



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 1947 of 2022
and WMP.Nos. 2104 & 2105 of 2022

Dr.Valampuri Selvan

..Petitioner

vs.

1.The Director of Public Health and
Preventive Medicine,
Teyanampet, Chennai-600006.

2.The Deputy Director of Health Services,
Cuddalore,
Cuddalore District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records which culminated in the proceedings bearing 1786593/E5/A1/2021 dated 22.12.2021 on the file of the 1st respondent and quash the same and consequently direct the respondents 1 & 2 to permit the petitioner to continue as Assistant Surgeon in primary Health Centre, Pennagaram, Cuddalore District .

For Petitioner : Mr.Ayyathurai
For M.Elumalai
For Respondents : Mr.V.Manoharan, AGP

O R D E R

Challenging the impugned transfer order passed by the 1st respondent in proceedings No 1786593/E5/A1/2021 dated 22.12.2021, the present writ petition is filed.

2. The learned counsel for the petitioner has submitted that the petitioner was appointed as Assistant Surgeon in the year 2008 and based on the alleged incident taken place between the petitioner and one Vasugi, Village Health Nurse, the 2nd respondent had initiated disciplinary proceedings under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules without giving any opportunity to submit explanation. Subsequently, FIR came to be registered in Crime No. 798 of 2021 against the petitioner by the Inspector of Police, Veppur Police



Station, Cuddalore District for the offenses punishable under Section 294 (b) r/w Section 3 (20 (va) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act. The 1st respondent had passed the impugned order, transferring the petitioner from Cuddalore District to Nagapattinam District.

3. The learned counsel for the petitioner has further submitted that the impugned transfer order passed by the 1st respondent would indirectly amount to holding that the charges against the petitioner are proved. The 1st respondent instead of proceeding with the disciplinary proceedings, has passed the order of transfer.

4. The contention of the learned counsel for the petitioner is that only due to pendency of criminal case as against the petitioner, the respondent had issued impugned transfer order as a measure of punishment, which is punitive in nature. Therefore, the impugned transfer order passed by the respondent on administrative grounds is liable to set aside.

5. On perusal of the counter affidavit filed on behalf of the 1st respondent, it is stated that the Deputy Director of Health Services, Cuddalore vide letter dated 13.12.2021 has informed about the unwanted quarrel with the Village Health Nurse by the petitioner and requested to transfer the petitioner to some other Health Unit District other than Cuddalore District. Based on the said letter, the petitioner was transferred to Government Primary Health Centre, Manalmedu, Nagapattinam Health Unit on administrative grounds.

6. At this juncture, it is pertinent to rely upon the decision of the Hon'ble Supreme Court in the case of Mrs. Shilpi Bose Vs.State of Bihar reported in AIR 1991 SC 532 has held that the Courts should not interfere with the transfer orders made on administrative reasons unless there is violation of any mandatory statutory rule or on the ground of malafide. The relevant portion of the judgment is extracted below;

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive



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instructions or orders, the Courts ordinarily should not interfere with the order of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department...."

7. Further in the case of LM.Salim & another Vs. Principal Chief Security Commissioner, Railway Protection Force, Southern Railway Chennai & 3 others, wherein I had an occasion to deal with the similar issue in detail by relying upon various decisions of the Hon'ble Supreme Court and held that in the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. The relevant portion is extracted hereunder;

"7. That apart, administrative transfers are the prerogative of the Department concerned and the competent authorities are the best persons to assess and act accordingly. However, those competent authorities should act in the interest of public and in the event of any illegality or some personal motive, then alone, the employee can approach the Court of law for appropriate remedy. In other words, if an order of transfer is issued with malafide intention or in violation of the statutory rules, then alone a writ petition can be entertained. Even in such cases, the allegation of malafide intention must be substantiated in the writ proceedings and the official concerned must be impleaded as party respondents in the writ proceedings. In the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. Transfer is an incidental to service, more so, a condition of service. Public servant is liable to work wherever he is posted in the interest of public administration. On accepting the offer of appointment, a person is agreeing for the conditions of service and transfer being incidental, he must be in a position to work, wherever he is posted.

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9. In State of U.P. and others vs. Siya Ram and others [(2004) 7 SCC 405], the Honourable Supreme Court has held that unless the order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions



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prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer / management, as against such orders passed in the interest of administrative exigencies of the service concerned.

10. Further, in *Airports Authority of India vs. Rajeev Ratan Pandey and others* [(2009) 8 SCC 337], the Honourable Supreme Court has held that in the matter of transferring Government employees, the scope of judicial review is limited and the High Courts should not interfere with an order of transfer lightly.

11. In the instant case, on perusal of the materials available on records, this Court does not find any mala fide exercise or violation of any statutory provision on the part of the respondents and therefore, the impugned transfer orders and the consequential relieving orders do not warrant any interference of this Court and the writ petitions are therefore liable to be dismissed."

8. Since it is clear from the statement made in the counter affidavit that the petitioner was transferred on administrative reasons due to unwanted quarrel by the petitioner with a Village Health Nurse and to avoid such further incidents and to have smooth functioning of the Health Unit, in view of the decisions cited supra, the impugned transfer orders issued on administrative grounds cannot be interfered with by this Court.

9. However, taking note of the fact that the FIR registered against the petitioner in Crime No. 798 of 2021 on the file of the Inspector of Police, Veppur Police Station, Cuddalore District was closed as mistake of fact, this Court is of the view that the transfer orders issued to the petitioner transferring to Nagapattinam District which is 300 km distance from the previous work place needs to be reconsidered. Accordingly, the following directions are issued;

- i. The petitioner shall make a representation to the 1st respondent for reconsideration of the impugned transfer order.
- ii. On receipt such representation, the 1st respondent is directed to consider the same and issue fresh transfer orders, transferring the petitioner to some other Health Unit situated nearby Cuddalore district, as expeditiously as possible without any delay.



With the above observations, the writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of Public Health and Preventive Medicine,
Teyanampet, Chennai-600006.
2. The Deputy Director of Health Services,
Cuddalore,
Cuddalore District.

+lcc to Mr.M.Elumalai, Advocate, S.R.No.17841
+lcc to the Government Pleader, S.R.No.18188

W.P.No.1947 of 2022
and WMP.No. 2104 & 2105 of 2022

SSV(CO)
KKV/22/03/2022