



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.13086 of 2021 and

WMP(MD) Nos.15650, 10125 & 10126 of 2021

WEB COPY

A.Ashok Kumar

...Petitioner

vs.

1.The Director of Medical & Rural,
Health Services,
Chennai - 600 006.

2.The Director of Medical & Rural,
Health Services (ESI),
Chennai - 600 006.

3.The Regional Administrative
Medical Officer (ESIS),
Madurai,
K.K.Nagar,
Madurai - 625 020.

4.Thiru.S.Athangarayan
Office Superintendent,
The Regional Administrative
Medical Office (ESIS),
Madurai,
K.K.Nagar,
Madurai - 625 020.

...Respondents

(R4 is impleaded vide Court order dated 01.02.2022 in WMP(MD) No.15650 of 2021 in WP(MD) No.13086 of 2021 by BPJ)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned transfer order of the first respondent in Ref.No.37124/E2/3/2021 dated 19.07.2021 and consequent impugned proceedings of the second respondent in Ref.No.13965/ESI/E2/1/2021, dated 23.07.2021 and quash the same and consequently forbearing the respondents herein from interfering with the day today work of the petitioner in the office of the second respondent herein.

For Petitioner

: No appearance

For R1 to R3

: Mr.S.Saji Bino
Special Government Pleader

For R4

: Mr.B.Michael Sebastin for
Ms.Xavier Rajini



O R D E R

The Writ petition is filed as against the transfer order passed by the first respondent in Ref.No.37124/E2/3/2021 dated 19.07.2021 transferring the petitioner from Madurai to Tuticorin and consequent relieving order of the second respondent in Ref.No.13965/ESI/E2/1/2021, dated 23.07.2021.

2.Today(01.02.2022), when the matter is taken up for hearing, there is no representation for the petitioner.

3. The petitioner who was working as Office Superintendent in the Office of the Regional Administrative Medical Officer (ESIS), Madurai was transferred and posted as Office Superintendent, Office of the District Siddha Medical Officer, Tuticorin in the existing vacancy, by order dated 19.07.2021. The petitioner has challenged the order of transfer and the consequential relieving order, on the ground that the order of transfer has been passed as punitive in nature. When the departmental proceedings was pending as against the petitioner, the petitioner has raised the following grounds in the writ petition:-

- i.The impugned transfer order issued by the first respondent and consequent impugned proceedings of the second respondent, pending disciplinary proceedings have been issued with motive, malafide intention, and without there being any real administrative reason.
- ii.Though the impugned transfer order is said to have been issued on administrative reason, the true reason behind the transfer order is with motive and malafide intention at the instance of the second respondent herein, requisitioning the first respondent in his letter No.13965/ESI/E2/1/2021, dated 29.06.2021 to transfer the petitioner from the third respondent office pending disciplinary proceedings, Hence, the first respondent has passed the impugned order of transfer with malafide intention at the request of the second respondent and there is no real administrative reason.
- iii.The impugned order of transfer issued by the first respondent and consequent impugned proceedings of second respondent are only to harass the petitioner pending disciplinary proceedings with malafide intention. Since charge memo was issued without any annexure for evidence of documents or witness to speak to the truth. Hence, pending charge, impugned transfer order has been issued as an alternative punishment.



iv. In the instance case, the impugned order of transfer has been passed in lieu of punishment during pendency of disciplinary proceedings finding no evidence to prove to prove the charge against the petitioner.

v. The Honourable Supreme Court has held that when an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal and the said judgment is reported in AIR 2009 SC 1399.

vi. The respondents 1 & 2 herein have adopted the power of transfer as an alternative for punishment which punishment cannot be inflicted without going through the process as prescribed under Article 311 of the Constitution of India. The transfer order under challenge has been passed to bypass the disciplinary machinery.

4. Mr. B. Michael Sebastin for Ms. Xavier Rajini, learned counsel appearing for the proposed fourth respondent filed WMP(MD) No.15650 of 2021 and submits that this writ petition is filed challenging the order of transfer, transferring the petitioner from Madurai to Tuticorin. Subsequently, the petitioner was also transferred from Tuticorin to Melur vide proceedings in 77291/E2/3/2020 dated 31.12.2021 and therefore nothing survives in this writ petition. The submission made by the learned counsel appearing for the proposed fourth respondent is recorded. The impleading petition in WMP(MD) No.15650 of 2021 in WP(MD) No.13086 of 2021 is ordered.

5. Mr. S. Saji Bino, learned Special Government Pleader appearing for the respondents 1 to 3 expressed that he is not having the papers.

6. This Court has perused the writ petition, counter affidavit filed by the third respondent, other relevant documents and all the available materials on record.

7. In the counter affidavit filed by the third respondent, it is stated that the petitioner was issued with the charge memo dated 06.02.2018 that the annual intern submitted by the Medical Officer in Madurai Region for the year 2017-2018 is for enhanced quantity and value and the same was detected during the audit objection. The charges are also extracted as under:-

i. The RRC-140 Annual indent for the year 2017-18 based on the Indents submitted by the Medical Officers in Madurai region to the value of Rs.13,12,52,093/- (Rupees Thirteen Crores twelve Lakhs Fifty Two Thousand and Ninety Three only) and the Indents were consolidated and submitted by the Store Medical Officer/Medical Store Officer with necessary authentication. Thiru. A. Ashok

Kumar, in/hcse/Office Superintendent, in Store Section has



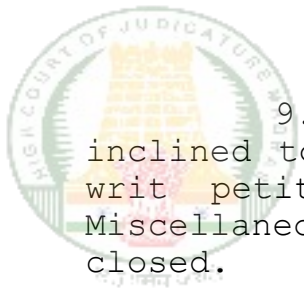
manipulated and enhances the Indents for Rs.24,59,09,442/- (Rupees Twenty four crore fifty nine lakhs nine thousand and four hundred and forty two only) with the concurrence of the Regional Administrative Medical Officer (ESI), Madurai without any proper Indents and submit the indent to the Directorate for Rs.37,67,61,535/- (Rupees Thirty Seven crores seventy one lakhs sixty one thousand five hundred and thirty five only).

ii. In the supply of Siddha Medicine of Rub-N-Run Oil to 5 ESI Dispensaries, it was found that of 5000 Bottles were not supplied to ESI Dispensary, Thirunagar, and Madurai. Hence, the Accountant General raised a audit objection to recover the value of the said medicine of Rs.9,45,000/- (Rupees Nine lakhs Forty Five thousand only). Thus, Thiru.A.Ashok Kumar, Office Superintendent, in Store Section has misappropriated the Government Funds.

iii. The peritoneal dialysis bags were supplied to Dispensary, Tallakulam, Madurai even though non receipt Indnet from that Dispensary without the approval of the store Medical Officer & Medical Store Officer. Due to non usage of the said item upto its expiry, which make loss of Government money of the tune of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand only). Thiru.A.Ashok Kumar, Office Superintendent, in Store Section is responsible for the loss of above said Government money.

iv. Thiru.A.Ashok Kumar, Office Superintendent, who was working in the store section from his initial appointment has maintained the Siddha medicine stock register which is not duty of him. The speciality and interim drugs were sent to the Directorate regularly without the approval of store Medical Officer / Medical store Officer and he had prepared the indent over and above the requirements as indented by the Store Medical Officer/Medical Store officer.

8. It is seen that the enquiry is still pending. Pending enquiry, in order to have a smooth conduct of enquiry and also restraining the petitioner from tampering of documents, the petitioner, who is facing grave charge of misappropriation of Government funds under violation of Rule 20(1) and Rule 20(2) of Tamil Nadu Government Servants Conduct Rules, 1973, was transferred from Madurai to Tuticorin. It is also reported by the learned counsel appearing for the fourth respondent that the petitioner was also transferred from Tuticorin to Melur, vide proceedings in 77291/E2/3/2020, dated 31.12.2021.



9. In view of the subsequent developments, this Court is not inclined to interfere with the order of transfer. Accordingly this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions in WMP(MD) Nos.10125 & 10126 of 2021 are closed.

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Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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MGJ(30.03.2022) 5P 4C