



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P. (MD) No. 19593 of 2018

and

W.M.P. (MD) No. 17379 of 2018

D. Asir Selvaraj

.. Petitioner

Vs.

1. The Director of Public Health & Preventive Medicine,
DMS Compound,
Thenampet,
Chennai - 6.

2. The Chief Water Analyst,
Regional Public Health Water Analysis Laboratory,
Anna Nagar,
Tirunelveli - 11.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 1st respondent bearing Na.Ka.No.71093/Pa.THo.2/Iru.2/2017 dated 22.08.2018 and the consequent order passed by the 2nd respondent bearing Na.Ka.No.535/A3/2018 dated 06.09.2018 and to quash the same and consequently permit the petitioner to continue working as Junior Water Analyst under the 2nd respondent office.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.M.Pandiarajan

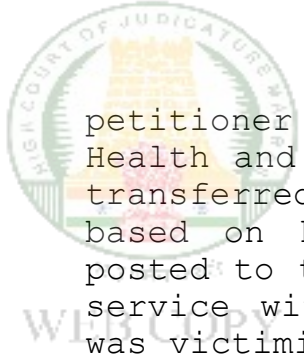
Additional Government Pleader

ORDER

This writ petition has been filed seeking a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in Na.Ka.No.71093/Pa.THo.2/Iru.2/2017 dated 22.08.2018 and the consequential order passed by the second respondent in Na.Ka.No.535/A3/2018 dated 06.09.2018 and to permit the petitioner to discharge his duty as Junior Water Analyst in the second respondent office.

<https://hcservices.ecourts.gov.in/hcservices/>

2. Learned Counsel for the petitioner would contend that the



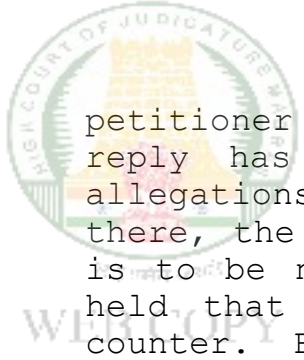
petitioner was appointed as Junior Assistant on 19.02.1993 in Public Health and Preventive Medicine Department and on 05.10.2010, he was transferred to the respondent Department as Junior Water Analyst, based on his qualification. Subsequently, on 20.02.2014, he was posted to the second respondent office and as such, he has rendered service without any blemish under the respondents. The petitioner was victimized on account of some problems created by one Ganapathy, who is the Superintendent of the office and the petitioner is in no way responsible for the same. On account of the strictness shown by the petitioner in work place, he has been targeted and was transferred from Tirunelveli to Coimbatore by order dated 22.08.2018 and a relieving order dated 06.09.2018 was also served on him. Challenging his transfer, the present writ petition has been filed. According to the petitioner, the impugned order has been passed with malafide intention and victimized for no fault of him. Therefore, the transfer order needs to be interfered with.

3. Learned Additional Government Pleader appearing for the respondents, on instructions, submitted that the transfer has been effected on administrative ground. The learned Additional Government Pleader has also filed a counter affidavit raising various averments as to the behavior of the petitioner towards other staff members, including his misbehavior towards women staff members. In the counter affidavit, it is further stated that the petitioner was working in a transferable post and that he has rendered service in the present station for more than four years and that the petitioner will have to be transferred. It is also stated that for the allegations levelled against the petitioner, he can be suspended and transferred to a non-sensitive post, but, without doing so, he has been simply transferred to Coimbatore from Tirunelveli. Therefore, the learned Additional Government Pleader prayed for dismissing the present writ petition.

4. In reply to the above submission, the learned Counsel for the petitioner has stated that the averments mentioned in the counter would reveal that there is a malafide intention and that when the transfer order is punitive in nature, casting stigma, it has to be interfered with. When the impugned order specifically states that the transfer was purely on administrative ground, in the counter affidavit, there are several allegations made against the petitioner and therefore, an inference could be easily drawn that there is no administrative ground to transfer the petitioner.

5. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6. The petitioner is now working as Junior Water Analyst in Tirunelveli. He has been issued with an order of transfer, dated 06.09.2018. A reading of the impugned order would clearly reveal that it is on administrative ground. It is no doubt true that several allegations that are said to have been committed by the



petitioner has been narrated in the counter affidavit, for which, a reply has also been furnished by the petitioner, denying the allegations. It is also not in dispute that when allegations are there, the transfer cannot be given effect to. At the same time, it is to be noted that the Hon'ble Supreme Court has time and again held that the impugned order cannot be improved by means of a counter. Even otherwise, the allegations levelled against the petitioner, viz., misbehavior with women staff members, in the counter affidavit, are serious in nature and cannot be simply brushed aside.

7. The Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India and another**, reported in **2015 (7) SCC 291**, has categorically held that instead of placing a person under suspension for the misconduct committed and unnecessarily paying subsistence allowance, the suspension order can be reviewed once in six months and if required, he can be transferred to a non-sensitive post.

8. A bare reading of the counter affidavit would unfold that there is no existence of cordial relationship between the petitioner and other staff members, which would affect the healthy running of the organization. Moreover, if the petitioner is allowed to continue in the same station, it would aggravate the present situation, thereby leading to unhealthy atmosphere, which is not at all good both for the petitioner and for the smooth conduct of the affairs of the organization. Therefore, this Court is of the view that not only in the interest of the organization, but also in the welfare of the petitioner, he shall not continue to work in the same place.

9. In view of the foregoing discussions, this Court is of the view that there is no error or illegality in the impugned order of transfer and therefore, this writ petition is dismissed, by confirming the impugned order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Director of Public Health & Preventive Medicine,
DMS Compound,

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Chennai - 6.



2. The Chief Water Analyst,
Regional Public Health Water Analysis Laboratory,
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Tirunelveli - 11.

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+ 1 CC TO Mr.S.C.HEROLD SINGH, ADVOCATE IN SR No. 86408
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 86759

GK

TE/SV/SAR-2 : 28/11/2018 : 4P/5C

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