



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)No.10797 of 2021

and

W.M.P(MD)Nos.8432, 8435 and 10454 of 2021

S.Sophia

... Petitioner

Vs

- 1.The Director of Medical and Rural Health Services,
Office of the Directorate of Medical and
Rural Health Services,
Tenampet, Chennai - 6.
- 2.The Director of Medical and Rural Health Services (ESI),
Office of the Directorate of Medical and
Rural Health Services,
Tenampet, Chennai - 6.
- 3.The Regional Administrative Medical Officer (ESI),
Office of the Regional Administrative Medical Officer
/ESIS,
Vinayaga Street,
K.K.Nagar, Madurai - 625 020.
- 4.The Medical Officer in charge,
The Government ESI Dispensary, Thuckalay
Kanyakumari District.
- 5.The Medical Officer,
Government Primary Health Centre,
Pappampatti, Dindigul 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 pertaining to the impugned transfer order in R.No.28176/N2/2/2021, dated 07.06.2021 and signed on 24.06.2021 passed by the respondent No.1 and consequential impugned relieving order in R.No.10272E12021, dated 24.06.2021 on the file of the respondent No.3 and the impugned relieving order in R.No.275/ESI/2021-1, dated 24.06.2021 on the file of the respondent No.4 and quash the same as illegal and for consequential direction to forbear the respondents from transferring the petitioner in violation of the guidelines issued in Government Order in

<https://hcservices.ecourts.gov.in/hcservices/>



G.O.Ms.No.10, Personnel Administrative Reforms Department dated 07.01.1994 and Government order in G.O.249 Finance (Budget General -1) Department dated 21.05.2020.

For Petitioner : Mr.Pinaygash.I
For Respondents : Mr.P.T.Thiraviam,
Government Advocate

WEB COPY

ORDER

This writ petition has been filed as against the order of transfer of the petitioner and the consequential relieving order.

2.The learned Counsel for the petitioner submits that the petitioner, while was working as Staff Nurse in the ESI Dispensary, Nagercoil, the Superintendent of the Government ESI Dispensary, Nagercoil one Kishore sexually harassed the petitioner and demanded sexual favours from the petitioner. Therefore, the petitioner lodged a complaint before the Superintendent of Police, Kanyakumari on 10.07.2021. For having lodged the said complaint, the petitioner was transferred on 18.07.2020 to ESI Dispensary, Thuckalay, from Nagercoil.

2.The learned Counsel further submits that while so, the petitioner sent a representation to the higher officials for appropriate action against the said Superintendent. However, there was no response. Therefore, the petitioner filed a writ petition in W.P(MD)No.10306 of 2021 for direction to the respondents to constitute a Gender Sensitisation and Prevention of Sexual Harassment of Women Committee and the writ petition is pending. For having filed the writ petition, the petitioner has been transferred from Thuckalay to Government Primary Health Centre, Pappampatti, Dindigul district and challenging the said order the petitioner is before this Court.

3.The learned Counsel alleges that for having lodged a complaint against the Superintendent, who has given sexual harassment, the petitioner was once transferred during July 2020 and for having filed writ petition before this Court, to take appropriate action against him by forming a Committee, the petitioner has been again transferred to a far away place. The petitioner, who is already facing sexual harassment has been victimised in this case by way of these punitive transfers.

4.The learned Government Advocate, appearing for the respondents submitted that since there was dispute between the petitioner and the superintendent one Kishore Kumar, both of them have been transferred from the said place on administration grounds. Only for smooth administration, the petitioner was transferred and no *mala fide* can be attributed against the respondents in this



regard.

5.This Court paid its anxious consideration to the rival submission and perused the materials placed on record.

6.It is admitted that the petitioner has lodged a complaint as against his superior alleging sexual harassment from him. The said complaint was not acted upon. However, the petitioner has been transferred from ESI Dispensary Nagercoil to ESI Dispensary Thucklaly on 18.07.2020. Subsequently, the petitioner has approached this Court in W.P(MD)No.10306 of 2021 for formation of Committee as directed by the Hon'ble Supreme Court in Vishaka Vs State of Rajasthan, reported in 1997 (6) SCC 241. The respondents, after taking notice in that writ petition has constituted a Committee and the said Committee found that there are materials against the said Kishore Kumar and transferred him to other place. At the same time the petitioner was also transferred to Dindigul from Thuckalay. It is not known why the petitioner should be transferred and that too, to a far away place. Though the learned Government Advocate submits that for smooth administration both of them have been transferred, this Court is not satisfied with the said reason. Since this is not the first time the petitioner has been transferred after lodging her complaint, but for the second time, apparently, she has been transferred that too for having approached this Court seeking legal remedy.

7.In the light of the above, this Court is of the view that the impugned transfer order cannot be sustained in the eye of law and therefore, this writ petition is allowed and the impugned transfer order and the consequential proceedings are quashed. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar (CS-III)

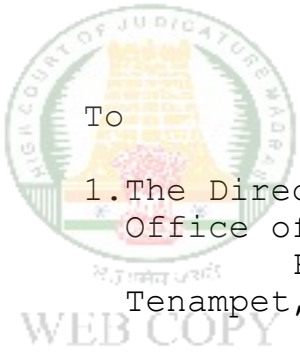
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Sub Assistant Registrar(CS)

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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

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Government Primary Health Centre,
Pappampatti, Dindigul District.

+1 CC to M/s.SPL GP (SR-39035[F] dated 16/12/2021)

+1 CC to M/s.I.PINAYGASH, Advocate (SR-39178[F] dated 16/12/2021)

W.P(MD)No.10797 of 2021
15.12.2021

PK(CO)

KB(12.01.2022) 4P 8C