

GAHC010185822024



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

Case No. : WP(C)/4632/2024

MUSTAQUE ALI
S/O- LATE CHANDMAMUD ALI, , VILL- BALADMARI, NABIN NAGAR, P.O.-
BALADMARI CHAR, P.S. GOALPARA, DIST.- GOALPARA (ASSAM), PIN-
783121

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF HEALTH AND WELFARE, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 36

3:THE JOINT DIRECTOR OF HEALTH SERVICES
GOALPARA
DIST.- GOALPARA
PIN- 783121

4:THE DISTRICT COMMISSIONER
GOALPARA
PIN- 783121

5:THE S.D.M AND H.O.
MORNOI B.P.H.C.
P.O. MORNOI
DIST.- GOALPARA
PIN- 78312

Advocate for the Petitioner : MR. T J MAHANTA, MS. T BEGUM,MR. A ROSHID

Advocate for the Respondent : SC, HEALTH, GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 10-09-2024

Heard Mr. T.J. Mahanta, learned Sr. counsel assisted by Ms. T. Begum, learned counsel for the writ petitioner. Also heard Ms. S. Sarma, learned standing counsel, H&FW Department, Assam appearing for the respondent Nos. 1 to 3 and 5. Ms. M. Bhattacharjee, learned Addl. Sr. Govt. Advocate, Assam is present on behalf of respondent No. 4.

The writ petitioner herein, who is holding the substantive post of Lower Division Assistant (LDA) in the Jaleswar Model Hospital, Jaleswar under Goalpara district, was attached to the Mornoi BPHC, Mornoi, Goalpara, in which post he has been discharging his duties. However, by the order dated 02-09-2024, the attachment of the writ petitioner was modified and he was asked to report for duties in his original place of posting, i.e. Jaleswar Model Hospital, Jaleswar, Goalpara. Aggrieved by the said order, the petitioner is before this Court by filing the instant writ petition.

By referring to the materials available on record, Mr. Mahanta has submitted in his usual fairness that although by the impugned order, the writ petitioner has been posted within the same district, yet, since the petitioner has a minor daughter, who is suffering from mental retardation, he is required to look-after his daughter personally, on day to

day basis. His minor daughter is studying in a school at Mornoi. Therefore, if the petitioner is now asked to report for duty at Jaleswar, which is about 70 k.m. away from Mornoi, this would cause serious disruption in the family life of the petitioner. Mr. Mahanta has further submitted that on 05-09-2024, the petitioner has submitted a representation before the respondent No. 2 ventilating his grievance in the matter. However, no action has been taken on the said representation till date, as a result of which, the petitioner has been compelled to approach this Court.

It is trite that the scope of interfering with an order of transfer by the Court is very limited, more so, when the transfer is effected within the same district. Moreover, by the impugned order, the petitioner is being brought to his original place of posting by withdrawing the attachment.

It is settled law that interference with a transfer order would be permissible only if it is established to be a case of arbitrariness, violation of statutory rules or *malafide* action. The petitioner's case evidently, does not come within any of the aforesaid parameters. Be that as it may, since the petitioner has expressed personal difficulty in reporting at Jaleswar on the grounds mentioned in the representation and he has already submitted a representation before the concerned authority on 05-09-2024, this Court is of the opinion that such representation submitted by the petitioner deserved due consideration by the concerned authorities.

As such, without expressing any opinion on the merit of the claim, this writ petition is disposed of by directing the respondent No. 2 to consider the representation submitted by the petitioner. Whatever be the outcome of the process, the petitioner be intimated

about the same in writing.

Until such time, an order is passed on the representation of the petitioner, *status quo*, as regards the place of posting of the petitioner, as on date, be maintained.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant