

(2019) 12 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 3560 Of 2019, CM No. 7256 Of 2019

Abdul Majeed Bhat

APPELLANT

Vs

Union Territory Of Jammu And Kashmir & Ors

RESPONDENT

Date of Decision : 10-12-2019

Acts Referred:

Citation : (2019) 12 J&K CK 0023

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Bhat Fayaz Ahmad, Shah Aamir

Final Decision : Disposed Of

Judgement

Ali Mohammad Magrey, J

1. Petitioner while working as Incharge Block Medical Officer, Keller, has been attached with the office of Chief Medical Officer, Pulwama, in terms of order impugned bearing No. Est/3/1-133/1857-59 dated 04.11.2019. The order impugned has been challenged by medium of the instant writ petition on varied grounds with particular reference that the order impugned is based on some complaints filed by some doctors as well as paramedical staff of Block Keller, therefore, bad in law.

2. Mr Bhat Fayaz Ahmad, learned appearing for the petitioner submits that there is no scope for the Respondent No. 2-Director Health Services, Kashmir, to order attachment of the petitioner with the office of Chief Medical Officer, Pulwama, merely on the complaints of doctors and paramedics, as the procedure for dealing with the complaints against the government employees is well established and the leading conclusion can result in initiation of departmental proceedings by the competent authority but not attachment. He further submits that the Respondent No. 2-Director, Health Services Kashmir, is not competent to order attachment of the petitioner as his posting is made by the Government in terms of Government order No. 586-HME of 2019 dated 20.06.2019 when the

petitioner was while holding the post of Incharge District Immunization Officer (DIO) Bandipora, was transferred and posted as Incharge Block Medical Officer, Kellar and has joined the post on 26.06.2019 i.e. before five months.

3. When this matter was taken up for consideration on 09.12.2019, Mr Shah Aamir, learned AAG, available in the Court, was asked to submit the records forming the basis for attachment of the petitioner.

4. Today, Mr Shah Aamir, learned AAG has produced the records, perusal whereof reveals that some doctors from Block Keller, have made allegations/assertions about the behavior of the petitioner and the Director has constituted a committee on 13.09.2019, which Committee has also furnished the conclusion report, stating therein that there is total mistrust and anonymity among the BMO and the doctors and paramedics which is required to be resolved in the best interest of the patient care. The Committee also suggested some improvement in the duty roster to enable the doctors and the paramedics to avail some breathing period. The Committee also has recommended for making available the blood bank facility in the hospital and has also suggested reshuffle of not only the Block Medical Officer but the doctors and paramedics from the Block. The Respondent No. 2-Director, Health Services Kashmir, instead of acting on the report so furnished by the Committee, has only attached the petitioner when as a matter of fact, the Committee had suggested for complete reshuffle which includes shifting of the other doctors, paramedics etc.

5. Be that as it may, the Court on consideration of the matter, in the totality of the circumstances is of the considered view, that the matter needs a decision at the level of Respondent No. 1, therefore, proposes to dispose of the instant petition in the following manner:

i. The Respondent No.1 shall examine the claim made by the petitioner for his continuation or posting commensurate to his status and position;

ii. The Respondent No.1 shall also while considering the posting of the petitioner commensurate to his status and position, ensure that the doctors and the paramedics who are continuing in Block Keller for longer periods, be also considered for their transfer on the strength of the report so furnished by the Committee;

iii. The Respondent No.1 shall also ensure posting of Block Medical Officer in Block Keller to ensure that patient care do not suffer as the arrangement made by the Director, Health Services, Kashmir-Respondent No. 2, by asking the Incharge Chief Medical Officer, Shopian, to perform duties as Block Medical Officer, Keller, in addition to his own duties is not workable; and

iv. In order to ensure that the order which is impugned in the present writ petition shall not form any basis for withholding benefit in favor of the petitioner, it has become necessary to treat the order impugned as non-est immediately on the issuance of the order of the Government. The exercise to be undertaken by

the Respondent No. 1 shall be completed within a period of two weeks from today.

6. With the aforesaid directions, this writ petition alongwith CM(s) shall stand disposed of accordingly.

7. Copy of this order be provided to learned counsel for the parties under the seal and signature of Bench Secretary of this Court.