

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 440 of 2015**

Smt. Shishir Marawi W/o Shri Rajesh Marawi, Aged About 40 Years
A.N.M. (Auxiliary Nurse Midwife) / Mahila Swasthya Karyakarta, Up -
Swasthyakendra Sarangurkala, Samudayik Swasthyakendra Bodla,
Post Sarangpurkala, Tahsil & Police Station Bodla, District Kabirdham
Chhattisgarh

---- Appellant**Versus**

1. Smt. Neeti Varma W/o Shri Dharendra Verma, Aged About 30 Years
Bahu - Uddeshyia Swasthya Karyakarta (Mahila), Up Swasthyakendra
Jhalmala, Vikas Khand Bodla, Tahsil, & Police Station Bodla, District
Kabirdham, R.O. Village Uslapur Post Pondi Tahsil & P.S. Bodla,
District Kabirdham Chhattisgarh
2. The State Of Chhattisgarh Through The Collector, District Kabirdham
(Chhattisgarh)
3. The Chief Medical & Health Officer, District Kabirdham, (Chhattisgarh)

-----Respondents

For Appellant:	Shri UN. Awasthy, Senior Advocate along with Smt Raksha Awasthy, Advocate.
For Respondent No.1:	None.
For Respondents No.2 & 3/State:	Shri B. Gopa Kumar, Deputy Advocate General.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Navin Sinha, Chief Justice****10/12/2015**

1. Despite repeated adjournments, no counter affidavit has been filed by the official Respondents and no one appears on behalf of Respondent No.1 despite valid service of notice.
2. We are not inclined to adjourn the matter any further and take up the appeal for final disposal at the admission stage itself for which we had given more than sufficient indication in our order dated 19.11.2015.
3. The present appeal arises from order dated 17.8.2015 in W.P.(S) No.2862/201. The Learned Single Judge declined to interfere with the

transfer of the Appellant from one block to another in the same District opining that she had a remedy to prefer a representation before the Divisional Commissioner who would be in a better position to assess the entire situation warranting transfer of the Appellant.

4. Learned Senior Counsel for the Appellant submits that the Appellant had worked in a tribal area for about 18 years and according to the Government circulars, she made a request for voluntary transfer to a place close to where her husband was working. In pursuance to the same, she was transferred to Community Swasthya Kendra, Bodla, District Kabirdham on 30.6.2014. She joined on 25.7.2014. As soon as 20.7.2015, she was transferred from Bodla block to the Sub Health Center, Jhalmala, though in the same block, at a considerable distance of 90 kms. Urging the transfer to be mala fide, in the facts of the case to favour Respondent No.1 who has never worked in a tribal area, it was contended that even if transfer be an incidence of service, arbitrary exercise of powers in the given facts of a case may vitiate it. Learned Senior Counsel highlighted three aspects,

- a) the transfer to Bodla was on the request of the Appellant herself,
- b) she had worked for 18 years in a tribal area,
- c) the transfer from Bodla to Jhalmala was barely within a year with no special administrative exigency cited for the purpose,
- d) the difference between the two blocks is 90 kms.

5. Learned Counsel for the State submitted that the Learned Single Judge has already granted liberty to the Appellant for ventilating her grievances before the Divisional Revenue Commissioner. The Appellant on her own showing has preferred a representation before the Commissioner on 14.8.2015. Directions may be given to dispose the same in accordance with

law.

6. We have considered the submissions on behalf of parties.

7. Transfer and postings are normally incidence of service and the Courts are generally reluctant and loath to interfere in the matters as the administrator is the best judge with regard to its own requirements and utilization of the employees. But it is not an invariable rule of complete exclusion of the jurisdiction under Article 226, merely because it may be a matter relating to transfer. In a particular case, depending on the facts and circumstances of the same, if the Court is satisfied of arbitrariness and which will include a case for drawing adverse inferences, relief cannot be denied merely for the reason that it related to a transfer matter.

8. On 19.11.2015, we had not only indicated that we shall not adjourn the matter further for a counter affidavit but had also observed that nothing precluded the Commissioner from disposing the Appellant's representation by a reasoned and speaking order. Neither has counter affidavit been filed nor has the Commissioner disposed the representation. Even before the Writ Court no counter affidavit had been filed.

9. The Appellant was transferred to Bodla at her own request after having served for 18 years in a tribal area. Obviously, the authorities were satisfied with the grounds that may have been mentioned in her representation with regard to a place of posting close to where her husband resides. No reasons have been assigned for reconsideration of the decision at such short interval. It cannot be said that a Government servant cannot be transferred within a period of one year of posting. In extraordinary circumstances, for reasons specified, the transfer could no doubt be effected. But if a challenge is laid out to the same, the Respondents owe a duty to furnish the reasons even if it is not mentioned in the order of transfer as is the case presently. No reasons have therefore been placed before the Court either from the order of transfer

or from a counter affidavit of the extraordinary circumstances under which the transfer was necessitated within a period of one year. This assumes importance in view of the background of the submission made by the Appellant that it has been done to unduly favour Respondent No.1, who has never worked in a tribal area, and which is reinforced by her failure to appear despite valid service of notice coupled with the Commissioner's not disposing the Appellant's representation also. Had the transferred place of posting been at a distance of barely 10-12 kms from the present place of posting at Bodla, we may have declined the discretionary jurisdiction under Article 226, but we do consider a distance of 90 kms to be considerable warranting invoking of our jurisdiction.

10. In the peculiar facts and circumstances of the case attributable to the official Respondents themselves, drawing an adverse inference, we set aside the order dated 20.7.2015 transferring the Appellant from the Sub Health Center, Sarangpurkala, block Bodla to Sub Health Center, Jhalmala but without prejudice to the administrative rights of the official Respondents afresh in accordance with law.

11. The appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE