

GAHC010201692024



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

Case No. : WP(C)/4984/2024

MOMTAZ BEGUM
W/O- NUR HUSSAIN,
R/O- CHANDARIYA PATHAR,
GOALPARA TOWN,
P.O- BALADMARI,
P.S AND DIST- GOALPARA, PIN-783121,
ANFD PERMANENT R/O- KALARDIA,
DIST- BARPETA, ASSAM, PIN0781308

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HEALTH AND FAMILY WELFARE DEPTT. DISPUR, GUWAHATI-06

2:DIRECTOR OF HEALTH SERVICES
ASSAM

HENGRABARI
GUWAHATI-36
P

3:DISTRICT COMMISSIONER
GOALPARA
ASSAM

4:JOINT DIRECTOR OF HEALTH SERVICES
DHUBRI
ASSAM

5:JOINT DIRECTOR OF HEALTH SERVICES
DHUBRI
ASSAM

6:SUPERINTENDENT
200 BEDDED CIVIL HOSPITAL GOALPARA
ASSA

Advocate for the Petitioner : MR. DITUL DAS, MS TINLUNG

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

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date :25/09/2024

Heard Mr. D. Das, learned counsel for the writ petitioner. Perused the averments made in the writ petition. Also heard Mr. D. Borah, learned Standing Counsel, Health and Family Welfare Department, Assam, appearing for the respondent nos. 1, 2, 4,5 & 6 and Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam, appearing for the respondent no. 3.

The instant writ petition has been filed assailing the transfer order dated 18/09/2024, by means of which, the petitioner, who is presently serving as Staff Nurse, posted in the Maternity Ward of Civil Hospital, Goalpara, has been transferred and posted in the same capacity in the establishment of Joint Director of Health Services, Dhubri.

The sole ground on which the petitioner has approached this Court is that her minor son, who is a student of Class-IX, is in his mid-academic session and if the petitioner is compelled to move out of Goalpara at this stage, the same would cause serious prejudice to the academic interest of her son. Mr. Das submits that his client is ready and willing to move out to Dhubri at the end of the academic session. It is also the submission of the petitioner that her husband is posted at Barpeta District as a School Teacher and, therefore, if the transfer order is implemented, her son cannot continue with his studies at Goalpara.

Responding to the above, Mr. D. Borah, learned Standing Counsel, Health and FW Department, Assam, submits that as many as 4 (four) Nurses have been transferred by the impugned order, in the exigencies of public service. Since the petitioner has remained in Goalpara since the year 2015, her transfer is wholly justified. It is also the submission of Mr. Boah, that the petitioner has already been released from her post at Goalpara.

It is the settled law that transfer is an incident of service. Ordinarily, the jurisdiction of the Writ

Court to interfere with an order of transfer would be extremely limited. Unless an order of transfer is shown to have been issued in violation of the statutory provisions or in *mala fide* exercise of administrative power, the Court would not interfere with an order of transfer.

Admittedly, the petitioner's case does not come under any of the aforesaid two parameters. However, the grievance of the petitioner pertaining to the potential disturbance of the academic career of her son also cannot be completely brushed aside without properly considering the same.

Whether the ground is sufficient to interfere and/ or modify the impugned order of transfer or not, is a matter which the departmental authorities would be best suited to consider.

Under the circumstances, without expressing any opinion on the merit of the claim of the petitioner, this writ petition is being disposed of by granting 3 (three) days time to the petitioner w.e.f. today, to submit a representation before the Commissioner and Secretary to the Government of Assam, Health and Family Welfare Department, Assam, ventilating her grievance, in the matter. If such a representation is submitted by the petitioner within three days from today by enclosing a certified copy of this order, the same be looked into and a suitable order be passed therein, as expeditiously as possible, preferably within a period of 7 (seven) days thereafter.

Till such time, the aforesaid action is completed, no coercive action be taken against the petitioner.

With the above observations, the writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant