

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 34578 of 2012
and
M.P. No. 1 of 2012

S. Ganesan

..Petitioner

Vs.

1. The State of Tamilnadu
rep. By the
Secretary to Government
Health & Family Welfare Department
Fort St. George
Chennai - 600 009.
2. The Director of Medical and
Rural Health Services
Chennai - 600 006.
3. The Director of Drugs Control
Chennai - 600 006.
4. The Joint Secretary to Government
Health & Family Welfare Department
Fort St. George
Chennai - 600 009.
5. The Joint Director of Health Services
Thiruvannamalai
Thiruvannamalai District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the Transfer order in Ref.No.69334/E5/3/2009 dated 03.11.2009 passed by the 2nd respondent and in Na.Ka. No. 7534/Ni3/2010 dated 27.08.2010 passed by the 5th respondent and appeal rejection order in Lr. No. 17013/C2/2011-1, dated 04.06.2012 passed by the 4th respondent and quash the same and direct the respondents to retain the petitioner in the office of

the Director of Drugs Control, Chennai itself and pass further orders.

For Petitioner : Mr.G. Elanchezhiyan

For Respondent : Mr. S. Diwakar, Spl. Govt. Pleader

O R D E R

This writ petition has been filed praying to quash the Transfer order in Ref.No.69334/E5/3/2009 dated 03.11.2009 passed by the 2nd respondent and in Na.Ka. No. 7534/Ni3/2010 dated 27.08.2010 passed by the 5th respondent and appeal rejection order in Lr. No. 17013/C2/2011-1, dated 04.06.2012 passed by the 4th respondent and direct the respondents to retain the petitioner in the office of the Director of Drugs Control, Chennai itself.

2. Learned counsel for the petitioner submitted that the petitioner was initially selected and appointed as a Driver in the office of the 3rd respondent. While so, on 11.09.2007, the petitioner was served with a suspension order. On 16.10.2007, the suspension order was revoked and the petitioner was directed to join duty in the same office. The petitioner has submitted his explanation to the charge memo dated 08.10.2007 and also to the revised charge memo issued subsequently. Learned counsel further submitted that he petitioner was prevented from continuing his job as a driver from 05.07.2008, on administrative grounds. Later, on 03.11.2009 the petitioner was transferred and posted at Government Headquarters Hospital, Thiruvannamalai, then to Polur and again he was re-transferred to Thiruvannamalai itself. Challenging the competency of the 2nd respondent in passing the transfer order dated 03.11.2009, the petitioner filed an appeal before the 4th respondent. Since no orders were passed on the appeal, the petitioner filed W.P. No. 25650 of 2011 before this Court. As directed by this Court to consider and pass orders, the appeal dated 28.04.2011 of the petitioner, was rejected by the 4th respondent on 04.06.2012. Aggrieved by the same, the petitioner is before this Court.

3. Learned counsel for the petitioner would submit that the 2nd respondent had passed the order of transfer, without getting the consent or approval of the Government, which is against the Rules prescribed. He further submitted that the transfer order has been passed mainly on the ground of allegations.

4. Relying on the counter affidavit filed by the 2nd respondent, learned Special Government Pleader submitted that

there are several complaints made against the petitioner and it was also brought to the notice of the authorities concerned that the petitioner behaves abnormal and use abusive language against the officers and staff within the DMS Campus. In spite of severe warning given by the authorities, the petitioner continued to behave as such, at the request of the 2nd respondent, Director of Medical and Rural Health Services. The petitioner was transferred from the campus of the 2nd respondent and posted to Government Head Quarters Hospital, Thiruvannamalai. It is further stated that there are only two vehicles available in the 2nd respondent office and two drivers are already available and therefore the transfer order has been passed, in the interest of the department. Hence, the transfer order has been passed on administrative grounds as well as in public interest. Therefore, he prayed to dismiss the writ petition.

5. Heard learned counsel for the petitioner and the learned Special Government Pleader for the respondents and perused the material available on records.

6. The 3rd respondent received many complaints from the neighbouring officers regarding the misbehaviour of the petitioner. There are complaints against the petitioner for having used abusive language against officers and towards an officer inside the DMS Office campus. On two occasions, complaints were launched against the petitioner before the Teynampet Police Station and he was relieved after payment of penalty. The 3rd respondent had forwarded those complaints to the 2nd respondent and requested to transfer the petitioner to a far off place like Tirunelveli or Tuticorin. Since there was no vacancy at those places, the petitioner was transferred to Thiruvannamalai. It is made clear that the transfer order has been issued based on the allegations. Further, the 3rd respondent stated that there are only two vehicles available in the department and since there were surplus drivers in the department, on administrative reasons, the petitioner has been transferred from the 3rd respondent department to the 2nd respondent department. Therefore, there is no malafide attributed by the respondents against the petitioner. In view of the above facts, it is clear that only based on the abnormal behaviour of the petitioner, forwarded by the 3rd respondent, had resulted in passing of the impugned order by the 2nd respondent.

7. The learned counsel for the petitioner submitted that the petitioner is at the verge of retirement and hence the request of the petitioner can be considered by the 2nd respondent and transfer him to the office of the 3rd respondent. The petitioner also submitted that he will file an undertaking affidavit stating that he will not indulge in any illegal

activities or misbehave with any Officers, during his service period.

8. In the light of the submissions made by the learned counsel for the petitioner, the writ petition is allowed and the transfer order in Ref.No.69334/E5/3/2009 dated 03.11.2009 passed by the 2nd respondent is set aside. The petitioner is directed to file an undertaking affidavit, along with a copy of this order and the same shall be considered by the 2nd respondent sympathetically, within a period of eight weeks from the date of receipt of a copy of this order. Consequently, the connected M.P is closed. No costs.

sd/

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

avr
To

1. The State of Tamilnadu
Secretary to Government
Health & Family Welfare Department
Fort St. George
Chennai - 600 009.
 2. The Director of Medical and
Rural Health Services
Chennai - 600 006.
 3. The Director of Drugs Control
Chennai - 600 006.
 4. The Joint Secretary to Government
Health & Family Welfare Department
Fort St. George
Chennai - 600 009.
 5. The Joint Director of Health Services
Thiruvannamalai
Thiruvannamalai District.
- +1cc to Government Pleader SR.No.1678
+1cc to M/s.G.Elamchezhiyan, Advocate SR.No.1308

W.P. No. 34578 of 2012
and
M.P. No. 1 of 2012

SAI (CO)
GN(28/03/2017)