



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.[MD].No.722 of 2018

and

C.M.P. (MD).No.4213 of 2018

G.Mariamammal

: Appellant/3rd Party

Vs.

1.The Director,

Adi-Dravidar Welfare Department,

Kamaraj Salai, Chepauk,

Chennai 600 005.

: Respondent/ Respondent

2.K.Saradha,

W/o.Late Rajasekaran,

Government Adi-Dravidar Welfare Girls Hostel,

Neeravi, Ramanathapuram District.

: Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 26.03.2018 made in W.P.(MD).No.5718 of 2018, on the file of this Court.

Prayer in WP(MD). 5718/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondent in his proceedings Na.Ka.No.02/24243/2017 dated 07.03.2018 and quash the same as illegal and consequently directing the respondent to consider the representation dated 11.01.2018 afresh in a fair and proper manner and restore the petitioner as Graduate Warden, Government Adi Dravidar Welfare Girls Hostel, Kamudhi, Ramnad District, within a time frame fixed by this Hon'ble Court.

For Appellant

: Mr.R.Anand

For respondent No.1

: Mr.N.Shanmugaselvam,

Additional Government Pleader

For Respondent No.2

: Mr.B.Saravanan

**JUDGMENT**

[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

This is the third round of litigation, which emanates from the order of transfer. The second respondent herein, on the first instance, filed W.P.No.30003 of 2017, challenging the order of transfer dated 03.11.2017, passed by the first respondent herein. The said order of transfer was passed both on request made by the appellant as well as on administrative grounds. The second respondent has been transferred on administrative grounds having worked there for more than six years.

2. The said Writ Petition was actually filed before the Principal Seat. One of the contentions raised by the learned counsel appearing for the second respondent was with respect to the ailment suffered by the second respondent. After hearing the family doctor of the second respondent, the following order was passed:-

"2. Today, when the matter is taken up for hearing, pursuant to the order passed by this Court on 23.11.2017, Dr.N.Sundaram, Chief Civil Surgeon (Retd), Kamuthi appeared before this Court.

3. Learned counsel appearing for 3rd respondent, namely, Dr.N.Sundaram submitted that he is the family doctor of petitioner for nearly 4 years and he knows the treatment undertaken by the petitioner for left breast cancer in the year 2005 in Madurai Institute of Oncology, Madurai and she has been taking treatment from Dr.B.K.C.Mohan Prasad, a Senior Consultant Oncologist, Madurai. Adding further, he stated that the 3rd respondent, has not prescribed any medicine for treatment of cancer, but, treated her on several occasions only in respect of general health ailments like fever, stomach ache, cough etc., He has only prescribed medicines and also treated the petitioner in compliance with the Rules framed by the Medical Council of India and only based on the other medical documents produced by her, he has given a certificate that she is a patient suffering from cancer and the said certificate was issued in good faith and there is no bad intention.

4. It is at this stage, Mr.M.Ravi, learned counsel appearing for petitioner submitted that he has been advised to withdraw the writ petition, since the petitioner is not prosecuting the writ petition. Accordingly, he sought permission to withdraw the same with liberty to pursue her representation with the Department



Level.

5. Heard the learned counsel for the petitioner and the learned respective counsel appearing for the respondents and perused the documents available on record.

6. This Court, taking note of the submission made by learned counsel for the petitioner and considering the affidavit filed by 3rd respondent namely, Dr.N.Sundaram, Chief Civil Surgeon (Rtd), Kamuthi, Ramnad District herein closes the Writ Petition, as nothing survives for adjudication".

3. Thus, from the aforesaid order, we could see that no liberty has been granted by the learned Single Judge. The second respondent, thereafter, made a representation and on account of non-consideration of the same, she filed another W.P.(MD).No.3434 of 2018 before this Court. The said Writ Petition was disposed of by order dated 20.02.2018, by the learned Single Judge, directing the official respondent to consider three factors. However, by the impugned order, once again, her request was rejected. Once again, the second respondent challenged the said order, by way of W.P.(MD). No.5718 of 2018. Admittedly, in the said Writ Petition, the appellant herein was not as a party, though she was made as a party on the first instance before the Principal Bench in W.P.No.30003 of 2017. The learned Single Judge, by order dated 26.03.2018, having found that the earlier direction was not carried out by the official respondent, was pleased to set aside the order impugned. Challenging the same, the present Writ Appeal has been filed.

4. Mr.R.Anand, learned counsel appearing for the appellant, would submit that the appellant was not heard before passing the order. Admittedly, the order impugned has got civil consequences. The ailment suffered by the second respondent was in the year 2005. The first Writ Petition filed by the second respondent herein before the Principal Seat was withdrawn by her, after knowing that no order could be obtained. This fact was not taken note of by the learned Single Judge on the second occasion. The second respondent was working in the same place for more than six years. While the transfer in favour of the appellant is on the ground of request made by her, the second respondent was transferred on administrative reason, having worked in the same place for more than six years. Therefore, the order passed by the learned Single Judge requires interference.

5. Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the first respondent, would submit that it is a fact that the transfer order of the second respondent was passed on administrative ground, since she was working in the same place for more than six years. The distance between the transferred place and the place, in which she was working earlier, is only 20 kilometres. Thus, the Writ Appeal will have to be allowed.

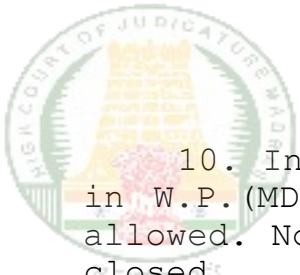


6. Mr.B.Saravanan, learned counsel appearing for the second respondent/writ petitioner would submit that it is a case, where the direction issued by the learned Single Judge was not complied with by the official respondent. The fact that the second respondent was suffering from cancer is not in dispute and hence, the order passed by the learned Single Judge needs no interference.

7. We have considered the above submissions and perused the materials available on record.

8. Admittedly, the order passed, on the first occasion, was not taken note of by the learned Single Judge on the second occasion, while passing the subsequent two orders. On a perusal of the transfer order dated 03.11.2017 would clearly show that it has been passed both on request as well as on administrative grounds. The request is with respect to the appellant and the administrative ground is with respect to the second respondent. Admittedly, the second respondent was working in the same place for more than six years. Therefore, she cannot, as a matter of right, claim that she should be allowed to work in the same place continuously. After all, being a government servant, an order of transfer is an incidental to service. The second respondent suffered ailment in the year 2005. Even there was no serious ailment thereafter. This has been taken note of by the learned Single Judge on the first instance, after seeing the affidavit filed by the family doctor of the second respondent. That is the reason why, the first Writ Petition was withdrawn by the second respondent. To be noted that no liberty has been granted by the Principal Seat while disposing of the Writ Petition. In fact, it has been stated that nothing survives for adjudication, in view of the statement given by the doctor. The subsequent impugned order, which is the subject matter of the present proceedings before the learned Single Judge and also before us, is nothing but a continuation of the earlier one. Hence, we are of the view that the challenge to the Writ Petition is not maintainable.

9. The learned Single Judge, with due respect, is not correct in allowing the Writ Petition, after fully knowing that the appellant was not impleaded as party respondent. The direction issued by the learned Single Judge cannot be implemented, without disturbing the appellant in the transferred place. In such view of the matter, the appellant ought to have been heard. To that extent, we are of the view that the order passed by the learned Single Judge attracts civil consequences. Once we hold that the order of transfer, insofar as the second respondent is concerned, is on administrative ground and she is not suffering from any serious ailment, coupled with the fact that the transferred place is only 20 kilometres away from the existing place, this Court cannot take the administrative role and allow the Writ Petition. After all, an order of transfer can only be interfered with, when there is malice and lack of jurisdiction, which are not available in the case on hand.



10. In such view of the matter, the order dated 26.03.2018 made in W.P.(MD).No.5718 of 2018, is set aside and the Writ Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Director,
Adi-Dravidar Welfare Department,
Kamaraj Salai, Chempauk,
Chennai 600 005.

+1CC to Mr.R.ANAND, Advocate, SR.No. 82308
+1CC to Mr.B.SARAVANAN, Advocate, SR.No.82407
+1CC to the Special Government Pleader SR.No. 83051

JUDGMENT MADE IN
W.A.[MD].No.722 of 2018
05.09.2018

NB

ES/SV/SAR 2/27.09.2018/5P/5C