



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.23548 of 2019

and

W.M.P(MD) .Nos.20175 & 20176 of 2019

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Dr.A.Saravana Prakash

... Petitioner

-Vs-

1.State of Tamil Nadu

Represented by its Principal Secretary
Department of Health and Family Welfare
Secretariat, Chennai -09

2.The Director of Public Health and

Preventive Medicine
DMS Complex
Chennai 600 006

3.The Deputy Director of Health Services

Office of the Deputy Director of Health Services
Tirunelveli 627 002

4.The Deputy Director of Health Services

Office of the Deputy Director of Health Service
Tiruvannamalai

5.The Block Medical Officer

Primary Health Centre
Vettavalam
Tiruvannamalai District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of transfer in Ref.R.No.95580/E5/A1/2019, dated 30.10.2019 on the file of the respondent no.2 and the consequential impugned order of relief in Ref.R.No.7475/A1/2019, dated 31.10.2019 on the file of the respondent no.3 and quash the same as illegal and consequently for a direction, directing the respondent nos.2 and 3 to retain the petitioner at the Office of the Deputy Director of Health Services, Tirunelveli.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader



ORDER

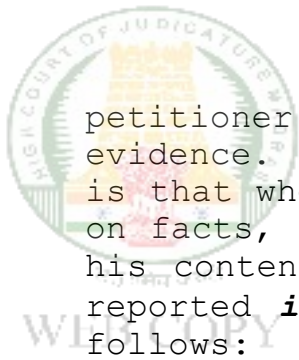
This Writ Petition is filed to call for the records pertaining to the impugned order of transfer in Ref.R.No.95580/E5/A1/2019, dated 30.10.2019 on the file of the respondent no.2 and the consequential impugned order of relief in Ref.R.No.7475/A1/2019, dated 31.10.2019 on the file of the respondent no.3 and quash the same as illegal and consequential direction, to the respondent nos.2 and 3 to retain the petitioner at the Office of the Deputy Director of Health Services, Tirunelveli.

2.The petitioner while working as Assistant Programme Manager in the Office of the Deputy Director of Health Services, Tirunelveli, by an order dated 30.10.2019, was transferred and posted as Assistant Surgeon to Government Primary Health Centre, Vettavalam, Tiruvannamalai Health Unit District. The petitioner is challenging the said order on the ground that he has been transferred in the middle of the academic year and his Son's education who is studying VII Standard is affected. Further, he is looking after his 85 years old father, who is a heart-patient and he has been transferred to a far off place, distanced more than 500 kms from the present place of working, which is malice in law and the petitioner has suffered by the said transfer. The order of transfer was not served on the petitioner and the same was informed by his office staff through e-mail. The relieving order was pasted on the wall of his house and it is totally violation and routine administrative process. The petitioner is aged about 56 years and he is at the verge of his retirement. The petitioner was also served with charge memo dated 30.10.2019 on the very same day of transfer. The learned counsel further submitted the said transfer is punitive in nature and the same is passed under the guise of administrative reason.

3.The learned Special Government Pleader appearing for the respondents submitted that in the place of petitioner, one A.Azima, is appointed and she has also joined duty in the said post. He further submitted that as per Government order in G.O.Ms.No.10, Personnel Administrative Reforms (Per.S) Department, dated 07.01.1994, the respondents have power to transfer an employee pending enquiry and prayed for dismissal of the writ petition.

4. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

5.From the impugned order of transfer, it is seen that the petitioner has been transferred for administrative reason. He is posted in the existing vacancy and was relieved on the next day. Except stating that the order of transfer is malice in law, the



petitioner has not substantiated the same by any acceptable evidence. The contention of the learned counsel for the petitioner is that when the transfer is punitive in nature or malice in law or on facts, the Court can interfere with such transfer. In support of his contention, he relied on the Judgment of **Hon'ble Supreme Court** reported **in (2009) 2 SCC 592**, in which, paragraph No.16, reads as follows:

"16.Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds- one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any fact germane for passing an order of transfer and based on an irrelevant ground ie. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal".

Further, he relied an order of this Court in W.PNo.3978 of 2005, dated 25.01.2006, in which, paragraphs 7 & 8 read as follows:

"7.It is seen from the impugned of transfer that it is passed on administrative ground, it appears that the order was passed by way of punishment and based on the complaint against the conduct of the petitioner. If that be so, the petitioner is certainly entitled for proper opportunity to defend himself as to whether, the complaint against him by the public or by the Headmaster is proper or not by way an enquiry.

8.In these circumstances, this Court is of the view that the transfer order passed by way of punishment is without any opportunity to the petitioner and on the face of it, the order of transfer is illegal and the same is liable to be set aside".

6.The above Judgments relied on by the petitioner, it is stated that only when the order of transfer is punitive in nature or malice in law or on facts, the Court can interfere with such transfer order. In those cases, the complaint has been given against the employee and based on the same, they were transferred. The Hon'ble Apex Court and this Court interfered with the order of transfer. In view of the said transfer order has been passed, based



on the complaint received from the employees. The petitioner has stated that already a charge memo was issued on the same day of transfer. The disciplinary proceedings was also initiated against the petitioner. The learned Special Government Pleader relied on the Government Order in G.O.Ms.No.10, Personnel and Administrative Reforms (Per.S) Department, dated 07.01.1994 and submitted that the respondents have power to transfer an employee pending enquiry. In this case, already a charge memo was issued and the disciplinary proceedings initiated against the petitioner, is a separate proceedings and the issuance of charge memo itself cannot be the reason to come to the conclusion that the impugned order of transfer is punitive in nature. Transfer of Government servant is not only an incident of service, but also a condition of service and no employee has any vested right to claim posting at a particular place of his choice. In the absence of any arbitrariness or malafides, it is not open to the petitioner to challenge the transfer order. The Government employee can be transferred to any place on administrative reason. In the present case, the petitioner is transferred on administrative reason in the existing vacancy.

7.For the above reasons, this Writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

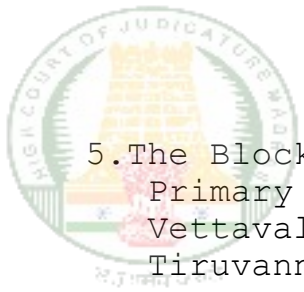
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Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary
State of Tamil Nadu
Department of Health and Family Welfare
Secretariat, Chennai -09
- 2.The Director of Public Health and
Preventive Medicine
DMS Complex
Chennai 600 006
- 3.The Deputy Director of Health Services
Office of the Deputy Director of Health Services
Tirunelveli 627 002
- 4.The Deputy Director of Health Services
Office of the Deputy Director of Health Service



5.The Block Medical Officer
Primary Health Centre
Vettavalam
Tiruvannamalai District

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+1 CC to Spl.GP (SR-99026[F] dated 18/11/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-99350[F] dated
19/11/2019)

W.P. (MD) No.23548 of 2019
and

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