

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 20840 of 2018
and

W.M.P. No. 24459 of 2018

1. Union of India,
Rep. By the Chairman & DGOF,
Ordnance Factory Board, M of D,
Kolkatta.
 2. The General Manager,
Engine Factory Avadi (EFA),
Avadi, Chennai 600 054.
 3. The General Manager,
Cordite Factory,
Aruvankadu, The Nilgiris 643 202
 4. The General Manager,
Ordnance Factory Khamaria,
Jabalpur, Madhya Pradesh
-Petitioners

Vs.

1. Dr. R. Tamil Sundar.
 2. The Central Administrative Tribunal,
Rep. By its Registrar
Madras Bench,
High Court Buildings,
Chennai - 600 104
- ...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records of the 2nd respondent dated 17.07.2018 made in O.A. No. 310/00800/2017 and quash the same.

For Petitioners: Mr. G. Rajagopalan,
Additional Solicitor General
assisted by Mr. Jeya Ganeshan

For Respondents: Dr. R. Tamil sundar, Party-in-person
(1st respondent)

R2 - Tribunal

O R D E R
(Order of the Court was made by M.M.SUNDRESH, J.)

Heard the learned Additional Solicitor General appearing for the petitioners. On the last two occasions, we have heard the counsel appearing for the first respondent. The first counsel reported that a change of vakalat has been given. Accordingly, the new counsel came and argued the matter. After giving a full hearing, we informed the counsel appearing on behalf of the first respondent that we are inclined to allow the writ petition and as to whether the first respondent is willing to accept the alternative proposal made by the learned Additional Solicitor General on our request to go to Aravankadu. At that point of time, the matter stood adjourned. Now, the first respondent is appearing in-person. Therefore, to show fairness to him, we once again heard him at length.

2. The first respondent is a Doctor working with the petitioners. The Transfer Policy governing the employees stipulates that the maximum tenure shall be five years. We appositely refer the transfer policy dated 07.03.2002 :-

"Tenure:

5. The maximum tenure at a unit/station for all officers of the IOFHS shall be 5 years, except MO-in-Charge of the Hospital. The MO-in-Charge, being a sensitive post, the maximum tenure shall be restricted to three years in a unit Hospital and five years at a station."

3. Thus, the transfer policy speaks of five years tenure as a maximum. During the interregnum the first respondent has even completed five years of tenure.

4. An Original Application was filed by him when a transfer was effected from Avadi to Aravankadu. That was put to challenge in O.A.No. 101 of 2017. The following portion of the order passed by the Tribunal is extracted hereunder:-

"Though the Tribunal is aware of the limitation in interfering with the transfer order, considering the fact that the applicant is the caretaker of his aged mother who is continuously taking medication for the breast cancer surgery underwent by her during 2015 and the disabled daughter and also his representation has not been answered, we are of the view, suffice is to direct the respondents to consider his representation dated 18.01.2017 in letter and spirit and pass an appropriate order in accordance with law within a period of one month from the date of receipt of a copy of this order.

6. Till the disposal of the said representation, status quo in respect of the applicant alone against the impugned order dated 16.01.2017 is maintained"

5. Thereafter, a detailed order was passed on 17.03.2017, the following is the operative portion:

"In view of the above and after due consideration of the issues raised by the MO, the order of transfer to CFA in respect of the Medical Officer issued vide OFB Order dated 16.01.2017 is hereby not being given effect to by the Competent Authority at OFB. The place of posting will be reviewed in due course by the Transfer Committee as per laid down policy and till such time as such exercise is concluding and decision regarding place of posting is arrived at the Medical Officer will continue to discharge his duties at EFA."

6. Accordingly, he was transferred to Ordnance Factory, Jabalpur. He once again challenged it before the Tribunal by filing O.A.No.701 of 2017. At the admission stage, the aforesaid application was disposed of with the following directions:-

"Keeping in view of the limited relief sought, without going into the substantive merits of the case, we deem it appropriate to direct the respondents to consider the representation dated 21.04.2017 of the applicant and pass a reasoned and speaking order within a period of six weeks from the date of receipt of a copy of this Order. However, considering the submissions made by the learned counsel for the applicant, the respondents are directed to maintain status quo of the impugned order in respect of the applicant till the disposal of the OA." (later amended through Corrigendum dated 16.05.17 as till the disposal of the representation)."

7. Once again a detailed order was passed which was again put to challenge. This time, the Tribunal passed an order stating that the first respondent being a whistle-blower the order of the transfer is punitive in nature. It has been further held that there is a vacancy available and there is no administrative exigency for transfer. Accordingly, the application was allowed with costs. Challenging the same, the present writ petition has been filed.

8. Learned Additional Solicitor General appearing for the petitioners would submit that detailed orders have been passed rejecting all the contentions raised by the first respondent. Though, it was stated that his mother was sick, she is no more. The disability of his daughter cannot be a ground, since the certificate shows that it was obtained when she was very young and now she is pursuing her medicine course by staying in the hostel. The maximum period of 5 years is also over. The complaints made by the first respondent have been inquired and intimated to him as not correct. This was done long time back. There is no malice in law or in fact. The other medical officer whom the first respondent mentioned was actually transferred and thereafter based on contingency reposted after some time. Since the transfer is a condition of service, the order of the Tribunal requires interference.

9. The respondent who appeared in-person submitted that action was taken only because he has brought forth the irregularities committed in procuring the medicines. He has got only few years to go and his daughter requires his assistance. Similarly placed persons have not been transferred to far off places. On a query raised by us, the first respondent stated that he is not willing to go to Aruvankadu and would rather take the order from the Court.

10. We are of the view that Tribunal has misdirected itself. Admittedly, the five year period is over. The provision recorded above speaks of five years as maximum period. The first respondent was initially transferred to Avadi and thereafter to Jabalpur. He has been given a detailed reply making allegations. In any case, there is no allegation made against the authority who passed the impugned order. Such an allegation even assuming to be true, has not been proved. No person by name has been arrayed by him. Thus, we do find any malice in law or in fact. In fact, all his complaints were looked into and detailed replies were given. The first respondent did not even make any mention about mere facts in his application.

11. The daughter of the first respondent is admittedly pursuing studies in the M.B.B.S. Course and is residing in the hostel. All the submissions raised by the first respondent have been considered at length while passing the order of the transfer in compliance of the order of the Tribunal. Though the Tribunal has observed that the first respondent is approaching the age of superannuation, the fact remains that it has been extended to 65 years. The other officer who has been referred has been transferred on a different footing. The first respondent has raised certain issues which has not been raised in his representation before the authority.

12. Thus, looking from any perspective we do not find any reason to sustain the order of the Tribunal. Whether there exists any administrative ground or not, is not a matter for this Court to consider. The first respondent is not even willing to accept the alternative suggestion made by this Court, which has been fairly accepted by the petitioners, through the submission made by learned Additional Solicitor General. We may also note that the first respondent discarded his counsels on two occasions presumably on the ground that he did not want to take the suggestion, though we are of the view that it is for the first respondent to decide. However he is not willing to accept any suggestion. Therefore, we observe so, notwithstanding the findings rendered by us on merit. Thus, the order of the Tribunal is set aside and consequently, the original application stands dismissed.

This writ petition stands disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

1. The Chairman and DGOF,
Union of India,
Ordnance Factory Board, M of D,
Kolkatta.
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Madhya Pradesh.

5.The Registrar,
Central Administrative Tribunal,
Madras Bench,
High Court Building,
Chennai.

+1cc to Mr.K.S.Jeyaganeshan, Advocate, S.R.No.87374
+1cc to Mr.R.Tamil Sundar , Party-in-Person, S.R.No.88521

W.P. Nos. 20840 of 2018

NMI (CO)

rrs 25/01/2019



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