

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.29762 of 2015

S.Ravikumar

... Petitioner

vs.

1. The Director of Medical and Rural Health Services (ESI) (Incharge) DMS Compound, Teynampet, Chennai 600 006.
2. Hospital Superintendent (Incharge) ESI Hospital, Ayanavaram, Chennai 600 023.
3. Dr.Thirunavukarasu
4. Shanmugam

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, after calling for the concerned records from the 1st and 2nd respondents, quash the order of the 1st respondent dated 08.09.2015 bearing Ref.No.22060/ESI/E2/2/15 and the consequential order of the 2nd respondent dated 08.09.2015 bearing Ref.No.4680/ES/2015 as illegal, arbitrary, contrary to law and consequently direct the 1st and 2nd respondents to retain the petitioner as Hospital Worker in ESI Hospital, Ayanavaram, Chennai 600 023.

For Petitioner

:

Mr.Balan Haridas

For R1 & R2

:

Mr.R.Venkatesh,

Government Advocate

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O R D E R

The petitioner has come up with this Writ Petition seeking to quash the order dated 08.09.2015 passed by the 1st respondent vide proceedings bearing Ref.No.22060/ESI/E2/2/15 and the consequential order dated 08.09.2015 passed by the 2nd respondent vide proceedings bearing Ref.No.4680/ES/2015 and for a further direction to the 1st and 2nd respondents to retain him as Hospital Worker in ESI Hospital, Ayanavaram, Chennai.

2. According to the petitioner, he joined as a Hospital Worker in the 2nd respondent Hospital on compassionate appointment grounds vide appointment order dated 10.01.1989. His services were confirmed by an order dated 29.10.1991 with effect from 11.01.1990. The grievance of the petitioner is that the 4th respondent using the influence of the 3rd respondent pressurized the 1st respondent to issue the order dated 08.09.2015 transferring the petitioner from the 2nd respondent Hospital to ESI Dispensary, Nagercoil, Kanyakumari District and that the 2nd respondent, issued the relieving order to the petitioner on the same day, i.e. on 08.09.2015 itself.

3. It is the case of the petitioner that the 4th respondent, who joined the 2nd respondent Hospital as a Sanitary Worker, has been promoting chit business within the hospital premises and also lending money on high interest. In cases, where there is a default of payment of chit money or interest, the 4th respondent assaulted the employees and also threatened them. In that regard, a complaint was lodged by one Jhony Babu against the 4th respondent in Ayanavaram Police Station on 03.07.2015 and one Ms.Glory had also given a complaint against him in Ayanavaram Police Station on 07.09.2015 vide CSR No.1165 of 2015. The 3rd respondent/Hospital Superintendent is shielding the 4th respondent and at one point of time, when the petitioner questioned the 4th respondent not to terrorize the employees and also stop his money lending and chit business, in order to wreck vengeance, the 4th respondent using the influence of the 3rd respondent, took steps to issue the said order of transfer. Contending that the order of transfer and the relieving order are tainted with malafides, the petitioner has approached this Court seeking to quash the same.

4. The 2nd respondent has filed a counter, denying the allegations made by the petitioner. According to the 2nd respondent, the relieving order issued by him on 08.09.2015 was accepted by the petitioner and received by him. It is his contention that the allegations made by the petitioner are all his own imaginations and that the Transfer and Posting orders have been issued only due to administrative reasons.

5. When the matter is taken up for hearing, learned counsel for the petitioner submitted that the petitioner is a Class IV employee and employees in that cadre can be transferred only if there is a request on their behalf seeking transfer and that the petitioner has not made any request for transfer. Further, he contended that there is no administrative exigency to transfer a Class IV employee from Chennai to Nagercoil.

6. To substantiate his case, learned counsel for the

petitioner referred to Rule 7(b) and 9(a) of Special Rules for Tamil Nadu Basic Service, which reads as follows:

"7. Service in a class or category in different Departments, or Offices:

(b) In cases of transfer from one Department to another that is, from the jurisdiction of one appointing authority to another, at the request of the individual, he shall be treated as a transferee to the service and treated as the junior most in the Department to which he is transferred.

9. Appointment, discharge and re-appointment:

(a) For the purpose of appointment, discharge and re-appointment, appointment as full members the jurisdiction of each appointing authority shall be treated as a separate unit."

7. Learned Government Advocate appearing for respondents 1 and 2, relying upon Rule 10A of the Tamil Nadu Basic Service, submitted that in the instant case, the 1st respondent is the Appointing Authority and it cannot be said that the petitioner cannot be transferred from one Unit to another Unit. He further submitted that the transfer of the petitioner is only due to administrative reasons.

8. For better understanding, Rule 10A of the Special Rules for Tamil Nadu Basic Service is extracted hereunder:

10A. Postings and Transfers:

(a) All Transfers and postings shall be made by the appointing authority.

Provided that the powers conferred on the appointing authority by this sub-rule may be exercised also by any authority to whom the appointing authority is administrative subordinate.

(b) All transfers and postings from the jurisdiction of the appointing authority to that of the other shall be made by the authority to which such appointing authorities are administratively subordinate.

9. On a reading of the above provisions set out under Rules 7(b), 9(a) and 10A of the Special Rules for Tamil Nadu Basic Service, it is clear that for the purpose of appointment, discharge and re-appointment, appointment as full members, the

jurisdiction of each appointing authority shall be treated as a separate unit. Furthermore, Rule 7(b) is very clear that if transfer is made from the jurisdiction of one appointing authority to another, at the request of the individual, he shall be treated as a transferee to the service and treated as the junior most in the Department to which he is transferred.

10. In the instant case, admittedly, the petitioner, who is a Class IV employee has not made any request for transfer. Therefore, this Court is of the view that the impugned orders of transfer and relieving order, both dated 08.09.2015 are legally unsustainable in the eye of law and they are liable to be quashed. Accordingly, the impugned order of transfer as also the relieving order, both dated 08.09.2015 are quashed and the respondents 1 and 2 are directed to post the petitioner as Hospital Worker in ESI Hospital, Ayanavaram, Chennai 600 023 within a period of two weeks from the date of receipt of a copy of this order.

This Writ Petition is allowed as prayed for. No costs. Consequently, connected M.P.No.1 of 2015 and W.M.P.Nos.12557 and 28025 of 2016 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Director of Medical and
Rural Health Services (ESI) (Incharge)
DMS Compound, Teynampet,
Chennai 600 006.

2. Hospital Superintendent (Incharge)
ESI Hospital, Ayanavaram,
Chennai 600 023.

+2cc to Mr.Balan Haridas, Advocate, S.R.No.65017
+1cc to the Government Pleader, S.R.No.65315

nrjk(CO)
md(23/12/2016)

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