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Ezhilagam Annex,
Chepauk,
Chennai - 600 005.
3. The Commissioner,
Tiruchirappalli City Corporation,
Tiruchirappalli - 620 017.

+ 1 cc to Government Pleader, SR No.3500

+ 1 cc to Mr. P. Srinivas, Advocate SR No.3186

+ 1 cc to Mr. R. Parthiban, Advocate SR No.3258

RB(CO)
SR/25.1.2010

W.A.No.1545 of 2009.

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