

GAHC010137592024



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

Case No. : WP(C)/3509/2024

SMT. DEFOLA NAIDING
W/O SHRI JOYBESH WARISA, R/O VILL- DONGJEN RAJI, P.O./P.S.-
UMRANGSO, DIMA HASAO, ASSAM-788931

VERSUS

NORTH CACHAR HILLS AUTONOMOUS COUNCIL AND 2 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY (T), HAFLONG, DIST-DIMA
HASAO, ASSAM-788819

2:THE JOINT DIRECTOR OF HEALTH SERVICES
HAFLONG
DIST-DIMA HASAO
ASSAM-788819

3:THE ADDITIONAL CHIEF MEDICAL AND HEALTH OFFICER (F.W.)
HAFLONG
DIST-DIMA HASAO
ASSAM-78881

Advocate for the Petitioner : MR B D DAS, MR. D THAOSEN

Advocate for the Respondent : SC, NCHAC,

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

10.09.2024

1. Heard Mr. B.D. Das, learned Senior Counsel assisted by Mr. J. Lotha,

learned counsel for the petitioner and Mr. R.M. Das, learned Standing Counsel, North Cachar Hills Autonomous Council (NCHAC) for all the respondents.

2. By filing this writ petition the petitioner has sought for interference of this Court to the order dated 29.06.2024 (Annexure-2), by which she has been transferred from Umrangso FWSC to Semkhor FWSC with immediate effect. According to the petitioner, the FWSC in Umrangso is catering to about 20 villages having a population of about 2700 and there are only two nurses including the petitioner herself. The other nurse is a contractual Auxiliary Nurse Midwives (ANM) under the National Rural Health Mission, who has been working for the last 3 to 4 months. Whereas in Semkhor FWSC where she has been posted, there are already two ANMs and posting of the petitioner in addition to the already existing ANMs may not be in the public interest in view of the above need of sufficient hands in Umrangso FWSC. The further contention of the petitioner is that she has two minor daughters who are currently studying in Class-V and Class-X in Vivekananda Kendriya Vidyalaya, Umrangso which provides for CBSE course. However, in the new place of posting, i.e. Semkhor FWSC, there are no schools offering CBSE course and therefore, the education of her children is going to be effected.

3. Mr. B.D. Das, learned Senior Counsel submits that the petitioner has submitted two representations before the respondent no.3 on 02.07.2024 and 08.07.2024 and the said authority during pendency of the writ petition has disposed of the representation dated 02.07.2024 by rejecting the same. He however submits that the fact of the education of the children likely to be effected in view of non-availability of schools having CBSE course in the new

place of posting and also the existence of already ANMs there has not been considered by the authority concerned. He therefore submits that the respondent authorities may be directed to reconsider the representation of the petitioner.

4. Mr. R.M. Das, learned Standing Counsel, NCHAC, on the other hand submits that the petitioner has already joined the new place of posting and also the representation of the petitioner has already been considered and rejected. He further submits that the petitioner has been serving on attachment basis in Umrangso since the year 2017 and she does not have any indefeasible right to continue there. He therefore submits that the writ petition has no merit and should be dismissed.

5. I have heard the submissions made by the learned counsels for the rival parties and have perused the materials available on record.

6. The Apex Court in the case of ***Director of School Education, Madras & Others vs. O. Karuppa Thevan & Another***, in the given facts of that case is that the transfer of the employee concerned during the mid-academic term of children of the employee is one factor which should be considered by the authority concerned unless there are other factors such as exigency of service, while issuing the transfer order. In the present case, the petitioner has not only made a plea that she is the only regular nurse who is posted at Umrangso and that there are already two ANMs working in Semkhor FWSC but also has contended the non-availability of school having the CBSE course at Semkhor FWSC. It is no doubt through the transfer and posting is an incident of service

and no particular employee will have the right to continue in a particular place indefinitely. Nevertheless, having regard to the projection made by the petitioner on the two grounds as noticed hereinabove, this Court deems it appropriate to direct the respondent authorities to once again re-visit the transfer and posting order of the petitioner at Umrangso FWSC. Let a review be undertaken within a period of 6 (six) weeks from the date of receipt of a certified copy of this order and the respondent authority concerned shall pass appropriate and reasoned order.

7. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant