

Dr. Abdul Rasheed M.H. Vs Secretary to Government

Court: High Court Of Kerala

Date of Decision: April 6, 2010

Hon'ble Judges: P.N.Ravindran, J

Bench: Single Bench

Advocate: H. Hamza Rowther, for the Appellant; Biju Balakrishnan, for the Respondent

Judgement

P.N. Ravindran, J.

The petitioners in these writ petitions challenge their transfer pursuant to the directions issued by the Government in

G.O.(Rt.) No. 743/2009/H&FWD. dated 19.3.2009, a copy of which is produced and marked as Ext.P3 in W.P.(C) No. 10287 of 2009.

2. The petitioner in W.P.(C) No. 9266 of 2009 is presently working as Professor and Head of the Department of Thoracic Surgery and the

petitioner in W.P.(C) No. 10287 of 2009 as Assistant Professor in the said department in Medical College Hospital, Thiruvananthapuram. By

Ext.P3 Government order produced in W.P.(C) No. 10287 of 2009, the Government ordered transfer of the petitioner in W.P.(C) No. 9266 of

2009 to Medical College Hospital, Kozhikode and the petitioner in W.P.(C) No. 10287 of 2009 to Medical College Hospital, Kottayam. When

W.P.(C) No. 9266 of 2009 came up for admission on 23.3.2009, the learned Government Pleader submitted that the petitioner was transferred

on account of an incident which resulted in the death of a patient who had undergone cardiac surgery. He also submitted that the said incident was

enquired into by the Superintendent, Medical College Hospital, Thiruvananthapuram and thereafter the Government passed the order dated

19.3.2009. Accordingly, this Court directed the Government Pleader to make available a copy of the of the enquiry report submitted by the

Superintendent of Medical College Hospital, Thiruvananthapuram and also a copy of Government order dated 19.3.2009. Thereafter, when W.P.

(C) No. 9266 of 2009 came up for further hearing on 27.3.2009, this Court admitted the said writ petition and issued notice to respondents 1 to

3. The petitioner in W.P.(C) No. 10287 of 2009 who is the 4th respondent in W.P.(C) No. 9266 of 2009 took notice through Counsel. On that

day, this Court also passed an interim order directing the official respondents to transfer back the petitioner in W.P.(C) No. 9266 of 2009 to

Medical College Hospital, Thiruvananthapuram. The said interim order was passed taking note the report submitted by the Superintendent of

Medical College Hospital, Thiruvananthapuram that the complaint enquired into by him was lacking in merit. The said interim order was complied

with and the petitioner in W.P.(C) No. 9266 of 2009 was re-posted in Medical College Hospital, Thiruvananthapuram. In the light of the said

interim order, when W.P.(C) No. 10287 of 2009 came up for admission on 31.3.2009, this Court passed an interim order in that writ petition

directing that the petitioner therein shall also be re-posted in Medical College Hospital, Thiruvananthapuram. The interim orders passed in these

two cases have become complied with and the petitioners in the respective writ petitions have been reposted in Medical College Hospital,

Thiruvananthapuram. Nearly one year has passed thereafter.

3. The Government have filed a counter affidavit in W.P.(C) No. 9266 of 2009 wherein besides dealing with other contentions, the Government

have stated in paragraph 4 as follows:

4. There were large number of complaints against the functioning of Cardio Vascular & Thoracic Surgery in the Medical College, Thiruvanantha-

puram. Government have received reports that the Head of the Department i.e. the petitioner and Dr. Rajasekharan V.R., Assistant Professor in

the same Department are in inimical terms and they quarrel each other in front of the patients and even in the intensive care units. Allegations and

counter allegations are raised by these doctors. Complaints were also filed before the Kerala State Human Rights Commission and the

Commission has called for a detailed report with regard to the functioning of the Cardio Vascular & Thoracic Surgery Department. Thus the

personal rivalry and fight between two doctors in a Department of rare specialization in a highly reputed medical college resulted in defamatory

media reports against Government that forced this respondent to issue G.O.(Rt) No. 743/09/H&FWD dated 19.03.2009 transferring the

petitioner to Medical College, Kozhikode and the 4th respondent to Medical College, Kottayam. Ext.P5 order was issued by the 3rd respondent

subsequent to the above mentioned order issued by this respondent (Government).

The said contention is reiterated in paragraph 2 of the statement filed on behalf of the Government in W.P.(C) No. 10287 of 2009. Paragraph 2

thereof reads as follows:

2. It is submitted that the Government as per Ext.P3 order transferred the petitioner as well as the Head of Department of Cardio Vascular and

Thoracic Surgery Department Dr. M.H. Abdul Rasheed to Kottayam and Kozhikode respectively, for administrative convenience. There were

large number of complaints against the functioning of the Cardio Vascular and Thoracic Surgery Department in the Medical College Hospital,

Thiruvananthapuram. The Government have reports that the Head of Department Dr. M.H. Abdul Rasheed and the petitioner are in inimical terms

and they frequently quarrel each other in front of the patients and even in the intensive care unit. Allegations and counter allegations are being raised

by these persons. Complaints were also filed before the Kerala State Human Rights Commission and the Commission has called for a detailed

report with regard to the functioning of the Cardio Vascular and Thoracic Surgery Department.

4. Sri. K. Sandesh Raja, the learned Government Pleader appearing for the official respondents submitted that the petitioners were transferred out

not merely because of the incident which was enquired into by the Superintendent, Medical College Hospital, Thiruvananthapuram but due to the

frequent quarrels in which the petitioners are engaged. The learned Government Pleader also submitted that the continuance of the petitioners in

Medical College Hospital, Thiruvananthapuram has affected the smooth functioning of the hospital. He also made available to me a copy of the

report submitted by the Evaluation Committee consisting of the Director of Medical Education which refers to the professional rivalry between the

petitioners and their intolerance for each other. Per contra, the learned Counsel for the petitioners contended that the petitioners were transferred

out solely in view of the death of a patient which on enquiry by the Superintendent was found to be not attributable to any act of negligence or

omission on their part and therefore the interim orders may be made absolute.

5. I have considered the rival contentions. The Government order directing transfer of the petitioners was issued on 19.3.2009. Pursuant to the

interim orders passed by this Court on 27.3.2009 and 31.3.2009 the petitioners in these writ petitions were re-posted in Medical College

Hospital, Thiruvananthapuram. The pleadings disclose that the petitioners have never worked outside Medical College Hospital,

Thiruvananthapuram though the petitioner in W.P.(C) No. 10287 of 2009 was away on leave without allowances for working in a private hospital,

for a period of five years. As Government servants, the petitioners are liable to be transferred and posted wherever the Government wants them to

serve. Government servants are liable to be transferred once in every three years. Even within a period of three years, it is open to the

Government/appointing authority to transfer the incumbents from their respective stations. Further, general transfer of Government servants is due

in April/May. In such circumstances, I am of the opinion that these writ petitions can be disposed of by maintaining the interim orders passed in the

respective cases, without prejudice to the right of the Government to transfer the petitioners from Medical College Hospital, Thiruvananthapuram,

if the Government are of the opinion that their continued retention in the said hospital is detrimental to public interest and the efficient and smooth

functioning of the hospital.

I accordingly dispose of these writ petitions maintaining the interim orders but subject to the rider that nothing contained in the said orders will

stand in the way of the Government from deciding whether the petitioners should be transferred out while effecting general transfers for the current

year. I make it clear that I have not expressed the view that the petitioners should be transferred out and that it is for the Government/appointing

authority to take an appropriate decision in the matter having regard to the exigencies of service and administrative needs.