

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2020

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THE HONOURABLE MR. JUSTICE **V.PARTHIBAN**

W.P.No.9006 of 2020
& WMP Nos.10951 & 10952 of 2020

C.Petchiappan

.. Petitioner

Vs.

1.The Secretary to Government,
Health Department,
Secretariat, Chennai-5

2.The Director of Medical Education,
Kilpauk, Chennai

3.The Dean, Stanley Medical College
Hospital, Chennai-1

4.The Dean, Vellore Medical College
Hospital, Vellore.

5.Mrs.Tamilselvi,
Pharmacist(Now under promotion
as Chief Pharmacist and not relieved)
Stanley Medical College Hospital,
Chennai-1

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for records and quashing the impugned order of transfer issued by the second respondent vide reference No.22342/E2/1/2020 dated 29.06.2020 transferring the petitioner from Stanley Government Medical College Hospital, Chennai to Vellore Government Medical College Hospital as a Chief Pharmacist vice re-posting of the fifth respondent in that behalf and consequently direct the respondents 1 & 2 to post the petitioner in the third respondent Stanley Government Medical College Hospital, Chennai itself.

For Petitioner .. Mr.K.Ravi Anantha Padmanaban
For Respondents . . Mr.V.Kathirvel, Spl.GP for R1
Mr.S.Karthigai Balan, GA for RR2 to 4

ORDER

This matter is taken up through web hearing.

2. This writ petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to call for records and quashing the impugned order of transfer issued by the second respondent vide reference No.22342/E2/1/2020 dated 29.06.2020 transferring the petitioner from

Stanley Government Medical College Hospital, Chennai to Vellore Government Medical College Hospital as a Chief Pharmacist vice re-posting of the fifth respondent in that behalf and consequently direct the respondents 1 & 2 to post the petitioner in the third respondent Stanley Government Medical College Hospital, Chennai itself.

3. The case of the petitioner is that he was working as a Chief Pharmacist at Stanley Government Medical College Hospital, Chennai. He was aggrieved by his transfer to Government Vellore Medical College Hospital as Chief Pharmacist vide proceedings of the second respondent dated 29.06.2020. According to the petitioner, in the normal circumstances, he would have retired from service on 30.06.2020. However, in view of the extension of retirement age to 59 years due to Covid-19 situation, the petitioner is due from retirement probably in June 2021, with hardly one year of service left.

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4. Several grounds have been raised in support of the challenge, particularly, that no employee would normally be disturbed on the verge of

his retirement. According to the petitioner, the fifth respondent who was transferred in his place was accommodated on the basis of her request. According to the petitioner, such request of transfer cannot be detrimental to his interest.

5. At the time of admission, Mr. S.Karthigai Balan, learned Government Advocate took notice and he informed the Court that the fifth respondent had already joined the post occupied by the petitioner at Stanley Government Medical College Hospital. At this, the learned counsel for the petitioner would submit that the petitioner may be accommodated in any one of the available vacancies in and around Chennai. In any case, this Court on due appreciation of facts and circumstances of the case, has granted interim stay of the transfer order.

6. However, the learned Government Advocate appearing for the respondents fairly submitted that he would ascertain as to the availability of vacancies in and around Chennai and report to this Court. On the next day

of hearing, the learned Government Advocate reported that there was a vacancy and suggested the place of posting at Chennai. However, the learned counsel for the petitioner submitted that the posting in the place suggested by the learned Government Advocate would result in loss of substantial emoluments as such posting will be on a deputation basis. Thereafter, the learned Government Advocate was directed to implement the interim passed by this Court.

7. When the matter came up for hearing on 04.08.2020, the learned Government Advocate for the respondents submitted that the petitioner's counsel has sent an E-mail dated 27.07.2020 to the second respondent threatening him that he would face dire consequences if the stay order is not implemented forthwith. The E-mail further stated that the issue of non-implementation of the order of this Court would be highlighted in Media, in case his client is not allowed to rejoin duty at Stanley Medical College Hospital, Chennai as per interim order passed by this Court.

8. A copy of the E-mail dated 27.07.2020 of the counsel for the petitioner was made available. The audacious contents of the E-mail authored by the learned counsel in threatening language far exceeds the professional brief entrusted to the counsel. This Court is not happy about the development, as the petitioner or his counsel has no right or propriety to send such threatening E-mails to the higher officials of the Government. When this Court was earnestly exploring the possibility of accommodating the request of the petitioner on the basis of equitable consideration, the petitioner or his advocate has no right to precipitate the issue and cause provocation to the higher officials of the Government. Such threatening E-mails, in the opinion of this Court, amounted to blackmailing and arm-twisting the officials of the Government. The dignity of the Court cannot be allowed to be trifled with by wanton exhibition of indiscretion on the part of the petitioner as well as his counsel. When an order was passed by this Court on a sympathetic consideration, the petitioner cannot take imprudent advantage of the order and threaten the higher officials of the Government through his advocate and such conduct on the part of the Government servant is not only contumacious but also deprecatory.

9. Be that as it may, with reference to the Stay order granted by this Court, a counter affidavit has been filed on behalf of the respondents and in the counter affidavit, it is stated that by further proceedings dated 21.07.2020, the fifth respondent has been transferred from the Government Stanley Medical College Hospital to Government Vellore Medical College and the petitioner was transferred back to the Government Stanley Medical College Hospital, Chennai subject to the outcome of the Writ petition. In para 8 of the counter affidavit, subsequent development has been delineated as under:

“8. Further, it is submitted that this Hon'ble High Court of Madras in its order dated 09.07.2020 filed in this Writ Petition have granted an order of interim stay on the transfer order issued to the petitioner. In the meanwhile, the Hon'ble High Court has directed the respondent to find out whether the petitioner can be retained in Chennai and posted the matter to... for reporting such instruction. In obedience to such direction, this respondent vide Ref.No.22342/E2/1/2020 dated 10.07.2020 reported through its Government Advocate that the petitioner can be

considered and posted at National Centre for ageing, King Institute of preventive medicine and Research, Guindy, Chennai on deputation from Government Vellore Medical College and Hospital, Vellore. However, the petitioner did not accept the same and hence the matter stood adjourned for filing counter affidavit. In the meanwhile, in order to obey the interim stay of this Hon'ble High Court of Madras and to avoid the salary issues in future as the 5th respondent has already joined in the place of the writ petitioner even before the grant of interim order, the petitioner was again transferred to Government Stanley Hospital, Chennai from Vellore Medical College Hospital and Tmt.S.Tamilselvi, Chief Pharmacist transferred from Govt.Stanley Hospital, Chennai to Vellore Medical College hospital, Vellore in letter Ref.No.22342/E2/2020 dated 21.07.2020 subject to the outcome of the Writ Petition. The above position has been informed to the petitioner and he has been asked to join duty at Vellore Medical College Hospital, Vellore so as to enable him to claim the salary for the joining time period. The Dean, Vellore Medical College hospital, Vellore has also requested to relieve the petitioner immediately as and when he reported for duty over the phone. The above fact has also been informed to the petitioner. But the petitioner was very adamant and did not show any interest to co-

operate with the administration and also refused to receive the order through proper channel.”

10. However, the only condition was that the petitioner has to go and join the place of transfer at Vellore, in order to streamline the process towards the claim of salary for the joining time period. In view of the above development and also to give a quietus to the entire issue and on consideration of the earnest pleading of the learned counsel for the petitioner, profusely apologizing for having sent the E-Mail, and also on consideration of the fact that the petitioner has less than a year for his retirement, this Writ petition is disposed of with the following directions, viz.,

(a) The petitioner is hereby directed to report to the transferred place at Vellore immediately on receipt of this order and on his reporting at the said place, the competent authority shall relieve the petitioner from Government Vellore Medical College Hospital at the earliest not later than two weeks from the date of the petitioner reporting to duty and thereafter, permit the petitioner to join duty at Stanley Medical College Hospital,

Chennai in terms of the letter of reference dated 21.07.2020 in No.22342/
E2/1/2020 and allow the petitioner to work in the same place.

b) No costs. Consequently, connected WMPs are closed.

06.08.2020

Index: Yes/No

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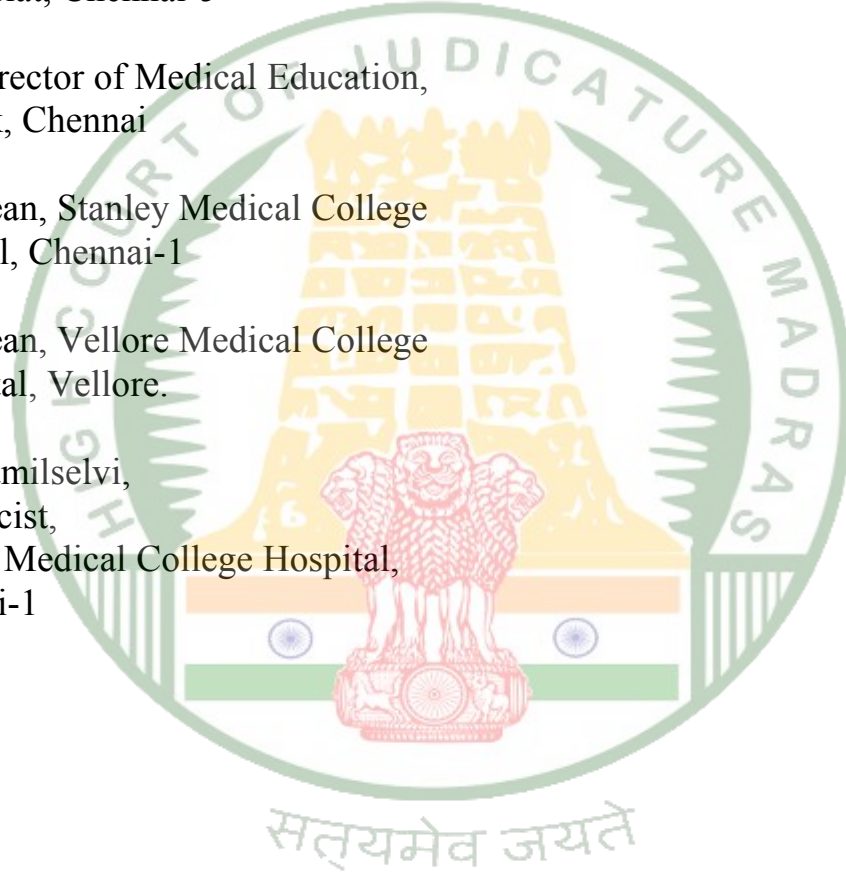


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**V.PARTHIBAN, J.
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To

- 1.The Secretary to Government,
Health Department,
Secretariat, Chennai-5
- 2.The Director of Medical Education,
Kilpauk, Chennai
- 3.The Dean, Stanley Medical College
Hospital, Chennai-1
- 4.The Dean, Vellore Medical College
Hospital, Vellore.
- 5.Mrs.Tamilselvi,
Pharmacist,
Stanley Medical College Hospital,
Chennai-1



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