



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 02.09.2020  
CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**

W.P. (MD)No.6204 of 2020

and

W.M.P. (MD) Nos.5410, 5411 and 7774 of 2020

J.Justel Mary Gilda

... Petitioner

Vs.

The Director of Public Health and  
Preventive Medicine,  
Chennai-6.

... Respondent

**PRAYER** : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned order bearing R.No.22250/E2/S1/2019 dated 23.03.2020 passed by the respondent and quash the same.

For Petitioner :Mrs.Porkodi Karnan, for  
M/s.Polax Solutions

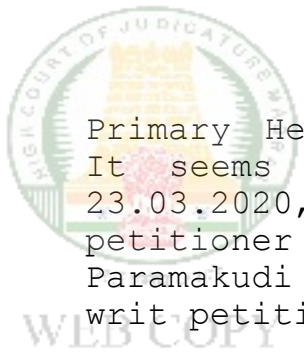
For Respondents :Mrs.J.Padmavathi Devi, Spl.G.P.

**ORDER**

The prayer sought for in this writ petition is for a Writ of Certiorari, calling for the records pertaining to the impugned order bearing R.No.22250/E2/S1/2019 dated 23.03.2020 passed by the respondent and quash the same.

2.The petitioner has been working as Lab Technician Grade III under the respondent department. When she was working at Urban Primary Health Centre, Puttuthoppu, Madurai HUD, on request, or otherwise, she was transferred to her native District and posted at the Hospital on Wheels Primary Health Centre, Agastheeswaram, Nagercoil Health Unit District by the orders of the respondent dated 11.10.2019, pursuant to which, the petitioner joined in the transferred place at Agastheeswaram and had been working there.

3.It is to be noted that till such time, the petitioner was working under consolidated pay of Rs.8,000/- per month. Thereafter, since the petitioner and similarly placed persons have been considered to be brought under time scale of pay, accordingly, a counselling was conducted, where, the willingness of the candidates like the petitioner for transfer and postings was asked and in this regard, it is the case of the respondent that, on 17.03.2020, at the time of general counselling, the petitioner in writing has given her willingness to be posted by way of transfer on regular basis at



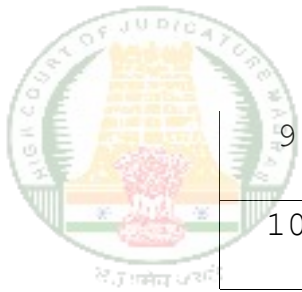
Primary Health Centre, Appanur, Paramakudi Health Unit District. It seems that, pursuant to the said general counselling, on 23.03.2020, order of transfer has been made, in which, the petitioner has been posted at Appanur Primary Health Centre, Paramakudi Health Unit District. Challenging the same, the present writ petition has been filed.

4. When the writ petition came up for hearing at the admission stage before the learned Judge of this Court, on 22.05.2020, the learned Judge, on the prima facie case that, in the impugned order, since it has been stated that, the petitioner as if working at the time of passing the impugned order at Puttuthoppu Urban Primary Health Centre, whereas, the petitioner had already been shifted to Agastheeswaram by order dated 11.10.2019 and accordingly, she had joined there and had been working, therefore, in total non application of mind, since the impugned order of transfer has been passed as if that, the petitioner had been working at Puttuthoppu, Madurai and accordingly has been posted at Appanur, Paramakudi Health Unit District and based on such prima facie case, the learned Judge was pleased to grant interim order of stay on that day i.e., on 22.05.2020 staying the operation of the impugned order of transfer.

5. The case all these days is pending and when it is taken up today, the learned Special Government Pleader appearing for the respondent has filed a typed set of papers, where, she relied upon the declaration given by the petitioner dated 17.03.2020 at the time of general counselling, which reads thus:

## DECLARATION

|    |                                                                      |                                                            |
|----|----------------------------------------------------------------------|------------------------------------------------------------|
| 1. | Date of Transfer Counselling                                         | 17.03.2020                                                 |
| 2. | Name of the Laboratory Technician Gr-III and present working station | J. Justel Mary Gilda,<br>HUD:Nagercoil,<br>Agastheeswaram. |
| 3. | Date of birth                                                        | 26.04.1980                                                 |
| 4. | Date of appointment                                                  | 29.10.2018 UPHC,<br>Puttuthoppu,<br>Madurai HUD            |
| 5. | Date of regularisation                                               |                                                            |
| 6. | Phone No.                                                            | 9095739905                                                 |
| 7. | Present working station                                              | PHC:<br>Agastheeswaram<br>HOWP<br>HUD : Nagercoil          |
| 8. | Date from which working in present station                           | Agastheeswaram MMU<br>(HOWP)                               |



|     |                                           |                               |
|-----|-------------------------------------------|-------------------------------|
| 9.  | Place opted during transfer Counselling   | PHC:Appanur<br>HUD:Paramakudi |
| 10. | Whether any DA is pending or contemplated |                               |

WEB COPY

sd/- (J. Justel Mary Gilda) 17.03.2020

Signature and date

6. In column No.9 of the declaration, the petitioner has filled up her willingness place to be considered for transfer as Appanur, Paramakudi HUD. When this was pointed out, the learned counsel appearing for the petitioner would contend that, at the time of counselling, the petitioner only wanted to be retained at her native District i.e., Nagercoil. However, the officials, who conducted counselling, according to the learned counsel appearing for the petitioner, on instructions from the petitioner, they insisted upon the petitioner to give willingness to Appanur, Paramakudi Health Unit District, otherwise, the petitioner would be posted by way of transfer to any far off place in the northern part of Tamil Nadu.

7. In response to the said submission made by the learned counsel appearing for the petitioner, when this Court raised a point that, this factor has either been stated in the representation submitted by the petitioner dated 14.04.2020 after receipt of the impugned order or atleast, in the affidavit filed in support of this writ petition, the answer was not in the affirmative and the learned counsel appearing for the petitioner would submit that, only after the receipt of documents filed by the respondent in the typed set of papers, this factor i.e., declaration made by the petitioner dated 17.03.2020 giving option to be posted at Appanur was clarified by the petitioner that, said option was given by the petitioner only out of a mere compulsion and not out of her own will.

8. This Court is not impressed on the submission made by the learned counsel appearing for the petitioner as the said factor has first been introduced before this Court during the argument today by the learned counsel appearing for the petitioner on instructions of the petitioner. As stated above, neither in representation dated 14.04.2020 nor in the affidavit filed in support of this writ petition dated 04.05.2020, such a plea was raised by the petitioner. Even though if the said plea is raised, it can very well be denied by the respondents. Therefore, the said ground raised by the petitioner cannot be accepted and therefore, it is rejected.

9. Since the impugned order states as if that, the petitioner was working at the time of passing the impugned order at Puttuthoppu, Madurai District, the learned Special Government Pleader appearing for the respondent would submit that, during the counselling taken place for the petitioner to bring her under time scale of pay, it was mistakenly stated as if that, the petitioner was working in Puttuthoppu, taking into account the earlier



situation, but it is only a mistake inadvertently taken place. Therefore, that would not any way protect the petitioner from being subjected to transfer after she has been brought under time scale of pay, that too, in a place, which was opted by the petitioner through declaration submitted in this regard as referred to above. The said submission made by the learned Special Government Pleader in this regard also is taken on record.

10. In view of the above, this Court is not inclined to interfere with the impugned order, which is a mere transfer, that too on administrative ground, after taking into account the position, where the petitioner has been brought under regular time scale of pay and also taking into account her willingness as has been discussed above.

11. For all these reasons, the impugned order can be sustained. Therefore, it cannot be interfered with. Hence, the interim order of stay granted by this Court dated 22.05.2020 is hereby vacated. However, since the petitioner has given a representation to the respondent on 14.04.2020, where the petitioner has raised her family circumstances and health grounds, where the petitioner is struggling to look after her aged mother, who is already suffered with Cancer. Therefore, considering the said family circumstances of the petitioner, let the respondent consider the request made by the petitioner dated 14.04.2020 and accordingly, take a pragmatic decision within a period of four weeks from the date of receipt of a copy of this order. It is however made clear that, the petitioner, because of the said direction to the respondent to consider her request, cannot take any shelter that he has to be retained at the present place, instead, the petitioner shall join in the transferred place at once and thereafter, if the representation of the petitioner as directed above is considered and she is given any re-transfer to her native place, that can be accepted.

12. With these observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

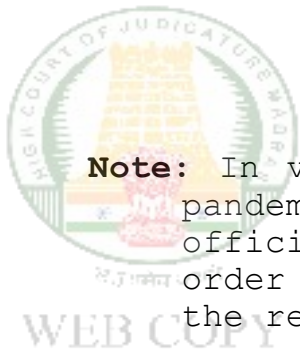
Assistant Registrar (Crl Side)

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Sub Assistant Registrar(CS)

Arul



**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Director of Public Health and  
Preventive Medicine,  
Chennai-6.

+1 CC to M/s.GP ( SR-15805[F] dated 03/09/2020 )

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate ( SR-15852[F] dated  
03/09/2020 )

**W.P. (MD)No.6204 of 2020**

**02.09.2020**

pm (CO)

**KK(08.12.2020) 5P 4C**