

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 25.04.2019

CORAM:
THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.13619 of 2018
and
WMP.No.16050 of 2018

K.Gopinathan

... Petitioner

Vs.

1. The Director,
Medical and Rural Health Services,
O/o the Director of Medical and Rural Health Services,
Chennai 600 006.
2. The Deputy Director of Health Services @ Saidapet,
Chengalpet HUD,
Kanchipuram District.
3. The Block Medical Officer,
Primary Health Centre,
Medavakkam, Chennai.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of impugned transfer order passed by the first respondent herein in Ref.No.31875/N1/3/2018, dated 28.05.2018, the cancellation of deputation order passed by the second respondent herein in Na.Ka.No.050/pa3/2018, dated 29.05.2018 and the consequential relieving order passed by the third respondent in R.No.620/PHC/2018, dated 29.05.2018 and quash the same.

For Petitioner : Ms.Swadhi Subramaniam

For Respondents : Mr.S.R.Rajagopalan, AAG
asst. by Mrs.P.Kavitha,
G.A., for RR1 to 3

O R D E R

The petitioner herein has filed this Writ Petition, aggrieved against the transfer order dated 28.05.2018, the cancellation of the deputation order passed by the second respondent herein dated 29.05.2018 as well as the consequential relieving order dated 29.05.2018.

2. When the Writ Petition came up for admission, this Court by an order dated 07.06.2018, directed the respondents that no coercive action shall be taken against the petitioner, if he doesn't join the new place of posting, with the following observations:

"3. The petition filed in WMP.No.16048 of 2018 to dispense with the production of the impugned order of the first respondent dated 28.05.2018 and the cancellation of deputation order passed by the second respondent dated 29.05.2018 and the consequential relieving order passed by the third respondent dated 29.05.2018, is allowed.

4. WMP.No.16049 of 2018, filed for the grant of interim stay is disposed of with a direction that if the petitioner does not join the new place of posting pursuant to the order of transfer, no coercive action shall be taken against him, pending disposal of this Writ Petition"

3. Subsequently, when the Writ Petition was listed on 02.08.2018, this Court had directed the respondents to allow the petitioner to be engaged in the place where he was working earlier, till 31.08.2018 and the observations made by this Court was as follows:

"2. This Court taking into consideration the facts and situations of the case, especially the fact that the petitioner is not a regular employee but contract nurse though his service is subject to future regularisation, this Court had directed the respondents not to take any coercive action against the petitioner for not joining in the new place of posting. For filing counter affidavit it was listed today, but counter affidavit has not been filed yet. Now the petitioner who is a contract nurse is out of work. In such premises, it is stated that the post from where he has been transferred is still lying vacant and there is a requirement of work.

3. If that be so, the respondents are directed to allow the petitioner to be engaged in the place he was working earlier, till 31.08.2018."

4. It is stated by the learned counsel for the petitioner that though the petitioner herein had reported for duty before the third respondent, he was not accommodated inspite of the interim order. This submission is opposed by the learned Additional Advocate General stating that the petitioner had not reported for duty.

5. The learned counsel for the petitioner placed reliance on the copy of the affidavit filed in support of the contempt

petition and the representation given by the petitioner dated 16.08.2018, wherein, it is stated that the petitioner herein had submitted a copy of the order of this Court dated 02.08.2008 to the second respondent herein on 10.08.2018 in person and requested him to allow to report for duty. The petitioner has also stated in the said representation that he had submitted a true copy of the order of this Court dated 02.08.2018 to the first respondent herein in person on 14.08.2018 with a similar request for reporting duty. Subsequently, a copy of this Court order dated 02.08.2018 along with representation were sent by registered post to the respondents herein on 16.08.2018. As such, the learned counsel for the petitioner submitted that since the respondents had not complied with the orders of this Court, she is entitled for salary from the date of this Court order.

6. Today, when the matter is called, the learned Additional Advocate General filed a copy of the modified transfer and posting order dated 16.04.2019 passed by the first respondent, wherein, the earlier transfer and posting order dated 28.05.2018 was cancelled and the petitioner has been directed to be posted to the Rajiv Gandhi Government General Hospital, Chennai in the Pay ward vacancy. The said modified transfer order dated 16.04.2019 was subject to the outcome of the present Writ Petition.

7. On a conjoint reading of the earlier order of this Court dated 02.08.2018 as well as the subsequent modified transfer, it is seen that the present modified transfer order has been made pursuant to interim direction of this Court dated 02.08.2018. The petitioner herein had also made a representation stating that he had reported for duty in person and also gave representation through registered post, which has not been countered by way of reply by the respondents.

8. It is in this background that the petitioner seeks for consolidated pay from the date of interim order till the actual date of modified order. In my view, the payment can be considered, based on the representation to be made by the petitioner. Since the prayer sought in the present Writ Petition has been prominently met through the modified transfer order dated 16.04.2019, no effective orders can be passed in the prayer seeking to quash the earlier order. In view of the present modified transfer order and posting order, dated 16.04.2019 the petitioner is granted liberty to join the present transfer post in the Pay ward vacancy in the Rajiv Gandhi Hospital, Chennai.

9. Insofar as the consolidated pay for the period between 02.08.2018 and 16.04.2019, the petitioner is granted liberty to approach the first respondent with a representation. On receipt

of such a representation, the first respondent herein shall consider the same as expeditiously as possible.

10. At this juncture, the learned Additional Advocate General brought to the notice of this Court that insofar as the regularisation of the contract nurses are concerned, the matter is pending before this Court in a Writ Petition in W.P.No.26410 of 2018. The order issued in the present Writ Petition with regard to the transfer order of the petitioner and the observations made in the present Writ Petition will not have any bearing on the outcome of W.P.No.26410 of 2018.

11. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

- 1.The Director,
Medical and Rural Health Services,
O/o the Director of Medical and Rural Health Services,
Chennai 600 006.
- 2.The Deputy Director of Health Services @ Saidapet,
Chengalpet HUD,
Kanchipuram District.
- 3.The Block Medical Officer,
Primary Health Centre,
Medavakkam, Chennai.

+lcc to Mr.R.Prem Narayan, Advocate, S.R.No.39823

+lcc to the Government Pleader, S.R.No.41250

SJ(CO)

RRS (26/06/2019)

W.P.No.13619 of 2018

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