

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

W.P. No. of 2019

Dr.S.Syed Thahir Hussain,
S/o. Syed Mohideen Sheriff,
No.280, Sri Meenakshi Nagar,
Veerapanjan,
Karuppayoorani, Madurai-625 020.

..Petitioner

-Versus-

1. The state of Tamilnadu,
Represented by Its Principal Secretary,
Health and Family Welfare Department,
Secretariat – 600 009.
 2. The Director,
Directorate of Medical Education,
Kilpauk, Chennai-10.
 3. The Director,
Directorate of Medical and Rural Health Services,
DMS Compound, Teynampet
Chennai-
 4. Dean,
Madurai Medical College,
Madurai- 20.
 5. Chief Medical Officer,
Polur Govt Hospital,
Polur, Thiruvannamalai District.
- ... Respondents

Affidavit of Dr.S.Syed Thahir Hussain

I, Dr. S.Syed Thahir Hussain, son of Syed Mohideen Sheriff, aged about 48 years and residing at No.280, Sri Meenakshi Nagar, Veerapanjan, Karuppayoorani, Madurai-625 020, now temporarily come down to Chennai do hereby solemnly affirm and sincerely state as follows.

1. I am the Petitioner herein and as such I am well acquainted with the facts and circumstances of the case.

Page:

Corrections:

..2..

-:2:-

2. I am filing this writ petition seeking for an issuance of a writ in the nature of CERTIORARIFIED MADAMUS to call for the records pertaining to the transfer and posting order in proceedings Ref No.65770/E1/1/2019 dated 30.10.2019 issued by the 3rd respondent and the consequential relieving order Ref. No.10738/E1/2/2019 dated 31.10.2019 issued by the 4th respondent and quash the same and consequently direct the 1st respondent to restore the services of the petitioner in the Madurai Medical College Hospital.

3. I have completed M.B.B.S in 1995. I have joined in the 1st respondent department on 19.10.2005. I was regularized in the govt service on 01.11.2006. I have completed my Diploma in Anaesthesiology (DA) in 2012 thereafter I have completed my Doctor of Medicine (MD) in Anaesthesiology in 2015. On 10.07.2015, I have been posted as Asst. Professor in Govt. Sivagangai Medical College, Sivagangai. On 17.07.2017, I was posted as Assistant Professor in the Madurai Medical College Hospital, Madurai through transfer counselling. Now I have been transferred to Polur Govt Hospital, Thiruvannamalai District as assistant surgeon which is under challenge in this writ petition.

4. In the State of Tamil Nadu the pay of the Doctors are very less and discriminatory when compared with the pay Structure of Central Government Doctors and neighbouring states such as Pondicherry, Kerala, kanataka etc. On entry Level the Central Government Health Scheme (CGHS for short) doctors' and TamilNadu Doctors enter with the same basic pay. From the 5th year to the 13th year, the disparity is Rs.4000 to 5000/-, from the 14th year to the 30th year, the disparity in basic is approximately Rs.40,000/-(Forty Thousand) per month. This disparity does not take into account the NPA, HRA, Transport and other allowances given to the CGHS MBBS doctors. The disparity is tabled in the chart below

Page:

Corrections:

..3..

-:3:-

Years of Service	Tamil Nadu Govt. Doctors Salary Rs.	CGHS Doctors Salary Rs.
0	56100	56100
4	63100	67700
9	74300	78800
14	83600	123100
16	89700	130600
18	96600	138500
21	123100	153000
26	142700	177400
28	151400	188200

The disparity, if the Non Practising Allowances (NPA for short) are taken into account is in the range of Rs.50,000/-(fifty thousand rupees only) to one lakh fifty thousand rupees per month which is as follows:

Position	CGHS Doctors	TN Govt. Doctors
Entry level qualification	MBBS	MBBS
Service condition	Govt. Service+ No private Practice	Govt. Service+ restricted Practice.
Working Hours/week	40 Hrs	48-54Hrs
Pay	Basic Pay+NPA NPA= 20% of Basic pay	Basic Pay
Entry level Basic pay	56,100+11220 67,320/-	56,100
At the end of 4 th year service	67,700+13540 81,240/-	63,100
At the end of 9 th year service	78,800+15760 94,560	74,300
At the end of 14 th year service	123,100+24,620 1,47,720	83,600
At the end of 16 th year service	1,30,600+26,120 1,56,720	89,700
At the end of 18 th year service	1,38,500+27,700 1,66,200	96,600
At the end of 21 st year service	1,53,000+30,600 1,83,600	1,23,100
At the end of 26 th year service	1,77,400+35,480 2,12,880	1,42,700
At the end of 28 th year service	1,88,200+37,640 2,95,840	1,51,400

Further If NPA and HRA is included the disparity is from One Lakh to one lakh fifty thousand rupees per month particularly after the 13th years of service. The Govt. Doctors in Tamil Nadu are demanding the Government to bridge the disparity in basic pay only. if the government deems it fit to ban private practise, we are welcome to the idea, provided all other allowances are given as it is drawn by the CGHS doctors.

5. All over the world investment in Health care is seen as investment in Socio Economic Development. In countries like India only a robust public health can protect the ordinary citizen from the rising cause of health care in corporate and semi corporate hospitals. Tamilnadu health system has been largely protecting the poor and needy common man for all the health care needs. A poorly paid Doctor population will tempt to get demoralized which will lead to destabilization of the system. It is important to invest on the pay structure which will in turn help to strengthen the existing public health system in Tamil Nadu.

6. Our associations are continuously representing with the Government for the revision of Pay and for the promotional avenues and to avoid stagnations. The 1st respondent issued G.O.Ms.354 Health and Family Welfare (B2) Department dt.23.09.2009 introduced vacancy based Dynamic Assured Career Progression. The very same G.O.354 recommends for the 1st review after 3 years and next reviews once in 5 years to correct the distortions.

7. Our representatives held discussion with the Health Secretary on 15.11.2017 and sought to review of pay structure in 5th, 9th, 10th, 12th years of service instead of 8th, 15th, 17th and 20 years of service. The Health Secretary accepted our genuine demands and prepared a file and made a proposal to the Finance department. We have also met the Joint Secretary,

Page:

Corrections:

..5..

Finance Department and requested to speed up the process. But all our steps went in vain. We have conducted lot of democratic protests including wearing demand Badges, signature campaign, dharna etc. We have also represented to the committee for the 7th Pay Commission.

8. On 27.08.2019, the Federation Of Government Doctors Assosiation FOGDA conducted an indefinite hunger strike and one day token strike. During the said strike, the Hon'ble Health Minister hold talks with our representatives and gave assurance that G.O. 354 dt.23.10.2009 will be reviewed comprehensively within six weeks. Though there was an agreement to place and discuss the developments every two weeks with the Associations, nothing has taken place. The Government failed to act the minutes recorded on 27.08.2019. Hence the Doctors were left with no other choice except to go on strike from 25.10.2019. The same was informed to the Government well in advance. The Government could have prevented the same by initiating talks as agreed by them on 27.08.2019 but they did not do so. Hence we were constrained to go on strike from 25.10.2019 as called by the Federation. I also participated in the peaceful agitations for our prolonged unfulfilled demands. Though the doctors did not sign the attendance, the doctors attended the patients in case of emergency. But this time, the Government refused to talk with our representatives and demanded that talks would be held only if we return back to duty.

9. As such, believing that the Government would take steps to atleast hear our grievance, we called off the strike on 01.11.2019 and I have signed my attendance in the Institute of Anaesthesiology and RMO office and carried my work satisfactorily at Ortho theatre, On the evening of 01.11.2019, I was served with a transfer order dated 30.10.2019 and relieving order dated 31.10.2019 transferring me to Polur General Hospital in Thiruvannamalai District which is 398 KM away from my residence in

Page:

Corrections:

..6..

-:6:-

Madurai and where there is no medical College and that too in the mid academic year of my children.

10. I am a Senior Anaesthesiologist with rich experience in Anaesthesiology, Critical care and Pain medicine with ultrasound + C arm guided interventions starting from head to toe. Recently I have discovered a novel device in emergency airway management. I have resuscitated many near death patients into life. But I have been hastily transferred to Polur GH where there is no medical college and that my services cannot be utilised to the fullest. The transfer order is not issued by a competent person and further the transfer order does not contain any signature.

11. I am the only teaching faculty in the entire Tamil Nadu government and private medical colleges in emergency Cricothyrotomy and Percutaneous Transdilatory Tracheostomy. I used to teach my post graduates and interns which I have documented evidences with photos and videos. Similarly, I used to teach normal anaesthesiology cases to the post graduates on an average 350 to 400 patients per month. I am the only few of the anaesthesiologists in the government medical colleges regarding pain interventions like neck pain, low back pain, hip, Knee and foot pain etc. Recently I have started a survey of low back ache intervention which is the first ever history in our country. Even all over the world also only few surveys are done. The topic is Comparative study of interlaminar and infralaminar transforaminal epidural steroid under C arm guidance for lumbar radiculopathy.

12. Now I have been posted to relatively insignificant Govt Hospital which has only facilities for minor procedures only. I am the senior anaesthesiologist serving both public as well as medical students and soon I will be elevated in as Associate Professor which again will be benefited to the immense number of poor patients and students

Page:

Corrections:

..7..

13. The Government transferred about 148 doctors including me in two days. Specialists and Super specialists have been transferred to remote areas where their services cannot be utilised properly. For instance, Dr.Rajarajan MS., MCh., Head of the Department of Cardio Therasic Surgery working in Salem Mohan Kumaramangalam Govt. Medical College and Hospital has been transferred as a Medical Superintendent in Ooty General hospital. As he was the only Professor and HOD in the Department of Cardio Therasic Surgery, the Department itself is closed and that the patients and the student have been affected by his transfer. Similarly Dr.Jesima DGO,MS,MCH., the only Unogynacologist in the entire state of Tamil Nadu has been transferred from Ghosh Hospital to Kodaikanal General hospital. Thus there is no rationale in transferring the doctors and the same defies all logic.

14. Further on 15.11.2019, I received a 17 B charge memo dated 30.10.2019 with false charges. The transfer order and the 17 B charge memo was issued on the same day which shows that both the transfer order and the charge memo is a punishment for participating in the strike. As such I am challenging the transfer cum relieving order on the following among other

GROUND

i) The transfer order issued by the 3rd respondent dt.30.10.2019 is illegal, unjustified and issued without any rationale.

ii) The Petitioner was working in the Madurai Medical College and Hospital under the Directorate of Medical Education but the transfer order contains the seal of the DMS who is not competent to transfer the petitioner. Further no one has signed the transfer order and hence it has no validity but referring the same, the 4th respondent has relieved him. A doctor cannot be transferred from directorate to directorate but the petitioner was transferred from directorate of Medical Education to Directorate of Medical Services.

Page:

Corrections:

..8..

-:8:-

iii) the Petitioner being Assistant professor has been transferred to a place where there is no College and the same defies any rationale as the respondent has not managed the resources properly.

iv) the petitioner participated in the state wide protest and he resumed duty on 01.11.2019 and signed the attendance but on the evening on 01.11.2019, he was served with the relieving order dated 31.10.2019 as such the relieving order has been prepared pre dated. If the relieving order is made ready on 31.10.2019, I would not have been allowed to work on 01.11.2019 which creates suspicion over the issuance of transfer cum relieving order.

v) The petitioner has been issued with a 17 B charge memo dated 30.10.2019 with false charges. The transfer order and the 17 B charge memo was issued on the same day which shows that the transfer is a punishment for participating in the strike and the same is not for administrative reasons.

vi) By the transfer of petitioner from DME to DMS, his grade pay is reduced from Rs. 6,600 to Rs. 5,400. Further it will affect his career because from April 2020 onwards he will be included in the Associate Professor seniority panel. All the promotional benefits are wiped out because of his posting in the non teaching Govt Hospital. In short his teaching experience is destroyed whereas the Government is in need of experienced teaching faculty for MCI approval as it proposes new Government Medical Colleges as its policy.

vii) The impugned order is passed with a malafide intention to deprive the petitioner from completing the teaching experience to be promoted to post of Associate professor.

15. Under these circumstances, I have no other alternative, effective and speedy remedy except to approach this Hon'ble Court under Article 226 of

Page:

Corrections:

..9..

