

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2016

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.41027 of 2015  
and  
M.P.Nos.1 and 2 of 2015

G.Kumar

... Petitioner

Vs

1. The Director of Public Health and Preventive Medicine Chennai 600 006.
2. The Deputy Director of Health Services, District Collector Buildings Sathuvachari Vellore District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in (i) Na.Ka.No.8564/VM/A3/2015 dated 18.12.2015 and (2) Na.Ka.No.9758/A3/2015 dated 22.12.2015 issued by the second respondent; to quash the same and to issue consequential direction to the respondents to forthwith pay the salary and all other benefits from the month of September 2015 onwards with interest on the delayed payment and to allow the petitioner to continue to serve in the office of the second respondent.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.S.Gunasekaran  
Government Advocate

O R D E R

This writ petition has been filed by G.Kumar, challenging the impugned order of transfer dated 18.12.2015 and the consequential order dated 22.12.2015, in and by which, the petitioner was transferred and posted to Primary Health Centre, Alamelumangapuram, Vellore Health Unit District in the existing

vacancy from the office of the Deputy Director of Health Services, Sathuvachari, Vellore on various grounds.

2. Heard both sides.

3. Learned counsel appearing for the petitioner would submit that disturbing the petitioner from the present post by way of transfer order is in clear violation of the settled transfer policy for the simple reason that in case of routine transfer station seniority has to be followed and the senior most in the station seniority will be first transferred. That apart insofar as the drivers are concerned, the Government Orders exempt them from routine transfers and accordingly, the same should have been followed in the present case also. He would further submit that apart from transferring the petitioner, the respondents have committed a grave mistake in transferring the senior most person without disturbing the juniors maintaining the station seniority. He would also state that even assuming that a senior most person is transferred, the petitioner is only the second senior most person in the office of the Deputy Director of Health Services and that he is working in the said office from 1995. Accordingly, he would submit that the respondents have adopted a pick and choose theory as a result of which, the present impugned transfer order has been passed. It is the further case of the petitioner that when five other junior most persons are serving in the office of the second respondent transferring the petitioner is nothing but mala fide or arbitrary exercise of their power. Accordingly, he would pray for setting aside the same.

4. By way of replying to the above contentions, the learned Government Advocate appearing on behalf the respondents would submit that the question of following "last come first go" principle cannot be applied in each and every case and that the respondent-Department being the best Judge in the matter of transfer of its staff, has not committed any mistake. Further he would submit that the petitioner has been transferred only to a station, which is hardly five kilometres from the present place. Therefore, the petitioner cannot be allowed to say that he has been put to severe hardship.

5. I fully agree with the contentions put forward by the learned Government Advocate appearing on behalf of the respondents. It is a well settled legal position that transfer is not only an incident of service but a condition of service; beyond that the petitioner has been transferred to a destination, which is only five kilometres away from his present place.

6. In view of the above, the question of not disturbing the juniors to the petitioner is far from acceptable. Accordingly, this writ petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vj2

To

1. The Director of Public Health and Preventive Medicine  
Chennai 600 006.
2. The Deputy Director of Health Services,  
District Collector Buildings  
Sathuvachari  
Vellore District.

+1cc to Mr.M.Ravi, Advocate, S.R.No.8148  
+1cc to the Government Pleader, S.R.No.8202

W.P.No.41027 of 2015

RSY(CO)  
CA(12/05/2016)

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