

GAHC010162192024



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

Case No. : Review.Pet./151/2024

DIGGOSH KEMPRAI
S/O- CHITTA RANJAN KAMPRAI, R/O- HAFLONG, P.O. AND P.S. HAFLONG,
DISTRICT- DIMA HASAO, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
THROUGH- THE PRINCIPAL SECRETARY, TO THE GOVERNMENT OF
ASSAM, HEALTH AND FAMILY WELFARE DEPARTMENT, DISPUR,
GUWAHATI- 781006

2:THE MISSION DIRECTOR
NATIONAL HEALTH MISSION
ASSAM
SAIKIA COMMERCIAL COMPLEX
SRINAGAR
G.S.ROAD
CHRISTIAN BASTI
GUWAHATI- 781005

3:THE JOINT DIRECTOR OF HEALTH SERVICES
ASSAM CUM MEMBER SECRETARY
DISTRICT HEALTH SOCIETY
KARIMGANJ
P.O. KARIMGANJ
DISTRICT KARIMGANJ
ASSAM

4:THE JOINT DIRECTOR OF HEALTH SERVICES
ASSAM CUM MEMBER SECRETARY
DISTRICT HEALTH SOCIETY
DIMA HASAO

P.O. HAFLONG
DISTRICT- DIMA HASAO
ASSAM

5:THE PRINCIPAL SECRETARY
N.C. HILLS AUTONOMOUS COUNCIL
HAFLONG
DISTRICT- DIMA HASAO
ASSAM

6:THE EXECUTIVE MEMBER
IN-CHARGE HEALTH
FAMILY WELFARE AND NATIONAL HEALTH MISSION
N.C. HILLS AUTONOMOUS COUNCIL
HAFLONG
DISTRICT- DIMA HASAO
ASSAM

7:SMTI. DIKSHA SARMA
PHYSIOTHERAPIST
KARIMGANJ CIVIL HOSPITAL
P.O. KARIMGANJ
DISTRICT- KARIMGANJ
ASSA

Advocate for the Petitioner : MR. J LASKAR,

Advocate for the Respondent : SC, HEALTH, SC, N C HILLS

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 25.10.2024

- 1.** Heard Mr. J, Laskar, learned counsel for the petitioner. Also heard Ms. A. Bora, learned Standing Counsel, National Health Mission (NHM) and Mr. R. M. Das, learned Standing counsel for the NC Hills.
- 2.** By this Review Petition, the petitioner has sought for a review of the order dated 26.02.2024 passed by this Court WP(C)/994/2024 with the following

directions:-

“This writ petition is filed by the petitioner seeking a direction to the respondent authorities to consider the request for transfer and posting of the petitioner in his capacity as a Physiotherapist from Karimganj Civil Hospital to Halflong Civil Hospital. Learned counsel for the petitioner referring to the representation dated 29.09.2023 (Annecure-5 to the writ petition) filed by the petitioner submits that he has sought for transfer back to Halflong on the ground that his old aged parents are in constant need of medical care and attention and he being the only son in his absence there is none to look after them. Learned counsel for the petitioner has also referred to the communication dated 22.09.2023 issued by the Executive Member, In-charge Health, Family Welfare & NHM, North Cachar Hills Autonomous Council, Halflong, who has recommended the transfer of the petitioner back to Halflong. Similar communication has been issued by the Principal Secretary, NC Hills Autonomous Council, Halflong on 07.12.2023 but in spite of such communications, the authorities have not passed any order in his representation dated 29.09.2023 stated to have been filed before the respondent no.2 i.e. the Mission Director of NHM.

Ms. K. Bora, learned Standing Counsel, NHM has placed before the Court the transfer policy of the NHM issued by the communication dated 21.08.2012.

As per the said transfer policy, in respect of transfer on request all applications are to be submitted in the prescribed format, which is available in the portal of NHM and which is required to be downloaded. As per the said policy the request made in any other format will not be considered.

Learned Standing Counsel, NHM submits that the representation of the petitioner is not in the prescribed format and perhaps that is the reasons as to why the representation of the petitioner has not yet

been considered.

Learned counsel for the petitioner submits at this stage that if that be so then he be permitted to resubmit his application in the prescribed format and such submission is not objected to by the learned Standing Counsel, NHM.

In view of such submission made by the learned counsel for the writ petitioner, the writ petition stands disposed of without expressing anything on merit permitting the writ petitioner to resubmit his application on the prescribed format as per the transfer policy mentioned by the NHM by their communication dated 21.08.2012. Once such application is submitted in the prescribed format, the respondent authority, namely, the respondent no.2 will consider the application sympathetically and pass necessary order intimating the same to the petitioner. The application/representation, if so submitted in the prescribed format, will be disposed of within 30 (thirty) days from the date of receipt of such copy of the application along with a certified copy of this order.

Writ petition stands disposed of in terms of the above."

3. The petitioner is before this Court seeking a direction that his application for consideration of transfer and posting as a Physiotherapist in Halflong Civil Hospital from Karimganj Civil Hospital was not considered.

4. During the hearing of the writ petition the learned Standing Counsel NHM submitted before the Court that on instructions the application was not considered because the same was submitted offline. As per the transfer policy, all such applications are required to be submitted online.

5. In view of the submissions of the learned Standing Counsel for the Department, the writ petition was closed permitting the petitioner to resubmit his application through the online portal of the NHM.

- 6.** The petitioner has filed this review petition on the ground that the portal of the NHM is not operating and consequently he could not file the said application as directed and permitted by the Court and, therefore, sought for review of the order.
- 7.** The Standing Counsel for NHM appearing for the respondent was duly permitted time to obtain the instructions in this regard.
- 8.** Today, when the matter is called up, the Standing Counsel, NHM has placed before this Court the instructions dated 03.10.2024.
- 9.** As per the said instructions, learned Standing Counsel, NHM submits that transfer of all Service Delivery and Programme Management staff including Physiotherapist without replacement are pending by the Authority except Mutual Transfer applications. The portal for submission of transfer application has been closed. However, offline applications for transfer are still being accepted at State HQ, NHM, Assam and in due course of time, transfer applications which are feasible for transfer without hampering public services may be allowed by the authority. Any order that are issued regarding transfer is uploaded in the NHM, Assam website.
- 10.** A perusal of the instructions placed before this Court reflects that the Department is presently accepting transfer applications in the Offline mode and the portal has been closed.
- 11.** Under such circumstances, it is seen that the order dated 26.02.2024 passed by this Court in WP(C) No. 994/2024 and the writ petition was closed on the basis of submissions made by the learned Standing Counsel, NHM that it is only through online mode that the applications for transfers are accepted by the

NHM and as such the writ petitioner was directed to submit his application for transfer through the online portal of NHM. This position as apprised before this Court by the Standing Counsel, NHM earlier appears to have not been followed by the NHM Department and for which the writ petitioner cannot be faulted with.

12. The instructions placed before this Court today also does not reflect as to the date from which the NHM has decided to close the portal for accepting application for transfer in the online mode. In the absence of any specific dates referred to in the instructions placed before the Court or in the absence of any such dates on the basis of which submissions are made before the Court to reflect the date from which the NHM has stopped accepting online applications for transfer, it will have to be presumed that till at least 26.02.2024 when WP(C) No. 994/2024 was disposed of, the NHM's policy of accepting online applications was still in place. This order was passed in the presence of the learned Standing Counsel, NHM and therefore, non-compliance of this order may lead to contumacious action against the respondents from this Court.

13. The instructions also do not reveal as to when this order was brought to the notice of the Mission Director, NHM and when the decision to change the policy to accept transfer applications in physical form and not in online form was taken and/or when the provision in the NHM portal for submission of transfer application in the online mode was closed or suspended. There is no explanation as to why the direction of this Court was not complied with. Such conduct according to the Court *prima facie* appears to be contumacious.

14. Be that as it may, considering that fresh instructions placed before the Court which reflects that the NHM has resorted for acceptance of offline

applications for transfer, this Court considers that without proceeding further in this regard, it will be sufficient to modify the order dated 26.02.2024 passed in WP(C) No. 994/2024 to the extent that the petitioner will now be permitted to submit his application in the Offline mode before the NHM authority.

15. The said application may be filed by the petitioner in physical form before the Mission Director, NHM within two weeks from today along with a copy of this order and thereafter, the same will be duly considered and necessary orders on the said application be passed by the NHM authority. The said application will be filed two weeks shall be considered and disposed of within a further period of two weeks therefrom.

16. To that extent, the order dated 26.02.2024 passed in WP(C) No. 994/2024 stands modified.

17. The order passed today shall be read together with the order dated 26.02.2024 passed in WP(C) No. 994/2024 with the modification that the petitioner is permitted to submit his application in physical form.

18. The review petition is, accordingly, disposed of in terms of the above order.

19. This Court expresses strong displeasure in the manner the directions contained in the order dated 26.02.2024 passed in WP(C) No. 994/2024 were not carried out by the respondent authorities. The change in policy was not apprise to the Court on the date when the WP(C) No. 994/2024 was disposed of by order dated 26.02.2024. The application of the petitioner was required to be considered as per the policy of the respondents as it then existed on the date when the order dated 26.02.2024 was passed disposing of the WP(C) No.

994/2024. In subsequent change in policy could not be grant for non-compliance of the directions of this Court, if indeed the directions contained by this Court could not have been carried out in the manner as directed, the respondents were required to bring it to the notice of this Court by taking proper legal records. However, the same was not done necessity the petitioner to approach this Court again by filing instant review petition. However, considering the submissions of the respondent counsel that the petitioner can be permitted to file his representation in the physical form.

20. This writ petitioner stands closed in terms of the directions above.

21. Accordingly, in view of the above, the review petition stands disposed of. The petitioner shall file an application within 2(two) weeks from the date of receipt of the certified copy of this order and thereafter, the concerned respondent authorities shall consider and disposed of the same within a further period of 2(two) weeks from the date of receipt of the application submitted by the petitioner.

22. Copy of the instructions received is kept in the case record.

JUDGE

Comparing Assistant