

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 21.02.2020
Pronouncing orders on : 28.02.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.31369, 31479, 31494, 31499,
31500, 31504, 31507, 31553, 32095, 32116,
32121, 32127, 32632, 32634, 32711, 32714,
32716, 32719, 32728,32942,
32945, 32951, 32953, 32727, 32730,
32909, 33075 and 32955 of 2019

and

W.M.P. Nos.35330, 35333, 31705, 32381, 32383,
33391, 31650, 31540, 31542, 31546, 32373, 32375, 32392,
33511, 32397, 33133, 31704, 31745, 31697, 31703, 33154,
33339, 35301, 35328, 31651, 31699, 31746, 32395, 32391,
32393, 33385, 33390, 35303, 31677, 31678, 32376, 32387,
33135, 33136, 33148, 33149, 31698, 33150, 35326, 31649,
31686,
31654, 33129, 31680, 31684, 31685, 31541, 31689, 31690,
31691, 31752, 31756, 32371, 32388, 32394, 32398, 33026,
33028,
33131, 33370, 33372, 35299, 35304, 35309, 35314,
35315 and 35324 of 2019

Dr.P.Balakrishnan

...Petitioner
in W.P.No.31369 of 2019

vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai - 600 009.

2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
 3. The Director,
Directorate of Medical and Rural Health Services,
Teynampet,
Chennai - 600 006.
 4. The Dean,
Stanley Medical College & Hospital,
Chennai - 600 001.
 5. The Chairman,
Medical Service Recruitment Board,
Chennai - 600 006.
- Respondents
in W.P.No. 31369 of 2019

PRAYER in W.P.No. 31369 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records and to quash the impugned Trasfer and Posting order in Ref.No.65770/E1/1/2019 dated 30.10.2019 issued by the 3rd respondent and consequently direct the 3rd respondent to retain the petitioner in the same post as Senior Resident/Chief Civil Surgeon in Department of Orthopedic Surgery in Stanley Medical College and Hospital, Chennai.

For Petitioner : Mr.C.Kanagaraju
in W.P.Nos.31369,
31479, 31494, 31499, 31500,
31504, 31507, 31553, 32095,
32116, 32121, 32127, 32632,
32634, 32711, 32714, 32716,
32719, 32728,32942,32945,
32951, 32953 and 32955 of 2019
W.P.Nos.32727 and 32730 of 2019 M/s.K.C.Karl Marx
W.P.No.32909 of 2019 Mr.M.R.Jothimanian
W.P.No.32909 of 2019 Mr.C.S.K.Sathish
For Respondents : Mr.Vijayanarayan
in all W.Ps Advocate General assisted by
Mr.A.N.Thambidurai
Special Government Pleader

COMMON JUDGMENT

सत्यमेव जयते

All the above writ petitions have been filed challenging the charge memos and the transfer and posting orders issued to the respective petitioners by the respondents viz., the Director of Medical Education and the Director of Medical and Rural Health Services.

2.The issues involved in all the above writ petitions are common and therefore, this Court proceeds to take up the same together and deal with the same and pass a common judgment.

3.The writ petitioners were working as Senior Resident/Assistant Professor/Associate Professor/Junior Resident in various departments under the control of the Directorate of Medical Education. There were long standing demands made by the Doctors working in various Government Hospitals through out the State seeking for revision of pay, time bound promotions, PGs posting counseling issues etc. A meeting was convened by the Hon'ble Minister for Health and Family Welfare on 18.09.2018. This meeting was attended by the office bearers of the various Doctors Associations, Principal Secretary to Government, Health and Family Welfare Department, Director of Medical Education, Director of Public Health and Preventive Medicine, Director of Medical and Rural Health Services and Additional Secretary to Government, Health and Family Welfare Department. During the meeting, the office bearers and various Associations laid emphasis to the long pending unresolved

issues and they requested the Government to resolve the pending issues. After deliberations, the Government agreed to immediately constitute a working group consisting of all the three Directors of the Medical Education, Medical and Rural Health Services and Public Health and Preventive Medicine, which will be chaired by a person not below the rank of Additional Secretary to Government and it also contemplated the active representation from the side of the Associations. The working group was expected to come up with a report within four weeks on the factual status and the appropriate recommendations to resolve the grievances. In view of this understanding, the Associations agreed to put on hold all forms of protest for four weeks.

4. According to the petitioners, there was absolutely no progress / developments and therefore, it was decided to raise the demands by calling for an agitation. A Public Interest Litigation came to be filed before the Madurai Bench in W.P.(MD)No.24194 of 2018 to forbear the Doctors from going on a strike and to ensure that there is uninterrupted treatment and medical services in all the Government Hospitals through out the State of Tamil Nadu. The Division Bench

heard the writ petition in detail and also took note of the earlier meeting held between the Associations and the Government / Department. In order to find a solution, this Court called the Principal Secretary to give some time line to address the issues and come to a conclusion. It will be beneficial to extract the orders passed by the Division Bench in this regard.

The Government of Tamil Nadu, by order dated 18 September, 2018, constituted a Working Committee with the Additional Secretary to Government, Health and Family Welfare Department as its Chairman, the Director of Medical Education, Director of Medical and Rural Health Services, Director of Public Health and Preventive Medicine and the Joint Action Committee Members of Government Doctors' Associations as its Members.

2. The Committee appears to have submitted its report to the Government. The Association of Doctors contended that the Committee has submitted its recommendation to the Government. However, the Principal Secretary to Government, Health and Family Welfare Department, in his counter-affidavit, submitted that no such recommendation was made. According to the Principal Secretary, the minutes of the meeting

should be circulated to other core departments, like Finance and Consultative Department for taking appropriate decision.

3. We have, by order dated 11 January, 2019, directed the Principal Secretary to submit a time schedule for taking a decision in the matter. The Secretary, in his affidavit dated 30 January, 2019, submitted that counselling for promotion as per eligibility would be completed by 28 February, 2019. The Principal Secretary further submitted that a final decision with respect to the other demands would be taken before 31 March, 2019 in consultation with all stake-holders.

4. The affidavit is not clear as to whether question regarding time bound promotion as per the demand made by the Doctors' Association would be taken before 28 February, 2019.

5. The learned Senior Counsel for the respondents 3 and 4 submitted that the affidavit is evasive and has not addressed the query raised by this Court.

6. There is no dispute that a Sub-Committee was formed to deliberate on the demands made by the

respondents 4 to 6. The minutes of the meeting dated 18 September, 2018 signed by the Principal Secretary clearly indicates that the working group was constituted to consider the demands, study the entire matter and to make recommendation to the Government. It is also not in dispute that the Working Committee has submitted its recommendation to the Government. It would not be possible for the Government to take up a contention that it was not a Working Committee and that the report was not in the nature of recommendation to the Government.

7. The Principal Secretary is right in his contention that the report should be placed before the core Ministries for approval before passing a formal order by the Government. There is no point in keeping the dispute live without any kind of solution.

8. We are of the view that any kind of strike or unrest among the Doctors would ultimately affect the common man, who are depending on our Government Hospitals for health related issues. The Health Department in Tamil Nadu has its credit several first in Health sector. The Doctors, who have played a definite part and contributed for its success, must also be given a reasonable pay structure, chances of promotion and

other benefits in commensurate with the nature of work.

9. The learned Additional Advocate General, on instructions from the Principal Secretary, submitted that the Government is prepared to convene a meeting of all stake-holders and the Association to take an early decision in the matter. The respondents 3 to 6 also agreed for such a course to resolve the issue.

10. The learned Additional Advocate General submitted that the meeting would be convened before 08 January, 2019 and it would be attended by Principal Secretary, Health and Family Welfare Department, Principal Secretary, Finance Department, Principal Secretary, Personal and Administrative Reforms, Director of Medical Education and Additional Secretary to the Government, Health and Family Welfare Department. The respondents 4 to 6 also would be invited to the meeting with advance notice.

11. We direct the Principal Secretary, Health and Family Welfare Department, to convene the meeting as agreed, deliberate on the issue and arrive at a decision by 16 February, 2019 and file an action taken report on 18 February, 2019.

5.This Court took into consideration the fact that a Sub-Committee was formed to deliberate the demands made by the Doctors. The learned Advocate General who represented the Government also submitted that a meeting will be convened before 08.01.2019 and the further development will be reported to the Court. The Division Bench directed the Principal Secretary of Health and Family Welfare Department to arrive at a decision and file an Action Taken Report in the next date of hearing. This order was passed on 30.01.2019.

6.There was no progress and therefore, all the Associations decided to jointly form a federation called as “Federation of Government Doctors Association” (FOGDA) and they decided to go an agitation. This Association gave a representation to the Government on 09.07.2019 and requested the Government to settle the pending disputes and they also informed the Government that if the issues are not settled on or before 16.07.2019, the Doctors will go on one day boycott on 18.07.2019 for two hours.

7.A meeting was convened by the Hon'ble Minister for Health and Family Welfare with FOGDA on 27.08.2019. The Minutes of the Meeting are extracted hereunder:

The Federation of Government Doctors Association (FOGDA), met Hon'ble Minister for Health & Family Welfare pressing the following demands.

- 1. Dynamic Assured Career Progression (DACP) with pay band 4 at the end of 13 years.*
- 2. Request to modify G.O.(4D)No.2, H&FW dated 15.02.2019 based on patient load and not to reduce existing doctors based on MCI norms.*
- 3. To conduct service PGs posting through counselling.*
- 4. To take necessary steps to bring back 50% service quota in PGs and superspeciality NEET PG exam for Tamil Nadu service candidates.*

Hon'ble Minister for Health and Family Welfare, after detailed discussions with the Association, Head of the Departments and other officials, among other, dedicated as below.

- 1. Various clauses including prospective clause in the G.O.Ms.No.354, Health and Family Welfare*

Department dated 23.10.2009 will be reviewed comprehensively with reference to the demands of the Association and will be moved forward for consideration within six weeks time. Progress will be reviewed once in two weeks by the Health Secretary with the concerned officials and association representatives. Project Director, TANSACS will coordinate with the concerned officials for this purpose.

- 2. With regard to modification of G.O.(4D)No.2, it was resolved that after the completion of refitment counselling, detailed analysis will be examined as per the patient load / service needs of the doctors, in consultation with the Finance Department.*
- 3. Government is taking earnest efforts to bring back the 50% quota for service doctors in PG courses in the Tamil Nadu Government Medical Colleges. Accordingly, Government of India had already been addressed.*

8.It is clear from the above Minutes of the Meeting that some assertions were given on the side of the Government to consider the demands made by the Doctors. The grievances were not addressed and therefore, the Associations decided to start the agitation.

9.The agitation started on 25.10.2019 and it was escalating

everyday. The Government decided to take stock of the situation. On 30.10.2019 the Hon'ble Chief Minister and the Hon'ble Minister for Health and Family Welfare and also the Health Secretary requested the agitating Doctors to drop the agitation unconditionally and gave an assurance that the demands will be addressed. In the meantime, orders were passed by the Health Secretary to declare break-in-service for the Doctors who are continuing with the agitation. In view of the request made by the Doctors and the Association, the break-in-service order was withdrawn. This news was spread through out the State through media. Therefore, the Associations decided to call off the strike and announcements were made to that effect on 31.10.2019. As a sequence, the Doctors resumed duty on 01.11.2019.

10.It is at this stage, the charge memos and transfer and posting orders came to be issued against the petitioners. The tabulation of the details of the writ petitioners challenging the charge memos and the transfer and posting orders is given hereunder below:

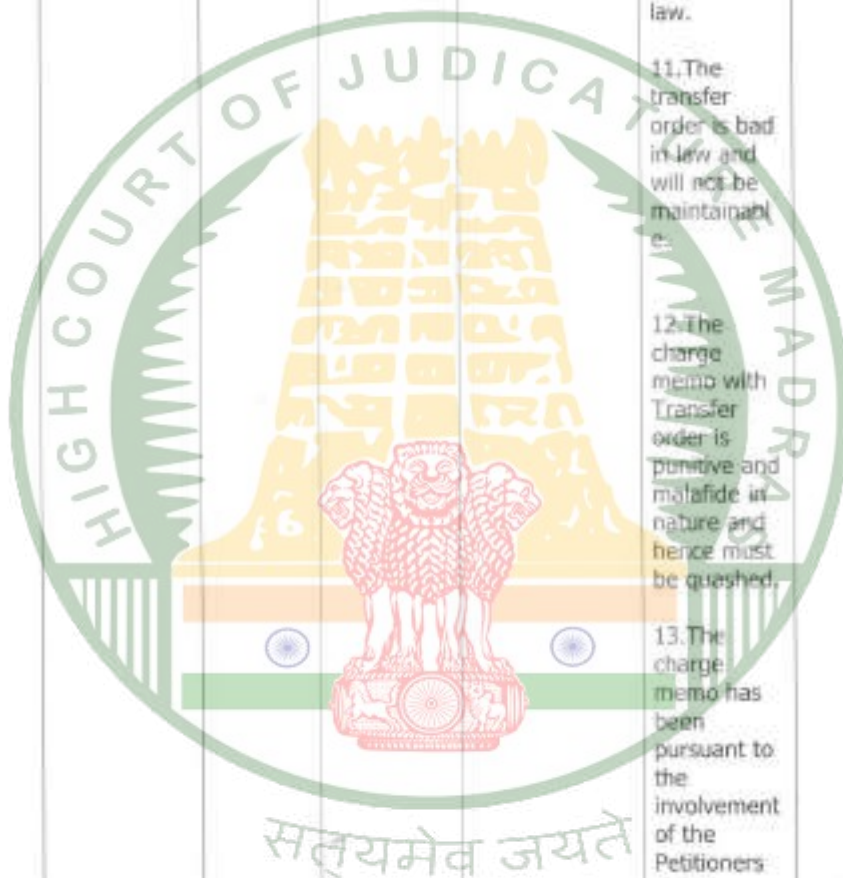
TABULATION OF DETAILS OF WRIT PETITIONS CHALLENGING CHARGE MEMO ISSUED TO GOVERNMENT DOCTORS

| S.No | W.P. No. | Name of Petitioner | Designation | Authority Issuing Charge Memo | Charges | Grounds raised by the Writ Petitioners | Defence taken in Counter Affidavits |
|------|------------|----------------------|---|---|--|---|---|
| 1. | 32632/2019 | Dr. P. Balakrishnan | Senior Resident / Chief Civil Surgeon in Department of Orthopaedics | The Director of Medical Education, Directorate of Medical Education, Kilpauk, Chennai | 1. Petitioner has absented himself/herself from their duties from 25.10.2019 onwards, dislocating the normal functioning of the Hospital and/or College and thereby depriving essential services to the public which is an unbecoming act of a Regular Government servant. | 1.Charge memo issued is illegal, not sustainable in law and against principle of natural justice. | 1. The DME issued a letter to all Deans/Head of Institutions under the control of DME to urge the doctors to call of the strike in view of outbreak of Dengue fever due to the start of North East Monsoon and other emergencies and to not sanction any leave and ensure that there is no disruption of treatment. |
| 2. | 32634/2019 | Dr. S. Balachandar | Assistant Professor in Department of Orthopaedics | The Director of Medical Education, Directorate of Medical Education, Kilpauk, Chennai | 2.Petitioner has engaged himself/herself in the indefinite strike by the Federation of Government Doctor Association ("the FOGDA"), from 25.10.2019 onwards, neglecting his/her duties of essential service thereby violating Rule 22 of the Tamil Nadu Government Servants Conduct Rules, | 2.Respondents used undue influence and mala fide intention for issuing charge memo. | 2. There is no legal/statutory authority to go on strike. Further Rules 22 and 22A of the Tamil Nadu Government Servants Conduct Rules, 1973 prohibits employees from going on a strike. |
| 3. | 32711/2019 | Dr. T. Senthil Kumar | Senior Resident in Department of Orthopaedics | The Director of Medical Education, Directorate of Medical Education, Kilpauk, Chennai | 2.Petitioner has engaged himself/herself in the indefinite strike by the Federation of Government Doctor Association ("the FOGDA"), from 25.10.2019 onwards, neglecting his/her duties of essential service thereby violating Rule 22 of the Tamil Nadu Government Servants Conduct Rules, | 3.Unilateral action of taking disciplinary proceedings by issuing charge memo under Rule 17(b) of the Tamil Nadu Service Rules in the same day by force and issuing new appointment order is against Articles 14 and 19 of the Constitution of India. | 2. There is no legal/statutory authority to go on strike. Further Rules 22 and 22A of the Tamil Nadu Government Servants Conduct Rules, 1973 prohibits employees from going on a strike. |
| 4. | 32714/2019 | Dr. S. Syed Naser | Senior Assistant Professor in Department of Orthopaedics | The Director of Medical Education, Directorate of Medical Education, Kilpauk, Chennai | 2.Petitioner has engaged himself/herself in the indefinite strike by the Federation of Government Doctor Association ("the FOGDA"), from 25.10.2019 onwards, neglecting his/her duties of essential service thereby violating Rule 22 of the Tamil Nadu Government Servants Conduct Rules, | 3.Unilateral action of taking disciplinary proceedings by issuing charge memo under Rule 17(b) of the Tamil Nadu Service Rules in the same day by force and issuing new appointment order is against Articles 14 and 19 of the Constitution of India. | 2. There is no legal/statutory authority to go on strike. Further Rules 22 and 22A of the Tamil Nadu Government Servants Conduct Rules, 1973 prohibits employees from going on a strike. |
| 5. | 32716/2019 | Dr. K. Abiramavalli | Assistant Professor in Department of Obstetrics and Gynaecology | The Director of Medical Education, Directorate of Medical Education, Kilpauk, Chennai | 2.Petitioner has engaged himself/herself in the indefinite strike by the Federation of Government Doctor Association ("the FOGDA"), from 25.10.2019 onwards, neglecting his/her duties of essential service thereby violating Rule 22 of the Tamil Nadu Government Servants Conduct Rules, | 3.Unilateral action of taking disciplinary proceedings by issuing charge memo under Rule 17(b) of the Tamil Nadu Service Rules in the same day by force and issuing new appointment order is against Articles 14 and 19 of the Constitution of India. | 2. There is no legal/statutory authority to go on strike. Further Rules 22 and 22A of the Tamil Nadu Government Servants Conduct Rules, 1973 prohibits employees from going on a strike. |
| 6. | 32719/2019 | Dr. I. Abaraham | Senior Resident in Department of | The Director of Medical Education, Directorate of Medical Education, Kilpauk, Chennai | 2.Petitioner has engaged himself/herself in the indefinite strike by the Federation of Government Doctor Association ("the FOGDA"), from 25.10.2019 onwards, neglecting his/her duties of essential service thereby violating Rule 22 of the Tamil Nadu Government Servants Conduct Rules, | 3.Unilateral action of taking disciplinary proceedings by issuing charge memo under Rule 17(b) of the Tamil Nadu Service Rules in the same day by force and issuing new appointment order is against Articles 14 and 19 of the Constitution of India. | 2. There is no legal/statutory authority to go on strike. Further Rules 22 and 22A of the Tamil Nadu Government Servants Conduct Rules, 1973 prohibits employees from going on a strike. |

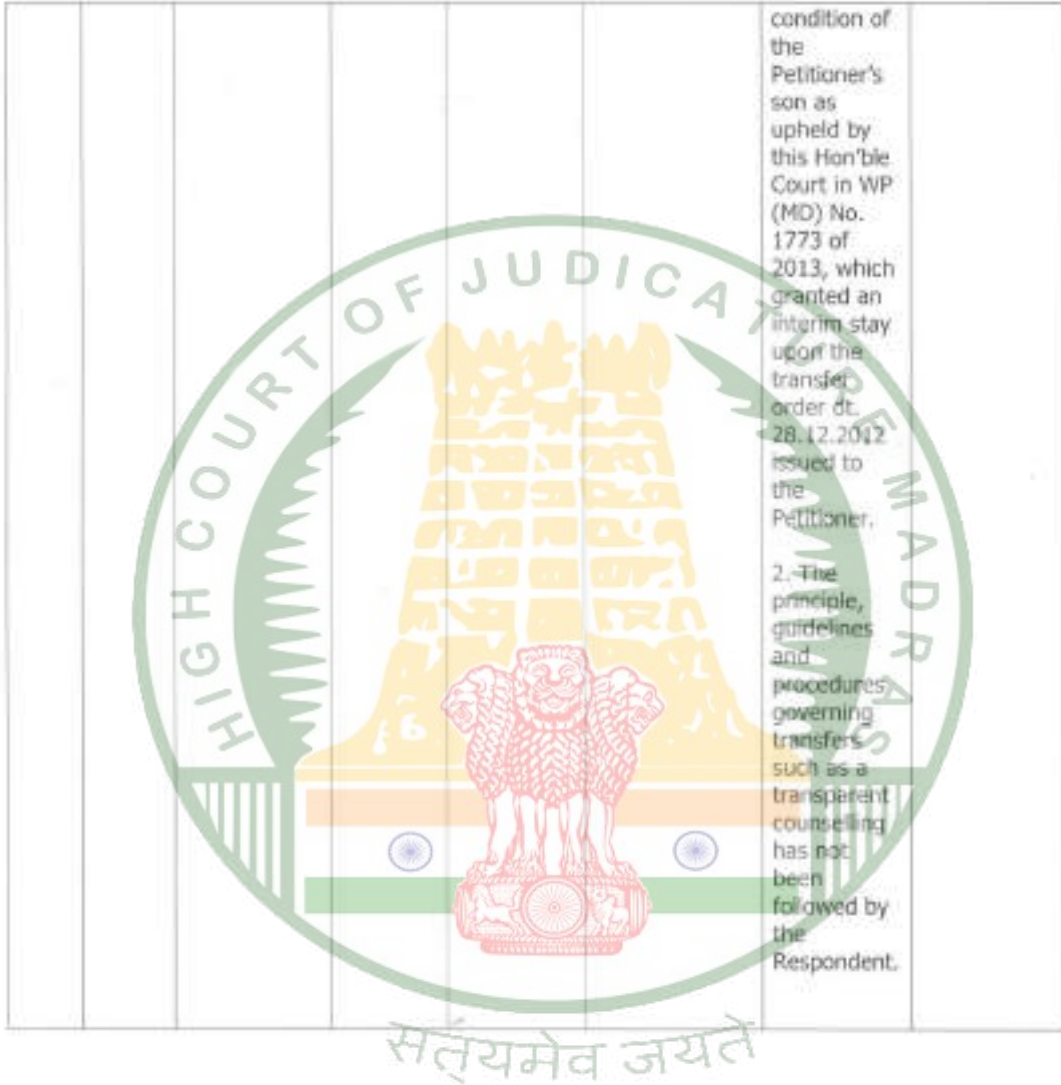
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| | | | Thoracic Medicine | | 1973. | 4.Charge memo issued with mala fide intention for participating in the strike and not for administrative reasons. | 3. The Respondent has no mala fide intention to take Disciplinary Action against the Petitioner and the Respondent was forced to do the same due to the conduct of the Petitioner. |
| 7. | 32728/2019 | Dr. N. Nachiappan | Junior Resident in Department of General Surgery | | 3. Petitioner has instigated other doctors to participate in the indefinite strike organized by the FOGDA, and prevented the doctors from discharging their official duties thereby violating Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973. | 5.The petitioner did not violate Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973 and the Respondent has failed to consider the same. | 4. Reference is drawn to the decision of the Honble Supreme Court in Rajendra Singh and Ors v. State of Uttar Pradesh and Ors. reported in (2009) 15 SCC 178 , where it has been held that a Government Servant has no vested right to remain posted at a place of his choice no can he insist that he be posted in one place or the other. |
| 8. | 32730/2019 (Counter not filed) | Dr. S. Syed Thahir Hussain | Assistant Professor | | 4. Petitioner has threatened and intimidated other doctors so as to participate in the indefinite strike organised by FOGDA and prevented doctors from discharging their official duties thereby violating Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973. | 6.The charge memo issued to the petitioner is against the established procedures of law and facts. | 5. Reference is drawn to |
| 9. | 32909/2019 (Counter not filed) | Dr. Pon A. Rajarajan | Professor in Department of Cardio Thoracic Surgery | The Director of Medical Education, Directorate of Medical Education, Kilpauk, Chennai | | 7.The petitioner never absented himself/herself from his/her duties from 25.10.2019 onwards thereby dislocating the normal functioning of the Hospital and | |
| 10. | 32942/2019 | Dr.P. Kannan | Assistant Professor in Department of General Surgery | | | | |
| 11. | 32945/2019 | C. Suresh Babu | Assistant Professor of General Surgery | | | | |
| 12. | 32951/2019 | Dr. T. Antan Ureshkumar | Senior Resident in Department of Cardio thoracic Surgery | | | | |
| 13. | 32953/2019 | Dr. T. Saravanan | Senior Resident / Assistant Professor in Department of Cardio thoracic Department | The Director of Medical Education, Directorate of Medical Education, Kilpauk, Chennai | | | |

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|-----|----------------|---------------------|--|--|--|--|
| 14. | 32955/ 2019 | Dr.P. Sarala Bai | Senior Resident in Departm ent of Obstetric s and Gynaecol ogy | <p>unparliamentary words against the Government thereby violating Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.</p> <p>6. Petitioner has commenced fasting until death since 25.10.2019 to till date, neither after obtaining prior permission nor after giving intimation to the authority concerned thereby violating Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.</p> <p>The Director of Medical Education, Directorate of Medical Education, Kilpauk, Chennai</p> | <p>the Respondent has failed to consider the same.</p> <p>8. The petitioner never engaged in indefinite strike and hence the issued charge memo is against law.</p> <p>9. The petitioner never instigated other doctors to participate in the indefinite strike and there is no complaint to the effect from any of the Co-Doctors. However, a charge memo has been issued without considering this fact.</p> <p>10. Charge memo issued without receiving any complaint from the other persons stating that the petitioner</p> | <p>the decision of this Court in <i>Shilpi Bose v. State of Bihar</i>, where it has been held that Courts are reluctant to interfere with a transfer order unless the transfer order is made in violation of any mandatory statutory rules or with malafide.</p> |
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| | | | | | <p>trespassed and gathered unlawfully in the hospital premises is against the law.</p> <p>11. The transfer order is bad in law and will not be maintainable.</p> <p>12. The charge memo with Transfer order is punitive and mala fide in nature and hence must be quashed.</p> <p>13. The charge memo has been issued pursuant to the involvement of the Petitioners in the indefinite strike and transfer order has been issued pursuant to filling of illegal vacancies against the refitment without sanctioned post.</p> <p>14. The</p> | |
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TABULATION OF DETAILS OF WRIT PETITIONS CHALLENGING TRANSFER AND POSTING ORDER

| S.No. | W.P. No. | Name of Petitioner | Designation | Transfer (on administrative grounds) | | Authority Issuing Transfer Order | Relieving Authority | Common Grounds raised by the Writ Petitioners | Defence taken in Counter Affidavits |
|-------|-------------|---------------------|--|--|---|--|--|--|--|
| | | | | From | To | | | | |
| 1. | 31369 /2019 | Dr. P. Balakrishnan | Senior Resident/ Chief Civil Surgeon in Orthopaedics | Government Stanley Medical College and Hospital | Government Head Quarters Hospital, Ramanathapuram | Director of Medical and Rural Health Services, Chennai | Dean, Stanley Medical College and Hospital, Chennai | a. Respondents' unilateral action of taking disciplinary proceedings by issuing transfer order/charge memo and relieving order on the same day and the issuance of appointment order is unheard of and unfair and is violative of Article 14 of the Constitution of India. | 1. GOMS No 354 dt, 23.10.2009 provided for a one time measure to be followed at the time of re-appointment to address the problem of stagnation at Assistant Professor Level and provided that subject to eligibility as per the Medical Council of India norms, all those who have completed 20 years of total service from time of entering into the TN Medical Service shall be promoted as Professors. |
| 2. | 31479 /2019 | Dr. P. Sarala Bai | Senior Resident in Obstetrics and Gynaecology | Government Mohan Kumaramangalam Medical College and Hospital, Salem | Government Head Quarters Hospital, Udhagamandalam, The Nilgiris | | Dean, Government Mohan Kumaramangalam Medical College and Hospital, Salem. | b. Failure on the part of the Respondents to conduct negotiations during the period 2018-19 and thereby failing to give the Petitioners, an opportunity to be heard is against the principle of natural justice of audi alteram partem. | It further created 2 additional posts viz. Senior Assistant Surgeon, Chief Civil Surgeon in each directorate i.e. Directorate of Medical and Rural Health Services and Directorate of Public Health and Preventive Medicine and Senior Assistant Professor in the Directorate of Medical |
| 3. | 31494 /2019 | Dr. C. Suresh Babu | Assistant Professor in Department of General Surgery | Government Mohan Kumaramangalam Medical College and Hospital, Salem | Government Head Quarters Hospital, Virudhunagar | | Dean, Government Mohan Kumaramangalam Medical College and Hospital, Salem. | c. The Respondents are in violation of G.O. 354. | |
| 4. | 31499 /2019 | Dr. T. Saravathi | Senior Resident in Department of Cardiology | Government Mohan Kumaramangalam Medical College, Salem | Government Head Quarters Hospital, Coimbatore District | Director of Medical and Rural Health Services, Chennai | Dean, Government Mohan Kumaramangalam Medical College and Hospital, Salem. | d. The transfer of the Petitioner is with mala fide intention in consequence | |
| 5. | 31500 /2019 | Dr. S. Balachander | Assistant Professor in Orthopaedics | Government Medical College, Omandur, Government Estate, Chennai | Government Hospital, Madhavastharam | | Dean, Government Medical College, Omandur, Government Estate, Chennai | | |
| 6. | 31504 /2019 | Dr. T. Senthilkumar | Senior Resident in Department of Orthopaedics | Government Mohan Kumaramangalam Medical College, Salem | Government Headquarter Hospital, Nagapattinam | | Dean, Government Mohan Kumaramangalam Medical College and Hospital, Salem. | | |
| 7. | 31507 /2019 | Dr. P. Kannan | Assistant Professor in Department of General Surgery | Government Mohan Kumaramangalam Medical College and Hospital, Salem. | Government Hospital, Sirkazhi, Nagapattinam | | Dean, Government Mohan Kumaramangalam Medical College and Hospital, Salem. | | |
| 8. | 31553 of | Dr. S. Syed Naser | Senior Assistant | Government Mohan | Government Hospital, | Director of Medical | Dean, Government | | |

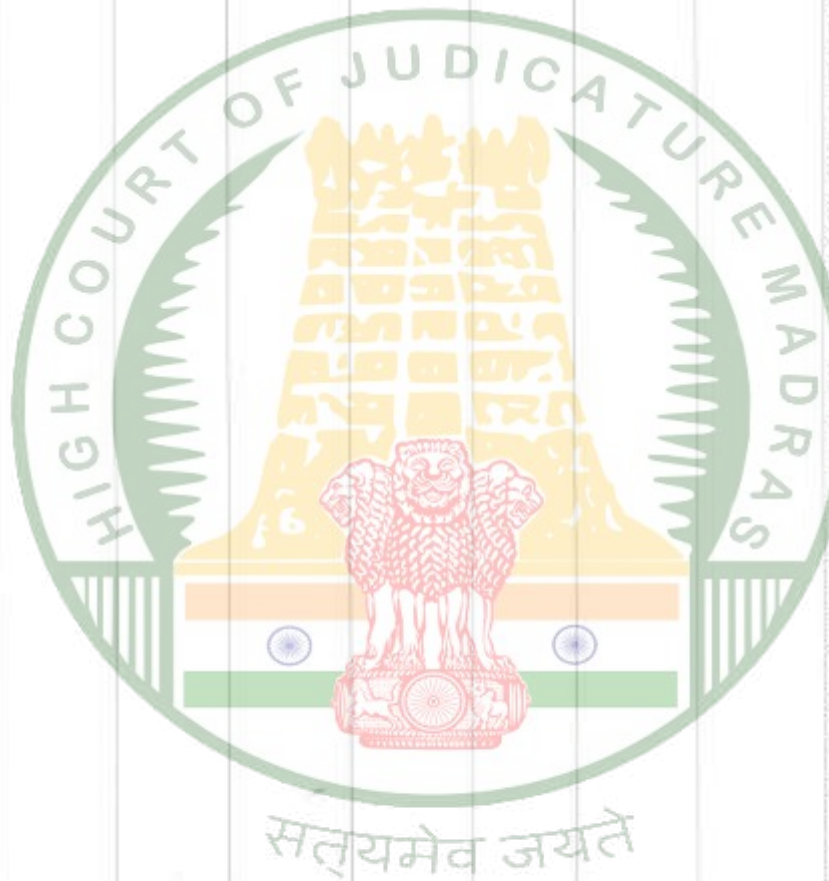
| | | | | | | | | | |
|-----|---------------|------------------------|---|---|---|--|---|---|---|
| | 2019 | | Professor in Department of Orthopaedics | Kamaraj Medical College, Salem | Nilakottai, Dindigul District | and Rural Health Services, Chennai | Mohan Kumaraj Medical College and Hospital, Salem. | of they having participated in the strike and not on administrative grounds, | Education. The said G.O also provided for regular promotion based on vacancies available in the said posts. |
| 9. | 32095 /2019 | Dr. K. Abiramavalli | Associate Professor of Obstetrics and Gynaecology | Government Kilpauk Medical College, Chennai | Government Head Quarters Hospital, Sirkazhi, Nagapattinam | Secretary to Government | Dean, Government Kilpauk Medical College, Chennai | v. The transfer order and relieving orders issued by the Respondents is illegal and unfair and involves coercion and undue influence upon the Petitioners. | 2. GOMS No. 245 dt. 31.10.2013 that is clarificatory in nature in GOMS No 384 referred supra in effect has led to the government doctors who have completed 20 years of service being paid under Pay Band IV of the 7 th Pay Commission w.e.f. 01.10.2017. |
| 10. | 32116 of 2019 | Dr.L. Aharam | Senior Resident in Department of Plastic Medicine | Government Medical College, Omandur, Government Estate, Chennai | Government Hospital, Sathur, Virudhachari District | Director of Medical and Rural Health Services, Chennai | Dean, Government Medical College, Omandur, Government Estate, Chennai | 3. Similar orders were passed against Dr.Venkateswaran, Dr.Karunagan, Dr.UsmanidiniValajpetal Government Head Quarters Hospital, Sivagangai District. The same was revoked and appointment of new doctors was stalled by the State Government. However, the transfer order of the Petitioners were not revoked since they has participated in the strike. | 3. Though the Respondent is responsible for looking into the demands made by FOGDA, the indefinite strike called for by the federation led to the Health and Family Welfare Board issuing Letter No. 36884/BI/2019 -I dt. 16.10.2019 instructing directorates to make sure that patient care was not affected as a consequence of the ongoing strike. |
| 11. | 32121 /2019 | Dr. T. Anand rasakumar | Senior Resident in Department of Cardiothoracic Surgery | Rajiv Gandhi Government General Hospital, Chennai | Government Hospital, Tiruchendur, Thoothukudi District | | Dean, Madras Medical College, Chennai | g. The present transfer orders issued to the Petitioners is violative of G.O. No. 131 dt. June 2019 and is thereby | 4. The DME issued a letter to all Deans/Head of Institutions |
| 12. | 32127 /2019 | Dr. S. Nachinappan | Junior Resident in Department of General Surgery | Government Sivagangai Medical College and Hospital, Sivagangai | Government Hospital, Kelli Hills, Namakkal District | Director of Medical and Rural Health Services, Chennai | Dean, Government Sivagangai Medical College and Hospital, Sivagangai | | |

सत्यमेव जयते

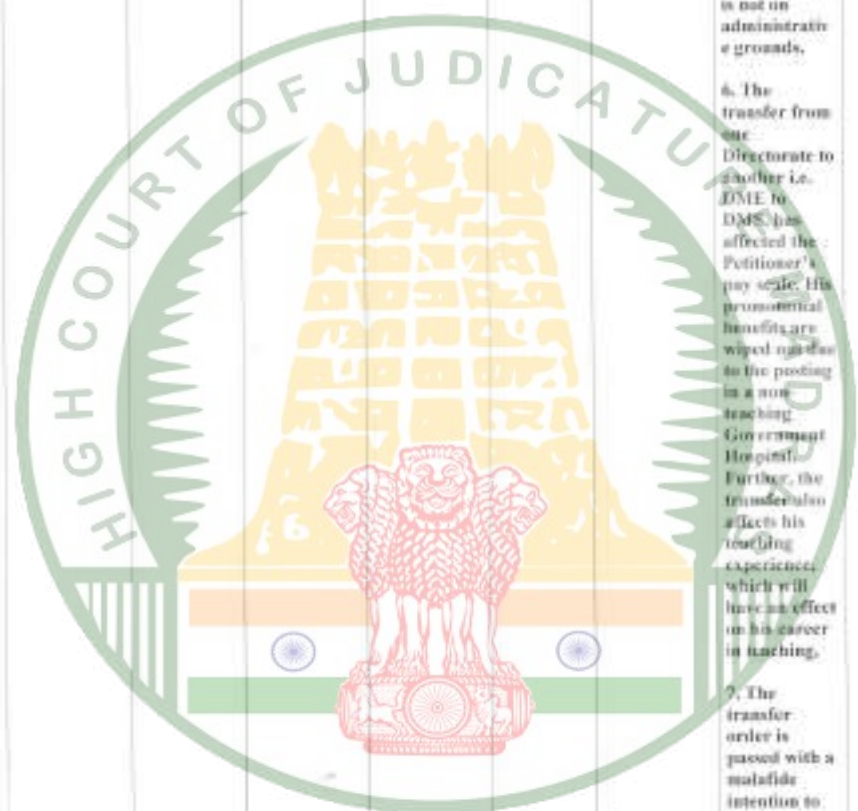
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|  <p data-bbox="646 1411 1029 1489">सत्यमेव जयते</p> <p data-bbox="430 1556 1204 1668">WEB COPY</p> | <p data-bbox="1085 416 1204 481">vindictive and mala fide in nature.</p> <p data-bbox="1085 504 1204 672">8. There is no break in service as the Petitioners were on duty during the period of strike/protest,</p> <p data-bbox="1212 416 1332 840">under the control of DME to urge the doctors to call of the strike in view of outbreak of Dengue fever due to the start of North East Monsoon and other emergencies and to not sanction any leave and ensure that there is no disruption of treatment.</p> <p data-bbox="1212 862 1332 1153">5. The Petitioner participated in the indefinite strike, instigated other doctors to participate in the strike and thereby flouted professional obligation.</p> <p data-bbox="1212 1176 1332 1915">6. In spite of the Government of Tamil Nadu holding several talks with the Tamil Nadu Government Doctors Association (TNGDA), a recognised Association and the FOGDA, and after having agreed to withdraw the strike and resume duty, the doctors went on a hunger strike unto death within the campus of the Rajiv Gandhi Government General Hospital and disrupted doctors from performing their</p> |
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| | | | | | | | | <p>functions, threatened them to participate in the indefinite strike and also caused disruption of treatment.</p> <p>7. There is no legal/statutory authority to go on strike. Further Rules 22 and 22A of the Tamil Nadu Government Servants Conduct Rules, 1973 prohibits employees from going on a strike.</p> <p>8. The conduct of the Petitioners is in violation of Article 21 of the right to life of the patients.</p> <p>9. Reference is drawn to the decision of the Hon'ble Supreme Court in <i>Rajendra Singh and Ors v. State of Uttar Pradesh and Ors</i>, reported in (2009) 15 SCC 178, where it has been held that the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer order is made in violation of any mandatory statutory rules or with malafide.</p> |
| 1A, 32727 | Dr. S. Svel | Senior | Madurai | Government | Director of | Dean, | | L. Petitioner |



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|  <p style="text-align: center;">सत्यमेव जयते</p> <p style="text-align: center; font-size: 2em; font-weight: bold;">WEB COPY</p> | <p>same day which shows that the transfer is a punishment for the Petitioner having participated in the strike and the same is not on administrative grounds.</p> <p>6. The transfer from one Directorate to another i.e. DME to DMS has affected the Petitioner's pay scale. His promotional benefits are wiped out due to the posting in a non-teaching Government Hospital. Further, the transfer also affects his teaching experience, which will have an effect on his career in teaching.</p> <p>7. The transfer order is passed with a mala fide intention to deprive the Petitioner from gaining teaching experience which will affect his promotion to the post of Associate Professor.</p> |
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11. The learned counsel appearing on behalf of the petitioners questioned the impugned orders primarily on the ground of malafides. It was submitted that nearly 18,000 Doctors participated in the agitation and the respondents have picked and chosen 135 Doctors who were identified as office bearers and charge memos and transfer orders were issued against them. It was further submitted that all the transfer orders are in the nature of punishment for having agitated for legitimate demands which were long pending in spite of repeated assurance given by the Government. It was further submitted that all the petitioners were under the control of Directorate of Medical Education and whereas the transfer orders have been passed by the Director of Medical and Rural Health Services and these orders were passed without any jurisdiction. The learned counsel submitted that G.O.Ms.No.354, dated 23.10.2009 makes it very clear that three different Directorates were formed viz., Directorate of Public Health and Preventive Medicine, Directorate of Medical and Rural Health Services and Directorate of Medical Education. Each Directorate had its own carrier progression and posts attached to the same. The Doctors falling under one of the Directorate cannot be transferred by

another Directorate and that itself shows that the transfer orders have been passed in a hasty manner and only with the intention to victimize the office bearers of the Association. The learned counsel further submitted that the transfer orders goes totally against the public interest, since, the petitioners have been transferred to a place / department where they have no work to do and all their experience is now going waste and they are not able to contribute anything towards public welfare. The learned counsel submitted that the Government went back on the undertaking in spite of orders passed by the Division Bench and instead of finding a solution to the problem, the Government has gone on a witch hunt by picking and choosing Doctors and passing orders of transfer and issuing charge memos against them. Some of the petitioners also expressed some individual grievances which were not taken into consideration before the orders were passed. It was also submitted that some of the Doctors to whom transfer orders were issued, were withdrawn later for some unknown reasons. To demonstrate the same, the withdrawal orders of Dr.Usha Nandhini, Dr.Karunakaran and Dr.Venkatesan was placed before the Court. The learned counsel for the petitioners concluded their arguments by submitting that the Government must

be a model employer and they are not expected to take vindictive against the office bearers who were only demanding the rightful claims on behalf of all Government Doctors.

12. The learned Advocate General appearing on behalf of the respondents submitted that whatever may be the demands of the Doctors, they are not expected to go on strike, since, it has a direct impact on the life and welfare of the patients who are taking treatment in the Government Hospitals. The learned Advocate General further submitted that the Government took the extreme step, since it wanted to bring the situation under the control. It was submitted that these are certain administrative decisions that have to be taken by the Government and the same cannot be made a subject matter of challenge by filing writ petitions and the petitioners can always give their reply and based on the same, a decision will be taken by the Department. The learned Advocate General submitted that if this attitude is not curtailed, it will set a very bad precedent and the Government will not be able to smoothly run the hospitals if such agitations are allowed in future.

13.The learned Advocate General submitted that the judicial review insofar as the transfer of an employee is concerned, is very limited. The same can be interfered only if it is issued without jurisdiction or if the same is tainted with malafides or it amounts to a punishment. In the instant case none of these three conditions are satisfied and therefore, there is no ground to interfere with the transfer. The same applies also to the charge memos issued to the petitioners and the petitioners can very well give their explanations and the same will be considered before taking any further course of action.

14.The learned Advocate General relied upon the judgment of the Division Bench of this Court W.A.(MD)Nos.1684 to 1695 of 2018, dated 30.08.2019. The relevant portions of the judgment are extracted hereunder:

16. From the above analysis of relevant case law, the following non-exhaustive principles emerge with regard to the law on judicial review of transfers:

(a) A transfer is an incident or condition of service and, therefore, is not ordinarily interfered with in exercise of the power of judicial review;

(b) A transfer is liable to be interfered with if, in the opinion of the court, there is sufficient evidence that such transfer is mala fide or if it is in violation of statutory provisions or service conditions;

(c) The administrative exigencies that, in the opinion of the employer, necessitate transfer cannot be exhaustively enumerated and the court would not ordinarily substitute its view for that of the employer in such matters;

(d) A transfer would be construed as punitive or in lieu of punishment if, in the opinion of the court, there is sufficient evidence that such transfer is intended to be the punishment for the alleged misconduct.

The provision of reasons in the transfer order, including reference to the alleged misconduct or complaints against the employee concerned, would not per se lead to the conclusion that the transfer is

punitive;

(e) The fact that a separate enquiry is being conducted in respect of the alleged misconduct by providing an opportunity of hearing to the employee concerned, which could result in punishment depending on the outcome thereof, would indicate that the transfer is not intended to be punitive or in lieu of punishment;

(f) The fact that the service conditions and monetary benefits are not adversely impacted by the transfer order indicates, albeit not conclusively, that the transfer is not intended to be punitive or in lieu of punishment; and

(g) A punitive transfer is interfered with on judicial review on the basis that an employee should not be punished without providing such employee with a reasonable opportunity to defend himself/herself against such proposed punishment by way of transfer. As a corollary, a punitive transfer is not per se illegal and may be resorted to if the service conditions permit such transfer subject to fulfilment of the requirements for the imposition of punishment, including

by way of transfer.

15. The learned Advocate General also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Somesh Tiwari vs. Union of India and others*** reported in (2009) 2 SCC 592. The relevant portions of the judgment is extracted hereunder:

16. *Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.*

16. The learned Advocate General also relied upon the judgment of the Hon'ble Supreme Court in the case of *Union of India and another vs. Kunisetty Satyanarayana* reported in (2006) 12 SCC

28. The relevant portions of the judgment are extracted hereunder:

13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others* JT 1995 (8) SC 331, *Special Director and another vs. Mohd. Ghulam Ghouse and another* AIR 2004 SC 1467, *Ulagappa and others vs. Divisional Commissioner, Mysore and others* 2001(10) SCC 639, *State of U.P. vs. Brahm Datt Sharma and another* AIR 1987 SC 943 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no

jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. *Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.*

16. *No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.*

17. The learned Advocate General further relied upon the judgment of the Hon'ble Supreme Court in the case of **Secretary,**

Ministry of Defence and others vs. Prabash Chandra Mirdha reported in (2012) 11 SCC 565. The relevant portions of the judgment are extracted hereunder:

10. Ordinarily a writ application does not lie against a chargesheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of U.P. v. Brahm Datt Sharma, AIR 1987 SC 943; Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors., (1996) 1 SCC 327; Ulagappa & Ors. v. Div. Commr., Mysore & Ors., AIR 2000 SC 3603 (2); Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr., AIR 2004 SC 1467; and Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906).

11. In *State of Orissa & Anr. v. Sangram Keshari Misra & Anr.*, (2010) 13 SCC 311, this Court held that normally a chargesheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority.

12. Thus, the law on the issue can be summarised to the effect that chargesheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

18.The learned Advocate General while replying to the contentions raised by the petitioners regarding the jurisdiction of Director of Medical and Rural Health Services issuing transfer and posting orders, relied upon the additional affidavit filed by the said authority. The relevant portions in the affidavit are extracted hereunder:

It is submitted that the Government of Tamil nadu delivers different level of Medical Care Services (Primary, Secondary and Territory) to the public through three different Directorates namely Director of Public Health and Preventive Medicine, Director of Medical and Rural Health Services and Director of Medical Education. The Medical Officers required for all three Directorates has been recruited as Assistant Surgeon (General) which is the entry level post for the Medical Officers through written competitive examination at the standards of MBBS Degree followed by oral test which was conducted by Tamil Nadu Public Service Commission till the year 2013 and now is conducted by Medical Services Recruitment Board from year 2013. The Director of

Public Health and Preventive Medicine is the appointing authority for the Post of Assistant Surgeon (General) from year 1995. There is no separate recruitment method for different Directorates. The recruited Medical Officers are being shared among three Directorates based on their qualification and need of the Medical Care by public. In clause 14 (b) of special rules relating to Tamil Nadu Medical Services, it has been stated as follows:

14(b) Members of the service shall be liable -

- i. to transfer to any part of the State of Tamil Nadu for the performance of the duties for which the service is constituted;*
- ii. to do field service with the Special Armed Police within the said State; and*
- iii. to do duty, civil or military, including field service beyond the said State.*

Hence, Medical officers in Tamil Nadu Medical Services may be transferred and posted across three Directorates wherever their services are required and decided by the Government, as this is being done routinely.

3.It is respectfully submitted that in G.O.(Ms)No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, there is no restriction for transfer of Medical officers working in Directorate of Medical Education (DME) side to Director of Medical and Rural Health Services (DMS) side. For transfer of the Medical officer below the rank of Associate Professor from DME side to another Directorate, DME usually issues the release order to concerned Directorate. On release, the Receiving Directorate will issue Posting Order to the new place under their control. If the Medical officer is in the rank of Associate Professor and above, Government issues transfer and posting order from DME to another Directorate.

4.It is submitted that on administrative grounds for the benefit of public, Director of Medical Education (DME) issued release orders for 25 Medical officers working under DME in the rank of Assistant Professor to Directorate of Medical and Rural Health Services (DMS) on 30.10.2019 and on release, DMS issued posting orders for those Medical Officers on same day. Further Government issued the transfer and posting orders to 8 Medical Officers working under DME in the rank of Associate Professor/Professor to DMS side on 30.10.2019.

Out of 33 medical officers transferred from DME to DMS side, 25 Medical officers have joined duty at their new Station and 8 Medical officer have not joined their new stations till date.

5.It is submitted that above Medical Officers are eligible to draw the same Scale of Pay as drawn in the last station under DME side with eligible allowances in new stations. There is no change in existing pay scale in the new station under DMS side. Hence the pay is well protected for Medical Officers even though they are transferred across three Directorates and their CML Seniority is also maintained.

6.It is submitted that the Medical Officers working under DMS are eligible to attend the Inter Directorate Transfer counseling conducted by DME in future and will be allowed to take posts available in DME side based on their qualification and seniority as per the rules in force at the time of Inter directorate counseling. So the Medical officers transferred to DMS side need not necessarily stay permanently in DMS side.

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9.it is submitted that based on above said Government orders, it has been clearly made that the

eligibility for promotion to the post of Associate Professor/ Professor in the Directorate of Medical Education will be as per the norms of Medical Council of India and subject to availability of vacancy based on the sanctioned post. Automatic promotion will not be given to the Medical officer just based on the fulfilling the norms of the Medical Council of india by the Individual.

10.It is submitted that in G.O.Ms.No.354, Health and Family Welfare (B2) Department dated 23.10.2009, the person oriented promotion was proposed as safeguard measure for Medical Officers working in all three Directorates and it has been stated as follows:

Person Oriented Promotions as Safeguard measure in both Director of Medical and Rural Health Services / Director of Public Health and Preventive Medicine side / Director of Medical Education side:

(i) Considering the fact that medical expertise is a rare expertise and it is in the interest of the government to avoid exodus for the system. Hence, in addition to restricted Voluntary Retirement Service Scheme to achieve this, following remedies are ordered as a safeguard, if in certain cases promotions do not occur at 8, 15 and 20 years even after providing enough

promotional opportunities as above.

ii) In the Director of Medical and Rural Health Services and Director of Public Health and Preventive Medicine side, if individuals are not promoted to the rank of Senior Assistant Surgeon, Civil Surgeon and Chief Civil Surgeon after 8,15 and 20 years of service respectively, then they will be given person-oriented promotions to the rank of Senior Assistant Surgeon, Civil Surgeon and Chief Civil Surgeon after 8,15 and 20 years of service respectively.

iii) In the Director of Medical Education side, if promotions are not obtained by Assistant Professor to the levels of Senior Assistant Professors and Professors respectively in Civil Surgeons period equivalent to 15 and 20 years of joining the Medical Service, person-oriented promotions will be given as Senior Assistant Professor and Professor at the end of 15 and 20 years of joining the Tamil Nadu Medical Service respectively, subject to the condition that the person is otherwise eligible for such promotion as per Medical Council of India norms.

iv) If some of them are not eligible for promotion to these posts as per Medical Council of India norms,

they will be given persons-oriented promotion in the scales of Civil Surgeons and Chief Civil Surgeons. An Assistant Professor at the end of 15 years of total service will be promoted as Civil Surgeon-Assistant Professor or Chief Civil Surgeon - Associate Professor depending on the total years of service on person oriented promotion.

v) These posts created due to person-oriented promotions will automatically be downgraded to the original cadre after the particular person gets promoted or retires from the promoted posts.

Hence it is understood that either if petitioners return to DME side through inter Directorate counseling conducted by DME or if they prefer to stay in DMS side, their career progression is well protected by Person Oriented Promotion as stated above. Further it is also submitted that the doctors who have joined and working have been paid salary upto January 2020.

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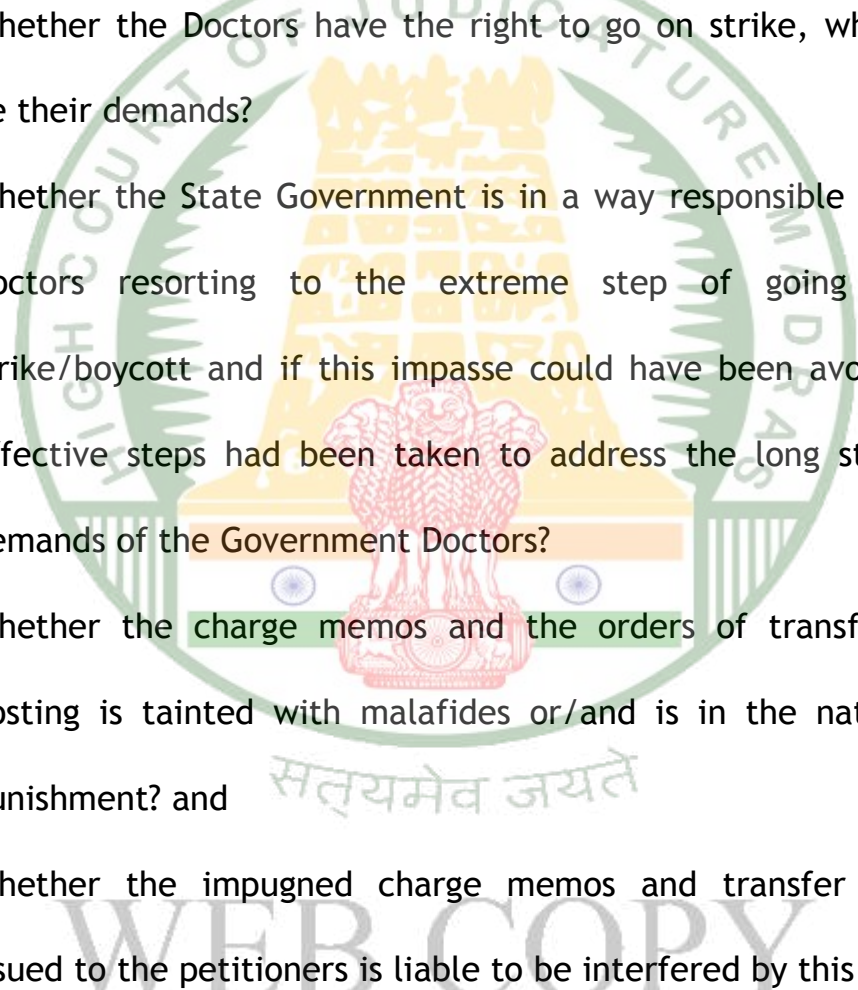
19.The learned Advocate General submitted that there is no separate recruitment for different Directorates and the medical officers for all the three Directorates are recruited as Assistant Surgeons which is the entry level post. The learned counsel submitted

that the transfer between the Directorates is done on a need basis and there is absolutely no restriction from transferring medical officers between these three Directorates. The learned Advocate General submitted that the pay and allowances and also the career progression is in no way affected. Even if a Doctor is sent from one Directorate to another, the seniority is ensured since CML seniority is maintained.

20. The learned Advocate General submitted that, out of the 33 Medical officers who were transferred, 25 Medical officers have joined duty at their new stations and 8 Medical officers have not joined duty till date. It was submitted that any delay in getting transfers after moving from one Directorate to another, cannot be a ground to question the transfer since vagaries of service by itself is not a ground to interfere with transfer. Therefore, learned Advocate General concluded his arguments by submitting that all the above writ petitions are liable to be dismissed.

21. This Court has carefully considered the submissions made on either side and also the materials available on record.

22.The important issues that requires the consideration of this Court in this batch of writ petitions are as follows:

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- (a) Whether the Doctors have the right to go on strike, whatever be their demands?
- (b) Whether the State Government is in a way responsible for the Doctors resorting to the extreme step of going on a strike/boycott and if this impasse could have been avoided if effective steps had been taken to address the long standing demands of the Government Doctors?
- (c) Whether the charge memos and the orders of transfer and posting is tainted with malafides or/and is in the nature of punishment? and
- (d) Whether the impugned charge memos and transfer orders issued to the petitioners is liable to be interfered by this Court?

23.The first issue that arises for consideration is regarding the right of the Doctors go on strike/boycott.

24. The “*right to health*” has universally attained the status of a fundamental right of every human being. The word “health” is one of indefinite import. However, in the present context, a widely accepted definition of health is as enumerated in the preamble of Constitution of the World Health Organization (1946) which defines it as “*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.*”

25. India is a signatory to the Universal Declaration of Human Rights (1948) (UDHR) and the International Covenant on Civil and Political Rights (1966). What is, however, of interest is the fact that the preamble of the UDHR specifically declares that the principles laid down therein represent “*common standard of achievement for all people and nations*” and that “*every individual and every organ of society*” must strive to secure “*universal and effective recognition of these rights*”. It has been held, on more than one occasion, that the principles set out in the UDHR greatly influenced the process of adoption of fundamental rights in India (See 2014 5 SCC 438 at paragraph 97). Thus, there can be no quarrel with the proposition that interpretation of fundamental rights must, therefore, be

informed by the principles set out in these international instruments.

26. The importance of timely and quality medical care as an integral part of the right to health is evident from the fact that Article 25 of the UDHR specifically enumerates it as one of the facets of the right to health and well being of a person. In ***Chameli Singh v. State of U.P.***, (1996) 2 SCC 549, the Supreme Court reiterated this obligation in the following words:

4. Article 25(1) of the Universal Declaration of Human Rights declares that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothing, housing, medical care and necessary social services”. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, 1966 laid down that State parties to the Covenant recognise “the right to everyone to an adequate standard of living for himself and for his family including food, clothing, housing and to the continuous improvement of living conditions”. The State parties will take appropriate steps to ensure realisation of this right.”

27. In *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 the Supreme Court reiterated that the right to medical care was a crucial facet of the right to life guaranteed under Article 21 of the Constitution and observed as under:

“494. The right to health is not simply the right not to be unwell, but rather the right to be well. It encompasses not just the absence of disease or infirmity, but “complete physical, mental and social well-being”, [Preamble to the Constitution of the World Health Organisation.] and includes both freedoms such as the right to control one’s health and body and to be free from interference (for instance, from non-consensual medical treatment and experimentation), and entitlements such as the right to a system of healthcare that gives everyone an equal opportunity to enjoy the highest attainable level of health.”

28. In the context of a meaningful enjoyment of the right to health in *Navtej Singh Johar*, supra, Chandrachud, J pointed out that the brooding omnipresence of Article 21 was not merely confined to imposing negative obligations on the State. The Court went on to observe as under:

The jurisprudence of this Court, in recognizing the right to health and access to medical care, demonstrates the crucial distinction between negative and positive obligations. Article 21 does not impose upon the State only negative obligations not to act in such a way as to interfere with the right to health. This Court also has the power to impose positive obligations upon the State to take measures to provide adequate resources or access to treatment facilities to secure effective enjoyment of the right to health.”

29. In *Parmanand Katara v. Union of India*, (1989) 4 SCC 286, the Supreme Court was petitioned, under Article 32 of the Constitution, for a direction that every injured citizen brought to a hospital was entitled for medical aid and for all such measures as may be necessary to preserve life. In an oft-quoted passage, Ranganath Misra, J reminded doctors of their “**total and paramount**” obligation consistent with their Hippocratic oath to preserve life. The Court said

“8. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and

reiterated with gradually increasing emphasis that position. A doctor at the government hospital positioned to meet this State obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way.”

30. In *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37, the Supreme Court reiterated this responsibility in equally emphatic terms. The Court observed thus:

“9. The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is

an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.”

31. In this backdrop, the legal validity of a strike by doctors may now be examined.

32. It is too late in the day to contend that an employee has a fundamental right to go on strike. The law was settled by the Supreme Court in *T.K. Rangarajan v. Govt. of T.N.*, (2003) 6 SCC 581 wherein it was unambiguously held that no employee has a fundamental right to go on strike. In fact, the Supreme Court went a

step further and opined that not only was there no legal right to go on a strike but there was no moral or equitable justification that could legitimize such actions. In an instructive passage the Supreme Court took note of the plight of innocent patients who suffer on account of a strike by doctors. The Court held as under:

“19. Apart from statutory rights, government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse, the entire administration comes to a grinding halt. In the case of strike by a teacher, the entire educational system suffers; many students are prevented from appearing in their exams which ultimately affects their whole career. In case of strike by doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a standstill: business is adversely affected and

number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among the public against those who are on strike”

33.Contextually, it may also be apposite to take note of the fact that the damage caused on account of strikes by doctors is, sometimes, irreversible as was held by the Supreme Court in **Ashoka Kumar Thakur v. Union of India**, (2011) 12 SCC 787, in the following words:

“5. The damage done to a patient is sometimes irretrievable, but the grievances of the persons who are resorting to strikes, etc. can be remedied in appropriate proceedings and the issues are being examined by this Court.”

34.Thus, in the absence of a legal or even a moral or equitable right to go on a strike the logical corollary is that any form of strike is necessary illegal and without any legal or moral justification.

35.Strikes by doctors is not an isolated phenomenon in the State of Tamil Nadu. The problem operates at a national level, and High Courts, all over the country, have been issuing directions prohibiting strikes by doctors. In *Humanrights Association of India v. State* (2013) 4 RLW 2904, a Division Bench of the Rajasthan High Court declared that doctors, like lawyers, had no right to go on strike. Arun Mishra C.J (as he then was) opined as under:

“9. In view of aforesaid pronouncements, it is apparent that even employees have no right to go on strike. The professionals like Doctors and lawyers have also no right to go on strike. Their responsibility is manifold. There is no legal/statutory right to go on strike. There is no equitable justification to go on strike. We expect from the Doctors and lawyers that they should not resort to strike.”

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36.Another learned single judge (Ajay Rastogi, J (as he then was)) of the Rajasthan High Court, in *Jayant Sharma v State of Rajasthan* [WP 9319 of 2012], examined this issue and held as under

“Before parting with the judgment this Court would like to record that it has been repeatedly held by Hon'ble the Apex Court that the government employees have neither fundamental nor statutory or moral right to resort to strike. The impact of such strikes either by students and medical community who are directly connected with the hospitals is totally different from the strike in factory or trading establishment, as the ailing patients cannot be left waiting or unattended. Hospital activity is not the same as the lifeless functioning of machines in a factory or movement of trading material or other forms of commerce where workmen are being provided certain protection under the provisions of the Industrial Disputes Act. Almost all the activities in relation to hospital are such as require constant and incessant attending and care, unlike financial losses; the loss of life or limb cannot be recouped.”

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37. In **Ahammed Kutty v State of Kerala** [W.P 1103 of 2007] a Division Bench of the Kerala High Court deprecated the practice of doctors going on strike and observed as under:

“We may also observe that the services by doctors are essential services and if, therefore, the doctors of the

State may strike, the Government would be well in its right to invoke the provisions of the Essential Services Maintenance Act and take action against them accordingly. We may also mention that in a noble profession which is totally service oriented, strike cannot be possibly resorted to. The members of the noble profession who are expected to serve the people cannot leave in lurch the patients at the time of their extreme difficulty, pain and suffering.

We are sanguine that the doctors or the members of the association of the Indian Medical Association and Kerala Government Medical Officers' Association would always remember that albeit agony for themselves, they have to render service to the society. We can visualise that in certain cases doctors may be victims of harassment by miscreants, but they require to be aware of the doors of remedial measures that are available to them. They being engaged in a noble profession, should invariably seek remedy from an appropriate forum depending on the issue, instead of going on strike or getting onto streets shouting slogans.”

38. In *D. Raju v The Government of Andhra Pradesh* [2004 2

ALT 2] a Division Bench censured a group of student doctors who

resorted to strikes thereby disrupting medical aid to several persons.

The Court said:

“Ailing patients cannot be left waiting or un-attended. Hospital activity is not the same as the lifeless functioning of machines in a factory, or movement of trading material or other forms of commerce. Almost all the activities in relation to hospital are such as require constant and incessant attending and care and, therefore, unlike a factory or trading establishment, the patients cannot be permitted to be deserted by striking doctors. Unlike financial losses, the loss of life or limb cannot be recouped.”

39. In *Bovel Lal v State of Himachal Pradesh* [C.W.P 181 of 2019] a Division Bench of the Himachal Pradesh High Court declared that strike by doctors is *“illegal and unethical”* as it infringes the *fundamental right of the patients enshrined in Article 21 of the Constitution of India*. The High Court held that *“The patients have also a fundamental 'Right to Life' and therefore, at the same time the medical treatment, which is an integral and essential part of the fundamental right, cannot be ignored.”*

40. In *Scheduled Castes and Scheduled Tribes Medical Association v Union of India* [W.P 8832 of 2006] a Division Bench of the Delhi High Court [Dipak Misra C.J and Saniv Khanna, J (as their Lordships then were)] dealt with a case of strike by doctors in the All India Institute of Medical Sciences, Delhi and held as under:

“(d) No authority, however high or low, can propagate for espousing a cause by way of strike or demonstration and no one can coerce the willing workers and the doctors to attend the patients.”

41. More recently, a Division Bench of the Calcutta High Court in *People for Better Treatment v West Bengal Medical Council* [W.P 246 of 2019] deprecated the practice of doctors going on strike and observed as under:

“At the outset, let us record that we do not propose to proceed with the matter as an adversarial litigation. However, we need to provide appropriate push with requisite grease to ensure that the on going strike by a section of doctors comes to an end through governmental intervention by way of persuasion or otherwise, in accordance with law. We do so because,

within the parameters of Article 21 of the Constitution of India, 'human rights' as understood in the civilised societies and recognised in the international domain through terms of international conventions, which bind different nations, it is the fundamental requirement that the right to health is given top priority and any need for medical help is immediately extended to any human being even if he is not a citizen. Therefore, we take this opportunity to state that resolution of disputes which would have arisen as a consequence of certain unfortunate events even in the hospital is not to be countered by action of eminent and well informed people like doctors by keeping away from their primary and fundamental duty to serve the people. Be that as it may, the State Government has also to ensure that the grievance of the doctors, particularly in relation to certain incidents which are alleged to have occurred, are addressed in accordance with law without any delay. We record the submission made by the Learned Advocate General that First Information Report has been lodged and arrests have been made insofar as the alleged incidents in which the doctors are stated to be victims. This means that the State Government has taken efforts to push the machinery in that regard. As a necessary follows and consequence, it is definitely for the doctors to now turn themselves to the reconciliatory mode in

the larger interest of the suffering people and answer their oath which they have taken while they became doctors. The great advise given through the Hippocratic Oath ought to lead them to better ways of dealing with the problems which they are faced with. The State Government shall also ensure that adequate protection is provided to the hospitals and place of work of all doctors and also such places where doctors may feel insecure in any circumstances.”

42.A conspectus of the aforesaid judgments would exhibit the unanimity in judicial opinion that strikes by doctors is, ex-facie, illegal and without any justification.

43.The issue may be also examined from an ethical perspective. There can be little doubt that by going on strike doctors violate a fundamental maxim of medical jurisprudence “*Primum, non nocere*” i.e., first, do no harm. The harm that befalls patients on account of strikes is unfathomable. By using strikes to resolve issues doctors, like lawyers, forget the moral worth and dignity of patients and leave them in the lurch unmindful of the humanitarian consequences that ensue from their actions. Patients cannot be a means to an end. They cannot be mere playthings whose lives can be

put on the line to achieve other ends through the medium of strikes. Doctors, like lawyers, must, therefore, be reminded of what the Prussian German philosopher Immanuel Kant formulated as the second categorical imperative (*the principle of humanity*) when he observed as under:

“Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means, but always at the same time as an end.”

44. In view of the above discussion, this Court comes to a clear conclusion that the Doctors do not have the right to go on strike/boycott under any circumstances.

45. This Court will now go into the second issue that has been formulated. The agitation/strike/boycott did not happen overnight and the long pending demands were brewing for quite some time resulting in this final agitation. It is true that the Doctors cannot resort to strike or boycott under any circumstances since they are

directly dealing with lives of persons and as between the demands of the Doctors and the lives of the patients, it is life that is more important than anything else. The nature of duty of a Doctor is such that the non-availability of the Doctor even for a single minute may cost a life. The Doctors have been making their demands for pay revision, to conduct service PGs posting through counseling and also for 50% service quota in PGs and Super Specialties and for time bound promotions. The Minutes of the Meeting dated 18.09.2018 which was attended by the Directors of all the three wings and also the Health Secretary, convened by the Hon'ble Minister for Health and Family Welfare, clearly shows that a Working Group/Committee was decided to be constituted and a report was sought to be submitted within four weeks. This Court took into consideration the seriousness of the issue and directed the Government to come up with a final decision by 16.02.2019. This did not happen and there was no progress on the side of the Government. Even subsequently a representation was given by FOGDA to draw the attention of the Government to attend to the demands of the Doctors and it was indicated that the Doctors will go on a one day boycott for two hours without affecting the emergency service. Thereafter, one more meeting was convened on

27.08.2019 by the Hon'ble Minister for Health and Family Welfare. Some assertions were given in the meeting and the Doctors were expecting their demands to move forward for consideration within six weeks. This also did not materialize and therefore, the Doctors resorted to an agitation from 25.10.2019. It is brought to the notice of this Court that nearly 18,000 Doctors participated in the agitation. This shows the enormity of the situation and the level to which the problem had escalated.

46. The Government must be a model employer. Ours, being a welfare State, the Government is bound to provide people with proper health care through Government Hospitals. These Government Hospitals and Colleges are manned by the Doctors. Their dedicated services are very essential in maintaining the health and care of the citizens. The Government ought to have given top priority for certain demands made by the Doctors and some final solution must have been reached by the Government. It is always essential that the Government takes a very clear stand on these issues, so that, the Government Doctors know, where they stand. The Government cannot keep the issues unresolved and expect the Doctors to wait endlessly.

No one can force the Government to take any decisions and there are various factors that goes into the decision making process. Ultimately, if the Government is not able to meet the demands, it can clearly convey the same to the Doctors. By keeping the issue pending, the Government was only unnecessarily escalating the already charged atmosphere. In fact, in two of the meetings convened by the Hon'ble Minister for Health and Family Welfare, Associations were given the hope that the demands are being considered. When ultimately, nothing came out of the Government, it resulted in an agitation / boycott / strike. In a way, the Government itself was responsible for this situation. The Government Doctors felt that the Government is dragging its feet and it was not coming out with any conclusion and all the time lines that were given was also not adhered. The Government Doctors started getting a feeling of betrayal. This ultimately resulted in a State-wide agitation. If the Government had been proactive, the entire incident could have been avoided. In the considered view of this Court, the inaction on the part of the Government had only led to the Doctors going on a State-wide boycott / agitation / strike.

47. Now going into the third issue that has been formulated, the sequence of events shows that the Associations started the agitation from 25.1.2019. It must be borne in mind that the educated class who are highly qualified viz., the Doctors are the ones who had decided to go on agitation. FOGDA was a federation of all the Associations coming together who decided to sphere ahead the agitation. The agitations were hitting the headlines on a day-to-day basis and it became an issue of a serious concern. The general public got panic, since they feared that the functioning of the Government hospitals will come to a grinding halt. It also involved the precious lives of the patients. Therefore, the Government thought it fit to give an announcement on 30.10.2019 requesting the striking Doctors to resume work and that their demands will be addressed in the near future. It was also announced that the order of break-in-service is also withdrawn. Since these announcements came from the Hon'ble Chief Minister and the Hon'ble Minister for Health and Family Welfare, the Associations decided to immediately call off the agitation and the Doctors resumed work on 01.11.2019. These announcements were published very widely through the media. The Doctors who resumed

work were expecting that ultimately the Hon'ble Chief Minister has interfered in the matter and therefore, there will be a solution for their demands. Like a bolt out of the blue, the department proceeded to identify certain Doctors and started issuing charge memos and transfer orders. The persons who were identified were all the various office bearers of the Associations and the ones who were sphere heading the agitation. Out of 18,000 Doctors who were agitating, the Department had chosen 135 persons and issued them with charge memos and transfer orders.

48. This Court reminds itself that there is a very limited scope to interfere with charge memo and transfer orders and the same is clear from the judgments that were cited by the learned Advocate General. One striking similarity that runs as a thread in all the above judgments is that such orders can be interfered if the same is tainted with malafides and is punitive in nature. This Court has absolutely no doubt that the charge memos and the transfer orders do not suffer from lack of jurisdiction. That apart, vagaries in the service conditions also cannot be a ground to challenge the transfer orders.

49. It is true that an employer must be given an absolute discretion in managing his affairs and every decision taken by the employer cannot be interfered by this Court. There may be extreme situations where the Government has to put its foot down and restore normalcy in public interest.

50. In the present case, the action taken by the Government by picking and choosing certain Doctors and issuing them with the charge memos and transfer orders, was not done to bring the situation under control, but it was done to warn the Doctors that any one who sphere heads such agitations will be dealt with iron hands. It is clear from the facts that the Hon'ble Chief Minister and the Hon'ble Minister for Health had requested the Doctors to resume work on 30.10.2019 with a promise that their demands will be looked into. Immediately, the agitation was called off and the Doctors resumed duty on 01.11.2019. As a model employer, the Government ought to have followed up and come out with solutions for the demands made by the Government Doctors. Instead of resorting to such a positive step, the Government decided to show its might against the office bearers.

51. There are not many Government servants who will willingly sphere head any agitation. However, there are some who will put their interest behind and take the over all interest of the Doctors to the forefront and decide to lead an agitation. The concerned person is not doing it for his selfish interest and it is being done in the interest of all the Government Doctors. It is seen that some of these Doctors are highly qualified and they have a lot of experience in service. These Doctors who sphere head the agitation are not instigating or conspiring or inciting an unlawful act. They are merely the representatives of the entire body of the Government Doctors. They should not be assigned the role of a villain and singled out and dealt with in such a harsh manner. On one occasion, this Court requested the learned Advocate General to take instructions from the Government as to whether the charges can be dropped and some solution can be found out for the problem. The learned Advocate General on instructions came back and said that the Government is not willing to take back the charge memos and that it has decided to continue further with the action. This attitude of the Government clearly shows that they want to send a very strong message to the

Government Doctors that no one in future will make any demands in his capacity as office bearers, on behalf of the Doctors.

52. The charge memos and the transfer orders that have been issued by the respondents, is clearly tainted with malafides. If action had to be necessarily taken for the agitation / strike, then it should have been taken against all the Doctors who participated in the same. However, the respondents have chosen to go only against the office bearers and hasty transfer orders have been passed and charge memos have been issued. Most of the Doctors who were transferred have also joined in the transferred place. It is also seen that the transfer orders and charge memos that were issued to some of the Doctors was later canceled. As a sample, it is seen from records that this was done to Dr. Usha Nandhini, Dr. Karunakaran and Dr. Venkatesan. It is not known for how many more Doctors this had happened. The orders were issued to those Doctors on the very same grounds on which it was issued to the petitioners. If their orders can be canceled, it is not known why the orders issued to the petitioners cannot be recalled. The manner in which the respondents have picked and chosen Doctors to issue charge memos and transfer orders,

clearly demonstrates the vindictiveness in issuing the orders. The charge memo and the transfer orders are clearly punitive in nature. This was not expected from the Government which should be a model employer. The fact that the Government is yet to come out with a solution for the demand made by the Government Doctors, shows that they are more interested in punishing the Doctors than finding a solution for their demands. Doctors going on a strike/boycott is a very rare phenomenon which does not happen very often. Unfortunately, the Government pushed the Doctors to take the extreme step and now the Government wants to punish those Doctors and warn them not to make any demands in future. This attitude of the Government requires a change. The Government will have to lend its ears to the demand made by the Government Doctors and find out a solution rather than spending its energy in punishing Doctors. These Government Doctors are too small before the might of the Government and therefore, the Government, who is a model employer must use its might and power to find a solution and not to wield a sword.

53. In view of the above discussion, this Court has absolutely no

hesitation in coming to a conclusion that the transfer orders and the charge memos issued to the petitioners are clearly tainted with malafides and it has been issued only to punish the petitioners who were sphere heading the agitation.

54.This Court now comes to the final phase of this judgment pertaining to the relief to be granted to the petitioners. The above discussion does not leave this Court with any other alternative except to interfere with the charge memos and the transfer orders issued by the Director of Medical Education and Director of Medical and Rural Health Services to the petitioners and accordingly the same stands quashed.

55.The transfer orders issued against the petitioners shall be recalled in the next transfer counseling and the petitioners shall be restored to their original position in the Directorate of Medical Education. All the writ petitions are accordingly allowed.

56.The illustrious and venerable poet Kambar in his immortal work Ramayana, while describing the coronation of Sugreeva as King,

narrates Lord Rama's advice to Sugreeva thus "Rule justly, that your subjects look up to you, not as a King, but as a caring mother nurturing her children", expounding the ideal, as was in vogue in ancient times that King and God were as caring as a mother of her children.

"நாயகன் அல்லன்; நம்மை நனி
பயந்து எடுத்து நல்கும்
தாய்" என, இனிது
பேணி, தாங்குதி தாங்குவாரை

57. This court expects the Government to adopt this attitude to resolve the long standing grievance of the Government Doctors.

58. Before ending this judgment, this Court wants to remind the Government Doctors about the findings rendered on the first issue wherein this Court has held that the Government Doctors do not have any right to go on a strike/boycott. Therefore, the chances of the Government Doctors again going on a strike is virtually ruled out. This Court makes a fervent request to the Government to immediately address the issues/demands made by the Government Doctors and find a solution. The more it is kept pending without any solution, the

more it is going to affect the morale of the Government Doctors. The love and concern shown by a Doctor to a patient plays a major role in the recovery of a patient. For this to happen, the Doctor must be kept happy and satisfied and it is the duty of the Government to ensure the same by finding an immediate solution for the long pending problems. Either of the parties are not winners or losers in this litigation and this judgment must ultimately go in favour of the larger public interest involved in the present case. This can happen only if both the parties come together and find an early solution for the pending issues. Consequently, connected miscellaneous petitions are closed. No Costs.

28.02.2020

Speaking Order/Non-Speaking Order

Index: Yes

Internet: Yes

ssr

To

1. The Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai - 600 009.

WEB COPY

N.ANAND VENKATESH.J.,

ssr

2. The Director of Medical Education,
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3. The Director,
Directorate of Medical and Rural Health Services,
Teynampet, Chennai - 600 006.
4. The Dean,
Stanley Medical College & Hospital,
Chennai - 600 001.
5. The Chairman,
Medical Service Recruitment Board,
Chennai - 600 006.
6. The Public Prosecutor,
High Court, Madras.

**W.P.Nos.31369, 31479, 31494, 31499, 31500, 31504, 31507,
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32714, 32716, 32719, 32728, 32942, 32945, 32951, 32953, 32727,
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and W.M.P. Nos.35330, 35333, 31705, 32381, 32383, 33391,
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and 35324 of 2019**

28.02.2020