



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) No. 9575 of 2015

and

M.P. (MD) No. 2 of 2015

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Arumugam

... Petitioner

Vs

1. The Secretary to the Government,
Health and Family Welfare IM2(2) Department,
St. George Fort, Chennai-9.

2. The Principal Secretary and Commissioner of
Indian Medicine and Homeopathy,
Arumbakkam, Chennai-106.

3. The District Siddha Medical Officer,
Pudukkottai and District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in the order passed by the second respondent in Ref.No.18149/E2/106 dated 23.02.2015, quash the same and further direct the second respondent to permit the petitioner to work as Hospital Worker in Karambakudi Government Primary Health Centre, Thanjavur District.

For Petitioner : Mr.K.Baalasundharam

For Respondents : Mr.S.Dhayalan

Government Advocate

ORDER

The order of transfer which is impugned in the present writ petition dated 23.02.2015, transferring the writ petitioner from Government Primary Health Centre, Karambakudi to Government Siddha Medical College, Palayamkottai, is under challenge in the present writ petition.

2. The writ petitioner was appointed as Office Assistant in the year 1997 and thereafter he was posted to Government Primary Health Centre, Karambakudi, in proceeding dated 26.10.2009 as Hospital Worker. The writ petitioner was transferred from Government Primary Health Centre, Karambakudi to Government Siddha Medical College, Palayamkottai. The proceedings of the Principal Secretary and Commissioner of Indian Medicine and Homeopathy, dated 23.02.2015 states that certain Hospital Workers made a request to post them in their respective native districts and a proposal was submitted by the authority to the Government so as to post this employee in their respective native districts. The Government rejected the proposal in proceedings dated 20.05.2014



stating that there is no provision in the existing Rules to appoint the individual who have already been appointed under Tamil Nadu Medical Subordinates Services which comes under Group-C, to the posts under Tamil Nadu Basic Services which comes under Group-D and to change their retirement age and pay scale.

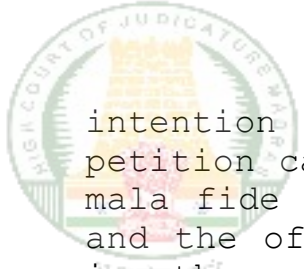
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3. Accordingly, few individuals who were appointed as Pharmacy Attendants in Tamil Nadu Medical Subordinate Service were posted in the existing vacancies at Government Siddha Medical College, Palayamkottai. The order impugned dated 23.02.2015 is self explanatory that the same was issued on certain administrative grounds. Accordingly, all the candidates were transferred by the impugned order and were posted in the Government Siddha Medical College, Palayamkottai.

4. This Court is of an opinion that transfers can be issued on various grounds. On a perusal of the impugned transfer order, it is stated that the writ petitioner is transferred on administrative ground and in the interest of administration. Transfers are imminent in respect of public servants, whenever there is a wide complaint against the employee is made known to the competent authorities. In certain circumstances, there may not be an evidence to prosecute the employee or to initiate departmental disciplinary proceedings. However, the competent authorities may of the opinion that further continuance of a public servant in a particular place would cause inconvenience as well as cause some difficult situation for the peaceful functioning of the public administration. Thus, in those circumstances, transfers alone are the remedies in the interest of public administration. Therefore, it is not necessary that there must be a transfer only after conducting an enquiry or initiation of disciplinary proceedings.

5. Administrative transfers are issued on various circumstances and on various grounds. For instance, continuance of certain public servants in a particular post, may not be conducive for the peaceful administration or their further continuance may cause certain troubles to the people, who all are the beneficiaries in the Department. There are various such administrative aspects, which all are the reasons for the administrative transfers. Courts would not be in a position to scrutinize or conduct an enquiry in respect of those reasons for such issuance of the administrative transfers.

6. Administrative transfers are the prerogative of the Department concerned and the competent authorities are the best persons to assess and act accordingly. However, those competent authorities should act in the interest of public and in the event of any mala fide or some personal motive, then alone, the employee can approach the Court of law for appropriate remedy. In other words, if an order of transfer is issued with a mala fide



intention or in violation of the statutory rules, then a writ petition can be entertained. Even in such cases, the allegation of mala fide intention must be substantiated in the writ proceedings and the official concerned must be impleaded as party respondents in the writ proceedings. In the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. Transfer is an incidental to service, more so, a condition of service. Public servant is liable to work wherever he is posted in the interest of public administration. On accepting the offer of appointment, a person is agreeing for the conditions of service and transfer being incidental, he must be in a position to work, wherever he is posted.

7. Place or post can never be claimed as a matter of choice by the public servants. All public servants are duty bound to perform their duties diligently and with utmost care and devotion. This being the basic principles to be followed and erosion in this regard can never be tolerated either by the officials or by the Courts. High Court cannot interfere with the routine administration of the State or its organization. In the event of such routine interference in administration, more specifically, in transfer cases, the very discipline and the functioning of the administration would be paralyzed. Thus, the judicial review of administrative transfers must be exercised with restraint and only on exceptional circumstances, such orders of transfers can be interfered with by the High Courts and not otherwise. This being the scope of the judicial review of administrative transfers issued by the competent authorities, this Court is of an undoubted opinion that the writ petitioner has not established any such strong acceptable ground for the purpose of interference in the order of transfer.

8. The Government employees are entitled to enforce their legal rights ensured under the Act and statutory Rules. However, they are not entitled to claim right based on certain facilities and concessions shown by the Government by way of Government letters/instructions. The State, being the model employer, time and again providing certain concessions/ facilities for the welfare of its employees and to encourage them, so as to run the administration in an effective manner. But those concessions/ facilities can never be a matter of legal right to the Government employees. The Constitutional Courts need not extend any consideration based on such facilities/instructions/guidelines extended by the Government in order to motivate the Government employees for running the State administration more effectively.

9. A mere forthcoming retirement or short tenure, cannot constitute a ground to attack the administrative orders of <https://hdservices.gov.in/hservices>. No doubt, certain difficulties may arise in the family of the Government servants in the event of an order of administrative transfer. But the interest of administration and



the public interest alone are the paramount importance and this Court cannot extend any leniency to the Government employee on such pleadings of personal grievances. It is for the Competent Authorities to consider those grievances and even in case, such grievances are not considered by the original authority, it is left open to the Government employees to approach the higher authorities or the Government in this regard, but certainly not before this Court under Article 226 of the Constitution of India.

10.The transfers are issued on account of the administrative reasons. This apart, the writ petitioner has already continued in the same station pursuant to the interim order granted by this Court for the past of 4 years. The writ petitioner cannot be allowed to continue in the same post for an unspecified period.

11.Transfer is being an incidental service and condition for service. By view of the interim stay granted in the writ petitioner, the Government employee cannot be allowed to continue in the same post. This being the legal principles settled at this point of time, deserves no further consideration and the writ petitioner has continued in the same station by virtue of an interim order. Thus no further consideration is required.

12.Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to the Government,
Health and Family Welfare IM2(2) Department,
St.George Fort, Chennai-9.

2.The Principal Secretary and Commissioner of
Indian Medicine and Homeopathy, Arumbakkam, Chennai-106.

3.The District Siddha Medical Officer,
Pudukkottai and District.

+1 CC to Mr.K.BAALASUNDHARAM, Advocate SR-68934.

+1 CC to SPL GP SR-69245.

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