

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 3267 and 5576 of 2019

and

W.M.P.Nos.3542 & 3544 & 3545 & 6350 of 2019

R.Sreenivasan

... Petitioner in both writ
petitions

Vs.

1. The Director
Directorate of Medical & Rural Health Services
Chennai - 600 006.
2. The Joint Director of Health Services
Coimbatore District
3. The Joint Director of Health Services
Vellore District
4. The Medical Officer
Government Hospital
Sundakamuthur, Coimbatore District
5. The Medical Officer
Government Hospital
Kalavai, Vellore District

.. Respondents in both writ petitions

PRAYER in W.P.No.3767 of 2019: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records pertaining to the Order in Ref.3482/N2/2/2018, dated 22.01.2019 issued by the 1st respondent, and quash the same.

PRAYER in W.P.No.2083 of 2019: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records, relating to the impugned order in the nature of writ calling for the records, relating to the impugned order dated 19.02.2019 Ref.No.Na.Ka.No.11/Ni/2019 issued by the 4th respondent and quash the same and consequently direct the

respondent authorities to post the petitioner in the near by work station of the petitioner's wife in Sundakamuthur, Coimbatore District.

For Petitioner : Mr.S.Thanga Sivan
(in both writ petitions)

For Respondents : Mr.A.N.Thambi durai
(in both writ petitions)

C O M M O N O R D E R

W.P.No.3267 of 2019 is filed challenging the transfer order dated 22.01.2019 issued by the Director of Medical and Rural Health Services transferring the writ petitioner from Government Hospital Sundakamuthur, Coimbatore District to Government Hospital, Kalavai, Vellore District in the existing vacancy on administrative grounds. The writ petitioner, in the said writ petition raised the ground that initially, he was appointed on contract basis and subsequently, his services were regularised in the sanctioned post. The grievances of the writ petitioner is that he is an active member and office bearer of the Tamil Nadu Government Contract Nurses Welfare Association and fighting for the Welfare of the members of the said association. Thus, taking some personal motive, the officials had issued the impugned transfer order transferring him from Coimbatore District to Vellore District.

2. The learned counsel, Mr.Thangasivan, appearing on behalf of the writ petitioner states that the writ petitioner is having a child aged about 3 ½ years and therefore, the impugned transfer would affect the normal family life of the writ petitioner. The wife of the writ petitioner is also working as Staff Nurse and the said ground also has not been considered. At the outset, the learned counsel for the writ petitioner states that the impugned transfer was issued on some personal vengeance and without considering the personal grievances of the writ petitioner. Thus the impugned order of transfer is liable to be set aside.

3. Another writ petition is filed by the very same writ petitioner in W.P.No.5576 of 2019 challenging the consequential relieving order dated 19.02.2019, pursuant to the order of transfer dated 22.01.2019. The relieving order was issued by the Chief Medical Hospital, sundakamuthur, Coimbatore District on 19.02.2019.

4. Though, two separate writ petitions are filed, the cause of action is one and the same. The relieving order dated 19.02.2019 was issued based on the transfer order issued by the

Director of Medical and Health Services on 22.01.2019. Thus, both the writ petitions are to be decided by way of common hearing.

5. The learned Special Government Pleader appearing on behalf of the respondents states that the writ petitioner was transferred on administrative grounds and therefore, the petitioner has to join in the transferred place. The allegations of personal vengeance or motive has not been established by the writ petitioner, except by stating that he is an office bearer of an association. Thus, the writ petitions are to be rejected.

6. This Court is of the considered opinion that the writ petitioner is serving as a Staff Nurse in Government Hospital. The job nature of Staff Nurse is noble one. A Public Servant, more specifically serving as a Staff Nurse, is bound to serve with full devotion to duty. Undoubtedly, the writ petitioner, being a Staff Nurse, more specifically in a Government Hospital, has to serve in the interest of Public and for the welfare of the Administration.

7. Administrative transfers are issued on various grounds. It is not necessary for the competent authorities to spell out reasons for all such administrative transfers. For instance, if the competent authority is of the opinion that the continuance of a particular Public Servant is not conducive for the peaceful functioning of the organisation or institution, then, an order of administrative transfer can be issued. If there is any complaint against any Public Servant, in respect of the performance of their duties and responsibilities, then also, a transfer order can be issued on administrative grounds. Even otherwise also, on necessity or on certain special circumstances, an order of transfer can be issued on administrative grounds. Administrative grounds cannot be challenged in a routine manner. However, the authorities, while exercising the power of discretion must keep in mind that the said power should be used without any bias and administrative transfers are to be issued for genuine reasons. The authorities should not issue any such transfer orders on personal vengeance or on any other extraneous consideration.

8. Thus, an order of transfer can be challenged, if the same has been issued by an incompetent authority, having no jurisdiction or an allegation of mala fides, or if the same is in violation of the statutory rules in force. Even in case of raising an allegation of mala fides, the authority, against whom such an allegation is raised, should be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ proceedings can be entertained against an order of

administrative transfer. Judicial review against an order of transfer is undoubtedly limited. High Courts cannot interfere with the orders of transfer issued on administration grounds and in the event of routine and frequent interference by the constitutional Courts, the peaceful functioning of the administration will be paralyzed and therefore, the Constitutional Courts also should exercise restraint in respect of interfering with all such administrative transfers.

9. In the present cases, except by stating that the writ petitioner is an office bearer of an Association and the officials concerned have taken certain personal vengeance against him, the said allegations are not substantiated with sufficient materials on record. Those officials are not impleaded as respondents in their personal capacity. In the absence of any such specific and substantiated allegations regarding the mala fide intention, this Court would not entertain a writ petition based on certain bald allegation or on certain grounds made in the writ petition. If such grounds are accepted at the threshold, every public servant will come to the court and state that every such transfer orders are issued with some ulterior motive or on personal vengeance. Courts cannot give room for such pleadings to be raised by the Public Servants, without any basis.

10. Place or post can never be claimed as a matter of choice. The order of appointment accepted by the writ petitioner itself is sufficient to establish that the petitioner has agreed for all the service conditions. Public employment is a contract. When the appointment is accepted by a person who serves as a Public servant, he is bound by the Rules and Regulations as well as certain instructions. According to the service condition, a Public Servant, wherever posted, is liable to serve in the interest of public, as well as the public Administration. Only on certain exceptional and extraneous circumstances, such orders of administrative transfers can be interfered with by the constitutional Courts, and not otherwise. Thus, the scope of Judicial Review against the transfer is limited. Under these circumstances, the present transfer order transferring the writ petitioner from Coimbatore to Vellore on administrative reasons, cannot be interfered with. The writ petitioner is serving as a Staff Nurse and he has to serve with full devotion to duty and serve for the welfare of the public at large.

11. This Court is aware of the fact that certain personal grievances are there to every public servant. Undoubtedly, every family in this Country has got problems in one way or other and they have to solve the problems and lead their life with happiness and peace. Such personal grievances cannot be a ground to revoke an order of transfer. This Court

would like to ask the question, whether, the petitioner can show any family in this country, having no problem or issues at all. If reasons like welfare of children, aged parents are to be raised, then the employee should not opt for public service. Public Service is a noble one, more so being a member of medical services in Government Hospitals, where the service of nurses like the petitioner, is very much essential for the benefit of poor people. This Court would like to remind the bravery shown by our Indian air force pilots in targeting the enemy terrorists camps inside the territory of Pakistan. The petitioner Staff Nurse/Public Servant also is expected to show such courage and braveness in performing his duties. If such mindset is developed in the Public Service, then, there would be no room for corrupt activities also in Public service. Under these circumstances, this Court, would suggest that the writ petitioner has to serve in the place where he is posted, in the interest of Public and to serve the nation with full devotion to duty. He is entitled to serve for the Welfare of the employees Association. However, mere fact that he is continuing as an office bearer in an Association will not provide any exemption from administrative transfer and he should be treated as an employee/Public Servant along with all other Public Servants in the matter of Service Rules and Service Conditions.

12. This being the factum of the case, the writ petitioner has not established any acceptable legal ground for the purpose of considering his case. If at all, any grievances are to be redressed, it is left open to the writ petitioner to approach the competent authority in the manner known to law.

13. Accordingly, these writ petitions stand dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Kmm

To

1. The Director

Directorate of Medical & Rural Health Services
Chennai - 600 006.

2. The Joint Director of Health Services
Coimbatore District

3. The Joint Director of Health Services
Vellore District

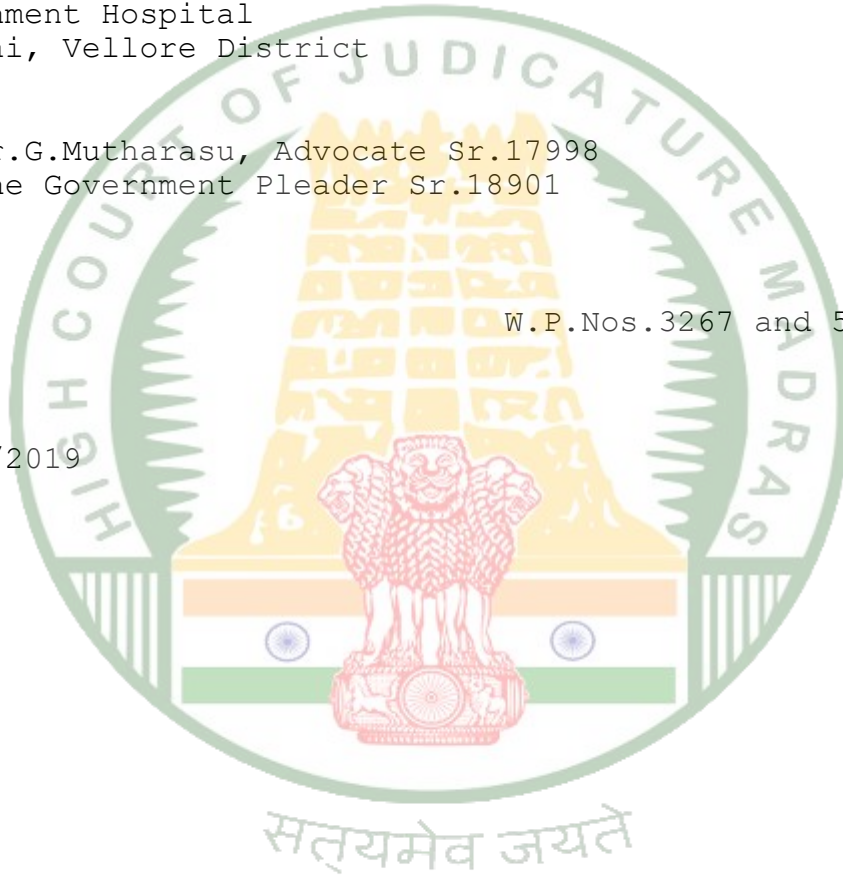
4. The Medical Officer
Government Hospital
Sundakamuthur, Coimbatore District

5. The Medical Officer
Government Hospital
Kalavai, Vellore District

+1cc to Mr.G.Mutharasu, Advocate Sr.17998
+1cc to the Government Pleader Sr.18901

W.P.Nos.3267 and 5576 of 2019

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