



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.23839 of 2016 and
W.M.P.(MD) Nos.17180 and 17181 of 2016

R.Krishnakumar

... Petitioner

-vs-

1. The Deputy Director of Health Services,
Theni District.

2. The Block Medical Officer,
Government Primary Health Centre,
Oodaipatti, Theni District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order vide Na.Ka.No.426/A-2/2016 dated 22.11.2016 on the file of the 2nd respondent, quash the same and consequently direct the respondents to restore the petitioner's original place of posting at Kuchanur Government Primary Health Centre.

For Petitioner : Mr.R.Venkateswaran

For Respondents : Mr.K.P.Krishna Doss
Govt. Advocate

O R D E R

This petition has been filed, seeking to quash the impugned order dated 22.11.2016 passed by the 2nd respondent in Na.Ka.No.426/A-2/2016, in and by which, the petitioner was deputed to work at Government Primary Health Centre, Govindanagaram. The petitioner also sought a direction to the respondents to restore the petitioner's original place of posting at Kuchanur Government Primary Health Centre.

2. The case of the petitioner is that initially, the petitioner was working as Pharmacist at the Kuchanur Government Primary Health Centre and thereafter, he was transferred to Kandamanur on deputation, where a post was vacant; that the petitioner, within the period of two months, was again shifted from Kandamanur to Kuchanur and after a period of two days, he was



once again relieved and posted at Govindanagaram. According to the petitioner, in order to accommodate one Sitarasu, who has been deputed at Kuchanur, he has been disturbed from there.

3. Learned Government Advocate would submit that the placement in both the places was only on deputation basis.

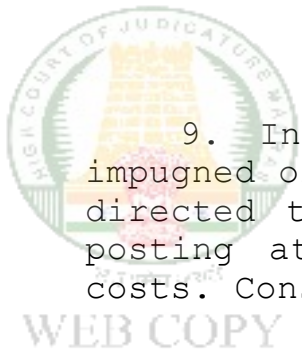
4. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

5. It is seen from the averments that both the petitioner and one Sitarasu were working as Pharmacists. Though no transfer on the ground of administrative ground can be interfered with, but at the same time, it is relevant to point out that the respondents are unable to adduce reasons as to the necessity arisen for the respondents to depute the petitioner to three different places within the short span of time between September, and November, 2016. It has been contended on the side of the respondents that it is only a deputation and temporary arrangement has been made in order to serve the public.

6. Though the argument of the respondents appears to be sound, deputation has been given to a person, where more than one person is working additionally. In this case, the petitioner has been relieved with the intention to accommodate another person, which clearly shows that there is no genuine administrative reason for posting the petitioner on deputation. Therefore, an inference can be drawn that there could have been some *mala fide* intention on the part of the respondents.

7. Under normal circumstances, the jurisdiction of the Courts to interfere in the orders of transfer is very very limited, unless such transfers are tainted with *mala fide* or *bias*, the Courts do not interfere in the transfer orders. The element of transfer is concomitant to administration and therefore, normally, Courts do not interfere in the discretion exercised by the authorities concerned, but when such discretion is tainted with *bias* or *mala fide*, naturally, the Courts have to intervene to correct the mistake.

8. In the case of State of Madhya Pradesh and others vs. S.S.Kourav and others, reported in 1995 (3) SCC 270, the Hon'ble Supreme Court has held that even though it is for the administration to take appropriate decision, if the transfer is made on account of malafides or by extraneous consideration without any factual background foundation, then the transfer is vitiated. In this case also, the transfer / deputation is not on administrative ground, but on account of some extraneous consideration. Therefore, the impugned order is liable to be set



9. In the result, this Writ Petition is allowed and the impugned order dated 22.11.2016 is set aside. The 2nd respondent is directed to accommodate the petitioner in the original place of posting at Kuchanur forthwith against the vacancy, if any. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar()

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Sub Assistant Registrar

To:

1. The Deputy Director of Health Services,
Theni District.
2. The Block Medical Officer,
Government Primary Health Centre,
Oodaipatti, Theni District.

+One cc to Mr.R.Venkateswaran, Advocate, SR.No.781

+One cc to The Special Government Pleader , SR.No.1152

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RL/5C/3P/SKN/SARI/12.1.2017

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