

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04-03-2020

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.3663 of 2020
and
W.M.P.No.4318 of 2020

M.Deepa

... Petitioner

-Vs-

1.The Director of Indian Medicine and Homeopathy,
Arumbakkam,
Chennai 600 106.

2.The District Siddha Medical Officer,
Dharmapuri,
Dharmapuri District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Na.Ka.No.163/Ni/2020 dated 23.01.2020 and quash the same and direct the respondents to permit the petitioner to work at the Government Headquarters Hospital, Krishnagiri.

For Petitioner : Mr.P.Rajendran

For Respondents : Mr.V.Kadhirvelu
Standing Counsel

O R D E R

This writ petition is filed challenging the order dated 23.01.2020, passed by the second respondent posting the petitioner to Government Hospital, Pochampalli, from Government Headquarters Hospital, Krishnagiri, on diversion of duty. The grievance of the petitioner is that earlier, she was posted on diversion of duty in a time bound manner. However, when the impugned order of transfer was issued on 23.01.2020, no tenure was mentioned and therefore it amounted to transfer order.

2.Mr.P.Rajendran, learned counsel appearing for the petitioner would strenuously contend that in the guise of diversion of duty, the second respondent has passed an order of transfer. According to the learned counsel, when a diversion of duty is mentioned in the impugned order, the second respondent ought to have mentioned the tenure of posting. Therefore, he would submit on this ground alone, the impugned transfer order is liable to be interfered with. He would further submit that the transfer is on punitive grounds. He would submit that in the counter affidavit filed by the respondent, it has been pleaded that the petitioner herein is facing a disciplinary action on serious allegation of misconduct. The transfer order is therefore not for administrative exigency but for achieving a collateral purpose. In fact, the learned counsel relied upon the decision of the Division Bench of this Court dated 12.01.2017 in W.P.Nos.42783 & 42784 of 2016, wherein this Court has held that the transfer order is passed on punitive grounds is liable to be interfered with. He would particularly refer to Paragraph 23 of the order, where the Division Bench of this Court has referred to earlier orders of this Court and set aside the transfer orders. In that case also, the petitioner was facing disciplinary action and the Division Bench has entertained that petition on the sole ground that the transfer order was punitive.

3. On the other hand, the learned standing counsel for the respondents would submit that the allegations against the petitioner are very serious in nature and if she is allowed to be retained in the Government Headquarters Hospital, Krishnagiri, there is likelihood of she tampering with the records and the severity of the disciplinary action, may get diluted or may get diverted. Therefore, it is only in the interest of administration, she was moved to a different place only for a period of six months. In fact, it is specifically stated in the counter affidavit filed by the respondents. Therefore, he would submit that the posting of the petitioner to Pochampalli is not permanent but only to facilitate the administration to go ahead with the disciplinary action and complete the same without being hampered or stalled by any machination that may be attempted by the petitioner.

4.Considering the submissions of the counsels on either side, this Court is of the view that on behalf of the respondents, it is specifically averred in the counter affidavit that the posting of the petitioner to Pochampalli is only for a period of six months. This Court is also convinced that the retention of the petitioner in the Government Head Quarters Hospital, Krishnagiri, is not in the interest of administration as rightly contended by the learned standing counsel that in case of retention, there is likelihood of records being tampered.

5. In the said circumstances, in order to strike a balance between the application of the legal principles as enunciated by this Court and also in the interest of Hospital Administration, the averment in the counter affidavit filed on behalf of the respondents 1 and 2 are recorded to the effect that posting of petitioner to Pochampalli is only for a period of six months and not beyond that. It is made clear that since the allegations against the petitioner appear to be very serious, the authorities shall initiate expeditious steps to complete the disciplinary action against the petitioner within a period of six months and shall pass further orders with regard to posting of the petitioner on expiry of six months period, which may commence from 01.02.2020.

6. This writ petition is disposed of in terms of above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst. Registrar (CS-III-MDU)

/true copy/

Sub Asst. Registrar

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To

1. The Director of Indian Medicine and Homeopathy,
Arumbakkam,
Chennai 600 106.

2. The District Siddha Medical Officer,
Dharmapuri,
Dharmapuri District.

+ 1 CC to Mr. P. Rajendran, Advocate in Sr.19662/2020

+ 1 CC to Government Pleader in SR.19758/2020

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RJI - C.O.

MRP - 5 copies