



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on :04.04.2022

Pronounced on :08.04.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

**W.P. (MD)Nos.9548 to 9550 of 2021**

**and**

**W.M.P. (MD)Nos.7292, 7295, 7298, 7294, 7297, 7299 and 7300 to 7302 of 2021**

Dr.P.Vidhu Prabha ... Petitioner in W.P.(MD)No.9548 of 2021  
Dr.M.Dhulasy Brindha ... Petitioner in W.P.(MD)No.9549 of 2021  
Dr.S.Periyar Rani ... Petitioner in W.P.(MD)No.9550 of 2021

Vs.

1.State of Tamil Nadu,  
Rep by its Principal Secretary to Government,  
Health and Family Welfare Department,  
Secretariat, Chennai-600 009.

2.The Director of Medical Education,  
Directorate of Medical Education,  
Kilpauk, Chennai-600 010.

... Respondents in W.P.(MD)Nos.9548 and  
9549 of 2021

1.State of Tamil Nadu,  
Rep by its Principal Secretary to Government,  
Health and Family Welfare Department,  
Secretariat, Chennai-600 009.

2.The Director of Medical Education,  
Directorate of Medical Education,  
Kilpauk, Chennai-600 010.

3.Dr.T.Preetha  
4.Dr.A.Sangeetha  
5.Dr.C.Poongodi  
6.Dr.M.Sargunam  
7.R.Bharathi  
8.E.Deepak Kumar

... Respondents  
in W.P.(MD)No.9550 of 2021

(R3 to R8 are impleaded vide Court order dated 23.03.2022 in W.M.P.  
(MD)No.2524 of 2022 in W.P.(MD)No.9550 of 2021)



**COMMON PRAYER:** Writ Petitions under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned circular in Ref.No.035195/E3/1/2021-SPG on the file of the respondent No.2 dated 21.05.2021 and the consequential impugned circular in Ref.No.035195/E3/1/2021-SPG on the file of the respondent No.2, dated 23.05.2021 and quash the same as illegal insofar as the Department of Psychiatry in the second respondent Directorate is concerned and consequently for a direction, directing the respondents to transfer and post the petitioners in the post of Assistant Professor / Senior Resident / Junior Resident / Tutor in any of the available vacancies in the Department of Psychiatry in the second respondent Directorate before going ahead with the transfer counselling for the Service Post Graduate, who have not at all completed the courses till date.

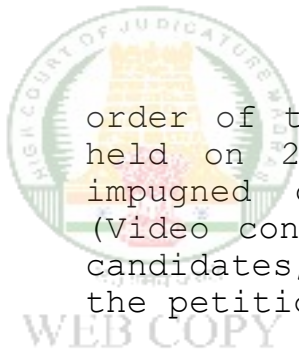
For Petitioners : Mr.T.Aswin Rajasimman,  
For Mr.T.Lajapathi Roy  
(in all Writ Petitions)  
For R1 and R2 : Mr.D.Sadiq Raja,  
Additional Government Pleader.  
(In all Writ Petitions)  
For R3 to R8 : Mr.M.S.Suresh Kumar  
(In W.P. (MD)No.9550 of 2021)

**COMMON ORDER**

The circular issued by the second respondent for on-line counseling (Video Conferencing) for Service Post Graduates for Degree/Diploma candidates and the vacancy details issued in circular dated 23.05.2021, are under challenge in these writ petitions.

2.The petitioners joined M.D Psychiatry in the year 2015 and 2016 respectively and completed the course in the year 2018 and 2019 respectively. They were appointed in the post of Assistant Surgeon and they were working at Government Head Quarters Hospital, Virudhunagar, Government Hospital, Rameshwaram and Government Head Quarters Hospital, Tirupur respectively, under the control of the Directorate of Medical Services. The second respondent issued a circular for transfer counseling for the post of Assistant Professor / Senior Resident / Tutor / Junior Resident in all specialities for the Medical Officers working in DMS/DMS(ESI)/DPH side.

3.The petitioners state that they were participated in the transfer counseling held on 28.02.2021 and chosen the Senior Resident Post and Assistant Professor Post in Department of Psychiatry, Ramanathapuram Government Medical College Hospital, Ramanathapuram and Senior Resident Post in Department of Psychiatry, Krishnagiri Government Medical College Hospital, Krishnagiri, respectively. However, the second respondent has not issued the



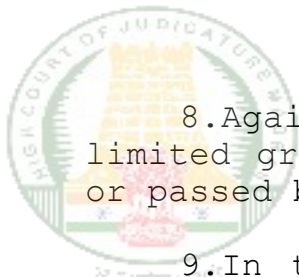
order of transfer and posting, pursuant to the transfer counseling held on 28.02.2021. While so, the second respondent issued the impugned circular dated 23.05.2021 regarding online counseling (Video conferencing) for Service Post Graduates for Degree/Diploma candidates, who are completing their courses during May 2021. Thus, the petitioners are constrained to move the present writ petitions.

4.The learned counsel for the petitioners mainly contended that the petitioners are serving by executing a bond for two years. Admittedly, they are non-service candidates, working in the medical department. The petitioners have participated in the transfer counseling held on 28.02.2021 and chosen the post of Senior Resident and Assistant Professor in Department of Psychiatry, Ramanathapuram Government Medical College Hospital, Ramanathapuram and Senior Resident in Department of Psychiatry, Krishnagiri Government Medical College Hospital, Krishnagiri respectively. While so, without issuing the order of transfer and posting, the second respondent issued another circular for in-service candidates, thereby affecting the rights of the petitioners for transferring to the post at Ramanathapuram and Krishnagiri.

5.The learned Additional Government Pleader appearing on behalf of the official respondents opposed the contentions raised by the petitioners by stating that the impugned circular is no way connected with the petitioners. The circular was issued to in-service candidates, who have executed a bond to serve in the medical department till their retirement. However, the petitioners are the non-service candidates executed a bond for two years and they are not regularly appointed to the post of Assistant Surgeon. Therefore, the service of the petitioners cannot be compared with the in-service candidates, who all are executed a bond to serve in the medical department of the Government of Tamil Nadu, till they attain the age of superannuation. Thus, the very circular is not applicable to the writ petitioners and the counseling conducted to the non-service candidates are no way connected with the in-service candidates.

6.The question arises whether the transfer counseling can be claimed as a matter of absolute right by an employee and further transfer is a condition of service or right of an employee.

7.The constitutional Court across the Country as well as the Apex Court of India has repeatedly held that transfer is an incidental to service, more so, a condition of service. Place or post can never be claimed as a matter of absolute right. The transfer counseling is a facility or concession provided to the employees to choose the place and such concession can never be construed as a right. Thus, mere participation in the transfer counseling would not confer any right on the employees to claim a particular post or place in Government Service.



8. Against the order of transfer, a writ would lie only on the limited grounds, if an order of transfer is tainted with malafides or passed by an incompetent authority, but not otherwise.

9. In the present case, no doubt, the petitioners participated in the counseling on 28.02.2021. Mere participation in the counseling would not confer any right to claim place or post as a matter of choice. This apart, the impugned circular was issued for conduct of counseling only to the in-service candidates, who all are permanently working in the medical department and executed a bond to continue in service till they attain the age of superannuation. Therefore, the service of the petitioners for two years on bond basis, cannot be compared with the in-service candidates. This apart, the petitioners, being executed a bond for two years to serve in the medical department, cannot have any right to claim post or place.

10. Beyond all this, as per the impugned circular, online counseling (Video Conferencing) was conducted between 25.05.2021 and 27.05.2021. Therefore, this Court is of an opinion that the petitioners are not entitled for any relief.

11. The counter filed by the Director of Medical Education also reveals that the petitioners were appointed temporarily under bond condition to claim posting on par with regular service candidates. The transfer counseling was conducted to qualify medical officer (MD/MS/DNB/DM/MCh), who all are working in Director of Medical Education / Director of Medical and Rural Health Services / Directorate of Medical and Rural Health Services (ESI) / Directorate of Public Health and Preventive Medicine. Thus, posting order is not issued to the petitioners, since they are the non service candidates. Based on the available vacancy and requirement of service in DME side, the Service Post Graduate candidates on completion of their courses in the teaching institutions in the speciality of Dermatology, certain doctors allowed to exercise their option to choose the posting from the Directorate of Medical and Rural Health Services to the teaching institutions under the control of the second respondent and no such vacancies available in the Department of Psychiatry to accommodate the petitioners herein. Psychiatrists are very much needed in District Mental Health Programme under the Director of Medical and Rural Health Services and the Dermatology specialities are requested to manage the cases of Mucormycosis consequent to Covid pandemic.

12. The High Court cannot interfere with the day to day administration of the medical department. The medical profession is a noble one. The service of the Doctors both in rural and urban are all paramount importance. The constitutional Courts have held that decent medical facility is an integral part of Article 21 of the Constitution of India. Therefore, the transfer and posting in a

both in rural and urban areas, are to be managed by the administration by assessing the situation and accordingly, post the Doctors appropriately.

13. Interference in this regard by the High Court would undoubtedly cause certain inconvenience to the medical department. Various speciality doctors are to be posted in various places in order to provide best available treatment to the patients, who all are attending the Government Hospitals. People are suffering due to various ailments and waiting for surgeries and for other treatments.

14.While so, the High Court has to exercise restraint from interfering with such transfer and posting orders in the absence of any valid grounds ie., malafide or incompetency. In the event of interim order, there is a possibility of abuse by the litigant in transfer cases, as the cases are pending for long years and till such time the doctors are permitted to work in the same place for long years, thereby causing inconvenience not only to the administration but to the poor citizen, who all are waiting to get treatment in Government Hospitals and Medical College Hospitals. As stated above, the transfer is being an incidental to service and condition of service, there is no vested right on the employees to claim a post or place as a matter of choice.

15. For the aforesaid reasons, the relief as such sought for in the writ petitions cannot be granted and accordingly, these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar (CS)

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1. The Principal Secretary to Government,  
State of Tamil Nadu,  
Health and Family Welfare Department,  
Secretariat, Chennai-600 009.
2. The Director of Medical Education,  
Directorate of Medical Education,  
Kilpauk, Chennai-600 010.

+1 CC to M/s.M.S.Suresh Kumar, Advocate ( SR.No.17604)

+3 CC to M/s.T. LAJAPATHI ROY, Advocate ( SR-18023[F] dated 12/04/2022 )

+1 CC to M/s.SPL.GP ( SR-17959[F],SR-17936 & SR-17908[F][F] dated 11/04/2022 )

**W.P. (MD) Nos. 9548 to 9550 of 2021**

08.04.2022