

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11-06-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.10406 of 2015

And

M.P.Nos.2 of and 3 of 2015

K.Ponmudi

... Petitioner

Versus

1.The Director of Medical Education,
Kilpauk,
Chennai-600 010.

2.The Dean,
Government Villupuram Medical College
Hospital,
Villupuram.

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of a Certiorari, calling for the records of the respondents in vide proceedings in Ref.No.19312/E4/3/2015 passed by the first respondent and Ref.No.1653/E5/2015 dated 31.3.2015 passed by the second respondent and quash the same.

For Petitioner : Ms.Lesi Saravanan

For Respondents : Ms.P.Kavitha,
Government Advocate.

ORDER

The order of transfer issued by the first respondent in proceedings dated 24.3.2015 and the consequential relieving order passed by the second respondent in proceedings dated 31.3.2015 are under challenge in this writ petition.

2. The writ petitioner is serving as a Sanitary Worker in the Medical Department.

3. The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner is a differently abled person and assessed 70% disability by the Medical Board and therefore, he must be given a place of his choice in and around in the very same District. Further, it is contended that there is no administrative reason as such stated in the impugned order. The administrative reason cited is false and incorrect.

4. The learned counsel for the petitioner further contended that the writ petitioner, being a differently abled person, ought to have been accommodated in anyone of the nearby places. Contrarily, he had been transferred from Villupuram to Chennai. Thus, it would be difficult for the writ petitioner to serve at Chennai. Further, the writ petitioner, being a Sanitary Worker, ought not to have been transferred to a far-off place.

5. The learned Government Advocate, appearing on behalf of the respondents, opposed the contentions of the learned counsel for the writ petitioner, by stating that the writ petitioner was transferred on account of the administrative reasons. The writ petitioner had misused his position as a differently abled person and was in the habit of frequently sending false complaints against the Superior Officers in Villupuram. It is further contended that all the complaints sent by the writ petitioner had been properly enquired into by the Officials and nothing was found true. The complaints sent by the writ petitioner against the Superior Officials are false. Such complaints are frequently sent by the writ petitioner in order to threaten the Higher Officials and to achieve his goals. Thus, the Head of the Department, namely, The Director of Medical Education, had no option but to transfer the writ petitioner from Villupuram to Chennai.

6. In paragraph-7 of the counter-affidavit filed by the respondents 1 and 2, it is stated as under:-

"7. With regard to para-6 of the affidavit, I humbly submit that relieving order was issued to the petitioner on 31.3.2015, based on the transfer order received from the first respondent. He denied to receive the both transfer and relieving orders and hence, they were sent to the residential address of the petitioner through RPAD. He submitted a representation on 1.4.2015 to this Office for the cancellation of the transfer orders. For which, he has been replied that the transfer

orders was issued by the Director of Medical Education, Chennai-10 which cannot be cancelled by this Office.

A. With regards to the grounds, No."a, c to d", I humbly submit that the transfer order was issued to the petitioner, based on the irregular activities and making of uninterrupted inconvenience and troubles to the administrations by the petitioner and not for this involvement in union and not on wreck vendetta.

B. With regard to ground "b", it is submitted that, there is one institution in each District functioning under the control of the Director of Medical Education, Chennai-10. If any one has to be transferred from any institution, which happens to be a District transfer. There is no possibility of transfer within the District.

Further, it is submitted that even though the guidelines issued in G.O.Ms.No.10 dated 7.1.1994 for effecting transfers of Government Servants and which do not apply to Group "D" posts, the Government in their letter (MS) No.92/S/09, dated 22.7.2009 of the P&AR(S) Department, have reissued the directions on effecting transfer of physically handicapped Government Servants, as follows:-

Physically challenged Government Servants in all Groups vide A,B,C and D shall be posted near to their native places wherever possible.

The above concession may be considered subject to administrative constraints."

7. This Court is of an opinion that transfer is an incidental to service, more-so a condition of service. Transfer is not a punishment. Being a condition of service, a Government employee transferred from one place to another place has to work in the interest of public and in the interest of administration. No writ against a transfer can be entertained in a routine manner. A writ against an order of transfer can be entertained if the order of transfer is issued by an incompetent authority

having no jurisdiction or if an allegation of mala fides are raised or if the same is in violation of statutory rules in force. Even in case of raising an allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained against an order of administrative transfer. The judicial review against an order of transfer is limited and the Constitutional Courts cannot interfere into the day-to-day administration of the State or the Union of India. Interference in the day-to-day administration will not only paralise the public administration but will create a chaos in the public administration. It is the prerogative of the public authority to appoint a public servant in a particular place or in a post. The Constitutional Courts cannot have any say on such transfers in the absence of any clinching evidence to show that such order of transfer was issued on extraneous considerations. Thus, the judicial review in this regard ought to be exercised cautiously.

8. In the present case on hand, the files regarding the administrative transfer of the writ petitioner has been produced by Mr.K.Anandha Jothy, Administrative Officer, Government Villupuram Medical College Hospital, Villupuram. On a perusal of the entire files, it is found that the writ petitioner is in the habit of writing frequent complaints against the Officers and other Superior Officials. However, the Department had conducted an enquiry into the complaints. Even the petitioner had been enquired by the Officials concerned, but none of the allegations are established.

9. It was found that the writ petitioner is a trouble-maker and frequently causing inconvenience to the public administration by writing such false complaints against the Superior Officials. Thus, the Director of Medical Education, who is none other than the Head of the Department, had taken a decision to transfer the writ petitioner from Villupuram Medical College Hospital, Villupuram to Rajiv Gandhi Government General Hospital, Chennai. The decision was taken in order to avoid any further inconvenience to the public administration. Thus, the administrative reason, cited in the order impugned, is very much sustained by the respondents by producing the files before this Court.

10. The writ petitioner, being a public servant, is duty bound to serve in the interest of public. Place or post can never be claimed as a matter of choice by the Government employees. Undoubtedly, the writ petitioner, being a differently abled person, can claim certain leniency and benefits, however, such benefits are to be granted without affecting the rights of

all other employees.

11. This apart, it is not necessary that a differently abled person should be accommodated in the nearby places for a continuous period. Allowing an employee to serve in a same place for a longer period is not also desirable for the efficient public administration. Thus, the writ petitioner cannot always avoid an order of administrative transfers. Nor he can claim the benefits of working in a same place on the ground that he is differently abled.

12. This Court is of the firm opinion that differently abled persons are no way lesser than the other employees. They are equally potential to serve in the interest of public and they need not seek any misplaced sympathy or otherwise. The genuine grievance, if any exist, to any differently abled persons, then they are at liberty to approach the Higher Officials for the purpose of redressing their grievances. Contrarily, they cannot file a writ petition and seek the sympathy of this Court, more-so in the matter of administrative transfer. Such personal grievances now pleaded before this Court need not be considered in view of the fact that the authorities competent alone can consider such personal grievances and while taking decisions, they have to adhere to the rules and in the interest of public administration.

13. This being the principles to be followed, this Court is of an opinion that there is no infirmity as such in respect of the order of transfer issued against the writ petitioner and the writ petitioner has not established any entertainable ground for the purpose of interfering with the order impugned.

14. Thus, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

Svn

To

1.The Director of Medical Education,
Kilpauk,
Chennai-600 010.

2.The Dean,
Government Villupuram Medical College
Hospital,
Villupuram.

+1cc to Mr.Lesi Saravanan, Advocate SR.No.36292

+1cc to Government Pleader SR.No.37525 (26/06/2018)

W.P.No.10406 of 2015

GN(18/06/2018)



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