



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.4294 of 2022

and

W.M.P. (MD) No.3648 of 2022

D.Kumar

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep., by its Principal Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai-9.

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

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 2nd respondent in R.No. 22260/MPiV/S3/2017 dated 28.01.2022 and quash the same and consequently direct the 2nd respondent to transfer and post the petitioner as Health Educator in the Tamil Nadu Public Health Subordinate Services in Thanjavur District based on his seniority by getting option letter as per the judgment of this Honble Court made in W.P.Nos. 29553 to 55/2014, 32344 to 46/2014 and 6234/2015 dated 01.03.2016.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.A.K.Manikkam,
Special Government Pleader

O R D E R

The Writ on hand has been instituted questioning the validity of the order of rejection passed by the Director of Public Health and Preventive Medicine in proceedings dated 28.01.2022 stating that the petitioner is working as Technical Personal Assistant and there is no rule provision to promote the petitioner from the post of



Technical Personal Assistant to the post of Health Educator. The scale of pay of Technical Personal Assistant and Health Educator is identical and therefore, the relief sought for by the petitioner is not feasible for compliance.

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2. The case of the petitioner is that he was appointed as Leprosy Inspector on 03.11.1986 in the Director of Medical Services Department and his services were regularised and at present, he is working as Technical Personal Assistant Grade-I. Three categories of Health Inspectors are functioning in the Department of Public Health and Preventive Medicine and they are (i) Health Inspector Grade-I; (ii) Health Inspector Grade-IB; and Health Inspector Grade-II. The petitioner was holding the post of Health Inspector Grade-I and in the line of promotion, he was promoted to the post of Block Health Supervisor and now holding the post of P.A. to Deputy Director of Health Services. Two line of promotions were provided from the post of Health Inspector and they are as under:-

Health Inspector Grade-I

↓
Non Medical Supervisor

(Near about 15 posts in each
posts in each District)

↓
Health Educator
Services

(3 posts in each District)

↓
Block Health Supervisor

(Near about 13 District

↓
P.A.To Deputy Director Health

(One post in the District)

3. The petitioner was promoted to the post of Block Health Supervisor. Therefore, in the said line of promotion, the next promotion was P.A. to Deputy Director of Health Services. Admittedly, the petitioner was not promoted to the post of Non-Medical Supervisor. Therefore, he is not falling in the line of Non-Medical Supervisor to be promoted to the post of Health Educator.

4. Once the petitioner is promoted as Block Health Supervisor in the line of promotions, the next promotion would be P.A. to Deputy Director of Health Services and in which post, the petitioner is working as of now. However, the fact remains that both the posts of Health Educator and P.A. to Deputy Director of Health Services are equivalent posts carrying identical scale of pay. Interchangeability whether permissible under the rules is to be verified by the authorities competent. However, if it is interchangeable post, then alone, the cases are to be considered for



transfer, if the rule permits otherwise. Thus, this Court is of an opinion that the petitioner cannot now seek for transfer to the post of other line, as he cannot seek transfer merely the post seems to be more attractive.

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5. Post can never be claimed as a matter of choice by the Government servants. Status cannot be claimed in Government services. It is a public service to be provided and the Government servants, wherever posted, are expected to perform their duties and responsibilities with full devotion. Thus, transfer is incidental to service. If the posts are interchangeable under the rules, then it is to be considered by the competent authorities, if an administrative decision is taken to do so. However, the employees have no right to seek such transfer to any other post. Transfer being an administrative affair, the competent authorities alone are empowered to take decision in matters of administrative affairs.

6. The learned counsel for the petitioner states that the petitioner has given option to the post of Health Educator and this Court is of an opinion that receiving an option is a concession and mere option would not confer any right on the petitioner to claim the post of Health Educator, even if the petitioner claims that he has completed Non-Medical Supervisor Training, he was promoted to the post of Block Health Supervisor in the other line and further promoted to the post of P.A. to Deputy Director of Health Services. Therefore, these administrative affairs cannot be construed as violation of service conditions.

7. The service conditions are not violated, as the petitioner is working in the equivalent post of Health Educator. When the service conditions are not violated and the salaries and perquisites are identical, then the post cannot be claimed as a matter of right or choice.

8. High Court cannot interfere with the administration of the Government Departments, unless the person approaching the Court establishes that his service conditions are violated or service rights are infringed. When the petitioner is working in the equivalent cadre of Health Educator, which carries the identical scale of pay, then the petitioner cannot be construed as an aggrieved person for the purpose of entertaining a writ petition. Option is a concession or facility. The options may be considered if an administrative decision is taken by the competent authorities. However, Court cannot issue any direction, as the service conditions of the petitioner as well as the salary of the petitioner are not affected, as the same are identical to that of the post of Health Educator in the line of promotion from Non-Medical Supervisor.



9.The writ petition is filed on the ground that counselling for transfer to the post of Health Educator is going to be conducted. Counselling itself is a facility provided and the counselling would not provide any right on the employee to claim a particular post. It is a facility to the employees and such facilities are subject to other conditions including availability of vacancies, eligibility, etc. Therefore, this Court is of an opinion that the case of the petitioner cannot be considered for participating in the counselling.

10.The learned counsel for the petitioner made a submission that the issues are pending before the Government. Thus, this Court is of the considered opinion that it is for the Government to take a decision regarding the interchangeability and other issues involved in the matter of transferring the P.A. to Deputy Director of Health Services to Health Educators. However, the petitioner in the present writ petition has not established any acceptable ground for the purpose of granting the relief, as there is no violation of service conditions, nor any infringement of right, as the post of P.A. to Deputy Director of Health Services and Health Educator are equivalent carrying identical scale of pay and the writ petition is liable to be dismissed.

11.Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Principal Secretary to Government
of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Chennai-9.

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

+1 CC to M/s.SPL GP (SR-11526[F] dated 11/03/2022)

+1CC to M/s.M.SARAVANA KUMAR, Advocate (SR-10917[F]dated 09/03/2022)

W.P. (MD) No.4294 of 2022
09.03.2022

abr

MS/28.03.2022/4P.5C