



WEB COPY

W.P.Nos.15589 of 2024, etc., and Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2024

PRONOUNCED ON : 11.12.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.Nos.15589, 15118, 15121, 15126, 15135, 15151, 15178,
15182, 15214, 15595, 15600, 15604, 15609,
& 36961 of 2024 & 31596 of 2023

and

W.M.P.Nos.16988, 16414, 16423, 16432, 16459, 16473, 16503, 16510,
16547, 16992, 16994, 16997, 16999, 39913,
39915, 39917 of 2024 & 31224, 31226 of 2023
& 10625 & 35656 of 2024

W.P.No.15589 of 2024:

- 1.The Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan,
Comrade Indrajeet Gupta (CIG) Marg,
New Delhi – 110 002.
- 2.The Deputy Director (Medical Administration),
Employees State Insurance Corporation,
Panchdeep Bhawan,
Comrade Indrajeet Gupta (CIG) Marg,
New Delhi – 110 002.



W.P.Nos.15589 of 2024, etc., and Batch

3.The Dean,
Employees State Insurance Corporation
Medical College & Hospital,
KK Nagar, Chennai – 600 078.

... Petitioners

Vs.

1.Dr.K.Monicka

2.Union of India,
Rep. By its Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhawan,
Rafi Marg, New Delhi – 110 001.

... Respondents

[2nd respondent had been given up as no relief
is sought for against the 2nd respondent]

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, call for the records of the Central Administrative Tribunal, Chennai Bench, pertaining to the order passed in OA/310/526/2024 dated 16.05.2024 and quash the same.

For Petitioners : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.K.Prabhakar

For R1 : Mr.P.Wilson
Senior Counsel
For Mr.S.Nedunchezhiyan

For R2 : Given Up



W.P.Nos.15589 of 2024, etc., and Batch

WEB COPY

COMMON ORDER

S.M.SUBRAMANIAM, J.

Under assail is the common order passed by the Central Administrative Tribunal, Chennai Bench dated 16th May, 2024 in OA/310/00503, 504 and 506 to 513 and 524 to 526/2024.

BRIEF FACTS OF THE CASE:

2. The Director General, Employees State Insurance Corporation is the writ petitioner before this Court. The respondents filed Original Applications before the Tribunal, seeking to set aside the order of the administrative transfers and the consequential orders. The Tribunal disposed of the Original Applications by issuing directions. Aggrieved by the said order, the Employees State Insurance Corporation has filed the present writ petitions.

3. The respondents, working as Professors / Assistant Professors in Medical Colleges run by the Employees State Insurance Corporation, were transferred from Chennai to other places on administrative grounds and



W.P.Nos.15589 of 2024, etc., and Batch

based on organisational requirements. The respondents initially filed original applications before the Central Administrative Tribunal, challenging the transfer order dated 20.05.2023. The Tribunal elaborately considered the issues and dismissed the original applications with a specific direction to the respondents herein to report to duty at the transferred places, since they are the life-saving Doctors to support the administration by serving in exigencies. The respondents were granted liberty to pursue their pending grievances before the Grievances Redressal Committee and the committee shall consider the grievances looking into the administrative constraints.

4. Challenging the said order passed by the Tribunal in batch of original applications, writ petitions are filed in W.P.Nos.31570 and 31592 of 2023 and the Division Bench of the Madras High Court passed final orders on 03.11.2023. The High Court without going into the merits of the case, directed the Director General, Employees State Insurance Corporation to give necessary instructions to the Transfer Grievances Redressal Committee to consider the grievances / representations of the respondents and take appropriate decision independently and on its own merits in accordance with law within a period of two weeks from the date of receipt of a copy of the



W.P.Nos.15589 of 2024, etc., and Batch

said order dated 03.11.2023. Pertinently, the order of the Central Administrative Tribunal dismissing the original application dated 18th October, 2023 was not set aside. The High Court granted liberty to the respondents to approach the Grievances Committee and the Committee was directed to consider the grievances and dispose of the same.

5. Pursuant to the orders of the High Court dated 03.11.2023, the Grievance Redressal Committee independently considered the grievances of the respondents on individual basis and rejected the same by not recommending the respondents to retain in their original posts at Chennai. Consequently, relieving orders were passed, relieving the respondents based on the transfer orders issued in May, 2023.

6. Once again the respondents filed original applications before the Tribunal in O.A.Nos.503, 504 and 506 to 513 and 524 to 526 of 2024. The Tribunal again re-adjudicated the transfer orders on merits and passed final orders on 16th May, 2024 setting aside the report of the Grievance Redressal Committee dated 02.04.2024 and consequential order of relieving dated 06.04.2024. Direction was issued to the writ petitioners herein to redo the transfer exercise within one month, considering all clauses of the transfer



W.P.Nos.15589 of 2024, etc., and Batch

policy, including the priority matrix at Annexure 1. Until then, the respondents were directed not to take any coercive or disciplinary action against the applicants for not joining in transferred places of posting after the reliving order is passed. The period of absence of the respondents, if any are directed to be regulated. The respondents were further allowed to join the ESI Hospital in Chennai.

7. Aggrieved by the said order of the Central Administrative Tribunal, the Employees State Insurance Corporation has filed these present writ petitions.

ARGUMENTS ON BEHALF OF THE PETITIONERS:

8. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing on behalf of the petitioners / Employees State Insurance Corporation would mainly contend that the services of the respondents are All India Service, as the Employees State Insurance Corporation falls under the administrative control of the Ministry of Labour and Employment, Government of India. The transfer order was initially challenged by the respondents / doctors before the Central Administrative Tribunal and the Tribunal elaborately adjudicated the validity of the transfers on merits and



W.P.Nos.15589 of 2024, etc., and Batch

dismissed the original applications vide order dated 18th October, 2023.

Challenging the said order, the respondents filed writ petition and the High Court has not set aside the order of the Tribunal. However, the High Court granted liberty to the respondents to approach the Grievances Redressal Committee and a direction was issued to the Committee to dispose of their representations within a period of two weeks.

9. The Grievances Redressal Committee again considered the grievances of the respondents and submitted a report not recommending the cases of the respondents for retention in the same posts. Consequently, the respondents were relieved of their duties. Thereafter, they filed another set of original applications challenging the report of the Grievance Redressal Committee dated 02.04.2024. The said original applications were allowed by the Tribunal, contrary to its earlier findings in order dated 18th October, 2023.

10. Once the Tribunal examined the validity of the administrative transfer orders and passed an elaborate order, once again the Tribunal ought not to have re-adjudicated the validity of the transfers, which was confirmed by the Grievance Redressal Committee. The second set of applications filed



W.P.Nos.15589 of 2024, etc., and Batch

before the Tribunal are not maintainable, as the validity of the original transfer order had already been tested and confirmed by the Tribunal. The subsequent applications filed challenging the very same transfer order, along with the report of the Grievance Redressal Committee, are untenable.

11. The learned Additional Solicitor General of India would submit that the respondents at the time of accepting their offer of appointment, had provided an undertaking that they will abide by the conditions of appointment, which included serving anywhere in India. A specific undertaking letter confirmed their unconditional acceptance of the appointment conditions. The order of appointment states that “He/She will be posted as ESIC PGIMSR, Chennai at the present but he/she will be liable to be posted anywhere in India and also required to undertake tours”. When the terms and conditions of the appointment is accepted by the respondents and the appointment order specifically states that they are liable to be posted anywhere in India, the respondents cannot now turn around and contend that they are posted on an institutional basis and therefore, they are not liable to be transferred.

12. The Employees State Insurance Corporation's transfer policy for



W.P.Nos.15589 of 2024, etc., and Batch

clinical postings of doctors aims to meet out the organisational requirement of doctors with diverse experience and job knowledge. The vision of transfer policy is to ensure an optimal number of doctors are deployed across the Country in ESIC medical institution and other offices to deliver medical service to stakeholders and beneficiaries. The primary object of this policy is to place the right person in the right place.

13. Such guidelines do not confer any right to the respondents to claim exemption from transfer to any other location or institution. When the petitioners have previously relied on this transfer policy, and the Grievance Redressal Committee considered the respondents' representations based on this policy, the respondents cannot now turn around and say that the transfer policy itself is infirm and would not bind on them. The transfer policy serves as a guideline issued for effective administration and does not confer any right on the employees to challenge the administrative transfer orders made based on organisational requirements.

14. The learned Additional Solicitor General of India would submit that even recently the Hon'ble Supreme Court of India set aside an interim order granted by the Central Administrative Tribunal, which was confirmed



W.P.Nos.15589 of 2024, etc., and Batch

by the High Court. The Apex Court made an observation that the interim orders stalling the transfer to Indore, is found to be unmerited. The Apex Court directed respondent / employee must join at his transferred place of posting within two weeks, while allowing the appeal.

15. Regarding the scope of challenge against transfers and the transfer policy guidelines issued by an employer, the learned Additional Advocate General would rely on the judgment of the Hon'ble Supreme Court of India in the case of *Shilpi Bose and Others vs. State of Bihar and Others*¹. The Apex Court made an observation that “A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department”.

16. In the case of *State of Uttar Pradesh and Others vs. Gobardhan Lal*², the Apex Court made a finding that the order of transfer made even in transgression of administration guidelines cannot also be interfered with, as

1. AIR 1991 SC 532

2. (2004) 11 SCC 402



they do not confer any legally enforceable rights.

WEB COPY

17. The learned learned Additional Solicitor General of India would contend that on the similar lines the Hon'ble Supreme Court has given findings in number of judgments.

18. Factually after the decision of the Grievance Redressal Committee, the respondents were relieved from their respective posts.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:

19. Mr.P.Wilson, learned Senior Counsel appearing on behalf of the respondents / doctors would contend that the transfer policy had been violated, and the spirit of the orders of the High Court has not been taken into consideration. The respondents are appointed on institution basis. Therefore, they were not liable to be transferred to any other place or post. He would further contend that the transfer policy is enforceable, as it provides guidelines and procedures. The Grievance Redressal Committee, while reconsidering the transfers based on the representation submitted by the respondents, failed to follow the procedures contemplated under the transfer guidelines. The transfer guidelines elaborately provides procedures



W.P.Nos.15589 of 2024, etc., and Batch

for annual general transfer. Specifically, he pointed out that weightage points secured under “Priority Matrix” (enclosed in Annexure-1) is to be considered for effecting transfers. He drew attention to Paragraph 4.4, which speaks about the procedures.

20. Clause 6.5 of the guidelines stipulates that the transfer committee shall record reasons for its recommendations. In the present case, the Grievance Redressal Committee has not assigned any reason for rejecting the recommendations of the respondents. Thus, the Committee's report per se is violative of transfer guidelines issued.

21. Clause 7.5 of the guidelines state that “A Doctor posted at a lesser-preferred station gains 20 points for being considered to a posting of his/her choice after completing his 3 years' tenure at such station. Similarly, a doctor who has served for full tenure of 3 years or more on an administrative post will be given 20 points so that he/she has higher probability of getting posting to a choice institution/station on clinical assignment”. None of these assignments are made by the Grievance Redressal Committee, while undertaking the process of consideration pursuant to the directions issued by the High Court. Thus, the Central Administrative Tribunal during the second



W.P.Nos.15589 of 2024, etc., and Batch

round of litigation directed the Committee to reconsider the issues afresh.

Therefore, the present writ petitions are unnecessary and liable to be rejected.

22. Mr.P.Wilson, learned Senior Counsel would submit that the constitution of the Grievance Redressal Committee is improper and violative of Clause 12.3 of the transfer guidelines. The Committee constituted was not in accordance with the guidelines and therefore, the entire report is vitiated.

23. Mere inclusion of a condition in the order of appointment would not preclude an employee from challenging the transfer policy or the transfer order. In the present case, the respondents are doctors, and State-to-State transfers would significantly impact their normal life. They may not be in a position to converse with the patients effectively for providing better treatment. Therefore, the Grievance Redressal Committee ought to have considered all these aspects, while undertaking the process of consideration.

24. The learned Senior Counsel relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Employees State Insurance Corporation vs. Union of India***³, reported in, wherein, the Hon'ble Supreme

3. (2022) 11 SCC 392



Court made the following observations:

WEB COPY

“**42.** The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.”



W.P.Nos.15589 of 2024, etc., and Batch

25. Mr.G.Sankaran, learned Senior Counsel appearing on behalf of the petitioners in W.P.Nos.31596 of 2023 and 36961 of 2024 reiterated that the transfer policy itself is under challenge in one writ petition. The conditions stipulated in the order of appointment that the employees are liable to be transferred anywhere in India is also under challenge in yet another writ petition. The transfer policy is enforceable in view of the fact that, it is all India based guidelines issued and being adopted by all the authorities across the Country. Therefore, the procedures as contemplated ought to have been followed by the Grievance Redressal Committee, while undertaking the process of considering the transfer order issued by the Original Authorities. The judgment relied on by the Employees State Insurance Corporation are not applicable to the facts of the present case. The Tribunal has rightly directed the Committee to reconsider the validity of transfer orders by assigning reasons. It is contended that the transfer of respondents from Chennai to other places would affect the normal family life of these doctors.

LEGAL POSITION ON ADMINISTRATIVE TRANSFER:

26. Administrative transfers are incidental to service and conditions of service. When transfer is an administrative condition, ordinarily no



W.P.Nos.15589 of 2024, etc., and Batch

application or writ is entertainable before the Court of Law. An application or writ against the order of administrative transfer is entertainable, if the transfer order has been issued by an incompetent authority having no jurisdiction or allegation of mala fides are raised. Even in case of raising an allegation of mala fides, the authorities against whom such allegations are raised, must be impleaded as a party-respondent in their personal capacity.

27. Place or post can never be the choice of an employee. Organisational requirements and public interest are of paramount importance. Transfers are unavoidable in Government Departments for efficient public administration, which is a constitutional mandate. Courts cannot interfere with day-to-day administration of the Government Departments / Organisations. Such interference undoubtedly would cause prejudice to the interest of efficient administration. It is the prerogative of the Executive Authority to take decisions regarding transfer and posting of an employee in a particular place and post.

28. Interference in administrative transfer orders are beyond the realm of the power of judicial review. Adjudication of transfer on merits are ordinarily impermissible. Personal / family grievances of the employees are



W.P.Nos.15589 of 2024, etc., and Batch

to be considered only by the employer concerned, and not by the Courts.

Misplaced sympathy by Courts in the matter of administrative transfers would cause inconvenience to the public administration.

29. In the case of ***Shilpi Bose*** cited *supra*, the Apex Court reiterated that the Courts should not interfere with the transfer order, which is made in public interest and for administrative reasons. Unless the transfer orders are made in violation of any mandatory statutory rules or on the ground of mala fide. A Government servant holding a transferable post have no vested right to remain posted at one place or the other. Transfer orders issued by the competent authority do not violate any of his service rights. If the Courts continue to interfere with the day-to-day transfer orders issued by the Government and the authorities, there will be complete chaos in the administration, which would not be conducive to public interest.

30. In the present case, even during the first round of litigation the High Court granted liberty to the respondents to approach the Transfer Grievance Redressal Committee and directed the Committee to take a decision on merits. Once the Committee made its decision, it became final in respect of transfers.



WEB COPY

31. Question arises, whether the transfer policy / guidelines will have the effect of statute and are enforceable in the eye of law. In this context, in **Gobardhan Lal's** case cited *supra*, the Hon'ble Supreme Court in unequivocal terms held that the order of transfer made even in transgression of administration guidelines cannot be interfered with, as they do not confer any legally enforceable rights.

32. Administrative guidelines for regulating transfers or outlining transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress, but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer / servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments.

33. Therefore, the legal position regarding judicial interference in administrative transfers had been repeatedly reiterated by the Constitutional Courts. Courts cannot run the administration and interference in



W.P.Nos.15589 of 2024, etc., and Batch

administrative transfers would affect the routine administration of the Government Departments/Organisations. Therefore, the cases of transfers to be considered based on the legal position settled by the Constitutional Courts.

34. The Hon'ble Supreme Court of India in the case of ***Tushar D. Bhatt vs. State of Gujarat***⁴, head as follows:

“16. The legal position has been crystallised in a number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies.

17. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as mala fide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11-10-1999 to 27-4-2000 i.e. more than six months. In the interest of discipline of any institution or organisation such an approach and attitude of the employees cannot be countenanced.

18. In Gujarat Electricity Board v. Atmaram

4. (2009) 11 SCC 678



WEB COPY



W.P.Nos.15589 of 2024, etc., and Batch

Sungomal Poshani [(1989) 2 SCC 602 : 1989 SCC (L&S) 393 : (1989) 10 ATC 396 : AIR 1989 SC 1433] this Court had an occasion to examine the case of almost similar nature. This Court observed as under: (SCC p. 607, para 4)

“4. ... Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other”.”

35. In the recent case of *The Tamil Nadu Agricultural University and*



W.P.Nos.15589 of 2024, etc., and Batch

Another vs. R.Agila ETC, in Special Leave to Appeal (C) Nos.13070-13075

of 2022 dated 20th August, 2024, the Hon'ble Supreme Court of India held as follows:

“18. Despite there being no interim order in their favour, respondent nos.4 and 7 continued to remain absent after being relieved from their original place of posting. As such, this Court is not inclined to extend any benefit of salary for the period of unauthorised absence. However, as the transfer order was quashed by the learned Single Judge, their service periods shall continue to be treated in continuity, and they would be entitled to whatever other benefits accrued to them due to this continuity, but no salary for the said period of unauthorised absence.”

DISCUSSIONS:

36. The appointment orders of the respondents reveal that he/she posted at ESIC PGIMSR, Chennai at present but he/she will be liable to be posted anywhere in India and also required to undertake tours. The offer of appointment was accepted through declarations submitted by the respondents. Even in the application Proforma a declaration has been given-up stating that “If selected, I am willing to serve anywhere in India”. Therefore, even before appointment order at the time of selection, the



W.P.Nos.15589 of 2024, etc., and Batch

respondents have given a declaration that they are willing to serve anywhere in India.

37. Regarding transfer guidelines, the vision of the guideline has been stated as follows:

Vision and Objectives of the Transfer Policy:

To have optimal number of doctors across the country in ESIC Medical Institutions / Other Offices for delivery of medical service to stakeholders / beneficiaries.

1. To meet organizational requirement of doctors with varied experience and job knowledge.
2. To provide an opportunity to all doctors to improve their proficiency, self-development and career path.
3. To groom officers for taking positions in higher rank and utilise their experience earned with age and position.
4. To conform to various DOPT/Government guidelines/Supreme court directions, as far as possible.
5. To implement Central Vigilance Commission (CVC) guidelines regarding rotation of doctors at clinical



WEB COPY



W.P.Nos.15589 of 2024, etc., and Batch

postings and in sensitive posts.

6. To have right person at right position and place.
7. To have transparency in transfer and posting.

38. Although guidelines have been issued for effective administrative transfers, an in-built mechanism has been provided by constituting a Transfer Grievance Redressal Committee. Such Committee comprises of Financial Commissioner, Medical Commissioner and Insurance Commissioner. Though the respondents have questioned the validity of the Committee, we do not find any infirmity in respect of the constitution of the Committee since in the present case the Finance Commissioner is the Chairman and Zonal Medical Commissioner (NZ) and Insurance Commissioner are members.

39. The Government issued transfer guidelines to maintain transparency in the matter of administrative transfers. These guidelines are framed only for the purpose of the competent authority, and will not provide any enforceable right to the employees. Since the transfer is conditions of service, transfer guidelines do not confer enforceable right to an employee. The primary purpose of issuing these guidelines is to improve transparency



W.P.Nos.15589 of 2024, etc., and Batch

in administration. Therefore, guidelines issued for the convenience of the Government Departments would not confer any right on the employees to challenge the order of administrative transfers.

40. In the present case, the annual general transfer for the transfer year 2023 was issued transferring about 213 Doctors across the Country. The competent authority on recommendations of the transfer committee has issued an annual general transfer. Therefore, the process of annual general transfers were undertaken pursuant to the transfer guidelines issued and based on the recommendations of the transfer committee. The Competent authority issued the orders. The said transfer order issued cannot be said to be infirm. Perusal of the transfer order would reveal that it is based on organisational interest and for the benefit to meet out the objectives of administrative transfers.

41. Therefore, the respondents cannot take any advantage from and out of transfer guidelines issued by the petitioner / organisation. The transfer policy / guidelines are subject to modification or withdrawal. Therefore, the ground taken by the respondents that the petitioners are in the process of reviewing the transfer policy is of no avail to support the case of



W.P.Nos.15589 of 2024, etc., and Batch

respondents. The ground taken by the respondents that the procedures stated in the transfer guidelines are not followed is untenable.

42. Let us now consider the adjudication of original transfer order by the Central Administrative Tribunal during the first round of litigation. The transfer order was challenged in O.A.Nos.463, 475, 491, 492, 493 and 578 of 2023. Final order was passed on 18th October, 2023. The Tribunal elaborately considered the legal principles entertainability of original applications challenging the order of administrative transfers and the other factors. The findings of the Tribunal are as under:

“21. It is also to be noted that it was well within the knowledge of the applicants that the department is implementing the policy hence the options were called from the employees including the applicants accordingly the applicants have submitted their options in the month of December/ January/February and given their preference of five choices.

22. It is to be noted that for the first time department was taking the decision on the transfer may be they have not followed with the schedule prescribed under the policy strictly however, the transfer has been issued as per the policy and as per the choice submitted



WEB COPY



W.P.Nos.15589 of 2024, etc., and Batch

by the applicants. Once the applicants have chosen to submit their choice after receipt of the transfer order they cannot question the same on the ground that their preferences of choice in accordance with priority has not been considered or the applicants do not have the right to claim the transfer as a matter of right to a particular place. The applicants who have submitted the proforma application at the time of recruitment where the condition was specifically mentioned and subsequently also when they received the appointment order the said condition in respect of serving anywhere in India was there and the applicants have submitted their willingness and unconditionally accepted the same.

23. It is to be noted that the applicants are in such a noble, life saving profession and though they are teaching faculties, they cannot come with such excuses of their spouse/dependent family member illness, particularly when they themselves are doctors and have been transferred to the metro cities.

24. It is to be noted that moreover in the recent order of the Hon.Supreme court in the matter of Mr. Namrata Verma Vs. State of UP in SLA (C).No.36717/2017 order dated 06.09.2021 it has been held that "it is not for the employee to insist to transfer him/her and/or not to transfer him/her at a particular



WEB COPY



W.P.Nos.15589 of 2024, etc., and Batch

place. It is for the employer to transfer an employee considering the requirements.

25. It is also to be noted that as held by the Hon.Supreme court in CA 280/2003 in the matter of Saxena Vs. UOI and others, vide order dated 21.02.2006, "In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his/her duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

43. The said order was taken by way of an appeal before the High Court in writ petitions. The High Court refused to set aside the order of the Tribunal but passed the following order:

“7. Considering the fact that the grievance/representation made by the petitioners are still pending before the Transfer Grievance Redressal Committee and also the submission made by the learned counsel for both side, without going into the merits of the case, we direct the second respondent to give necessary instructions to the said Committee, which is under their control, to consider the petitioners'



WEB COPY



W.P.Nos.15589 of 2024, etc., and Batch

grievances/representations and take appropriate decision independently, on its own merits and in accordance with law, without influencing any of the observations made by this Court in this order, within a period of two weeks from the date of receipt of a copy of this order. Further, if the petitioners are having any additional particulars, the same shall be submitted to the said committee, within two days from the date of receipt of a copy of this order. Status-quo to be maintained, till the date of orders passed by the Transfer Grievance Redressal Committee on the grievances/representations made by the petitioners.”

44. In the context of the first round of litigation, the second set of original applications are filed challenging the original transfer orders along with the report of the Transfer Grievance Redressal Committee dated 02.04.2024. The Tribunal re-adjudicated the merits once again which were already adjudicated by the Tribunal and issued the following directions:

“39. In the light of the reasons state above, I am passing the following orders:

(i) I answer the question of law in favour of the applicants that the impugned report of the 5th respondent dated 02.04.2024 and the consequential order of the 4th respondent dated 06.04.2024 are quashed and set aside in toss respect of the applicants



WEB COPY



W.P.Nos.15589 of 2024, etc., and Batch

herein.

(ii) I also hereby direct the respondents to redo the transfer exercise after considering all the Clauses of the Transfer Policy, including Priority Matrix at Annexure-1 within a period of 1 month from the date of receipt of this order.

(iii) Till such time, the Respondents are directed not to take any coercive/disciplinary action against the applicants herein for not joining the transferred place of posting after relieving orders were passed.

(iv) The respondents are further directed to regulate the period of absence of the applicants (if any) from 06.04.2024 (relieving order) to till the date of pronouncement of this order, as per the extant rules.

(v) The respondents are also directed to permit the applicants to join the 4th respondent's Hospital till the respondents passes a speaking order as per the direction of the Hon'ble High Court of Madras.”

45. The above directions of the Tribunal in our considered opinion is beyond the scope of the legal position settled by the Constitutional Courts. Such directions issued in the matter of administrative transfers would



W.P.Nos.15589 of 2024, etc., and Batch

undoubtedly result in prejudice to the interest of public administration and the petitioners / Employees State Insurance Corporation may not be in a position to run an effective public administration. Once the Tribunal dismissed the original application filed challenging the transfer orders and the High Court directed the Grievance Redressal committee to consider the representation of the respondent and the Committee considered the same and rejected the representation of the respondents, thereafter entertaining an application against the very same transfer order and issuing several directions as stated above by the Tribunal is excess exercise and therefore, we are not inclined to approve the orders impugned.

46. In view of the above discussions the order passed by the Central Administrative Tribunal, Chennai Bench dated 16th May, 2024 in OA/310/00503, 504 and 506 to 513 and 524 to 526/2024 is set aside and the Writ Petitions in W.P.Nos.15589, 15118, 15121, 15126, 15135, 15151, 15178, 15182, 15214, 15595, 15600, 15604, 15609 of 2024 are allowed.

W.P.Nos.31596 of 2023 and 36961 of 2024:

47. With reference to the relief sought for in the writ petitions in W.P.Nos.31596 of 2023 and 36961 of 2024 to quash the Clause 3(d)



W.P.Nos.15589 of 2024, etc., and Batch

incorporated in the appointment order issued to the writ petitioners, this Court is of the considered opinion that the said clause was accepted by the writ petitioners even at the time of submitting his application for selection.

48. In the Application Performa itself the petitioners have given a declaration that “If selected, I am willing to serve anywhere in India”. After selection the condition in Clause 3(d) was inserted in the order of appointment. The offer of appointment was accepted by the petitioner and he joined in the post and served for about 9 years. Now he cannot turn around and challenge the terms of appointment regarding transfers. Thus, the additional prayer sought for in the writ petition in W.P.Nos.31596 of 2023 and 36961 of 2024 is not entertainable, more so after a lapse of about 9 years from the date of joining in the post.

49. Having accepted the condition and served for 9 years, the petitioner cannot turn around and challenge the same at this length of time in order to escape from the administrative transfers.



W.P.Nos.15589 of 2024, etc., and Batch

50. The issues are elaborately considered by this Court as above and therefore, those findings are applicable to the facts of the writ petitions in W.P.Nos.31596 of 2023 and 36961 of 2024. Thus, we are not inclined to entertain the writ petitions and consequently, the Writ Petitions in W.P.Nos.31596 of 2023 and 36961 of 2024 are dismissed, and the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

[S.M.S., J.] [M.J.R., J.]
11.12.2024

Jeni

Index : Yes

Speaking order

Neutral Citation : Yes



W.P.Nos.15589 of 2024, etc., and Batch

To

WEB COPY

- 1.The Registrar,
Central Administrative Tribunal,
Chennai Bench.

- 2.The Secretary,
Union of India,
Ministry of Labour and Employment,
Shram Shakti Bhawan,
Rafi Marg, New Delhi – 110 001.



WEB COPY



W.P.Nos.15589 of 2024, etc., and Batch

S.M.SUBRAMANIAM, J.
and
M.JOTHIRAMAN, J.

Jeni

W.P.Nos.15589 of 2024, etc., and Batch

11.12.2024