

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :20.02.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.1480 of 2019
in
W.M.P.No.5407 of 2019

Dr.R.Srilatha

.. Petitioner

..vs..

1.The Secretary to Government,
Health Department,
Fort St.George,
Chennai - 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai.

3.The Dean,
Govt.Mohan Kumaramangalam Medical College,
Salem.

4.The Medical Council of India,
Sector - 8, Pocket - 14, Dwaraka,
New Delhi - 110 077.

5.Dr.P.Padmapriya

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records related to the order dated 04.01.2019 bearing No.6789/E3/1/2017 issued by the 2nd respondents and to quash the same stream line that is Physical Medicine & Rehabilitation Department in which she has been obtained the specialty.

For Petitioner : Mr.K.V.Dhanapalan
for M/s.T.Fenn Walter

For Respondents : Mr.A.N.Thambi durai
Special Government Pleader for R1 to R3

Mr.N.Joshi
for Mr.N.Manokaran for R5

O R D E R

Post or Place can never be claimed as a choice by the Public Servants. Public servants, more specifically, the Doctors who all are performing noble duties and responsibilities are bound to serve wherever they are posted in the interest of the Public at large. Right to life is now an integral part of Article 21 of the Constitution of India. The Doctors who performing the noble duty, cannot refuse to serve in the place and post provided by the Government in the interest of the Public Administration and in the interest of the Government Hospitals, which all are established for the purpose of providing treatment to the poor people of this Great Nation.

2. Transfer is an incidental to service, more so, a condition of service. The only rule to be followed is that while effecting the transfer and postings, the service benefits or the conditions are to be protected. The benefits

already guaranteed under the Service Rules cannot be taken away by effecting transfers to the public servants. However, transfer and postings on administrative ground cannot be interfered with by the High Courts in a routine manner. High Court cannot interfere with the routine administration of the State Departments, Organisations and Undertakings. In the event of any such interferences by the Constitutional Courts, smooth administration will certainly be affected and therefore, the High Courts must exercise restraint in interfering with such administrative transfers and the judicial review against the order of transfers are certainly limited.

3. An order of transfer can be interfered with, by the Constitutional Courts, only if the same is issued by an incompetent authority having no jurisdiction or competency or if an allegation of mala fides are raised or the same is in violation of the Statutory Rules in force. Even in case of an allegation of mala fides, the authority against whom such an allegation is raised, is to be impleaded as a party respondent in his personal capacity in the writ proceedings. No writ proceedings can be entertained against the administrative transfers.

4. Now let us consider the facts, in respect of the present case on hand:

The impugned order dated 04.01.2019, states that on administrative grounds Dr.R.Srilatha (writ petitioner), Assistant Professor of Physical Medicine, Government Mohan

Kumaramangalam Medical College, Salem, is transferred and posted as Senior Resident / Assistant Professor of Radio Diagnosis Department, Government Mohan Kumaramangalam Medical College, Salem.

5. The learned counsel for the petitioner mainly raised a ground that the transfer will affect the promotional opportunities of the writ petitioner and the writ petitioner is already a P.G. Diploma Holder serving in the Department of Physical Medicine and she is not qualified to serve as the Assistant Professor in the Department of Radio Diagnosis. Substantiating the said ground, the learned counsel for the petitioner states that the Medical Council of India itself clarified that the P.G.Diploma Holders or Physical Medicine cannot be posted in the Radio Diagnosis Department.

6. However, the learned counsel for the writ petitioner fairly admitted that first batch of Physical Medicine and Rehabilitation pass-outs are now joining in the Department of Physical Medicine and Rehabilitation. On account of this, the existing employees, who are already serving in Physical Medicine cannot be disturbed at all.

7. The learned counsel appearing on behalf of the impleaded respondent No.5 disputed the contentions by stating that, in the absence of the M.D. candidates in Physical Medicine and Rehabilitation, the P.G.Diploma Holders were allowed to continue, and soon after the completion of the M.D. degree in the specialized department, those candidates are inducted in the interest of the hospital as well as the public at large. Thus, there is no error on the part of the Competent Authorities in transferring the P.G.Diploma holders in the Department of Physical Medicine to Radio Diagnosis Department and inducting the P.G.holders in the department of Physical Medicine. The decision taken by the authorities are in consonance with the scheme of medical developments and therefore, there is no infirmity as such. This apart, the writ petitioner is posted within the same Medical College as well as at Salem, and therefore, the transfer and postings would not affect the service conditions of the writ petitioner.

8. The learned Special Government Pleader appearing on behalf of the respondents 1 to 3 also disputed the contentions raised on behalf of the writ petitioner by stating that the department has followed the norms and the guidelines issued by the Government in this regard. Whenever, more qualified and suitable candidates are available in the department it is duty mandatory on the part of the Government to provide specialized treatment to the patients, who all are attending the Hospital for treatment.

9. Thus, the 5th respondent who has already completed M.D. in Physical Medicine and Rehabilitation is accommodated in the Department of Physical and Medicine on administrative grounds. The writ petitioner is also accommodated in the very same Medical College Hospital at Salem in the Radio Diagnosis Department.

10. The writ petitioner is possessing MBBS with DPMR, therefore, they are to be considered as General Doctors and they have to assist the Head of the Department and the other Doctors, who all are possessing specialized master's degree in the particular field of medicine. Even in Physical Medicine Department, the writ petitioner was assisting the Head of the Department and therefore, the writ petitioner cannot raise any ground that her service conditions are violated and her promotional opportunities are denied. Promotional opportunities will be considered, whenever the process is undertaken in this regard, and as per the Rules in force.

11. The challenge has been made in the present writ petition against the order of transfer and posting, and the order of transfer and posting is issued on administrative grounds, in order to accommodate the P.G.degree holder in the Department of Physical Medicine, Government Mohan Kumaramangalam Medical College, Salem. The writ petitioner is transferred to Radio Diagnosis Department in the very same hospital. This would not cause any violation of service conditions and therefore, the writ petitioner cannot claim the transfer and posting, as a matter of right. As stated earlier, post or place can never be claimed as a matter of choice or right. The writ petitioner being a public servant as a Doctor enjoying a status in the society and by virtue of the status, she is bound to serve in the interest of public at large and with devotion to duty.

12. The Government also issued certain guidelines in Letter No.14097 / B1 / 2018 - 1, dated 07.05.2018 which reads as under:

I am directed to state that consequent to the amendment to the Medical Council of India Regulation dated June 8th 2017 in respect of Senior Resident Post in the teaching Medical Institutions and regarding the availability of more number of Post Graduate qualified Medical Officer. I am to request you to take immediate action on the following:

i. For the replacement of Diploma holder in the Senior Resident posts by the Post Graduate Degree holder below 40 years of age as per Medical Council of India norms and such Diploma holders may be

accommodated in the non-teaching posts in their respective institutions subject to availability of such posts (or) nearby institutions.

ii. Replace the Diploma holder in the speciality like Radio diagnosis, Forensic Medicine as and when the Post Graduate qualified in the respective specialities are available.

Iii. Conduct a special counselling for such Diploma holder for posting in non-teaching posts or in Director of Medical and Rural Health Services side institutions

2.An action taken report may be sent to Government urgently."

13. Thus, the posting order issued by the 2nd respondent is in consonance with the decision taken by the Government and therefore, there is no infirmity as such in respect of the order passed.

14. Accordingly, the present writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Health Department,
Fort St.George,
Chennai - 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai.
- 3.The Dean,
Govt.Mohan Kumaramangalam Medical College,
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4.The Medical Council of India,
Sector - 8, Pocket - 14, Dwaraka,
New Delhi - 110 077.

+1cc to Mr.T.Fennwalter Associates, Advocate, S.R.No.15637

+2cc to Mr.N.Manokaran, Advocate, S.R.No.15485

+1cc to the Government Pleader, S.R.No.16641

W.P.No.1480 of 2019
in
W.M.P.No.5407 of 2019

GSP (28/02/2019)



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