

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.08.2020

Pronounced on : 25.08.2020

CORAM:

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.9028 of 2020
and WMP Nos.10980 & 10981 of 2020

Dr.S.Perumal Pillai

.. Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. By its Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai - 600 009.

2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

3. The Director,
Directorate of Medical and Rural Health Services,
Teynampet, Chennai - 600 006

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent bearing Ref.No.85333/SCI/3/2019-15 dated 30.10.2019, that of the 3rd respondent bearing Ref.No.65770/E1/1/2019 dated 30.10.2019 and that of the 3rd respondent bearing Ref.No.65770/E1/1/2020 dated 11.06.2020 and quash the same and consequently direct the 2nd respondent to restore the services of the petitioner as the Assistant Professor of Pediatrics at the Institute of Child Health and Hospital for Children, Chennai.

For Petitioner : Mr.T.Gowthaman
For Respondents : Mr.V. Karthigaibalan
Government Advocate

O R D E R

The matter is taken up today through web hearing.

2. The writ petition has been filed seeking for the following prayer:

"for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent bearing Ref.No.85333/SCI/3/2019-15 dated 30.10.2019, that of the 3rd respondent bearing Ref.No.65770/E1/1/2019 dated 30.10.2019 and that of the 3rd respondent bearing Ref.No.65770/E1/1/2020 dated 11.06.2020 and quash the same and consequently direct the 2nd respondent to restore the services of the petitioner as the Assistant Professor of Pediatrics at the Institute of Child Health and Hospital for Children, Chennai."

3. The petitioner is a Doctor, who was originally working as an Assistant Professor of Pediatrics at the Institute of Child Health and Hospital for Children, Chennai. The Federation of Government Doctors Association had organised an indefinite hunger strike and also one day token strike on 27.08.2019. According to the petitioner, he participated in the peaceful agitation pressing for certain demands in regard to the service conditions of the Doctors employed in the State.

4. It transpired subsequently the strike was given up on the basis of an Understanding reached between the Government and the Federation of Doctors. However, the Government, initially as a consequence of the Doctors going on strike transferred several Doctors to various places and also issued charge memoranda individually for their participation in the strike. The petitioner herein is one of the persons transferred and who was also issued with a charge memorandum dated 30.10.2019. Besides, the petitioner was transferred to Pallapatti, Karur District Government Hospital on 30.10.2019 along with a charge memorandum.

5. While the matter stood thus, several Doctors who were affected by issuance of charge memorandum and the transfer orders have approached this Court challenging the charge memoranda and also the transfer orders issued against them. The learned Judge of this Court in a batch of writ petitions vide order dated 28.02.2020, allowed all the writ petitions by quashing the charge memoranda and transfer orders, pertaining to the petitioners in those writ petitions. According to the counsel for the petitioner herein, after the quashing of the charge memoranda and the transfer orders, the status quo ante was restored and the Doctors who were subjected to the transfers had been brought back to the place they were originally posted and working.

6. However, as far as the petitioner alone was concerned, his transfer order was not recalled, in pursuance of the order passed by the learned Single Judge in the batch of writ petitions dated 28.02.2020. However in the meanwhile, the petitioner was subjected to a further transfer from his Karur

posting to Chengalpet Government Medical College, Chengalpet, vide order dated 11.06.2020. The petitioner is therefore, before this Court, challenging three orders viz., (1) the charge memorandum dated 30.10.2019, (2) the first transfer order dated 30.10.2019 to Karur Government Hospital and (3) the second transfer order dated 11.06.2020, posting the petitioner from Karur Government Hospital to Chengalpet Government Medical College, Chengalpet.

7. The learned counsel who appeared for the petitioner would submit that two transfer orders had been issued, which was a sequel to the charge memorandum dated 30.10.2019. The learned counsel would submit that when all other Doctors had been restored to the erstwhile positions after quashing of the charge memoranda and of the transfer orders by the learned Judge of this Court on 28.02.2020, the petitioner herein alone was discriminated against and his transfer order to Karur Government Hospital was not recalled. When the original order of transfer to Karur Government Hospital was itself not recalled, unfortunately, the second transfer order was issued on 11.06.2020, posting the petitioner to Chengalpet Government Medical College, Chengalpet. The learned counsel would submit that petitioner being a very senior Doctor, is entitled to be restored back to the Institute of Child Health and Hospital for Children, Chennai.

8. Notice was issued and Mr.Karthigaibalan, learned Government Advocate, entered appearance on behalf of the respondents.

9. Although an attempt was made, whether any vacancy was available in Chennai, where the petitioner could be accommodated, considering the fact that the identical charge memoranda and transfer orders have been quashed by this Court and the petitioner was also entitled to have parity of treatment, on instructions, the learned counsel for the respondents would submit that the professional services of the petitioner is required more in Chengalpet Government Medical College, than in the Institute of Child Health and Hospital for Children, Chennai. In fact, a detailed counter affidavit has been filed containing a tabulated statement showing the rise of paediatrics cases due to Covid-19 in Chengalpet and also number of Paediatricians working in Chengalpet Government Medical College and the Institute of Child Health and Hospital for Children, Chennai.

10. The learned Government Advocate Mr.Karthigaibalan, would hence submit that in view of the availability of more number of Paediatricians in Chennai and less number of them in Chengalpet, his services cannot be dispensed with by bringing him back to

Chennai in today's pandemic crisis. Therefore, his services are essentially to be utilised for a larger public interest. The learned Government Advocate would also submit that the individual interest howsoever legitimate it may be, has to give way to larger public interest, in the present scenario. In regard to the challenge to the first transfer order, learned counsel submitted that the issue does not survive any more, in view of the second transfer order dated 11.06.2020, posting the petitioner in the present place of work at Chengalpet Government Hospital.

11. At this, the learned counsel for the petitioner would submit that in any case in paragraph No.5 of the counter affidavit, it is mentioned that the petitioner's request will be considered for transfer to the Institute of Child Health and Hospital for Children, Chennai, when normalcy is restored in Chengalpet District. He therefore, requested this Court to indicate some time frame for the respondents to act, based on the averments contained in the counter affidavit.

12. As regards the challenge to the first transfer order dated 30.10.2019, as contended by the learned Government Advocate appearing for the respondents, the issue does not survive any more for consideration before this Court, as the subsequent order of transfer dated 11.06.2020 had superseded the earlier transfer order. But, however, in regard to the charge memorandum is concerned, in view of the orders passed in the batch of writ petitions dated 28.02.2020 in WP Nos.31369 of 2019 etc batch, the impugned charge memorandum dated 30.10.2019 in Ref.No.85333/SCI/3/2019-15, has to meet the same fate and is hereby quashed.

13. As regards the present transfer order under challenge dated 11.06.2020, this Court is of the considered view that the said challenge has to necessarily fail, for the reason that the pandemic situation is quite alarming in the State and the services of the Doctors are extremely important and essential in order to save the lives of people, particularly, children in this case, since the petitioner is a Paediatrician. The contention of the counsel for respondents in this regard has some substance and same cannot be ignored by this Court. The petitioner's service is required more in Chengalpet District due to dearth of sufficient Doctors in the said District.

14. However, while disallowing the writ petition, in view of the averments contained in paragraph No.5 of the counter affidavit that the request of the petitioner would be considered after the return of the normalcy in Chengalpet District, the respondents are directed to consider the request of the petitioner for his transfer back to the Institute of Child Health and Hospital for Children, Chennai. It is also open to the petitioner to make fresh representation to the competent authority, whenever the situation improves considerably with reference to Covid 19 situation. When any such representation

is made in future, the same shall be considered earnestly as per the averments contained in the counter affidavit and a decision taken balancing the interest of the petitioner as well as the interest of the medical administration of the State.

15. The writ petition is disposed of, as indicated above. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Department of Health and Family Welfare,
Secretariat, Chennai - 600 009.

2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

3. The Director,
Directorate of Medical and Rural Health Services,
Teynampet, Chennai - 600 006

+1cc to M/s.Government Pleader, in SR.27771

Pre-delivery order in
WP No.9028 of 2020
and WMP Nos.10980
& 10981 of 2020

BS (CO)
RV (10/09/2020)

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