

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 8684 of 2019

G.R. Jemi Sonia

..petitioner

Vs

1. The State of Tamil Nadu represented
By the Secretary to Government
Health Department
Fort ST.George
Chennai - 600 009.
 2. The Director of Health & Family Welfare Services
Teynampet
Chennai.
 3. The Director of Medical Education
Kilpauk
Chennai
- ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the representations of the petitioner dated 06.01.2019 and 07.01.2019 for transfer of the petitioner to the Multi speciality Hospital, Tirunelveli, within such time as may be directed by this Court.

For Petitioner : M/s.D.Bharatha Chakravarthy

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

WEB COPY
O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to consider the representations of the writ petitioner dated 06.01.2019 and 07.01.2019 for transfer of the petitioner to the Multi Speciality Hospital, Tirunelveli, within such time, as may be directed by this Court.

2. The learned counsel appearing on behalf of the petitioner states that the request application submitted by the writ petitioner has not been considered. Contrarily, the claim of the juniors to the writ petitioner had been considered by the authorities and the authorities had thereby committed an act of arbitrariness. The authorities have not considered the case of the writ petitioner in spite of the fact that the writ petitioner is senior and eligible for such transfer as per her representation.

3. This Court is of the opinion that the circumstances narrated in the writ petition are of no avail to the writ petitioner, in view of the fact that the transfer is an incidental to service, more so a condition of service. Place or post can never be claimed as a matter of choice by the public servants. The public servants are bound to work wherever they are posted. Even in case of personal grievances, the public servants are at liberty to approach the competent authority for redressal of their personal grievances. Contrarily, the High Court cannot issue any direction in this regard as it is the pre-condition that a legal right is to be established for issuance of any such direction to the authorities competent. In the event of issuing any such direction, there is a possibility of abuse of the order by the respective parties and disposal of representation cannot be granted in a routine manner. Even, for issuing such direction to the Competent Authorities, the issues involved to be considered by the High Court and the legal rights are to be established by the persons, who have approached seeking redressal.

4. The 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred abundant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. Thus, it is not as if a representation can be submitted by the public servant to the competent authority and file a writ petition for the purpose of obtaining

a direction to consider the said representation. Such a course is certainly impermissible and the power of Judicial review cannot be exercised for such purpose.

5. Transfers on certain administrative exigency can never be interfered with by the Constitutional Courts. High Court would not interfere with the routine administration of the State or

its organisations. It is the prerogative of the Competent Authority to post the employees in a particular place or in a post, in order to run the public administration smoothly and efficiently. In the event of unnecessary interference of administrative transfers by the Constitutional Courts, the same would affect the effective and efficient public administration. Thus, the constitutional Courts are bound to exercise restraint in entertaining such writ petitions seeking direction to post the employee in a particular place or post and only on exceptional circumstances, such a writ proceedings can be entertained, if the writ petitioner establishes a malafide intention or any ulterior motive in respect of considering such representations. Even, in case raising on allegations of malafides, the authority against whom such allegation is raised has to be impleaded as party respondent in his personal capacity in the writ proceedings. Thus, in the absence of any such substantial evidence or averments by impleading the parties concerned, the Courts would not be in a position to consider the relief to consider the representation.

6. This being the legal principles to be followed, this Court is of opinion that the relief as such sought for in the present writ petition is misconceived and it is left open to the writ petitioner to approach the competent authorities for the purpose of redressing his grievances in the manner known to law.

7. With these observations, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ssb/kmm

To

1. The State of Tamil Nadu represented
By the Secretary to Government
Health Department
Fort ST.George
Chennai - 600 009.
2. The Director of Health & Family Welfare Services
Teynampet
Chennai.

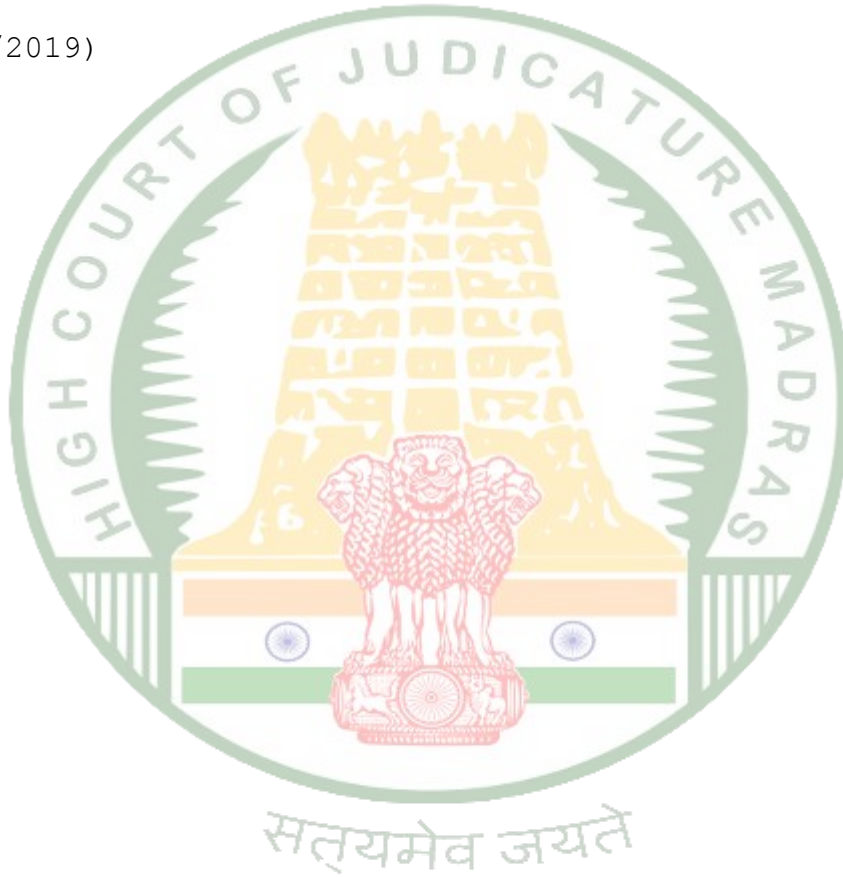
3. The Director of Medical Education
Kilpauk
Chennai

+1cc to Mr.D.Bharathachakravathy, Advocate SR.No.28674

+1cc to Government Pleader SR.No.29749

W.P.No. 8684 of 2019

SPD (CO)
GMY (20/05/2019)



WEB COPY