

GAHC010264092023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6781/2023

JUFIN SULTANA
W/O- ASIQUE HUSSAIN, PERMANENT RESIDENT OF VILL.- NAHARANI,
MAZGAON, PIN- 785618, DIST. GOLAGHAT AND PRESENTLY RESIDING AT
WARD NO. 2 NEAR CIRCUIT HOUSE, MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, HEALTH AND FAMILY WELFARE DEPARTMENT, DISPUR,
GUWAHATI-781006.

2:MISSION DIRECTOR

NATIONAL HEALTH MISSION
ASSAM

3:THE DEPUTY COMMISSIONER CUM CHAIRPERSON

DISTRICT HEALTH SOCIETY
MORIGAON.

4:THE JOINT DIRECTOR OF HEALTH SERVICES CUM MEMBER
SECRETARY
DISTRICT HEALTH SOCIETY
MORIGAON.

5:SONATON ISWARY
DISTRICT PROGRAMME MANAGER
DHUBRI

Advocate for the Petitioner : MR. JYOTIRMOY ROY

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

22.11.2023

Heard Mr. J. Roy, learned Sr. Counsel assisted by Mr. C. Chakravarty, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel, Health.

2. This writ petition is filed by the petitioner impugning the order of transfer dated 10.11.2023 whereby three persons including the petitioner were transferred from their existing place of posting to the new place of posting. The petitioner's name appears at Sl. No. 2 of the said order.

3. The petitioner is aggrieved by the fact that notwithstanding there being a transfer policy in place in respect of NHM employees, the petitioner is transferred out contrary to the said policy. As per the said policy, no request for transfer will be entertained until the employee serves for a continuous period of three years in the place of posting. However, the Mission Director, NRHM reserves the right to transfer or depute any employees at any time if the need arises in the interest of the programme.

4. Mr. Roy, learned Sr. Counsel submits that ordinarily as a matter of practice, employees are transferred after completion of three years. However, this transfer policy has not been applied uniformly by the respondents. While some persons have continued to be posted in the same place for more than ten (10) years considering their personal hardships, however, no such benefit has been

extended to the petitioner. Even her prayer for child care leave has been denied by the respondents. The petitioner has a minor son of 2 ½ years and he is undergoing speech development therapy. The learned Sr. Counsel for the petitioner submits that if the transfer is allowed to be given effect to then the treatment of the minor child will be seriously hampered. All these issues had been raised by the petitioner before the authorities by filing representation dated 16.11.2023 which according to the petitioner were not being attended to by the respondent authorities. It is the grievance of the petitioner that the transfer policy in place has not been uniformly followed. Therefore, some persons are allowed to work in places for more than a decade. Mr. Roy has referred to a list of names enclosed to the writ petition at Annexure-7. According to Mr. Roy, names appearing in Sl. No. 11, 12 and some other persons who are being allowed to be posted at their place of posting for more than a decade.

5. Mr. B. Gogoi, learned counsel for the NHM submits that even as per the transfer policy, the Mission Director NRHM reserves the right to transfer or depute any employee at any time if the need arises. Therefore, the question of having mandatory period of three years will not arise even under the transfer policy. He, however fairly submits that he has no instructions, if any had been order passed on the representation in the meantime.

6. Having heard the learned counsels for the parties and upon careful perusal of the pleadings on records, this Court is of the view that ordinarily transfer and posting unless shown to be in malafide not in public interest, ordinarily constitutional Courts would loathe to invoke its extraordinary powers under Article 226 under judicial review for interfering with such orders.

7. In the facts of the case, however, without entering into the merits of the case, considering the fact that there is a representation pending before the

authority concerned, this Court is of the considered view that ends of justice will suffice if the respondents are directed to redress the grievances of the petitioner as per the representation filed and take into consideration the difficulties faced by the petitioner which are urged before the Court. It is expected that the respondents will consider the case of the petitioner sympathetically in view of the fact that her son is undergoing speech development therapy.

8. Accordingly, the writ petition stands disposed of.

9. The representation shall be disposed of as expeditiously as possible within a period of two weeks from the date of receipt of certified copy of this order. Till the representation is disposed of, the impugned order dated 10.11.2023 shall not be given effect to.

JUDGE

Comparing Assistant