IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.8960 of 2020 and
W.M.P.Nos.10892 & 18143 of 2020

Dr.C.Rajasekhar ... Petitioner

Versus

1. The State of Tamil Nadu,
Rep by Principal Secretary to Government,
Department of Health and Family Welfare,
Secretariat, Chennai 600 009.

2. The Director of Medical and Rural
Health Services,
DMS Compounds, Chennai 600 006.

3. The Joint Director of Health Services,
Trichy, Trichy District. ...Respondents

PRAYER : petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned charge memo dated 30.10.2019 in Ref No.5824/SC/2019, issued by the third respondent and quash the same, consequently, direct the respondents to re-consider the transfer order of the petitioner by posting him at Srirangam Government Hospital forthwith.

For Petitioner : Mr.M.R.Jothimanian
For Respondents : Mr.R.A.S.Senthilvel, GA

ORDER

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This writ petition has been filed to call for the records of the impugned charge memo dated 30.10.2019 in Ref No.5824/SC/2019, issued by the third respondent, quash the same and consequently, direct the respondents to re-consider the transfer order of the petitioner by posting him at Srirangam Government Hospital forthwith.

2. The case of the petitioner is that he was appointed as Assistant Surgeon in the Tamil Nadu Medical Service on

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01.03.2007. He worked in various hospitals during his career. In October 2019, there was a call for agitation and protest by the Government Doctors, demanding various service benefits from the Government and there was a Statewide agitation in that regard, pressing for the attention of the State Government for redressal of their grievances.

3. The Government in order to take action against the striking Doctors, has issued identical charge memoranda to all the Doctors who were absented themselves from duty on 30.10.2019, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charges were unauthorized absence and dislocation of the normal functioning of the Hospital. Simultaneously, the Doctors were also issued transfer orders posting them to various hospitals.

4. The petitioner herein was also issued with the charge memorandum on 30.10.2019 and was also transferred on the same day from Srirangam Hospital to Government Headquarters Hospital, Udagamandalam. Challenging the charge memoranda dated 30.10.2019, a batch of writ petitions came to be filed before this Court in W.P.Nos.31369 of 2019 etc.

5. The learned Judge of this Court, after hearing all the parties to the litigation, has finally allowed the writ petitions in favour of the Doctors by setting aside the charge memoranda and the transfer orders as well. The petitioners in that batch of writ petitions were also issued with the charge memoranda containing the same articles of charges as that of the petitioner herein.

6. When the matter is taken up for hearing, the learned counsel appearing for the petitioner would submit that in pursuance of the order passed in the above said batch of writ petitions, the Government has also implemented the same vide G.O. (D) No.555, Health and Family Welfare (A1) Department, dated 11.06.2020. He would therefore request this Court that since the challenge to the charge memorandum is directly covered by the batch of writ petitions and the petitioner herein is also identically placed as that of the other petitioners therein, the same principle may be followed in this writ petition.

7. Although a detailed counter affidavit has been filed and an objection has been raised by Mr.R.A.S.Senthilvel, learned Government Advocate for the respondents, but ultimately the fact of the matter is that the case on hand is squarely covered by the decision rendered by the learned Judge of this Court in the above said batch of writ petitions dated 28.02.2020. This Court while allowing the batch of writ petitions, has gone into detail in regard to the factual assertion of the rival parties and also

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considered the relevant decisions on the subject matter. The learned Judge has rendered a comprehensive decision while interfering with the charge memoranda as well as the transfer orders issued.

8. This Court does not think that this writ petition can be treated differently in the matter and therefore, the benefit of the order passed by the learned Judge ought to be applied to the petitioner herein, as well. This is more so, when the Government itself thought fit to implement the order of this Court in G.O. (D) No.555 dated 11.06.2020. Since the facts as stated herein are beyond the pale of any dispute, this Court has to necessarily allow the writ petition by following the earlier order of this Court dated 28.02.2020.

9. Therefore, this writ petition is allowed and the charge memorandum dated 30.10.2019 in Ref No.5824/SC/2019, issued by the third respondent, is hereby setaside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
   Department of Health and Family Welfare,
   Secretariat, Chennai 600 009.

2. The Director of Medical and Rural
   Health Services,
   DMS Compounds, Chennai 600 006.

3. The Joint Director of Health Services,
   Trichy, Trichy District.

+1cc to the Government Pleader, S.R.No.37177

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