

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.2223 of 2019

G.R.Jemi Sonia

.. Appellant

Vs.

1. The State of Tamil Nadu,
Rep. 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 Appeal filed under Clause 15 of the Letters Patent
against the order dated 25.03.2019 made in W.P.No.8684 of 2019.

WP.No.8684 of 2019:

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 6.1.2019
and 7.1.2019 for transfer of the petitioner to the Multi
Speciality Hospital, Tirunelveli, within such time as may be
directed by this court.

For Appellant : Ms.Gopika Nambiar
for Mr.T.Saikrishnan

For Respondent 1 : Mr.A.Ansar
Government Advocate

For Respondents 2&3: Mr.V.Kadhirvelu,
Special Government Pleader

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J U D G E M E N T

(Judgement of the Court was made by S.MANIKUMAR, J.)

Being aggrieved by the order made in W.P.No.8684 of 2019 dated 25.03.2019, instant writ appeal is filed.

2. The case of the appellant is that she was originally appointed as Staff Nurse on contract basis in the year 2008 and thereafter, absorbed on regular basis and posted at the Government Medical College Hospital, Tiruvarur and till the date of filing of the writ petition, she is functioning at the same place. Citing family situations, from the year 2015, by various representations, she has made request to the respondents to grant her transfer to the available vacancies in Tirunelveli district. While being so, staff nurses, who are juniors, both in service, as well as in the request for transfer, the respondents upon considering their requests and transferred the juniors of the appellant, while the appellant's transfer request alone, remains without consideration. Alleging that even as on date, there are vacancies and necessity of hands in the above mentioned Multi Specialty Hospital, Tirunelveli, action of the respondents, in not considering her request alone is arbitrary and violative of Article 14 of the Constitution, the appellant has filed writ petition No.8684 of 2019 before this Court.

3. Having heard the learned counsel for the parties, Writ Court vide order dated 25.03.2019, made in W.P.No.8684 of 2019, dismissed the writ petition. Paragraph Nos.3 to 7 of the said order reads as follows:

"3. This Court is of the opinion that the circumstances narrated in the writ petition is 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 dispose 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. "

4. Being aggrieved by the order passed by the Writ Court, appellant filed the instant writ appeal. Ms.Gopika Nambiar, learned counsel appearing for the appellant, briefly submitted the facts of the case and assailed the order of the Writ Court, inter alia, as follows:

"1) That the learned Judge ought to have noted the fact that the action of the respondents in obliging with the transfer requests of the petitioner's juniors, while sitting over the petitioner's representations since the year 2015 without passing a single order amounts to arbitrary conduct.

2) That the learned Judge while holding that a legal right must be established to warrant interference by this Court, ought to have considered the fact that the petitioner is pleading violation of his fundamental right under Article 14 of the Constitution of India in as much as the action of the respondents in not following request seniority and picking and choosing the request transfer applications are arbitrary and discriminatory and as such writ petition is maintainable.

3) That the observation of the learned Judge that it is left open for the petitioner to approach the competent authority is again illogical in as much as the petitioner has already approached the competent authority and only because no decision is conveyed to her filed the writ petition."

5. On this day when the instant writ appeal came up for hearing, Ms.Gopika Nambiar, learned counsel appearing for the appellant submitted that the transfer request application submitted by the appellant has not been considered by the respondents, instead transfer requests made by her juniors were considered by the respondents, which is arbitrary and violates

Article 14 of the Constitution. Ms.Gopika Nambiar, made her earnest effort to convince her case.

6. Transfer is an incident of service and it cannot be claimed as a matter of right. Further, in the State of Tamil Nadu transfer is done through counselling. May be the requests of the juniors have been considered, but we are of the view that, the appellant has not established that any fundamental rights, have been violated. A perusal of the judgement of the writ Court would show that the writ Court has elaborately dealt with each and every aspect of the grounds raised by the appellant and we do not find any illegality or infirmity in the order passed by the Writ Court.

7. In the light of the above, we are of the view that the appellant has not made a case warranting interferences with the impugned order of the Writ Court. There are no merits in this appeal. Hence, W.A.No.2223 of 2019 is dismissed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. 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 M/s.Sai & Bharath, Advocate SR.76710

PA(CO)
CB(07/11/2019)

W.A.No.2223 of 2019