



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.18203 of 2020

and

W.M.P. (MD) Nos.15188 of 2020 & 1783 of 2021

Dr.A.Femila

... Petitioner

vs.

1.The Director of Public Health  
and Preventive Medicine  
Chennai

2.The Deputy Director of Health Services  
Nagercoil-629 001  
Kanyakumari District

3.Dr.Bosco Raja  
Deputy Director of Health Services  
Nagercoil-629 001, Kanyakumari District

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records related to the impugned proceedings of the first respondent - Director of Public Health and Preventive Medicine, Chennai, dated 20.10.2020 in R.No.79879/E5/A1/2020 and quash the same.

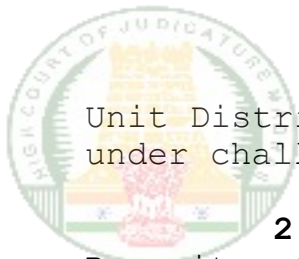
For Petitioner : Mr.N.Dilip Kumar

For Respondent : Mr.A.K.Manikkam  
Special Government Pleader  
for R1 & R2

Mr.Prabhu Rajadurai for R3

### O R D E R

The transfer order, dated 20.10.2020, passed by the first respondent transferring the petitioner from the Government Primary Health Centre, Muttom, Nagercoil Health Unit District to the Government Primary Health Centre to Nainarkovil, Paramakudi Health

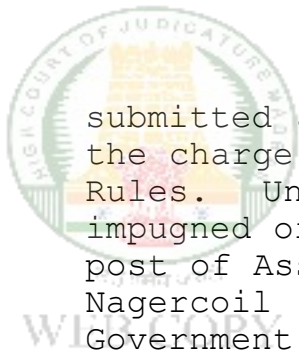


Unit District, in the existing vacancy on administrative grounds, is under challenge in this writ petition.

2. The petitioner was selected by the Medical Service Recruitment Board to the post of Assistant Surgeon and appointed in the Government Primary Health Centre, Panagudi, Tirunelveli Health Unit District. The petitioner would state about the National Health Mission launched by the Ministry of Health & Family Welfare, Government of India and the nature of the Scheme. The petitioner participated in the transferring counselling held on 16.03.2017 and exercised her option to join the School Health Department so that she can join Rashtriya Bal Swasthya Karyakram (for brevity "RBSK"). Accordingly, the first respondent transferred the petitioner to the Primary Health Centre, Muttom, School Health-MHT, Nagercoil Health Unit District.

3. The petitioner states that the third respondent is the immediate superior to her and he developed personal animosity against her. Under those circumstances, the third respondent recorded that the petitioner was absent from duty on 03.02.2020 and from 10.02.2020 to 12.02.2020. On all these days, the petitioner attended duty and in fact, had signed in the attendance register. The petitioner states that she had visited various Government and Aided Schools and other places with regard to RBSK Mission. The petitioner further states that the RBSK Medical Officers should not be deputed or diverted to manage outpatients or night duty or any other activities of the Primary Health Centres and all Deputy Director of Health Services / Block Medical Officers have been strictly instructed that RBSK Medical Officers should be utilized for RBSK activities only.

4. The petitioner further states that the first respondent, vide proceedings dated 25.04.2017, directed all the Deputy Directors of Health Services to cancel the deputation orders. The third respondent, in exercise of his powers, issued a charge memo, dated 25.02.2020, to the petitioner under Rule 17(B) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for certain allegations. The petitioner submitted her detailed explanation to the said charge memo and the disciplinary proceedings are pending. Due to Covid-19 pandemic, the Project Director of National Health Mission, Tamil Nadu, vide proceedings dated 17.03.2020, directed the Deputy Directors of Health Services to utilize the RBSK Mobile Health Teams for specified activities like 24X7 District Control Rooms; Fever Clinics at Government Hospitals and Medical College Hospitals; 24 hours surveillance of the passengers at the Airport / Seaport / Railway Stations etc. Thus, the third respondent, in his official capacity, again deputed the petitioner to a Government Primary Health Centre, Vellichanthai, from 03.06.2020 until further orders. The petitioner claims that the said deputation order is also contravention to the guidelines. The petitioner again



submitted a detailed representation on 24.06.2020 with reference to the charge memo issued under Rule 17(B) of the Discipline and Appeal Rules. Under those circumstances, the first respondent passed the impugned order dated 20.10.2020 transferring the petitioner from the post of Assistant Surgeon, Government Primary Health Centre, Muttom, Nagercoil Health Unit District to the post of Assistant Surgeon, Government Primary Health Centre, Nainarkoil, Paramakudi Health Unit District, citing administrative grounds.

5. The petitioner mainly raised a ground that the impugned order of administrative transfer is punitive in nature and passed during the middle of the academic year, without considering her family circumstances. It is contended that the impugned order is an outcome of the colourable exercise of power and she was transferred to accommodate another person, namely, Dr.Catherine Divya. The petitioner was prevented from attending duties and the gates of the Government Hospital were locked. However, the petitioner has visited the Schools on those days, where absence was marked in the register.

6. The learned counsel appearing for the petitioner made a submission that the transfer counselling is scheduled to be held on 15.03.2022 and the petitioner may be permitted to participate in the said counselling.

7. The third respondent filed a counter affidavit stating that he was unnecessarily dragged into the writ petition in his personal capacity with an intention to harass him. The petitioner is in the habit of harassing her superiors with all sorts of allegations. Therefore, the third respondent states that he is unnecessary party in this writ petition and the impugned order was passed by the first respondent, who is the Head of the Department. The petitioner joined as Assistant Surgeon in the year 2013 and she was posted in Panagudi Primary Health Centre in Tirunelveli. However, even in that station, the petitioner was reprimanded by the superior official one Dr.Kolappan as she made false allegation as if the said Dr.Kolappan threatened her life and sexually harassed her. The petitioner would not work in amity with her colleagues and superiors and even at the slightest hint, used to make complaints to National Human Rights Commission, Prime Minister's Office and State Women Commission. The complaint of the petitioner against the said Dr.Kolappan was enquired by the Joint Director in the year 2016 and found as false.

8. The petitioner is having the habit of making complaints against the Block Medical Officer and the third respondent with wild allegation of sexual harassment. The Joint Director conducted an enquiry on the said complaint and submitted a report dated 19.10.2020 holding that the complaint of the petitioner was not proved. The petitioner made a similar complaint against the



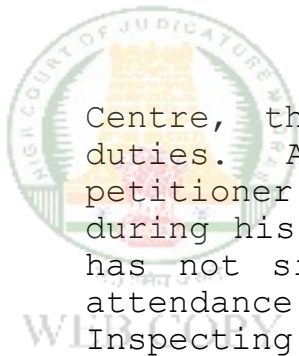
predecessor one Dr.Madhusoodhanan, when he found similar attendance violation of the petitioner. The Joint Director enquired into that complaint and concluded that the said complaint was also not proved.

**9.** In view of the pandemic situation, all the Primary Health Centers were started to function as fever clinics to trace covid patients and as such, the petitioner was deputed to the Primary Health Centre, Palugal on 22.03.2020. The petitioner disobeyed the said order even though every other medical professionals had selflessly came forward to offer their service in fighting covid pandemic. The petitioner in total disobedience continued to put her signature in Muttom Block by threatening the employees. Thereafter, on 03.06.2020, the petitioner was deputed to Primary Health Centre at Vellisandhai. The petitioner disobeyed the said order as well. Thereafter, the petitioner was deputed to Kurunthankodu Primary Health Centre in the same Block. The petitioner disobeyed the said order as well and in such circumstances, the third respondent was constrained to issue a charge memo on 09.06.2020 for insubordination. Under those circumstances, the petitioner raised unnecessary allegations against the third respondent and impleaded him, in his personal capacity, without any valid reason.

**10.** The third respondent states that there is no difficulty for the petitioner to work in Primary Health Centre / Fever Clinics during covid pandemic as all professions were mobilized to meet the situation. On the transfer of the petitioner, the petitioner was served with relieving order dated 21.10.2020, but she refused to receive the same. The said order was thereafter pasted at her residence with the assistance of the concerned Village Administrative Officer. Hence, the petitioner was relieved from the said post and one Dr.Catherine Divya was posted in her place. However, the petitioner made false allegations as if she was not relieved from the post and obtained an order of stay.

**11.** The learned counsel appearing for the third respondent submits that for the past about two years, the petitioner is not working anywhere. The petitioner, without any authority, visited Muttom Primary Health Centre though she was relieved from there and forcibly taken the outpatient register from the duty Medical Officer. Such a conduct is nothing, but an act of trespass and preventing the other officer from doing duty and in such circumstances, a complaint was lodged against the petitioner by the Block Medical Officer.

**12.** The first respondent has filed a counter affidavit, in the form of vacate stay petition, wherein, he has stated that as reported by the Block Medical Officer, Government Primary Health Centre, Muttom as well as the Deputy Director of Health Services, Nagercoil, since from joining duty in the said Primary Health

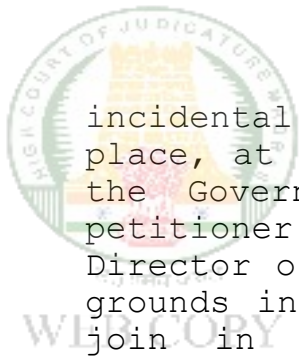


Centre, the petitioner has been irregular and derelicted in her duties. According to the Deputy Director of Health Services, the petitioner was found absent from duty on 24.05.2017 and 28.03.2018 during his inspection in the Primary Health Centre. The petitioner has not signed in the attendance register and she signed in the attendance register on those dates tampering the markings of the Inspecting Officer. As reported by the Deputy Director of Health Services, the petitioner has not respected her superiors, has been making problems with the other staff and not followed the official procedures.

**13.** The first respondent, based on the report of the Deputy Director of Health Services, has stated that for the smooth functioning of the administration in the pandemic situation and the act of disobeying the orders of superior officials, the petitioner was transferred to the Government Primary Health Centre, Nainarkoil, Paramakudi Health Unit District vide proceedings dated 20.10.2020, impugned in this writ petition, but the petitioner has refused to receive the relieving order. The Head of the Department has stated that the petitioner has made several representations to the Tamil Nadu State Commission for Women, National Human Rights Commission, Human Rights Commission etc., against the third respondent along with certain other staff of the Primary Health Centre, Muttom. The first respondent has made it clear that the impugned transfer order was issued only on administrative grounds and the third respondent has been unnecessarily implicated in his personal capacity.

**14.** Considering the facts and circumstances of the case on hand, this Court is of the considered opinion that the order of administrative transfer is under challenge in this writ petition. The said order of transfer is on administrative grounds in the existing vacancy. However, the petitioner has unnecessarily raised several allegations even personally against the superior officials, without substantiating such allegations. The Deputy Director of Health Services and the Head of the Department of Public Health and Preventive Medicine have clearly stated that the petitioner is having the habit of making unnecessary allegations against the superior officials wherever she is posted.

**15.** The perusal of the allegations and counter allegations reveal that the petitioner, in order to escape from the departmental actions and evade from performing her official duties, is indulging in raising unnecessary allegations against the superior officials without any concrete materials on record. Such conduct of the Medical Practitioner working as Assistant Surgeon, at no circumstances, be tolerated either by the Authority competent or by the Courts. The medical profession is a noble profession. The Doctors, who all are working in Government Hospitals, are expected to be devotion to duty and at all circumstances, they must be in a position to serve in the interest of the public. Transfer is an

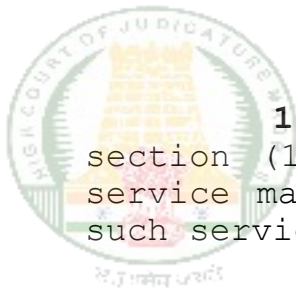


incidental to service, more so, a condition of service. Post or place, at no circumstances, can be claimed as a matter of choice by the Government employees. However, in the present case, the petitioner has been transferred by the Head of the Department / Director of Public Health and Preventive Medicine on administrative grounds in the existing vacancy. Therefore, the petitioner has to join in the said post. However, in order to evade such administrative transfer, the petitioner started raising allegations against the superior officials and in the present writ petition, the third respondent has unnecessarily been implicated in his personal capacity. This apart, the third respondent has not issued the impugned order of transfer. He has sent a report to the Head of the Department regarding the happenings in the particular station and referring the said report, the Head of the Department has passed the impugned transfer order. Therefore, it is apparently clear that a decision was taken on administrative grounds. When the happenings, which all are not conducive to the interest of the public administration, more specifically in Primary Health Centers, then administrative transfers are justified.

**16.** The allegations raised by the petitioner and the charges framed against her for absenting from duty would reveal that in lieu of suspension, the petitioner is transferred to the existing vacancy on administrative grounds. In certain circumstances, if frequent allegations are raised against the employees in a particular place or post, in order to avoid any further complications, such employees may be transferred to any other place or post on administrative grounds. Under those circumstances, such allegations, based on which the administrative transfers are issued, cannot be construed as punitive transfer.

**17.** In order to establish punitive transfer, motive is to be established. In the present case, the petitioner was not attending her duties in the Primary Health Centre and absented herself on many occasions and manipulated the attendance register and a charge memo has been issued. Mere issuance of charge memo would not provide any cause of action. The petitioner has to prove her innocence. Under those circumstances, in the interest of public administration, administrative transfers are issued. Therefore, such administrative transfers cannot be construed as punitive in nature. If such allegations of employees are accepted, then the competent Authorities would not be in a position to effect administrative transfers in order to run the public administration in a smooth manner.

**18.** Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Act No.14 of 2016) governs the powers of authorities to transfer government employees.



**19.** Section 48 stipulates 'posting and transfer'. Sub-section (1) contemplates that 'a member of a service or class of service may be required to serve in any post both on the cadre of such service or class for which he is qualified'.

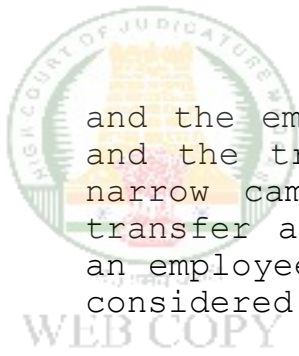
**20.** Sub-section (3) contemplates 'notwithstanding anything contained in this Act or any special rules or adhoc rules, the Government may transfer any Government servant from one revenue district to another revenue district within the State, on administrative grounds.'

**21.** The power of transfer conferred on the Government under Section 48 of the Act is absolute. Even sub-section (3) contemplates, on administrative grounds, the Government, notwithstanding the provisions of the Act or any special rules or adhoc rules, may issue orders of transfer on administrative grounds.

**22.** Let us consider the spirit of this provision. Transfers are issued on administrative grounds for efficient and effective public administration. Efficient public administration is the constitutional mandate and under those circumstances, the act intended to provide an absolute power to the Government to transfer an employee from one revenue district to another revenue district on administrative grounds notwithstanding anything contained in the act or any special rules or adhoc rules.

**23.** Thus, this Court is of the considered opinion that day-to-day administration of the Government vests with the executives. The day-to-day administration are to be effectively monitored and regulated by the competent authorities. Courts are not expected to interfere with the day-to-day administration of the Government departments. No doubt, on exceptional circumstances, the Court can entertain writ petitions, where an order of transfer is under challenge on certain limited grounds. If any order of transfer has been passed without jurisdiction or allegations of mala fides are raised or in certain exceptional circumstances, where materials are available to establish that the transfer is punitive, then the Courts can interfere, in order to mitigate the exceptional circumstances advanced. However, the scope of interference is undoubtedly limited and in the event of frequent interference by the Constitutional Courts in the matter of administrative transfer, the executives may not be in a position to run the administration in a smooth manner.

**24.** The next question arises, whether transfer gives a right to a government employee. The answer would be that transfer would not provide any right to a Government employee. Transfer is an incidental to service, more so a condition of service. When an offer of appointment is issued by the competent authorities, the acceptance of appointment is implied that the transfers are agreed



and the employment is a contract between the employer and employee and the transfer being incidental, the scope for challenge is in narrow campus. Thus, when there is no right in the matter of transfer and transfers are not affecting the service conditions of an employee, then the entertainability of the writ petition is to be considered.

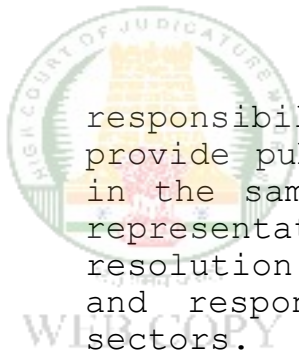
**25.** As stated above, entertainability rests on limited grounds viz., (i) without jurisdiction; (ii) mala fide; and (iii) punitive, if established with sufficient materials to the satisfaction of the Courts.

**26.** The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which a decision is taken by the competent authority in consonance with the provisions of the statutes and rules, but not the decision itself.

**27.** There are many complaints against the public officials in common parlance. General public are giving complaints and some complaints are motivated and some complaints require enquiry. However, if the higher officials receive frequent complaints against an officer in a particular manner or regarding certain instances, then it is the subjective satisfaction of the competent authority concerned to take a decision and the Courts cannot play any role in such decision of the administrative authorities. In the process of administration, an executive takes a decision considering the nature of complaints and the seriousness involved and further enquiry to be conducted, if necessary. Such a process is an administrative process, which is the day-to-day administration and in the event of interference by the High Courts, it would be undoubtedly, a tedious affair for the executives to run the administration in a peaceful manner and to enforce discipline amongst the employees, which is of paramount importance.

**28.** This Court cannot brush aside the general allegations in the public domain against the public servants. There are large scale corruption in Government Departments. People are not only lamenting, but even for their rightful claims, bribes are demanded. Under these circumstances, administrative transfers are warranted and therefore, the Courts are expected to exercise restraint in exercise of the power of judicial review under Article 226 of the Constitution of India and the discipline to be maintained in public service is also to be considered by the Courts, while interfering with such administrative transfers.

**29.** Government servants play a significant role in running the administration of our great nation. They are important constituents of the administrative set up of our nation. They are the pillars of the Government Departments on whose shoulders, the



responsibility to implement the Government policies lies. They provide public services to the citizen at the grass root level and in the same way, they forward the grievances of the public, their representations and demands to the higher for their effective resolution. The Government employees have different work culture and responsibility as compared to the counterparts in private sectors. They are smartly paid and they have some kind of perquisites given to them but at the same time, they have heavy responsibility to the Government in particular and public in general. These Government employees enjoy a special status. They are receiving a decent salary from the taxpayers money. In the event of encouraging the district level officers, to choose the place and post in a particular manner, this Court is of the considered opinion that the administrative discipline will certainly parallelize and under those circumstances, the administrative reasons place a dominant role. Courts in all circumstances cannot interfere with the administrative reasons. Administrative reasons cannot be defined in a narrow campus. There may be several instances of administrative reasons. The Government may have decided that a particular officer will be the best person to tackle certain issues in a particular place or post. As stated earlier, it is the subjective satisfaction of the competent authority and therefore, the power of judicial review and its scope are undoubtedly limited.

**30.** In the case on hand, the petitioner was relieved from the post and therefore, she has to join in the transferred place. Only after joining, the petitioner has to submit her representation, if at all any grievance exists. There are wide allegations in the public domain that Doctors and staff in the Primary Health Centres are not even attending for works and thereby, not performing their duties and responsibilities. The first respondent, in this regard, is bound to conduct frequent inspections in the Primary Health Centres so as to ensure that the Doctors and the staff posted in the Primary Health Centres are performing their duties and responsibilities as per the Rules in force. In the event of any lapse, dereliction or negligence on their part, all appropriate actions are to be initiated under the Discipline and Appeal Rules. The respective District Level Officers should monitor the day-to-day functioning of the Primary Health Centres and submit a report to the Head of the Department for initiation of all appropriate actions. In the present case, the Deputy Director of Health Services, Nagercoil / second respondent submitted a report with reference to the happenings of the particular Primary Health Centre, based on which, the first respondent / Head of the Department has issued the administrative transfer order and therefore, such transfer orders are well within their powers and the challenge made in this regard deserves no merit consideration. This being the factum established, the petitioner is not entitled for any relief as such sought for in this writ petition.



**31.** Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To:

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

2.The Deputy Director of Health Services,  
Nagercoil-629 001,  
Kanyakumari District.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate ( SR-9802[F] dated  
03/03/2022 )

+1 CC to M/s.SPL GP ( SR-9408[F] dated 02/03/2022 )

**W.P. (MD) No.18203 of 2020**

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