



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) Nos.9335, 9336 & 9338 of 2019

and

W.M.P. (MD) Nos.7337, 7338, 7339, 7340, 7341, 7342, 7346, 7347 & 7348
of 2019

N.Shankar Ganesh

... Petitioner in W.P.
(MD) No.9335 of 2019

Dr.A.Thomas Edwin Raj

... Petitioner in W.P.
(MD) No.9336 of 2019

J.Praveen Singh Peter

... Petitioner in W.P.
(MD) No.9338 of 2019

vs.

1.State of Tamil Nadu

rep.by its Principal Secretary
Department of Health and Family Welfare
Secretariat, Chennai-9

2.The Director of Medical Education

Directorate of Medical Education
Kilpauk, Chennai-10

3.The Dean

Government Tirunelveli Medical College Hospital
Tirunelveli-11

4.Dr.S.Ravi

5.Dr.F.Jason Ambrose

... Respondents in all W.Ps.

PRAYER (in all W.Ps.): Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records pertaining to the impugned order in Ref.No.4053/E3/1/2019, dated 04.02.2019 and impugned order in Ref.No.4053/E3/1/2010, dated....02.2019, on the file of the respondent No.2 and quash the same as illegal and consequently for a direction directing the respondent No.2 to transfer the petitioner in the post of Senior Resident, Department of Neurology at Government Tirunelveli Medical College Hospital, Tirunelveli-11 by showing the place as vacant in the upcoming transfer counseling in accordance with the guidelines issued by the respondent No.1 vide Government Order in G.O.(2D) No.131, dated 20.11.2007.



For Petitioner
(in all W.Ps.)

: Mr.T.Lajapathi Roy

For Respondent
(in all W.Ps.)

: Mr.N.Satheesh Kumar
Additional Government Pleader
for R1 to R3

C O M M O N O R D E R

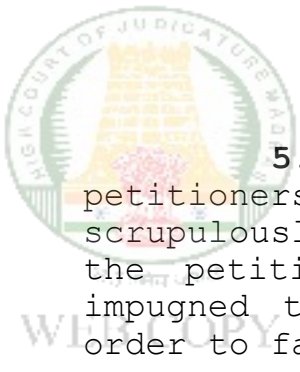
Since the issues involved in all these writ petitions are one and the same, they were taken up and heard together and are being disposed of by this common order.

2. The orders of transfer transferring the respondents 4 and 5 are under challenge in the present writ petitions.

3. The short ground raised by the petitioner is that the counselling guidelines issued by the Government in G.O.(2D) No.131, Health and Family Welfare (A1) Department, dated 20.11.2007, have not been followed by the Authority concerned, while issuing the impugned orders of transfer in favour of the respondents 4 and 5.

4. The learned counsel for the petitioners state that the petitioners are seniors and therefore, the procedures contemplated are to be strictly followed. However, depriving the rights of the petitioners, the respondents 4 and 5 were accommodated as per their choice and therefore, the petitioners have chosen to file the present writ petitions. In this context, the learned counsel for the petitioners relied on Clause 10.14 of the guidelines for counselling issued by the Government, which reads as under:

"However, vacancies arising in the inter-counselling period which in the opinion of the Director Government cannot be left vacant till next Counselling may be filled up by the Director / Government as the case may be purely on a temporary basis. Similarly when an officer reports for duty from leave or absence, he may be posted temporarily in a vacancy, but such postings should not be done in the institutions in Chennai City and its adjoining districts, Madurai or Coimbatore cities. A report on all such postings made by the Director of Medical Education should be sent to the Government for ratification within a week with full justification for the postings. The posts so filled up must invariably be notified as vacancies for the next counselling and the individuals posted temporarily in those posts must be directed to appear for counselling. No exceptions should be made to this rule."



5. Relying on the above Clause, the learned counsel for the petitioners reiterated that the guidelines were not followed scrupulously by the Authority concerned so as to provide benefit to the petitioners, contrarily the Authority concerned issued the impugned transfer orders in violation of the above procedure in order to favour the respondents 4 and 5.

6. The learned Additional Government Pleader appearing for the respondents 1 to 3 objected the said contention by stating that Clause-10.14 of the Guidelines is not applicable to the case the petitioners, but in fact, Clause-10.13 is applicable to the case on hand and the said Clause reads as follows:

"As a rule, no transfer should be affected in-between the counselling periods other than those required on administrative grounds, or in the public interest or in the interest of the medical education or public health. The transferring authorities can effect transfers of Medical Officers on administrative grounds, if warranted. The Government should be kept informed regarding these transfers. If the transfer is based on allegations and charges, which should be recorded in writing.

- (i) Those transferred on account of administrative ground/grounds of allegation will not eligible for transfer for the next three years;*
- (ii) Those who have obtained transfer orders on request cannot apply for transfer atleast for the next one years. This minimum period will not be applicable in case of those who are promoted."*

7. Relying on the above Clause, the learned Additional Government Pleader made a submission that no transfer should be effected in-between the counselling periods other than those required on administrative grounds or in the public interest or in the interest of the medical education or public health. However, the impugned transfer orders are issued on administration grounds as stated in the impugned orders and therefore, the petitioners cannot claim any preference in the administrative transfers issued by the Authority concerned.

8. Be that as it may, this Court is of the considered opinion that transfer is an incidental to service, more so, a condition to service. An order of transfer can be challenged on limited grounds, more specifically, on the grounds of jurisdiction or mala fides. Even in case of mala fides, the Authority against



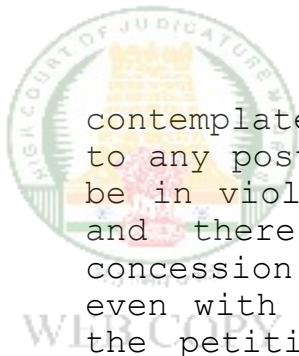
whom such allegation is raised must be impleaded as a party respondent in his personal capacity.

9. The Government has issued G.O.(2D) No.131, Health and Family Welfare (A1) Department, dated 20.11.2007. The said Government Order provides revised guidelines for transfer counselling. Now, the question arises as to whether these guidelines would confer any right on the employee to claim priority or otherwise.

10. Guidelines / instructions would not have the enforceability of the statute. These guidelines / instructions are issued for maintaining efficient public administration and to run the public administration in a smooth manner. Such guidelines / instructions would not confer any right on the employees to claim a particular post or place. The benefit of transfer counselling is provided only with a idea to extend the choice for the employees and even in case where choice is unable to be provided, such a situation cannot be taken as undue advantage by the employee for filing a writ petition and claim the transfer as a matter of right. Therefore, the guidelines / instructions issued, which have got no statutory enforceability, cannot be relied upon for the purpose of establishing his right. Such a transfer counselling is not part of his service rights conferred under the Service Rules in force. The counselling for transfer is a concession or facility provided to the employees and such a concession would not confer any right to claim a particular post or place.

11. Section 48 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 contemplates that a member of a service or class of service may be required to serve in any post borne on the cadre of such service or class for which he is qualified. Therefore, the Act contemplates that a member of a service is required to serve in any post borne on the cadre of such service or class for which he is qualified. Thus, the Government servant is bound to work wherever he is posted and the post or place can never be claimed as a matter of choice. In between facilities or concession extended by way of counselling would not confer any right nor such counselling procedures can never run counter to the provisions of the Act.

12. A careful scrutiny of the provisions of the above Section as well as the guidelines would reveal that the guidelines / instructions for counselling are the facilities provided and the same cannot run counter to the provisions of the Act. The Act contemplates that a member of a service is required to work wherever he is posted. Therefore, an administrative decision in the matter of transfer became final and all administrative transfers are falling within the ambit of Section 48 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. When the Act



contemplates that a member of a service is liable to be transferred to any post or place, then the guidelines issued for transfer cannot be in violative of the provisions of the Conditions of Service Act and therefore, for all purposes, the guidelines are only a concession extended to the employees. In order to be more precise, even with reference to the guidelines in Clause-10.14 relied on by the petitioner, it has been clearly stated that when an officer reports for duty from leave or absence, he may be posted temporarily in a vacancy. The language coined in the said guideline is "may" and not "shall". Therefore, there cannot be any guidelines running counter to the provisions of the Act. Therefore, the transfer counselling is only a concession granted for smooth functioning of the public administration and to facilitate the employees to work in a peaceful manner and such a concession cannot be construed as a legal right for the purpose of challenging the order of transfer. This being the scope of the transfer counselling policy, the writ petitions, on the ground of violation of counselling procedures, need not be entertained in all circumstances.

13. This being the factum, if at all any personal grievance existing, then the petitioners are at liberty to approach the Authority competent for redressal of their grievance. However, the post or place cannot be claimed as a matter of right.

14. Accordingly, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Principal Secretary,
Department of Health and Family Welfare,
State of Tamil Nadu,
Secretariat, Chennai-9.

2.The Director of Medical Education ,
Directorate of Medical Education,
Kilpauk, Chennai-10.



3.The Dean,
Government Tirunelveli Medical College Hospital,
Tirunelveli-11.

+1 CC to M/s.SPL GP (SR-6169[F] dated 15/02/2022)

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RK(28/02/2022) 6P 5C