

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.171/2024 with
MC (WPC) No.84/2024

Date of Order: 03.06.2024

Smti. Aitihun Marbaniang

..... Petitioner

Vs.

1. Union of India represented by the Secretary, Ministry of Health and Family Welfare Room No.201-D, Nirman Bhawan Pin-110011.
2. The Director, Central Government Health Scheme, Ministry of Health and Family Welfare R.K. Puram, New Delhi-110022.
3. The Additional Director, office of the Additional Director Central Government Health Scheme, Ministry of Health and Family Welfare Nongrim Hills, Shillong-793003.
4. The Chief Medical Officer, Central Government Health Scheme Wellness Centre No.2, Shillong-793001.
5. Miss. Phibawansuk Lyndem, Nursing Officer, Central Government Health Scheme Wellness Centre, Agartala, Tripura.

..... Respondents

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance

For the Petitioner : Ms. R. Kharshiing, Adv

For the Respondents : Mr. S. Pandey, Adv for R/1-4
Ms. S Shallam, Adv for R/5

ORDER

(Made by Hon'ble, the Chief Justice)

The present writ petition has been filed challenging the order of the Central Administrative Tribunal, Guwahati Bench passed in O.A.No.043/0044/2024 dated 15.05.2024.

2. The petitioner joined the services at CGHS, Wellness Centre No.1, Shillong on 10.11.2022 but due to her pregnancy, the transfer order was not given effect to. In the meantime, pursuant to the order of the Supreme Court dated 31.10.2013 arising in W.P. (Civil) No.82 of 2011 and in pursuant to the DoP&T's Office Memorandum dated 02.07.2015, the Under Secretary to the Government of India, Ministry of Health and Family Welfare had directed to constitute a committee to consider the transfer/posting as per the Office Memorandum dated 21.09.2021 in respect of staff working under CGHS across the country. According to the petitioner, she should be permitted to serve at Shillong for five years and the transfer is in violation of the contents and that she should not be disturbed or transferred to Wellness Centre, Agartala.

3. The respondents has took notice and stated that in terms of the guidelines in the Standard Operating Procedure (SOP), a person with the longest continuous stay in a particular place shall ordinarily be transferred first. That apart, it has no right to contend that the petitioner may be allowed to continue for five year.

4. According to the private respondent No.5, the petitioner has been working since 2008 onwards had been stationed at Wellness Centre No.1, Shillong and thereafter transferred to Wellness Centre No.2, Shillong in 2022. The petitioner has been in the same station for more than sixteen years. Learned counsel for the private respondent

No.5 contended that due to the illness of her mother and she had been making several representations to consider her case but the Department rejected her representations on the ground of non-completion of five years tenure. Learned counsel for the private respondent No.5 further contended that she had made a plea for who is stationing more than six years in Agartala but the Tribunal after hearing the parties has extracted the relevant portions of the SOP etc., and the same is extracted below as mentioned in paragraph 8 of the order of the Tribunal:

“The maximum tenure period for all posts sensitive as above mentioned for serving in a particular Wellness centre/dispensary will be considered as detailed above and for non-sensitive post is 5 years, it cannot be extended under any circumstances. The crucial date for determining the period of completion of tenure shall be 30th June and 31st December.”

5. The Tribunal having considered the plea of the parties that a person who was posted in a non-sensitive post for a maximum period of five years cannot be extended beyond that period. Admittedly, the petitioner is stationed at Wellness Centre No.1 and Wellness Centre No.2, Shillong for more than sixteen years. If the contention of the petitioner that she has been in Wellness Centre for only two years and she need not be disturbed is accepted then any person can be shifted from one centre to another centre in the same station and later on contends that he or she has been posted recently and the person has not been completed five years of service. The reason given by the petitioner that she is taken care of her child and also to look after an old aged

person at her residence, she may not be disturbed or transferred is not correct.

6. This Court while hearing the matter on 31.05.2024 expressed its view that the petitioner cannot insist that she should continue in the same post in Wellness Centre No.2, Shillong on the ground that she has been transferred from Wellness Centre No.1, Shillong to Wellness Centre No.2, Shillong only in 2022. The Apex Court in the decision reported at (1993) 1 SCC 148 in the case of **Rajendra Roy v. Union of India** and the relevant paragraph is extracted below:

“The order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score the order of transfer is not liable to be struck down. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer.

It may not be always possible to establish malice in fact in a straight-cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestion.”

7. From the above, it is very clear that transfer unless it smacks victimization or mala fide or colourable exercise of power or in violation of Rules, transfer order cannot be interfered with. Admittedly, the petitioner is working in Shillong station for more than sixteen years

and as has been laid down by the Supreme Court that when no ingredients pleaded or placed before the Court with material to interfere with the order of transfer.

8. The petitioner was given time to file an affidavit mentioning the joining time so that she may not be disturbed and she will make arrangements to join her new place of posting. An affidavit dated 31.05.2024 has been filed and paragraph 3 is extracted below:

“That I am willing to join my new place of posting at Agartala within 3 (three) months’ time from the date of the final judgment and order and I undertake to join my new place of posting at Wellness Agartala within 3 (three) months’ time from the date of the disposal of this instant writ petition. Hence, this Affidavit.”

9. In view of the above, since we find that there is no merit in the writ petition and the same is rejected. However, as prayed by the petitioner, three months’ time is granted from today to enable her to join the transfer place. In case the petitioner failed to join duty within three months as undertaken, the period of absence will be treated as “no work” “no pay” and apart from enabling the authority to initiate disciplinary proceedings against her. In case the petitioner is not working by absenting herself in the present place, she will not be entitled to wages. Leave, if any, available to the petitioner can be adjusted and the remaining period can be treated as “no work” “no pay”.

10. MC (WPC) No.84 of 2024 stands disposed of.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
03.06.2024
"*Lam* DR-PS"