

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.6538 of 2018

Dr.Anand A.Nesamani

.. Petitioner

-vs-

1. The Principal Health Secretary to the Government
Department of Health & Family Welfare
Secretariat
Fort St.George
Chennai 600 009
2. The Director of Medical Education
Directorate of Medical Education
Kilpauk
Chennai 600 010
3. The Director of Medical & Rural Health Services
DMS Complex, Teynampet
Chennai 600 006
4. The Joint Director of Health Services
Kancheepuram
Kancheepuram District
5. The Superintendent
The Government Royapettah Hospital
Royapettah
Chennai 600 014
6. The Medical Officer in charge
The Government Hospital
Saidapet
Chennai 600 015
7. Dr.M.Subbulakshmi .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the order of direction to relieve the petitioner from the Government Dispensary, Tod Hunter Nagar, Saidapet, Chennai 600 015 vide Na.Ka.No.3472/P&D/2016 dated 06.07.2017 passed by the fourth

respondent viz., the Joint Director of Health Services, Kancheepuram, Kancheepuram District and to quash the same and to direct the fifth respondent to permit the petitioner to join duty in the Government Dispensary, Thodhunter Nagar, Saidapet, Chennai 600 015.

For Petitioner :: Mr.R.Manivannan

For Respondents :: Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R1 to 6

ORDER

This writ petition has been filed challenging the correctness of the relieving order dated 6.7.2017, which was communicated on 12.7.2017, passed by the fourth respondent relieving the petitioner from the Tod Hunter Nagar Dispensary, Saidapet and directing him to join duty at the Government Hospital, Saidapet.

2. Learned counsel for the petitioner, assailing the impugned order, submitted that the Joint Director of Health Services, Kancheepuram has no authority to pass the impugned order and moreover the earlier order dated 5.5.2017 transferring the petitioner from the Tod Hunter Nagar Dispensary to the Government Hospital at Saidapet has not been served upon him. Referring to G.O.Ms.No.55, Health and Family Welfare (E1) Department dated 27.2.2015, he submitted that there is a ban order against the Director of Medical Education not to transfer any staff of the transferred hospitals to the Director of Medical and Rural Health Services side against their wish and if any Medical Officer want to move to the Director of Medical and Rural Health Services side, he/she should give it in writing to the Director of Medical and Rural Health Services and the Director of Medical and Rural Health Services should consider their request on priority and merit.

3. But this Court is neither inclined to entertain the writ petition nor find any merit in the said submissions for the following three reasons. Firstly, the petitioner was already transferred by an order dated 18.11.2016 passed by the fourth respondent directing him to report for duty at the Government Hospital, Saidapet. After finding that the petitioner had not joined at the transferred place, by the order dated 5.5.2017, the Director and Superintendent, Government Royapettah Hospital was once again requested to direct the petitioner to join at the Government Hospital, Saidapet. Even thereafter, the petitioner did not join in the transferred place. Therefore, by the impugned order, he has been relieved from the Tod Hunter

Dispensary, Saidapet to join at the Government Hospital, Saidapet. Admittedly, the earlier orders of transfer dated 18.11.2016 and 5.5.2017 have not been questioned till date by the petitioner. Secondly, the relieving order alone has been challenged, which is only a consequential order passed by the fourth respondent. A perusal of the impugned order also shows that the petitioner being a Medical Officer, oblivious of his duties, has not even joined duty for quite a long time. Therefore, he has been relieved to join at the Government Hospital, Saidapet. As mentioned above, the earlier orders have not been questioned. Having chosen not to challenge the correctness of the original transfer orders dated 18.11.2016 and 5.5.2017, the petitioner cannot move this writ petition challenging only the consequential relieving order. This apart, it is a well settled legal position that the transfer is not only an incident of service, but also a condition of service. I could also see that the petitioner, being a Medical Officer, has been remaining out of duty for the reasons best known to him for quite a long time. Therefore, the fourth respondent, seeing the conduct of the petitioner, has passed the impugned order. Last but not the least, when the relieving order was issued eight months ago, it is not known how the petitioner can come to this Court with a huge delay of eight months. Hence, the writ petition is dismissed. Consequently, W.M.P.Nos.8130 to 8134 of 2018 are also dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Principal Health Secretary to the Government
Department of Health & Family Welfare
Secretariat
Fort St.George
Chennai 600 009
2. The Director of Medical Education
Directorate of Medical Education
Kilpauk
Chennai 600 010

3. The Director of Medical & Rural Health Services
DMS Complex, Teynampet
Chennai 600 006

4. The Joint Director of Health Services
Kancheepuram
Kancheepuram District

5. The Superintendent
The Government Royapettah Hospital
Royapettah
Chennai 600 014

6. The Medical Officer in charge
The Government Hospital
Saidapet
Chennai 600 015

+1cc to Mr.R.Manivannan, Advocate Sr.No.21617
+1cc to Government Pleader Sr.No.22832

AD(CO)
sm:18.5.2018

W.P.No.6538 of 2018



WEB COPY