

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.779 of 2023

Dr. Anita Das,

W/o: Dr. Rajesh Ranjan Das,

R/o: 79 Tilla Housing Complex, Block-A, Room No:301,

P.O: Kunjaban, Agartala, Tripura, P.S: NCC, Pin: 799006.

....Petitioner(s)

Versus

- 1. The State of Tripura**, to be represented by the Secretary, Department of Health & Family Welfare Department, Govt. of Tripura, New Secretariat Building, New Capital Complex, Agartala, West Tripura, PIN-799010.
- 2. The Under Secretary**, Department of Health and Family Welfare, Govt. of Tripura, Agartala, West Tripura.
- 3. The Director**, Department of Health and Family Welfare, Govt. of Tripura, Agartala, West Tripura.
- 4. The Superintendent**, AGMC & GBP Hospital, Agartala, West Tripura.

....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. K. Nath, Advocate Mr. S. Bhattacharjee, Advocate Ms. A. Debbarma, Advocate
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For the Respondent(s)	:	Mr. Kohinoor N. Bhattacharyya, GA
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Date of hearing & delivery of judgment & order	:	16.08.2024
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Whether fit for reporting	:	Yes
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HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

By means of filing the instant writ petition, the petitioner has challenged the impugned transfer order dated 06.12.2023 issued by the Under Secretary, Health & Family Welfare Department, Govt. of Tripura (*Annexure-4* to the writ petition) whereby and whereunder she had been transferred to Khowai District Hospital, mainly on the ground that her son, who is aged about 22 years, is suffering from autism, which is evident from the Disability Certificate dated 09.06.2021(*Annexure-1* to the writ petition) issued by the authority concerned.

2. Facts:

2.1. The petitioner is a doctor specialized in Oral Pathology & Microbiology. She was appointed in the year 1998. The first posting of the petitioner was at Community Health Centre(CHC), Kalyanpur where she had served upto 2013. In the year 2013, she was posted at the AGMC & GBP Hospital, Agartala, Tripura. Thereafter, the petitioner got married to Dr. Rajesh Ranjan Das, who is also a doctor and now is serving as Associate Professor in the AGMC & GBP Hospital. The son of the petitioner is suffering from Autism Spectrum Disorder. It is stated in the writ petition that the writ petitioner being the mother is the care-giver of her disabled child suffering from autism. It is pleaded that her son, Sri Hritaban Das needs constant high support since sometimes he becomes aggressive and shows abnormal behaviour. The son of the petitioner also needs consultation in OPD. For this reason, she should not be transferred from her present place of posting at AGMC & GBP Hospital to any other place, which may cause serious hindrance to the support system which the petitioner is now providing to her son. On the aforementioned grounds, the petitioner has come forward before this Court challenging the said impugned transfer order.

2.2. This Court vide order dated 18.12.2023 directed the respondents to consider the transfer order of the writ petitioner to Khowai District Hospital and to re-examine the issue. An interim protection was also given to the petitioner so that she could not be forced to join her new place of posting. In pursuance of the said order passed by this Court, the State-respondents under order dated 20.02.2024 expressed their inability to modify

the transfer order. The relevant portion of the order dated 20.02.2024 is reproduced hereunder:

*“GOVERNMENT OF TRIPURA
HEALTH AND FAMILY WELFARE DEPARTMENT*

No.F.3(154)-HFW/2023

Dated: 20/02/2024

.....Whereas, it has been decided that Dr. Das will be allowed to leave her work place at Khowai DH for one hour before completion of the scheduled duty hours for supporting daily needs of her mentally son Sri Hritaban Das.

AND

Now, therefore, after consideration of all aspects, the competent authority is pleased to Order that the Department may post Dr. Anita Das to the nearest District of Agartala i.e. Khowai District Hospital which is merely 44 K.M. away as compared to Other District, as per approval of the Government.

Accordingly, the representation dated-20/12/2023 is disposed of

*By Order of the Governor,
-Sd
Under Secretary to the
Government of Tripura”*

2.3. Thereafter, this Court had passed another order dated 05.03.2024 extending the period of interim protection given to the writ petitioner and directed to list the matter on 09.04.2024 for filing an affidavit-in-opposition. The respondents, accordingly, have filed affidavit-in-opposition.

2.4. From the order dated 23.04.2024 it comes to light that exchange of pleadings was complete and both the parties had urged this Court to hear and dispose of the matter finally.

2.5. In the meantime, the State-respondents have come up with an application for vacating the said order stating *inter alia* that the respondents have re-examined the issue in question and on such re-consideration have decided to modify the impugned transfer order and they are ready to transfer the petitioner in Gomati District Hospital, Gomati District instead of Khowai

District Hospital where adequate medical facilities are available for the autistic persons like the son of the petitioner.

2.6. This Court vide order dated 13.08.2024 directed the respondents to clarify certain doubts regarding the availability of medical facilities in Gomati District Hospital and the establishment of District Early Intervention Centre(for short, DEIC) and the matter was directed to be listed today for final hearing and disposal.

3. On the aforesaid background of facts, I have heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioner. Also heard Mr. Kohinoor N. Bhattacharyya, learned GA appearing for the respondents-State.

4. Submissions on behalf of the petitioner:

4.1. In view of the order dated 13.08.2024, it is submitted by Mr. Roy Barman, learned senior counsel that the parents, i.e. the petitioner and her husband had visited Gomati District Hospital and they have placed on record by way of affidavit that DEIC is only meant for treating the children of 0 to 6 years. Further, there is no provision for providing treatment to an autistic person having the age of 22 years.

4.2. It is strongly argued that the respondents have ignored the objectives of the RPWD Act, 2016 and did not consider at all the condition of the son of the petitioner while transferring her to a place away from her present place of posting. The respondents ought to have considered the fact that the son of the petitioner sometimes becomes very aggressive and shows abnormal behaviour. Learned senior counsel has strenuously argued that the son of the writ petitioner suffers from 90% disability. The transfer of the

petitioner to Gomati District Hospital, Udaipur will interrupt the behavioural training of her son.

4.3. Though not alleged in the writ petition but, learned senior counsel has urged this Court to lift the veil behind the issuance of the impugned transfer order placing her service to a place other than her present place of posting. According to him, the transfer order is not bonafide.

To support his arguments, Mr. Roy Barman has given much emphasis on Section 38 of the Rights of Persons with Disabilities Act, 2016(for short, RPWD Act). Learned senior counsel has also pressed upon a decision of the Hon'ble Supreme Court passed in the case of *Vikash Kumar vs. Union Public Service Commission & Ors*, (2021) 5 SCC 370. To conclude, Mr. Roy Barman, learned senior counsel has strongly urged before this Court that it is a fit case for this Court to interfere with the impugned transfer order as it is illegal, arbitrary and discriminatory.

5. Submissions on behalf of the respondents:

5.1. Opposing the submissions of learned senior counsel appearing for the petitioner and to defend the impugned transfer order and subsequent decision to modify the said order, Mr. Bhattacharyya, learned GA has submitted that the respondents have re-examined the issue looking into the interest of the welfare and best well-being of the son of the petitioner. Having reviewed the entire aspects involving public interest as well as the interest of the son of the petitioner, the respondents are ready to transfer the petitioner to Gomati District Hospital (for short, Gomati DH), subject to approval of the Court. It is found that there is long-standing demand that Gomati DH needs service of a doctor like the writ petitioner, which will cater service to not only the people of Gomati District but also the adjacent

districts. Keeping in view the objectives and purpose of RPWD Act, the respondents have taken into account the facilities and various infrastructures at Gomati District Hospital so that the treatment of the son of the writ petitioner is not affected in any manner whatsoever. His ultimate submission is that the service of the petitioner will be utilized to the patients and the people at large residing in Gomati District as well as adjacent two districts, viz, South Tripura and Sepahijala. Learned GA has further submitted that the support services which the writ petitioner is presently rendering towards her son shall not in any way be hindered. The petitioner will not be dissociated in any manner whatsoever from her son. The son being aged about 22 years would reside with the writ petitioner. So, there is no question of any dislocation of the writ petitioner from her son.

5.2. Mr. Bhattacharyya, learned GA has also urged this Court to consider the fact that the Government of Tripura has established a Dental Medical College at Agartala where all infrastructures are available. So, the service of the writ petitioner is urgently required in other districts like Gomati District wherefrom she would also be able to cater service to the adjoining areas and districts.

5.3. Lastly, learned GA has submitted that the petitioner should not forget the fact that transfer is incidental to service and one has no vested right to claim his/her posting at a place of his/her choice.

6. Analysis and Conclusion:

6.1. I have considered the submissions of learned counsel appearing for the parties.

6.2. Before I deal with the submissions of learned counsel appearing for the parties and the merits of the present writ petition, I would like to refer to the salient features of the RPWD Bill, 2014, which *inter alia*, are:

- “(i) Nineteen specified disabilities have been defined;*
(ii) the persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity, etc., equally with others;
(iii) duties and responsibilities of the appropriate Government have been enumerated;
(iv) all educational institutions funded by appropriate Government shall provide inclusive education to the children with disabilities;
(v) a National Fund is proposed to provide financial support to persons with disabilities;
(vi) stakeholders' participation in the policy making through Central and State Advisory Boards;
(vii) increase in reservation in posts from existing three per cent to five per cent in the vacancies for persons or class of persons with benchmark disabilities in every establishment and reservation of seats for students with benchmark disabilities in higher educational institutions;
(viii) setting up of National Commission and State Commission to act as Grievance Redressal Mechanism, monitor implementation of the proposed legislation replacing the Chief Commissioner and State Commissioners for persons with disabilities, respectively,
(ix) guidelines to be issued by the Central Government for issuance of certificates of specified disabilities;
(x) penalties for offences committed against persons with disabilities; and
(xi) Court of Session to be designated as Special Court by the State Government in every district to try offences.”

6.3. It is no more *res integra* that the scope of RPWD Act is wider than what it was under the Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995(for short, PWD Act). Keeping in mind the objective of the RPWD Act, I am not in disagreement with Mr. Roy Barman, learned senior counsel that it is a welfare legislation to provide sufficient and enough opportunities and benefits to a person suffering from physical or mental disability. However, *in my opinion, it is*

equally to be kept in mind that no one should take the advantage of the RPWD Act. It is true that the interest of the persons with disabilities would be the paramount consideration and a care-giver of a disabled person should not be a subject to discrimination. A care-giver is entitled to be provided with all facilities to support the person with disabilities. Keeping in mind the aforesaid principles, now, I may proceed to examine whether the decision of the respondents to transfer the petitioner to Gomati DH in modification of the impugned transfer order is necessary to be interfered with by this Court or not.

6.4. At the outset, I should record that the Government of Tripura in pursuance of the RPWD Act and in compliance with various guidelines issued time to time by the Central Government has formulated certain policies to take care of the interest of the children with physical and mental disabilities. From the records, it appears that the District Disability Board has certified that the son of the petitioner suffers from 75% disability. It is also evident from another certificate that the son of the petitioner sometimes becomes very aggressive and shows abnormal behaviour.

6.5. While proceeding to decide the present case, I feel it necessary to take note of the definitions of some terminologies mentioned in the RPWD Act. In the RPWD Act, the term ‘care-giver’ is defined under Section 2(d) which means *any person including parents and other family members who with or without payment provides care, support or assistance to a person with disability.*

The term ‘discrimination’ is defined under Sub-section (h) of the Section 2 which enumerates that *discrimination in relation to disability, means any distinction, exclusion, restriction on the basis of disability which*

is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

‘High support’ is defined under Section 2(l) which means *an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy;*

‘Person with benchmark disability’ is defined under Section 2(r) which means *a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.*

‘Person with disability’ is defined under Section 2(s) which means *a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.*

‘Person with disability having high support needs’ is defined under Section 2(t) which means *a person with benchmark disability certified under clause (a) of sub-section (2) of Section 58 who needs high support.*

It is also important to note the definition of ‘reasonable accommodation’ defined under Section 2(y) which means *necessary and appropriate modification and adjustments, without imposing a*

disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

Section 2(z) defines 'rehabilitation' which refers to *a process aimed at enabling persons with disabilities to attain and maintain optimal, physical, sensory, intellectual, psychological environmental or social function levels.*

6.6. To decide the present challenge, in my opinion, paramount consideration is to look upon whether the interest of the son of the petitioner has properly been taken care of by the State-respondents while modifying/transferring the writ petitioner from her present place of posting at Agartala to Gomati DH at Udaipur, Gomati District. From the application for vacating the said order as well as the submissions advanced by learned GA for the respondents it comes to fore that due to establishment of the Dental Medical College at Agartala, having all infrastructures thereof, the service of the petitioner at her present place of posting at AGMC & GBP Hospital is not a necessity, rather, public interest demands the posting of the petitioner at a hospital where such service lacks, leading to increased sufferings to the people of other districts. The petitioner is specialized in oral pathology and microbiology. As such, considering public interest the petitioner is re-considered to be transferred to Gomati District Hospital wherefrom she would be able to cater service to the bigger districts of the State of Tripura. The patients as well as the people of those districts now can avail the service of a specialized doctor in dentistry. During the entire exercise the respondents have taken care of the interest of the son of the petitioner too.

6.7. I have perused various guidelines as relied upon by the petitioner in her writ petition. *Firstly*, I should refer to Office Memorandum dated 8th October, 2018 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India where it is notified that the care-givers of persons with disabilities should be exempted from routine exercise of transfer/rotational transfer, however, subject to administrative constraints. Para 3 of the said office memorandum may be extracted hereunder, for convenience:

“ 3. With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in supersession of the above-mentioned OMs of even number dated June 6, 2014, November 17, 2014 and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer:

(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

(ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (i) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness (iii) Low-vision (iv) Deaf (v) Hard of hearing (vi) Speech and language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability caused due to: (a) Neurological conditions such as Multiple sclerosis and Parkinson's disease (b) Blood disorder- Haemophilia, Thalassemia and Sickle cell disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.

(iii) The term 'Specified Disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/rotational transfer by a Government employee, who is a care-giver of dependent daughter/son/parents/spouse/brother/sister as stated in Para 3(i) above.....

-Sd
(G. Srinivasan)
Director(Res)
Tel: 2309 3074”

6.8. Keeping in conformity with the said office memorandum dated 8th October, 2018, issued by the Government of India, the General Administration (Personnel & Training) Department, Government of Tripura came up with an office memorandum dated 15th November, 2021. The relevant portion of the said office memorandum may be extracted hereunder, for convenience:

*“GOVERNMENT OF TRIPURA
GENERAL ADMINISTRATION (P & T) DEPARTMENT*

No.F.23(39)-GA(P&T)/2021/

*Dated, Agartala
The 15th November, 2021*

MEMO

.....Considering that transfer of a Government employee who serves as the main care giver of persons with disability would have a bearing on the systematic rehabilitation of persons with disabilities, the Government issued OM of even number dated June 6, 2014 to exempt such employee from routine exercise of transfer/rotational transfer, subject to administrative constraints.

2. The scope of disability initially had covered (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities, which subsequently, vide OMs of even number dated November 17, 2014 and January 5, 2016, was further extended to include 'Autism, 'Thalassemia' and 'Haemophilia'.

3. With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in super session of the above- mentioned OMs of even number dated June 6, 2014, November 17, 2014 and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer

i A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/ rotational transfer subject to the administrative constraints.

*ii. **** **** *****

*iii. **** **** *****

-Sd

*Under Secretary to the
Government of Tripura”*

Later on, the Government of Tripura has issued another memorandum dated 25th November, 2021 wherein in addition to the benefits of the care-giver under the aforesaid memoranda, following additional benefits are provided. The relevant portion is reproduced hereunder:

*“GOVERNMENT OF TRIPURA
GENERAL ADMINISTRATION (PERSONNEL & TRAINING) DEPARTMENT*

No.F.23(43)-GA(P&T)/2021 Dated, Agartala, The 25th November, 2021

MEMORANDUM

.....(a) The guidelines for posting of caregivers may also take into consideration the need and requirement of each of the specified disability separately as in some cases it may not be feasible to shift the dependent to new place owing to nature of disability. In such cases the posting of caregiver may be considered at such place which does not hinder the caregiver to attend to the needs of dependent (disabled person of specified disability).

b) There may be an arrangement to provide appropriate reliefs to caregivers, which could include giving a suitable break during working hours to attend to the dependent person inflicted with specified disabilities. Such an arrangement would not only enable raising quality of life of dependent, it would also aid the concerned government employee to devote quality time when in office. In order to ensure that only exceptional and genuine cases get covered under this relief, State Medical Board may be consulted wherever necessary.

3. With the enactment of the Rights of Persons with Disabilities Act, 2016, this Memorandum is issued as per recommendations of the State Commissioner for Persons with Disabilities.

-Sd

*Under Secretary to the
Government of Tripura”*

I find that in view of the said office memorandum dated 25th November, 2021, the Directorate of Health Services, Government of Tripura under order dated 16.07.2021 (*Annexure-10* to the writ petition) had allowed the petitioner to leave her workplace for one hour for supporting daily needs of the son of the writ petitioner.

The above fact has not been disputed by learned senior counsel appearing for the petitioner.

6.9. As I have said already that to decide the merits of challenge of the impugned transfer order, this Court would particularly take into consideration the interest of the son of the writ petitioner. It is stated and submitted by learned GA that all treatment facilities are made available in the Gomati DH for the son of the writ petitioner.

I have perused the concept of setting up of DEIC. These are the centers advised to be established in various district level hospitals to take initial steps of screening of children from birth to 18 years of age group for selected health conditions including defects at birth, deficiencies, diseases and developmental delays including disabilities under Rashtriya Bal Swasthya Karyakram (RBSK) through trained and dedicated Mobile Health Teams. The next vital step is confirmation of preliminary findings, referral support, management and follow up. Under RBSK, these activities *viz.* confirmation, management, referral, tracking and follow-up, needs to be planned according to the age group of the child. It is also noticed that the main function of these centers are to provide referral support to children detected with health conditions during health screening, primarily for children upto 6 years of age group. A team consisting of Pediatrician, Medical Officer, Staff Nurses and Paramedics are engaged to provide such services. There is also a provision for engaging a manager who will carry out mapping of tertiary care facilities in government institutions for ensuring adequate referral support.

6.10. The main challenge of learned senior counsel appearing for the petitioner is that DEIC is not meant for treating the patient, like the son of the writ petitioner. In the affidavit sworn on 15.08.2024, the petitioner has enclosed some medical prescriptions issued in the year 2010 by the National

Institute of Mental Health and Neurosciences. I have also seen the behavioural report dated 24.06.2013 issued by the National Institute for the Mentally Handicapped, Andhra Pradesh, wherein it was advised for “*Psycho education to parents*”, to start *Tab. Risperidone* 1 mg/day, to start *Tab. Trihexyphenidil* 2 mg/day, if necessary only, if seen EPS. The said report dated 24.06.2013 also suggested mild improvement.

I have made some research on the effect of the medicines prescribed as mentioned here-in-above. I find that *Tab. Risperidone* prevents aggressive behaviourness of an autism person. From the prescription dated 11.04.2019 it is found that Sri Hritaban Das, son of the petitioner has been prescribed *Tab. Risperidone* and *Clonidine*. After some research, I find that *Tab. Clonidine* is helpful for patients with impulsive behaviour or hyperactivity.

6.11. It has come to fore that there is no specialized treatment meant for managing an autistic person. A person with autism conjointly needs to be managed. The parents were also adequately trained to manage the behavioural attitude of Sri Hritaban Das. Moreover, in the instant case, I find that the parents are doctors. They visited many specialized centers in India for various advisories to manage their son. On some thorough research made by this Court, it comes to fore that till today there is no treatment so that an autism person can be cured. Therefore, the management of such person is the prime consideration.

6.12. Furthermore, DEIC is only meant for detection of behavioural or attitude changes amongst the children as well as the persons from the age group ranging from 0 to 18 years. What this Court has understood after having some research that a person with autism needs to be managed or

controlled in their behavioural activities. Medications are given to control the aggressiveness and other abnormal behaviour of such person.

6.13. The question is whether the behavioural management of the son of the petitioner is possible if the petitioner is asked to serve Gomati DH at Udaipur?

I have taken into consideration that Gomati DH is only one hour and fifteen minutes journey from Agartala. The doctors serving in Gomati DH are provided with quarters which are adjacent to the hospital. It is not necessary to have a specialized center at any hospital for management of such autistic person. The autistic person may be treated by a Psychiatrist also. From the list of doctors as submitted by learned G.A., it is revealed that there are specialized doctors including Psychiatrists at Gomati District Hospital, as are available in AGMC & GBP Hospital, Agartala, the present place of posting of the petitioner. The competent authority has allowed the petitioner to visit her son in the afternoon for more than an hour to take care of her son.

6.14. The competent authority has decided to continue same facilities as the petitioner is enjoying at present to attend her son. The husband of the petitioner who is also a doctor can stay at Udaipur and can perform his duties at AGMC & GBP Hospital, Agartala without any sort of difficulty. So, there is no chance of disassociation or dislocation of Sri Hritaban Das from his parents. Learned G.A. has also submitted that the competent authority undertakes to co-operate with the petitioner in all respects considering the advice and modalities of treatment of Sri Hritaban Das. In this regard, learned G.A. has placed before this Court a communication made today itself (16.08.2024) by the In-charge, Director of Health Services,

Govt. of Tripura to the Medical Superintendent, District Hospital, Gomati, Udaipur. The said communication has been kept with the case record.

6.15. Now the question, as raised by learned senior counsel appearing for the petitioner whether the son of the writ petitioner would be deprived of providing “high support service” as defined under Section 2(l) of the RPWD Act and “reasonable accommodation” as defined under Section 2(y) of the RPWD Act? Keeping in mind the definition of high support service noted in the preceding paragraphs, I am of the opinion that the son of the petitioner will not in any way be deprived of being provided with high support service the writ petitioner is rendering towards her son at present at her proposed new place of posting at Gomati DH.

6.16. Since all facilities are available in Gomati District Hospital at Gomati District, there cannot be any hurdle to take her son to Udaipur so that the supports which she has been providing to her son would be continued. There is no question of any dislocation or disassociation. There is no question of experiencing a different environment. At present also both the parents perform their respective duties and responsibilities with some additional benefits provided to the writ petitioner to attend her 22 yrs. old son. There will be no deficiency in providing physical or psychological support to the son of the writ petitioner. In the instant case, it is not the claim of the writ petitioner that the respondents have allowed her to abstain from her daily routine duties at her present place of posting at AGMC & GBP Hospital. The nature of duties which she has been performing at present would remain same. So, there will not be any change in extending the support the petitioner now renders towards her son.

6.17. Another aspect to be considered that the transfer of the petitioner to Gomati District Hospital, Udaipur will interrupt the behavioural training of her son.

6.18. I have considered the submission of learned senior counsel appearing for the petitioner. In my opinion, the transfer and posting of the petitioner to Gomati DH at Udaipur will not in any way interrupt the behavioural attitude of her son for the reason that all specialized doctors are available in Gomati DH which have been discussed here-in-above.

6.19. The autism is not a disease, it is a disorder. There is distinction between disease and disorder. The autism is incurable since till today there is no specialized treatment to cure an autistic person. At the cost of repetition, I reiterate that an autistic person is only to be managed and controlled and for this, the doctors only prescribe medicines and also train the parents only to manage and control the behavioural attitudes of autistic persons. In the present case, the parents of the autistic child themselves are the doctors. Furthermore, keeping in mind the treatment facilities available at Gomati District Hospital and the distance between Agartala and Udaipur, I find that the posting of the petitioner to Gomati District Hospital, Udaipur will not in any way cause any additional sufferings which the petitioner and her husband suffer staying at Agartala presently.

This Court is also sympathetic to the condition of the son of the petitioner but, in my opinion, in such a nature of case, the Court has to maintain a balance between the public interest *vis-à-vis* the individual interest. It is asserted by learned G.A. that service of the petitioner is urgently needed at Gomati DH which has already been discussed in the preceding paragraphs of this judgment. After thoughtful and conscious

consideration of the documents and reports time to time issued by the specialized hospitals for mentally handicapped persons relating to management modalities of the son of the petitioner, I am of the opinion that the posting of the petitioner at Gomati DH will not in any manner invite any hindrance to actively manage the son of the petitioner. As I have already said that Gomati DH is situated only at a distance of 40-42 Kms. away from the Agartala city, the parents of Sri Hritaban Das can easily stay together and give adequate company to him if they both prefer to stay at Udaipur where the Gomati DH is situated considering the larger public interest. Having taken into consideration the nature of grounds tried to be projected by the petitioner in her efforts to desist the impugned transfer order, in my considered view, she is trying to take advantage of her son.

6.20. Another important aspect to be considered that the petitioner is not subjected to “routine” or rotational transfer as she has been at AGMC & GBP Hospital since 2013 and now with the establishment of Modern Dental Hospital at Agartala, in the considered view of this Court, the respondents most reasonably have thought it fit to utilize her service at a place wherefrom she can cater service to the people of 3(three) districts without causing any prejudice to the welfare and well-being of her son. Further, such transfer and posting, in my opinion, will not tantamount to any kind of discrimination as defined in Section 2(h) of the RPWD Act, relating to the service of the petitioner at her work place. That apart, the competent authority while re-considering the transfer and posting has reasonably accommodated the petitioner at Gomati DH keeping in view the objectives delineated in Sections 2(l), 2(r), 2(s) , 2(t), 2(y) and Section 58 of the RPWD Act, 2018.

6.21. In my ultimate analysis, I hold that a balance be maintained when fundamental and human rights coupled with the welfare and well-being, individual dignity and autonomy of both the care-giver and the dependent disabled person are adequately protected, then, in the context of the case, it would not be proper to complain of breach of the rights conferred upon such persons under various provisions of the RPWD Act. In the instant case, the facilities available at AGMC & GBP Hospital are equally available at Gomati DH. More importantly, the petitioner has not specified/identified any particular facilities or services that are available at AGMC & GBP Hospital but not at Gomati DH. So, in my opinion, while proposing the modification of the impugned transfer order to Gomati DH, the respondents have been able to maintain a balance between public interest and the personal interest. By striking this balance, in the unique circumstances of the present case as narrated here-in-before, governments can promote common good while respecting individual dignity and autonomy of the petitioner and her 22 yrs. old son deserve.

7. In light of above discussions and for the reasons recorded here-in-above, according to this Court, the proposed transfer and posting of the petitioner to Gomati DH, Udaipur from AGMC & GBP Hospital, Agartala in modification of the impugned transfer order does not call for interference.

Accordingly, the instant writ petition stands dismissed. The stay order passed on 18.12.2023 hereby stands vacated. Connected applications, if any, shall also stand disposed of.

JUDGE

Snigdha

**SAIKAT
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