

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.10.2019

Coram

The Honourable Mr. Justice D. KRISHNAKUMAR

W.P.No.19547 of 2009
and W.P.M.P.No.2 of 2009

T.Selvam

...Petitioner

Versus

1.The Deputy Director,
Public Health and Preventive Medicine,
Tiruvarur.

2.The Block Medical Officer,
Primary Health Centre,
Alathambadi, Thiruthuraipoondi Taluk,
Thiruvarur District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of Na.Ka.No.4284/A2/2009 dated 31.08.2009 from the first respondent and quash the same and to direct the respondents to retain the petitioner in the present place.

For Petitioner : Mr.Leo Prabhu
for Mr.P.Vijendran
For Respondents : Mr.A.Ansar, Govt. Advocate

O R D E R

The relief sought for in the present writ petition is to call for the records of Na.Ka.No.4284/A2/2009 dated 31.08.2009 from the first respondent and quash the same and to direct the respondents to retain the petitioner in the present place.

2. It is the case that the petitioner was appointed as an Office Assistant by the first respondent. Now, the petitioner is working under the second respondent. The petitioner went to the treasury on 01.07.2009, for an official purpose and he returned to the office on 02.07.2009. On 02.07.2009, the second respondent was discussing about the Letters of the earlier day i.e., 01.07.2009, one Mr.S.Ravindran, who is working as driver with the second respondent's family welfare section, came towards the petitioner and threatened him using the filthy

language. Though the petitioner tried to pacify the said Ravindran, however, he beaten the petitioner and pushed him down. The said incident was happened before the second respondent officers and other employees. Pursuant to the said incident, on 02.07.2009, the petitioner gave a complaint to the first respondent but no action was taken against the said Ravindran. Suddenly, the petitioner was issued a Transfer Order vide proceedings Na.Ka.No.4284/A2/2009 dated 31.08.2009 by the first respondent from the second respondent.

3. The learned counsel for the petitioner submitted that the respondents without serving any Charge Memo to the petitioner passed the impugned order. He further submitted that though the petitioner made a complaint against the said Ravindhran, no action was taken against him by the first respondent, whereas, a punitive action was taken against the petitioner by passing a Transfer Order. He therefore prayed that the said impugned order is liable to be set aside.

4. The learned Government Advocate appearing for the respondents would contend that the petitioner has not attributed any mala fide. He would further contend that the said impugned order is only an administrative order. He would also submit that having regard to the efflux of time and also the subsequent developments and changed circumstances, this Court may not interfere with the impugned order passed by the first respondent. In support of his contention, he relied on the judgement, State of Uttar Pradesh & Others Vs. Gobardhan Lal Appeal (Civil) No.408 of 2004 dated 23.03.2004, wherein, the Honourable Supreme Court held as follows:

"It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent

authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

5. In the light of the decision of the Honourable Supreme Court in State of Uttar Pradesh & Others Vs. Gobardhan Lal Appeal (Civil) No.408 of 2004 dated 23.03.2004 and also taking note of the facts and circumstances of the case, this Court is of the view that there is no necessity to interfere with the impugned order passed by the first respondent since the case of the writ petitioner deserves no merit of adjudication. Hence, this Writ Petition is liable to be dismissed.

6. Accordingly, this Writ Petition is dismissed. However, due to the efflux of time, the petitioner is directed to make a representation before the Authority concerned, if so advised and the Authority shall consider the same in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1.The Deputy Director,
Public Health and Preventive Medicine,
Tiruvavarur.

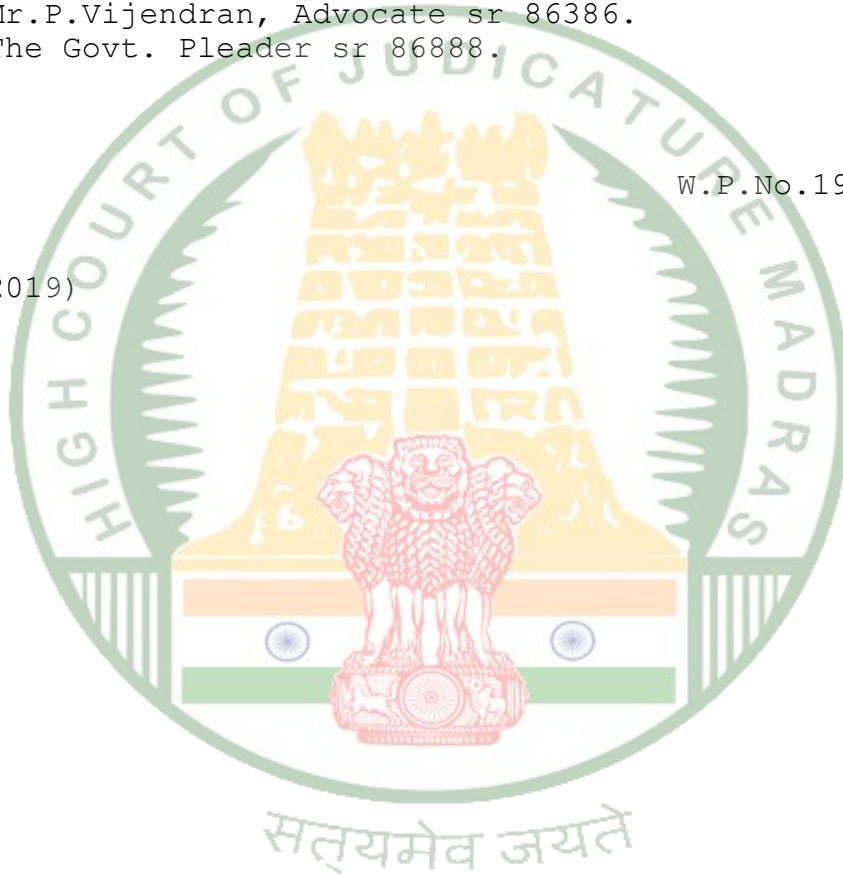
2.The Block Medical Officer,
Primary Health Centre,
Alathambadi, Thiruthuraipoondi Taluk,
Thiruvavarur District.

+1 CC to Mr.P.Vijendran, Advocate sr 86386.

+1 CC to The Govt. Pleader sr 86888.

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NMI (CO)
SP(26/11/2019)



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