

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No. 31763 of 2018
and
WMP No.36985 of 2018

N.Nagendraboobathi .. Petitioner

Vs.

1. The Director of Medical and
Rural Health Services (Incharge)
Chennai - 600 006.

2. The Joint Director of Health Services
Old District Head quarters
Hospital Campus, Sivagangai
Pin Code - 630 561.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, call for the records relating to the impugned Order passed by the 1st respondent in Ref.No.68177/E2/3/2018, dated 16.11.2018 and quash the same.

For Petitioners : Mr.R.Murugesan

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

O R D E R

The order of transfer dated 16.11.2018, transferring the writ petitioner from Sivagangai to Perambalur is under challenge in the present writ petition.

2. The writ petitioner is now working as an Office Superintendent at Sivagangai. On account of administrative reasons, the petitioner is transferred from Sivagangai to Perambalur.

3. The learned counsel for the writ petitioner states that the transfer is now made during the middle of the academic year which affects the education of the children of the writ

petitioner and more specifically, his daughter is pursuing 10th Standard. This apart, such transfers are affecting the normal family life of the Government employees. Thus, the writ petitioner shall be allowed to continue in the same place and be posted at Sivagangai itself.

4. The learned Special Government Pleader appearing on behalf of the respondents opposed the contention of the petitioner by stating that during the surprise inspection, several lapses were found in the office of the Joint Director of Health Services, Old District Head Quarters, Hospital Campus, Sivagangai and the lapses are extracted hereunder;

" During the inspection the following lapses were found.

1. Though given prior intimation for the inspection, Thiru.N.Nagendra boopathy has signed the late attendance without getting prior permission.

2. Some of the Assistant/Office Superintendents have not furnished the relevant records such as Personal registers, Reminder dairy, Brought forward register, Stock file etc.

3. Further the Personal Registers submitted by the Assistants are not having corresponding entries in the registers for various months and no action has been taken on the files maintained by them.

4. The Administrative Officer has gone on leave and after joining, he has not taken the responsibility of the Administrative Officer.

5. The temporary vouchers are not maintained properly and settled properly.

6. The Suit register not maintained properly.

Due to the above lapses it has been decided to transfer certain staff and charges may be framed against the lapses."

5. On account of certain serious lapses, the competent authority had taken a decision to transfer those officials from Sivagangai to various other offices. Three office Superintendents and one Assistant were

transferred from the Office of the Joint Director of Health Services, Sivagangai. All the three other officials had already joined in the transferred place and post, except the writ petitioner. Under these circumstances, no leniency can be shown in respect of the writ petitioner and he has to join in the transfer place, on account of the administrative decision taken by the competent authorities.

6. It is to be noted that transfer is an incidental of service, more so, a condition of Service. The public servant is liable to work wherever he is posted, Place or post can never be claimed as a matter of right. However, if an order of transfer is issued without any intention, such transfers can be challenged by way of a writ petition and not otherwise. In the present writ petition, administrative decision was taken by the Head of the Department to transfer four officials from the office of the Joint Director of Health Services, Sivagangai, on account of certain serious lapses found during the surprise inspection. The said decision cannot be found fault with and this Court cannot interfere with such administrative decisions in a routine manner. The Constitutional courts shall exercise restraint on interfering with such administrative transfers and the Judicial review against an order of transfer is certainly limited. Frequent intervention in administrative transfers by the Courts also would cause prejudice to the Public Administration. It is the prerogative of the Administrative authorities to post an employee in a particular place or post for effective and efficient administration.

7. No writ can be entertained against a show cause notice in a routine manner. A writ against a show cause shall be entertained, if the same has been issued by an incompetent authority having no jurisdiction or an allegation of mala fides are raised or in the same is in violation of the statutory rules in force. Even in case of raising allegation of mala fides, the authorities against whom such an allegation is raised, to be

impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any of these legal grounds, no writ proceedings can be entertained in respect of the show cause notice issued under the statute. Judicial review against the show cause notice is certainly limited.

8. In the present case on hand, the grievances of the writ petitioner is in respect of the Education to his children which has to be considered only by the competent authority and not by this Court. Thus, it is left open to the writ petitioner to approach the competent authority for redressal of his grievances in the manner known to law. However, the decision taken at the administrative level to transfer four officials from the Office of the Sivagangai, cannot be found fault with and there is no infirmity as such sought for in respect of the impugned order of transfer.

9. Accordingly, the writ petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

Kmm

To

1. The Director of Medical and Rural Health Services (Incharge)
Chennai - 600 006.
2. The Joint Director of Health Services
Old District Head quarters
Hospital Campus, Sivagangai
Pin Code - 630 561.

+1cc to Mr.R.Murugesan, Advocate SR.No.14841

+1cc to Government Pleader SR.No.15560

W.P.No.31763 of 2018

GMV (26/03/2019)