

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.102 of 2024

Dr. Anita Das, W/o Dr. Rajesh Ranjan Das, resident of 79 Tilla Housing Complex, Block-A, Room No.301, P.O-Kunjaban, Agartala, West Tripura, Pin-799006.

..... Appellant(s)

V E R S U S

- 1) The State of Tripura, represented by the Secretary to the Health & Family Welfare Department, Government of Tripura, New Secretariat Complex, P.O.- Secretariat, Pin-799010, Agartala, District – West Tripura.
- 2) The Under Secretary, Department of Health & Family Welfare, Government of Tripura, New Secretariat Complex, P.O-Secretariat, Pin-799010, Agartala, District – West Tripura.
- 3) The Director of Health Services, Government of Tripura, PN Complex, P.O-Kunjaban, Agartala, Pin-799006, District-West Tripura.
- 4) The Medical Superintendent AGMC & GBP Hospital, Agartala, P.O-Kunjaban, Pin-799006, District-West Tripura, Agartala.

..... Respondent(s)

For Appellant(s) : Mr. C.S. Sinha, Advocate,
Mr. D.C. Saha, Advocate.

For Respondent(s) : Mr. Kohinoor N. Bhattacharyya, GA.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S. D. PURKAYASTHA**

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10/09/2024

Heard Mr. C.S. Sinha, learned counsel together with Mr. D.C. Saha, learned counsel for the appellant. Also heard Mr. Kohinoor N. Bhattacharyya, learned Government Advocate for the State-respondents.

[2] This appeal is directed against the judgment dated 16.08.2024 whereby the learned writ Court refused to interfere in the transfer order of the

writ petitioner. Writ petitioner is a qualified doctor who first joined in service under the Government of Tripura in 1998 and was posted at Community Health Centre (CHC), Kalyanpur till 2013. Since 2013 she was serving at the AGMC & GBP Hospital, Agartala, till she was transferred by the impugned transfer order dated 06.12.2023 to Khowai District Hospital. Her husband Dr. Rajesh Ranjan Das, is also a doctor and serving as an Associate Professor in the AGMC & GBP Hospital. Challenge to the impugned transfer order has primarily been made on the ground that her son, aged 22 years, is suffering from Autism Spectrum Disorder. As per disability certificate dated 09.06.2021, he was suffering from 90% Intellectual Disability diagnosed as severe Mental Retardation (Annexure-1). Writ petitioner relied upon the various provisions of the Rights of Persons with Disabilities Act, 2016 (for short, the Act of 2016) and office memorandum dated 08.10.2018 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India where instructions were issued that care-giver of a dependent daughter/ son/ parents/ spouse/ brother/ sister with specified disability, certified as a person with benchmark disability defined under Section 2(r) of the Act of 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to administrative constraints. Writ petitioner also relied upon a memorandum dated 15.11.2021 issued by General Administration (P&T) Department, Government of Tripura which had issued instructions to the same effect. Further, administrative instructions contained in memorandum dated 25.11.2021 have been relied upon by the writ petitioner which instruct that posting of care-giver may be considered at such a place which does not hinder the care-giver to attend to

the needs of dependent (disabled person of specified disability). Pursuant to these memorandums, the Directorate of Health Services, Government of Tripura had vide order dated 16.07.2021 (Annexure-10 to the writ petition) allowed the writ petitioner to leave her workplace for one hour for supporting daily needs of the son of the writ petitioner. Writ petitioner on the basis of the above grounds sought interference in the order of transfer. Initially the learned writ Court granted an interim protection by order dated 18.12.2023 and directed the respondents to re-examine the issue. Till then, the transfer order dated 06.12.2023 was kept in abeyance.

[4] Respondents came back with a proposal to transfer the writ petitioner to District Hospital, Gomati instead of District Hospital, Khowai. The respondents, however, also opposed the challenge to the impugned transfer order. A plea was taken by the respondent-department that in keeping with the long-standing demand of Gomati District Hospital, the services of the writ petitioner have been placed at that Hospital which could also cater to adjacent districts like South Tripura and Sepahijala. According to Mr. Kohinoor N. Bhattacharyya, learned Government Advocate, writ petitioner is the only doctor having specialization in oral pathology and microbiology in the State. Learned Government Advocate also sought to bring to the notice of the learned writ Court that better treatment facilities are available at Gomati for treatment of such a child suffering from autism or mental retardation. Moreover, this transfer has been made after 10 years of her stay in AGMC & GBP Hospital, Agartala. Similar facility of break in duty hours would also be available to the writ petitioner at her place of posting in Gomati during duty hours. According to him, in fact Khowai district is at a distance of 54 km

(approx) whereas Gomati 77 km (approx). As such, all the protections provided under the Act of 2016, such as high support service, would be provided to the writ petitioner, treating her to be the care-giver in terms of Section 2(d) of the Act of 2016. In such a case, the interest of the writ petitioner as a care-giver and mother to the mentally retarded son and the larger interest of serving the people of those districts where her services are required, have to be balanced.

[5] Learned writ Court upon analysis of the relevant provisions of the Act of 2016, the office memorandums referred to herein above, the intellectual disability suffered by the son of the writ petitioner and also the distance to be traversed about one hour & fifteen minutes from Agartala to Gomati, acceded to the proposal of the respondents-State to post her at Gomati DH at Udaipur where there are specialized centre for management of such autistic person and the benefit of the expertise of the writ petitioner could also be availed by the people of the Gomati District and adjoining districts. The learned writ Court also took into account that writ petitioner have been serving for 10 years at Agartala and her husband is posted as an Associate Professor in the AGMC & GBP Hospital. The said post is non-transferable. The learned writ Court tried to strike the balance in the unique circumstances of the case where it is also the responsibility of the Government to promote common good while respecting individual dignity and autonomy of the writ petitioner and her 22 year old son. The writ Court, therefore, declined to interfere in the order and dismissed the writ petition.

[6] Upon dismissal of the writ petition, the writ petitioner was transferred as medical officer (dental) at Gomati DH, Udaipur by transfer order dated 17.08.2024. Release order was issued on 31.08.2024. Writ petitioner being aggrieved has approached this Court in the instant appeal. Writ petitioner had also in the meantime submitted a representation that she was not satisfied with the judgment of the learned writ Court and has decided to file an appeal. She prayed that her reporting for duty at Gomati DH be subject to the outcome of the writ appeal. The order of disposal of representation dated 29.08.2024 issued by the Health and Family Welfare Department refers to these facts and the grounds on which the service of the writ petitioner has been placed at Gomati DH, Udaipur from AGMC & GBP Hospital, Agartala in modification of the earlier transfer order as under:

“Whereas, in order to settle the matter, the Secretary, Health & Family Welfare Department, Govt. of Tripura called the Petitioner & Department in his Office Chamber for Personal hearing on 29-08-2024 at 12-00 Noon. Accordingly Dr. Das present there and stated that after receiving the certified copy of judgment order dated 16-08-2024 from the Hon'ble High Court she will decide about the appeal before the Hon'ble Division Bench. After hearing her, the Secretary, H&FW Department, directs the Administrative Department to issue Speaking Order.

AND

Whereas, it is required to be mentioned here that Patient load is growing day by day at District Hospital Gomati within the Dental Department. It is important to mention that Dr. Anita Das is the only MDS, in Oral Pathology Specialist in the entire State of Tripura that is why she was transferred to the District Hospital Gomati in the interest of the patient to provide better treatment.

AND

Whereas, it is required to be mentioned here that even after receiving the transfer Order Dr. Anita Das did not join in the at District Hospital Gomati, so the patients are also deprived of better treatment.

AND

Whereas, it is also required to be mentioned here that at AGMC Hospital Dr. Das is providing only General Dentistry Services, though she is holding MDS degree on Oral Pathology.

AND

Whereas, it is also required to be mentioned here that as for other Medical Officers of her Grade (Grade-III of TDS) they are allowed to leave station with prior permission of Medical Superintendent to reach home early to take care of their child. Till date no other Medical Officer has complained for not sanctioning station leave permission by the Authority.

AND

Whereas, it is also required to be mentioned here that as she is the only Oral Pathology Specialist under TDS, no other MO (Dental) may be able to provide the specialty services to the patient to which she is capable of.

AND

Whereas, after consideration of all aspect, the competent authority is pleased to post Dr. Das to the nearest District of Agartala, which is merely 55 K.M. away from the State Capital.

AND

Whereas, in the judgment & order passed by the Hon'ble High Court, Tripura it is mentioned that a balance be maintained when fundamental and human rights coupled with the welfare and wellbeing, individual dignity and autonomy of both the care-giver and the dependent disabled person are adequately protected, the, in the context of the case, it would not be proper to complain of breach of the rights conferred upon such persons and various provisions of the RPWD Act. In the instant case, facilities available at AGMC & GBP Hospital are equally available at Gomati District Hospital. More importantly the petitioner has not specified / identified any particular facilities or services that are available at AGMC & GBP Hospital but not at Gomati District Hospital.

AND

Whereas, in the said judgment & order it is also mentioned that while proposing the modification of the impugned transfer order to Gomati District Hospital, the respondents have been able to maintain a balance between public interest and the personal interest. By striking this in the unique circumstances of the present case as narrated here-in-before Government can promote common good while respecting individual dignity and autonomy of the petitioner and her 22 years old son deserve. The proposed transfer and posting of the petitioner to Gomati District Hospital, Udaipur from AGMC & GBP Hospital, Agartala in modification of the impugned transfer order does not call for interference.

AND

Whereas, consequent upon the Judgment & Order passed by the Hon'ble High Court of Tripura in WP (C) No. 779 of 2023 dated 16-08-2024, Dr. Anita Das, MDS, Medical Officer (Dental), Grade-III of TDS, AGMC & GBP Hospital, Agartala now under Order of transfer at the District Hospital Gomati, Udaipur, Tripura vide order of even number dated 17-08-2024 is hereby directed to join her new place of posting on transfer immediately and report for duty to the Medical

Superintendent, District Hospital Gomati, Udaipur, Tripura and function accordingly.

Accordingly, the representation dated 21-08-2024 is disposed.

This issued with the approval of the Government of Tripura Health & Family Welfare Department vide U.O. No. 421 Dated 29-08-2024”

It is informed by the learned Government Advocate that writ petitioner has not yet joined the place of posting.

[7] Learned counsel for the appellant has strongly relied upon the grounds agitated before the writ Court also. The appellant’s concern is of due care of her autistic son aged about 22 years as a mother and a care-giver entitled to enjoy certain protection under the Act of 2016.

[8] Learned counsel for the writ petitioner submits that the learned writ Court has also gone on to make personal research as to the effect of certain medicines prescribed for treatment of aggressive behavior of an autistic person to control impulsive behavior of hyper activity which was not at all warranted. The learned writ Court therefore fell in serious error in ignoring the salutary provisions of the Act of 2016 and instructions issued by the government of India and the State of Tripura to protect care-givers of persons with disability from routine exercise of transfer/rotational transfer subject to administrative constraints. She has prayed for setting aside the impugned judgment and also the transfer order dated 17.08.2024 and the release order dated 31.08.2024.

[9] Mr. Kohinoor N. Bhattacharyya, learned Government Advocate has strongly opposed the prayer. He has reiterated the grounds and averments taken before the learned writ Court which has been referred to in the

impugned judgment as also in the forgoing part of this order. He submits that transfer being an incidence of service, the writ petitioner, a government employee, can be transferred, however, keeping into mind the protections available to a care-giver under the Act of 2016 and the government instructions issued from time to time. She has not been transferred in a routine manner. After 10 years of her stay at AGMC & GBP Hospital, Agartala, she has been posted to the district hospital, Khowai which was only 54 km (approx) from Agartala. However, upon reconsideration, pursuant to the interim order passed by the learned writ Court, the department has modified the impugned transfer order and posted her at Gomati DH. The learned writ Court after applying its mind to all the rival submissions and the provisions of the Act of 2016, the government circulars issued from time to time, rightly declined to interfere in the order of transfer while trying to balance the interest of the writ petitioner with the larger public interest. Therefore, the impugned judgment does not require any interference.

[10] We have given patient hearing to rival submissions of the learned counsel for the parties. We have also rendered anxious consideration to the submissions made both on law and on the individual facts relating to the case of the writ petitioner which are evident from the narration made in the foregoing part of the order. We find that writ petitioner has not been subjected to the routine transfer since she was working in AGMC & GBP Hospital from 2013 till issuance of the impugned order of transfer on 06.12.2023 to a nearby District Hospital at Khowai which is approximately 54 km from Agartala. However, on account of interim directions passed by the learned writ Court, the department reconsidered the matter and proposed

to post her as Medical Officer, Gomati DH which is about 77 km (approx) from Agartala but connected with proper roads. The learned writ Court has also noted that Gomati DH is only one hour and fifteen minutes journey from Agartala. Writ petitioner's husband is posted in a non-transferable job as Associate Professor in the AGMC & GBP Hospital. Writ petitioner has been provided the duty break hours as a care-giver as per instructions issued by the Government of Tripura contained in memorandum dated 15.11.2021 and 25.11.2021. Transfer being an incidence of service, a government employee is liable to be transferred in the larger public interest to places from time to time. The jurisdiction of the competent authority is not in question. Neither is any allegation of mala fide raised by the writ petitioner against any of the departmental officials. There is no malice in law involved either as writ petitioner being the only doctor having specialization in oral pathology and microbiology in the State, has been transferred to cater to the residence of Gomati district and adjoining districts like Sepahijala and South Tripura who also needs services of such a specialized doctor.

[11] Learned Government Advocate has further tried to reinforce the decision to post her at Gomati DH keeping into account the exigencies which have a reason due to the recent floods in those areas in August, 2024. Respondents have also sought to justify her transfer to Gomati on the ground that the said district has better treatment facilities for children suffering from intellectual disability like autism. This Court in exercise of the powers of judicial review has a difficult task to balance between the personal interest of a person like the writ petitioner, acting as a care-giver to her 22 year old son suffering from intellectual disability up to 90% as per the disability certificate

dated 09.06.2021 and the larger public interest involved in providing services of such a specialist doctor to the needy persons in other neighboring districts. Writ petitioner cannot expect to provide round the clock care and attention to her son suffering from autism as she also has to balance the duties and responsibilities attached as a doctor in any hospital whether at AGMC & GBP or at hospitals anywhere else in the State. The act also provides a break in duty service and not a complete off duty employment to such a person. In the instant case, the husband also is an employee and stationed at Agartala in the AGMC & GBP Hospital, working as Associate Professor. The choice to provide special care is obviously left to the parents of such an autistic child, wherein one of the parents is residing in Agartala in a non-transferable job. It is not a case where both the spouses are on transferable job. The benefit of care-giver to a person with disability is to the extent from exemption from routine exercise of transfer or rotational transfer. However, this is subjected to administrative constraints as per the government circular dated 15.11.2021 and 25.11.2021. Learned writ Court appears to have dealt with the rival grounds urged by the parties giving due consideration to the special factum of intellectual disability of the son of the writ petitioner. However, in the above background facts and moreover, that the writ petitioner has remained for 10 years in the same place of posting at Agartala; that Agartala and Gomati are not separated by such a distance which is difficult to commute, refused to interfere keeping into account the public interest involved. As stated above, a large body of needy persons not only from Gomati district but from adjoining districts shall be able to get the services of such a specialized doctor. This Court in the appellate jurisdiction is of the opinion that the approach of the

learned writ Court does not suffer from errors in law or on fact while passing the impugned judgment. In such circumstances, we do not find any reason to interfere in the impugned judgment and also the order of transfer of the writ petitioner.

[12] Accordingly the instant petition is dismissed.

Pending application(s), if any, shall also stand disposed of.

(S. D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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