

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.04.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8971 of 2018

and

W.M.P.No.10822 of 2018

D.Martin Rosary

... Petitioner

Vs.

1.The State of Tamil Nadu

Rep by the Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai-9.

2.The Director of Medical Education

Kilpauk, Chennai - 10.

3.The Director of Medical and Rural Health Services

Chennai - 6.

4.The Director and Superintendent

Institute of Non Communicable Diseases and
Government Royapettah Hospital
Chennai - 14.

5.Jayamani

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records relating to the order passed by the second respondent in office order No.5292/E5/1/2018 dated 06.04.2018, quash the same.

For Petitioner :

Mr.L.P.Maurya

For M/s.G.R.Associates

For Respondents:

Mrs.P.Rajalakshmi [For R1 to R4]

Additional Government Pleader

O R D E R

The order of transfer issued by the second respondent in proceedings dated 06.04.2018 is under challenge in this writ petition.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner was initially appointed as a Radiographer on 16.02.1989 and she was served as Radiographer from 20.02.1989 till 17.02.2016 at Government Peripheral Hospital, Anna Nagar. Thereafter, the petitioner was promoted and posted as Chief X-ray Technician at Government Sivagangai Medical College Hospital on 24.02.2016.

3.The writ petitioner had submitted a request application to consider her case to transfer to Chennai or in and around Chennai. Considering the request application of the writ petitioner, once again the writ petitioner was transferred from Government Sivagangai Medical College Hospital to Government Chengalpattu Medical College Hospital on 06.10.2016. Thereafter, again the writ petitioner had made a request to transfer within Chennai city on the ground that the writ petitioner has developed severe Arthritis and high blood pressure and since the petitioner was advised by the Doctor not to undertake long journey frequently. Thus, the writ petitioner requested for transfer from Government Chengalpattu Medical College Hospital to Government Royapetta Hospital in communication dated 28.12.2017. Considering the request of the writ petitioner the respondents had taken lenient view and issued a transfer order on 09.03.2018, posting the writ petitioner to Institute of Non Communicable Diseases and Government Royapettah Hospital, Chennai pursuant to a relieving order dated 15.03.2018.

4.Subsequently, 5th respondent was promoted as Chief X-ray Technician and posted at Cheyyar in February, 2018. Under these circumstances, the writ petitioner was once again transferred from Government Royapettah Hospital, Chennai to Chengalpattu Medical College, Chengalpattu in the existing vacancy in proceedings dated 06.04.2018. The grievances of the writ petitioner is that the officials / respondents have issued the impugned transfer order with an ulterior motive to accommodate the 5th respondent in the office of the writ petitioner at Government Royapettah Hospital, Chennai. Therefore, the order is motivated and the same is liable to be set aside.

5.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is fully qualified to work as Chief X-ray Technician at the Government Royapettah Hospital, Chennai and therefore, the respondents cannot transfer

her to Chengalpet within a short span of time and further, the writ petitioner is senior to 5th respondent and in order to accommodate the 5th respondent, the writ petitioner cannot be transferred to Chengalpet. In this regard, the learned counsel appearing for the writ petitioner relied upon the Government Order issued in G.O.(2D) No.131 Health and Family Welfare (A1) Department dated 20.11.2007 and the said G.O. provides procedures for counselling for transfer and promotion.

6.Pursuant to the directions of this court, the Directorate of Medical Education deputed Mr.Sharath Babu, Deputy Director of Medical Education from the office of the Directorate of Medical Education and produced the files in relation to the impugned transfer order.

7.On perusal of the files Dr. S.Saravanan, MD(RT), Professor of Radiation Oncology, Department of Radiation Oncology, Government Royapettah Hospital, Chennai - 600 014, sent a letter to the Directorate of Medical Education, Kilpauk, Chennai - 10 on 24.01.2018. In the subject itself it is categorically enumerated that "on a request to fill up the existing vacancies of THREE Radiotherapy Technologists (DRTT/Bsc Qualified) in the Radiotherapy Department of Government Royapettah Hospital /KMC and to shift one Radiographer from our Department of Radiotherapy."

8.The letter reads as follows:-

"We are running the department with 1) one Telecobalt machine, 2)one HDR Brachytherapy and 3) one CT simulator. We had four AERB qualified radiotherapy technologists in our department 3 years back at the time of commissioning of Brachytherapy and CT Simulator. But because of promotion of two qualified technologists namely 1)Mrs.Maragaret Technologists in our department at present leading to disruption of services of poor cancer patients because of the inadequacy. Since we are treating more than 100 patients per day amounting to more than 1000 cancer patients per year I request you to kindly fill up the two existing vacancies with two qualified radiotherapy technologists fulfilling the AERB norms i.e. qualification should be B.Sc. Radiotherapy (Three year Radiotherapy Technologists course) or DRTT, (Two year Radiotherapy Technologist course).

I also request you to kindly make necessary arrangements to post one Radiotherapy Technologist named MR.Suresh, CXRT from Thiruvallur Head Quarters Hospital on warfoot basis consequent on promotion of Mrs.Jayamani who got promoted as CXRT at Cheyyar Dist HQ Hospital in our Dept of Radiotherapy so as to comply

with AERB norms for requisite manpower and to prevent impending disciplinary action from AERB. Since Linear Accelerator project is also going to be implemented in our hospital in another three or four months I request you to give top most priority to create additional three posts through the proposal which is already in Dept. of Health and Family Welfare. Hence, I request you also to kindly make necessary arrangements to fill up the remaining three vacant existing posts of Radiotherapy Technologists to ensure smooth functioning of the department and to comply with AERB norms and for onward transmission to the Medical Recruitment Board."

9.The annexure to the letter Appedix-VII is enclosed, which speaks about the minimum personnel requirements for radiation oncology facility and the same is recruited. The Directorate of Medical Education submitted a brief history leading to the order of transfer issued in proceedings dated 06.04.2018 transferring the writ petitioner to Government Chengalpattu Medical Hospital. The facts are stated as based on the letter submitted by Dr.S.Saravanan, Professor of Radiation Oncology, Department of Radiation Oncology, Government Royapettah Hospital. The actions were taken to fill up the posts with qualified persons for the efficient functioning of the Government Hospital. This apart, dealing with such expert treatment, qualified persons are to be accommodated, more specifically, in specialised Medical centres like, the Government Royapettah Hospital. In order to make necessary arrangement to comply with AERB norms for requisite manpower and to prevent impending Disciplinary action of AERB necessary arrangement may be made to post a Radiotherapy Technologist since the Regional Cancer Centre is functioning in the Institution.

10.It is further stated that Dr.S.Saravanan, Professor of Radiation Oncology, Institute of Non-Communicable Diseases and Government Royapettah Hospital, Chennai that Tmt.D.Marin Rosay Chief X ray Technician does not possess the "Radiation Safety Certification Course" conducted by AERB which is needed for obtaining ë-lora" license for operating the Radiotherapy equipment namely, "Cobalt 60" available at Institute of Non-Communicable Diseases and Government Royapettah Hospital, Chennai which will affect the functioning of Regional Cancer Centre, attached to the Institution.

11.Under these circumstances, the administration had taken a decision to post a qualified personnel in cobalt Therapy unit as per the norms of AERB. Deficiency in man power according to the AERB will lead to the closure of Cobalt Therapy Unit which will affect the health care of Cancer patients.

12.Considering these administrative requirements for the efficient functioning of the Cancer centre the writ petitioner Tmt.D.Martin Rosary , Chief X Ray Technician, Institute of Non-Communicable Diseases and Government Royapettah Hospital, was transferred to Chengalpattu Medical College Hospital, Chengalpattu in the existing vacancy in which the Cobalt Therapy Unit was not installed.

13.Further it is contended that 5th respondent Tmt.P.Jayamani, Chief X-ray Technician, Government Headquarters Hospital, Cheyyar, Thiruvannamalai the only CXRT who was undergone "Radiation Safety Certification Course" for regularization of Radiotherapy Technologists -2015" conducted by AERB during April 2015 and the Radiotherapy equipment namely, "Cobalt 60" available at Institute of Non-Communicable Diseases and Government Royapettah Hospital, Chennai has been supported by "e-lora" licence held by her while she was working as Radiographer at Institute of Non-communicable Diseases and Government Royapettah Hospital, Chennai (i.e.)before her promotion as CXRT. Thus, 5th respondent Tmt.P.Jayamani, Chief X-ray Technician, Government Headquarters Hospital, Cheyyar, Thiruvannamalai was transferred and posted to Institute of Non-communicable Diseases and Government Royapettah Hospital in the existing vacancy as Chief X-ray Technician in the impugned transfer order dated 06.04.2018.

14.On a perusal of the entire file in relation to the facts and circumstances in the present case on hand, this court is of an opinion that there is absolutely no infirmity as such in respect of the order issued by the respondents. Undoubtedly, she is transferred from Chennai to Chengalpattu within a short span of time. However, such decision was taken on account of the administrative exigency and in order to post a most qualified person for the purpose of dealing with certain specialised equipments already installed and in operation in Government Royapettah Hospital, Chennai. Thus, the arguments advanced by the learned counsel for the writ petitioner that the writ petitioner was transferred in order to accommodate 5th respondent is incorrect and not supported by any documents or instances.

15.Transfer is an incidental to service, more so, a condition of service. A writ petition challenging the order of transfer need not be entertained in a routine manner and only on exceptional circumstances, an order of transfer may be quashed. The place of work and the post can never be claimed as a matter of right by an employee and it is the duty of the Competent Authority to implement the Government schemes and policies by posting the employees in a right manner.

16. This being the principle and the transfer being incidental to service, this Court is not inclined to interfere with the order of transfer impugned in this writ petition. The powers of judicial review on transfers are certainly limited. Intermediate intervention has to be exercised cautiously and cannot be done in a routine manner, more specifically in the matter of administrative transfers.

17. It is for the authorities to follow the guidelines issued by the Government in this regard and it is not for the Courts to interfere in the matters of transfer unless an order of transfer is issued without jurisdiction or with a malafide intention by the Authority. Even, in the case of raising the plea of malafides, the said person has to be impleaded as a party in his personal capacity. In the absence of these grounds, no writ petition can be entertained by this Court, under Article 226 of the Constitution of India.

18. In the present case on hand, the learned counsel for the writ petitioner raised the grounds that the impugned transfer order has been passed in order to accommodate 5th respondent in the place of the writ petitioner.

19. However, on a perusal of the files in entirety this court is of an opinion that such an allegation is not substantiated and not supported by any other documents or instances. Therefore, the arguments as advanced by the learned counsel for the writ petitioner deserves an outright rejection. Another ground raised by the writ petitioner is that the seniority to be followed as per G.O.(2D) No.131, Health and Family Welfare (A1) Department, dated 20.11.2007, this court is of an opinion that the said Government order is the procedures to be followed at the time of conducting counselling for transfer and promotion. At the time of conducting process of counselling for transfer and promotion, no doubt the employees to be given option based on their seniority. That does not mean that every transfer should be issued based on the seniority of the employees as such mooted out by the learned counsel for the writ petitioner. The transfer being an incidental to service, question of seniority would not arise at all. Seniority would be considered only for the purpose of grant of promotion not for the purpose of administrative transfer. A public servant more specifically a technically qualified person that of the writ petitioner and the fifth respondent, they must work wherever they are posted since they are performing noble duties more specifically to control the evil disease of cancer. They must be more dedicated and serve with utmost devotion. Therefore, the very stand and the contention raised on behalf of the writ petitioner are untenable and the writ petitioner has failed to establish her case in respect of transfer. Further, the impugned transfer order was passed purely on account of certain administrative exigency in

order to accommodate more qualified person for the purpose of operating the advanced machinery installed in Government Royapettah Hospital, Chennai and therefore, the order of transfer issued against the writ petitioner is on purely administrative grounds.

20. This court is of an opinion that there is absolutely no infirmity as such in respect of the order issued by the respondents. Accordingly, this writ petition is devoid of merits and dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The State of Tamil Nadu
Rep by the Secretary to Government
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- 3.The Director of Medical and Rural Health Services
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- 4.The Director and Superintendent
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+1 cc to Govt Pleader sr 29177
+1 cc to Mr.G.R.Associates Advocate sr 28799

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