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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.01.2022

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P.No.222 of 2022
and W.M.P.No.253 of 2022

T.Irudayaraj
S/o Thangaswamy
No.10, 1st Street
Grey Nagar
Pulianthope
Chennai - 600 012.

... Petitioner

-vs-

1.Employees State Insurance Corporation (ESIC)
Headquarters
CIG Marg
New Delhi - 110 002.
Rep by the Director General

2.Employees State Insurance Corporation (ESIC)
Regional Office
No.143, Sterling Road
Chennai - 600 034.
Rep by the Additional Commissioner &
Regional Director.

3.Employees State Insurance Corporation (ESIC)
No.143, Sterling Road
Chennai - 600 034.
Rep by the Deputy Director (Admn.,)

4.The Deputy Medical Superintendent
ESIC Hospital
KK Nagar, Chennai - 600 078.

5.The Central Administrative Tribunal
Madras Bench
Rep by its Registrar
Chennai - 600 104.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorarified
Mandamus, calling for the records of the 5th respondent



pertaining to its order, which is made in OA/310/00634/2021 dated 07.12.2021 and quash the same, consequent to direct the respondents 1 to 4 to retransfer and post the petitioner at ESIC Hospital, KK Nagar, Chennai or its unit at Ambattur, Chennai.

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For petitioner : Mr.R.Malaichamy

For respondents : Mr.K.Prabhakar, Standing Counsel
for RR1 to 4
R5-Tribunal

ORDER

(Order of the Court was made by K.KALYANASUNDARAM, J.,)

This writ petition has been filed, assailing the order passed by the Central Administrative Tribunal, Chennai Bench in O.A.No.310/000634/2021 dated 07.12.2021.

2.The learned counsel for the petitioner, Mr.Malaichamy, would submit that the petitioner is working as a Male Nursing Orderly at ESIC Hospital, KK Nagar, Chennai and he was transferred to ESIC Hospital, Tirunelveli. It is the submission of the learned counsel that the transfer order is punitive, on the basis of the complaint made by one Premkumar, Retired Official. It is further submitted that the petitioner is suffering from health issues and he has to take care of his family members. It is also stated that the children of the petitioner are studying.

3.Perusal of the records reveal that the petitioner was working as Male Nursing Orderly, ESIC Hospital, K.K.Nagar and he was transferred to ESIC Hospital, Tirunelveli, on administrative grounds. While considering the submission of the learned counsel appearing for the petitioner that the transfer was punitive, the Central Administrative Tribunal, Chennai Bench, in paragraph Nos.19, 20 and 21 has observed as follows:-

"19.Further, in the counter the respondent has stated the reason which is quoted above and considering all these aspects, it cannot be stated that the order of transfer is mala-fide one and it was passed as a punishment. As a matter of fact, in the judgment reported in (2004) 4 SCC 245 in the case of Union of India and others vs. Janardhan Debanath and another, the Honourable Supreme Court has held that unless the order of transfer is shown to be an outcome of mala-fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Court or the Tribunals normally cannot interfere



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with such orders as a matter of routine.

20. Further, in the judgment reported in (2004) 4 SCC 245, in the case of Union of India and others vs. Janardhan Debanath and another, the Honourable Supreme Court held as follows:-

"The manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether the use of the word "undesirable" casts a stigma or constitutes a punishment would depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions-status, service prospects financially - and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration."

21. The Apex Court further held that "whether there was any misbehaviour is a question which can be gone into in a departmental proceedings. For the purpose of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authorities concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by the respondents, of holding an elaborate enquiry is to be insisted upon, the very purpose of transferring an employee in public interest or exigencies or administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for the Supreme Court to direct one way or the others."

Therefore, the Honourable Supreme Court has held that the order of transfer cannot be said to



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be punitive in nature and the holding of an enquiry need not be insisted upon for the purpose of transferring an employee in public interest and due to exigencies of administration and to enforce decorum and ensure probity a transfer over can be passed."

4. It is relevant to note that admittedly the petitioner joined duty at the transferred place i.e., E.S.I. Hospital, Tirunelveli on 22.08.2021. The Central Administrative Tribunal following the decisions of the Hon'ble Apex Court, has rightly rejected the case of the petitioner. Hence, we find no reason to interfere with the order impugned in this Writ Petition.

5. In fine, the Writ Petition fails and the same stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Central Administrative Tribunal
Madras Bench
Rep by its Registrar
Chennai - 600 104.
- 2.The Deputy Director (Admn.,)
Employees State Insurance Corporation (ESIC)
No.143, Sterling Road
Chennai - 600 034.
- 3.The Director General,
Employees State Insurance Corporation (ESIC)
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- 4.The Additional Commissioner & Regional Director
Employees State Insurance Corporation (ESIC)
Regional Office,
No.143, Sterling Road,
Chennai - 600 034.



5.The Deputy Medical Superintendent
ESIC Hospital
KK Nagar, Chennai - 600 078.

+1cc to Mr.R.Malaichamy, Advocate, S.R.No.1740

W.P.No.222 of 2022
and W.M.P.No.253 of 2022

SVI (CO)
SB(02/03/2022)