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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.5330 of 2015

and

M.P.[MD]Nos.1 & 2 of 2015 & 8145 of 2017

Rajkumar

... 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,
Pudukottai District.

... Respondents

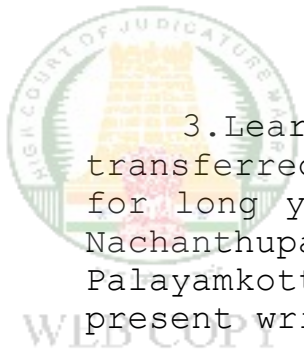
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in impugned order in Ref.No.18149/E2/1/06 dated 23.02.2015 passed by the second respondent and quash the same and further direct the second respondent to permit the petitioner to work as Watchman in Primary Health Centre Nachanthupatty, Pudukottai District.

For Petitioner	: Mr.V.Venkataseshan
For Respondents	: Mr.S.Dhayalan
	Government Advocate

O R D E R

The order of transfer dated 23.02.2015, transferring the writ petitioner from GPHC, Nachandupatti to Government Siddha Medical College is under challenge in the present writ petition.

2.Learned Counsel for the writ petitioner states that the writ petitioner joined as Office Assistant on 03.09.1997 at Revenue Department at Avudaiar Kovil. Thereafter, he was transferred to Thirumayam Siddha Medical Godown as Attender. Thereafter, he was transferred from Thirumayam to Aringar Anna Government Hospital at Chennai and within a period of three months, the writ petitioner is able to get the order of transfer cancelled by the second respondent. Subsequent deputation order passed against the writ petitioner was also cancelled by the second respondent. In the year 2009, the petitioner was transferred to Primary Health Centre at Nachanthupatty.



3.Learned Counsel for the writ petitioner states that in the transferred station at Nachanthupatty, the petitioner is working for long years. Under these circumstances, he is transferred from Nachanthupatty to Government Siddha Medical College, Palayamkottai. Thus, the petitioner is constrained to move the present writ petition.

4.The writ petitioner is continuing on the same station on account of the interim stay granted by this Court. The impugned order was passed on certain administrative grounds. Learned Government Advocate also states that the order passed by the Principal Secretary and Commissioner of Indian Medicine and Homeopathy dated 23.02.2015, it is categorically stated that the post of Pharmacy Attendant is a Group-C post and it comes under Tamil Nadu Medical Subordinate Services. The post of Hospital Worker is a Group-D post and it comes under the Tamil Nadu Basic Services and therefore, the Government orders are necessary in this regard. Accordingly, the order of transfer was passed on administrative reason and therefore, the present writ petition is to be dismissed.

5.The order impugned dated 23.02.2015 states as follows:

"The post of Pharmacy Attendant is a Group-C post and it comes under Tamil Nadu Medical Subordinate Service. The post of Hospital Worker is a Group-D post and it comes under Tamil Nadu Basic Service and therefore the Government orders are necessary in this regard. Necessary proposals were submitted to Government in this regard in this office Ref.No.Lr.Ref.No.18149/E2/1/2006 dated 18.10.2008. It was also clearly mentioned in the proceedings that the above individuals will draw the salary last drawn by them in the scale of Rs.2610-60-3150-62-3540 and further increments will be sanctioned only on receipt of approval from the Government. It was also mentioned that if any of the above individuals reached the age of superannuation before the receipt of Government orders, they will be retired on completion of 58 years. A declaration was also submitted by the above individuals, to this effect, before joining as Hospital Workers.

Of the above thirteen persons, Tmt.N.Vasantha, Tmt.E.Visalakshi, Tmt.P.Maniammai and Thiru.M.Kaliyamurthy have been retired from service on attaining the age of 58 years.

Now, the Government in Letter No.15559/IM2-16714/MSH & FW dated 20.05.2014 have stated that there is no provision in the existing rules to appoint the individuals who have already been



appointed under Tamil Nadu Medical Subordinate 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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Therefore, the following individuals are reappointed as Pharmacy Attendants in Tamil Nadu Medical Subordinate Service and posted to the existing vacancies at Govt.Siddha Medical College, Palayamkottai."

6.On certain administrative grounds, the writ petitioner and other persons in the impugned orders were reappointed as Pharmacy Attendants in the Tamil Nadu Medical Subordinate Services and posted to the existing vacancies at Government Siddha Medical College, Palayamkottai. In view of the fact that it is not a mere transfer and the order impugned is reappointment of the writ petitioner as Pharmacy Attendant under the Tamil Nadu Medical Subordinate Services which is falling under Group-II services and the scale of pay is also higher, this Court is of the opinion that the writ petitioner cannot claim the salary attached to the Group - III services more specifically in the post of Pharmacy Assistant and retain him in the same post in the same place.

7.Post or place can never be claimed as a matter of choice. The writ petitioner was admittedly reappointed as Pharmacy Assistant under the Tamil Nadu Medical Subordinate Services and posted in the Government Siddha Medical College, Palayamkottai. Thus, the impugned order of transfer is on administrative exigencies and there is no acceptable ground for the purpose of quashing the impugned order of transfer.

8.Transfer is an incidental to service. More so, a condition of service. The writ petitioner was reappointed as Pharmacy Assistant in a different service namely, Tamil Nadu Medical Subordinate Services. The scale of pay applicable to the post of Pharmacy Assistant is entirely different and therefore, the writ petitioner cannot seek any benefit by claiming that he was a last grade servant. On reappointment, he was posted at Palayamkottai. This being the factum of the case, the writ petitioner cannot claim that he must be posted in the same place till his retirement.

9.Admittedly, the writ petitioner is a public servant. This Court is not inclined to consider the case of the petitioner for his retention in the same place for it will affect the efficiency level of public administration. This being the factum of the case, the writ petitioner has not established any acceptable grounds.



10. Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Ad-I)

// 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,
Pudukottai District.

+1 CC to Mr.M.V.VENKATASESHAN, Advocate SR-75381.
+1 CC to SPL GP SR-75456.

W.P[MD]No.5330 of 2015
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CS(05.08.2019) 4P 6C