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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.A.No.815 of 2022
and
CMP.Nos.5539 & 5317 of 2022

Dr.Valampuri Selvan

... Appellant

-vs-

1. The Director of Public Health and
Preventive Medicine
Teynampet,
Chennai 600 006.

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

... Respondents

Prayer: Writ appeal is filed under clause 15 of the Letter Patent praying to allow the Writ Appeal and set aside the order dated 16.03.2022 in W.P.No.1947 of 2022.

Prayer in W.P.No.1947 of 2022:

Petition 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 first respondent and quash the same and consequently direct the respondents 1 and 2 to permit the petitioner to continue as Assistant Surgeon in Primary Health Centre Pennagaram, Cuddalore District.

For Appellant : Mr.S.Ayyathurai

For Respondents : Mr.Abishek Murthy
Government Advocate



JUDGMENT

Instant Writ Appeal is directed against the order dated 16.03.2022 made in W.P.No.1947 of 2022, by which there was a direction issued for consideration of transferring the Writ Petitioner to a nearby District.

2. It is the case of the Writ Petitioner that he was appointed as Assistant Surgeon in the year 2008 and based on a complaint lodged by one Vasugi, Village Health Nurse, an FIR came to be registered against him in Crime No.798 of 2021 by the Inspector of Police, Veppur Police Station, Cuddalore District for the offences punishable under Section 294 (b) r/w Section 3 (20 (va) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act. The 2nd respondent had also initiated disciplinary proceedings under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and no opportunity was afforded to the Writ Petitioner to submit his explanation. On 22.12.2021, the 1st respondent passed an order, transferring the Writ Petitioner from Cuddalore District to Nagapattinam District, which will cause a stigma on the charged issued to him. It is further case of the Writ Petitioner that the order of transfer is punitive in nature and therefore, the Writ Petitioner filed the writ petition, in which the aforesaid direction was issued.

3. The learned counsel for the Writ Petitioner / Appellant vehemently submitted that the first respondent, instead of proceeding with the disciplinary proceedings issued under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, initiated by the second respondent against the Writ Petitioner, has passed the order of transfer transferring him from Cuddalore to Nagapattinam District. The order of transfer has been passed only to victimize the Writ Petitioner. It is further submitted that even though the order of transfer is passed due to administrative reasons, there is no administrative exigency warranting the transfer of the petitioner from Cuddalore District to Nagapattinam District. The appellant has been posted in the present station, namely, Cuddalore District just one year before and even before completion of three years, the impugned order of transfer has been passed and it is causing hardship to the petitioner personally to shift his family. Moreover, the case in Crime No.798 of 2021 registered against the Appellant was also closed as Mistake of Fact by the Investigating Officer, namely, concerned DSP. Therefore, the present order of transfer is not warranted and it is liable only to be interfered with by this Court. As there are many vacancies available in Cuddalore District, the appellant has given a representation dated 06.04.2022, requesting to post him in Cuddalore District itself.



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4. The learned Government Advocate appearing for the respondents submitted that the respondents are prepared to consider the appellant's representation dated 06.04.2022 and to pass suitable orders thereon.

5. Heard both sides.

6. It is seen that the entire issue revolves around the complaint lodged by one Vasugi, Village Health Nurse and though the said complaint culminated into an FIR, subsequently, the case was closed as a Mistake of Fact. However, in the meanwhile, the reputation earned by the Appellant has been completely tarnished on account of the complaint lodged and to add fuel to the fire, he was also transferred to a far off place, in addition to issuance of charge memo against him. A cursory look at the Enclosure No.4 to the Charge Memo reveals that there is no witness to the allegations levelled against the Appellant herein. It is seen that the appellant has been posted at Government Primary Health Centre, Mugaiyur, Villupuram Health Unit District, which according to the appellant is 130 Kms away from the present place of work, namely, Nallur Block, Cuddalore Health Unit, Cuddalore District. He has already sent a representation dated 06.04.2022 to the respondents for posting him in the very same station in Cuddalore District.

7. Mr.Abhishek Moorthy, learned Government Advocate fairly submitted that though the distance between Cuddalore and Villupuram is only 60 Kms, the respondents have no objection in considering the request of the appellant, viz., posting him in the same station, which, of course will be in accordance with norms prescribed for transfer / request transfer.

8. A circumspection of the facts and circumstances of the case shows that there was no witness to depose against the Writ Petitioner and the criminal case was also closed as Mistake of Fact. Hence, this Writ Appeal is disposed of with a direction to the first respondent / the Director of Public Health and Preventive Medicine Teynampet, Chennai-6 to take a decision on the appellant's representation dated 06.04.2022, within a period of two weeks from the date of receipt of a copy of the judgment, bearing in mind what is stated hereinabove and till such time, we direct the respondents not to precipitate the Disciplinary Proceedings against the appellant.

9. Of late, several frivolous and false complaints of this nature are mushrooming, by invoking the provisions of SC/ST Act, on account of which, the real intent of the said provision gets diluted and in case the respondents find that the complaint has been lodged in order to defame the Appellant, it is open to them



to initiate departmental action against Vasugi, Village Health Nurse, so that it will be a lesson for others to think twice before making false allegations against someone. No costs. Consequently connected miscellaneous petitions are also closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

DPQ

To

1. The Director of Public Health and
Preventive Medicine
Teynampet, Chennai 600 006.
2. The Deputy Director of Health Services,
Cuddalore,
Cuddalore District.

+1cc to Mr.S.Ayyathurai, Advocate, S.R.No.26061
+1cc to the Government Pleader, S.R.No.26336

W.A.No.815 of 2022
and C.M.P.Nos.5539 and 5317 of 2022

GP(CO)
TE(25/04/2022)