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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13.02.2024

+ W.P.(C) 2016/2024, CM APPL. 8474/2024 & CM APPL. 8473/2024
SPORTS AUTHORITY OF INDIA THROUGH SH. SANDIP
PRADHAN, DIRECTOR GENERAL & ORS.

..... Petitioner

Through: Mr. Sandeep Kumar Mahapatra, Adv.
CGSC with Mr. Sugam Kumar Jha, Mr. Harsh Raj,
Mr. Tribhuvan, Mr. K.P. Sridaas and Mr. Raghav
Tandon, Advs.

versus

DR. HEMA VALECHA

..... Respondent

Through: Mr. Sachin Chauhan, Adv.

+ W.P.(C) 2074/2024 & CM APPL. 8624/2024 & CM APPL.
8623/2024 -Stay
SPORTS AUTHORITY OF INDIA & ORS. Petitioners

Through: Mr. Sandeep Kumar Mahapatra, Adv.
CGSC with Mr. Sugam Kumar Jha, Mr. Harsh Raj,
Mr. Tribhuvan, Mr. K.P. Sridaas and Mr. Raghav
Tandon, Advs.

versus

DR. KULBIR SINGH RANA

..... Respondent

Through: Mr. Sachin Chauhan, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J (ORAL)

1. The present writ petitions under Article 226 & 227 of the Constitution of India seek to assail two separate but identical orders both dated



28.11.2023, passed by the learned Central Administrative Tribunal (Tribunal) in Original Applications (OAs) No. 3696/2023 and 3693/2023 preferred by the respondents, wherein they had assailed the transfer order dated 17.11.2023 vide which they were sought to be transferred to Trivandrum and Alleppey, respectively.

2. Vide the impugned orders, the learned Tribunal while staying the operation of the transfer orders assailed by the respondents has directed the petitioners to clarify the vacancy position in the post of Physiotherapist Grade-II in January 2021 in the National Centre of Excellence (NCOE), Trivandrum, Alleppey, Guwahati, Imphal, i.e, the locations to which the two respondents and other similarly placed applicants were transferred.

3. We may at the outset note the brief factual matrix as emerging from the record.

4. The respondents are Physiotherapist Grade-II employees who have been working with the petitioner/authority on a contractual basis in the National Centre of Excellence (NCOE), KSSR, Delhi. The duration of these contractual appointments of the respondents is three years which period is ending on 07.03.2024 for the respondent in OA no. 3696/2023 and on 19.02.2024 for the respondents in O.A. No.3693/2023. On 17.11.2023, the petitioners issued office orders transferring the two respondents to Trivandrum, Alleppey, respectively. Being aggrieved, the respondents approached the learned Tribunal, with a grievance that the transfer orders had been issued as a counter blast to the judgement dated 10.11.2023 passed in OA no 597/2023, whereunder the petitioner was directed to pass a reasoned order by considering the respondents and other similarly placed persons as 'Initial Constituent' of the service as per 2022 (4) Rules and to



continue with their services till the speaking order was passed.

5. On 28.11.2023, when the respondents O.A. was listed for preliminary consideration, the learned Tribunal while issuing notice to the petitioners and staying the operation of the Transfer Orders dated 17.11.2023 directed the petitioners to furnish a detailed vacancy position as existing in January, 2021 qua the post of Physiotherapist Grade-II in National Centre of Excellence (NCOE), Trivandrum and Alleppey etc. Even though, the petitioners have duly furnished this information before the learned Tribunal, they have now approached this Court with a grievance that even though the services of the respondents are urgently required in Trivandrum and Alleppey on account of the ongoing preparation for the events related to Khelo India, they are unable to move them on account of the interim stay granted by the learned Tribunal.

6. Learned counsel for the petitioners submits that the impugned order is even otherwise perverse as the learned Tribunal by directing the petitioners to provide the vacancy position at its various centres located all over the country tried to interfere with an administrative decision taken by the petitioners. He further submits that the learned Tribunal has failed to appreciate the urgency involved in the matter and, therefore, prays that the learned Tribunal be directed to decide the O.A. expeditiously.

7. Issue notice. Mr. Sachin Chauhan, learned counsel for the respondents accepts notice and submits that the directions issued by the learned Tribunal were justified in the factual matrix of the present case. He submits that the Transfer Orders were issued only as a counter blast to the order dated 10.11.2023 passed by the learned Tribunal whereby the respondents, who were appointed on contractual basis in 2021, were directed to be treated as a



part of the regular cadre. He further submits that despite the learned Tribunal having repeatedly been directing the petitioners to permit the respondents to rejoin duty at NCOE, Delhi, the petitioners are blatantly flouting the stay order. He, therefore, prays that the writ petition be dismissed and the petitioners be directed to forthwith permit the respondents to rejoin duty.

8. In order to appreciate the rival submissions for the parties, we may begin by referring to para nos. 6 & 7 of the impugned order, which read as under-

“6. In the instant case, it is not denied that the applicant entered into litigation with the respondents regarding the status of contractual employment. The counsel for the respondents states that eight more individuals were transferred to various places like Imphal and Guwahati in the public interest, along with the applicant. In the interest of clarity and appropriateness, it is suggested that the respondents should provide the following clarifications:

(a) Whether there were vacancies in January, 2021 for the position of Physiotherapist Grade II in locations such as Alleppey, Imphal, Guwahati, and other places outside Delhi to where the eight individuals including the applicant, were transferred. Particularly, information is sought about Alleppey, the destination to which the applicant has been transferred, as per the prevailing conditions in January 2021 when the present applicant was appointed on a contractual basis.

(b) The respondents shall also furnish the current status of the representation submitted by the applicant to the respondents.

7. These clarifications shall be provided by the counsel for the respondents by the next scheduled date of the hearing. Till the next hearing date, the transfer order dated 17.11.2023 is stayed.”

9. From a perusal of the aforesaid extract of the impugned order, it is evident that the learned Tribunal has proceeded to venture into an exercise



which borders on administrative decisions of the petitioner/authority. In our opinion, if the learned Tribunal was of the view that the impugned transfer orders were issued *malafidely* as was the case of the respondents, it could have certainly interfered with the same. This, however, does not imply that the learned Tribunal ought to have sought detailed information regarding the vacancy position in all the Centres of the petitioner/authority spread across the Country. This course of action adopted by the learned Tribunal in our considered view was impermissible. Having said so, we may turn to the grievance of the respondents that despite the transfer orders having been stayed, the petitioner is not permitting them to rejoin duty.

10. Learned counsel for the petitioner submits that since the relieving orders were not stayed, the petitioner was justified in not permitting the respondents to rejoin duty. In our considered view once the said Transfer Orders were stayed, the petitioners were expected to permit the respondents to rejoin duty in compliance of the learned Tribunal's order.

11. In the light of the aforesaid, we dispose of the writ petitions by clarifying that the learned Tribunal will not venture into the aspect of number of vacancies available in the post of Physiotherapist Grade-II at other Centres of the petitioner and that too in 2021, but, will decide the O.As filed by the respondents on the grounds raised by them in their O.A. We make it clear that it will be open for the learned Tribunal to consider the respondents' plea that the impugned Transfer Orders were passed as a counter blast to the order dated 10.11.2023 passed in O.A. 597/2023. Further, the petitioners are directed to forthwith permit the respondents to rejoin duty at NCOE, Delhi. Needless to state that rejoining of the respondents at Delhi Centre will be subject to further orders passed by the



Tribunal.

12. Taking into account the nature of urgency expressed by the petitioners as also the fact that the respondents are contractual employees, whose three years contractual term is coming to an end in February/March, 2024, we request the learned Tribunal to decide the OAs expeditiously and preferably before 15.03.2024. It is further made clear that the order granting stay of the transfer orders will not be construed as an order extending the service of the respondents beyond the period of their contractual term of three years. However, this order will not come in the way of the respondents seeking extension of their contractual term on any permissible ground.

13. It is further clarified that this Court has not expressed any opinion on the merits of the rival claims of the parties except to the extent noted hereinabove.

14. The writ petitions stand disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 13, 2024

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