

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2654 of 2016

Dr. Kamini Ray W/o Kundan Kumar Ray, Aged About 33 Years
Presently Working As Block Medical Officer At Community Health
Center Wadrafnagar, P.S. Basantpur Tahsil, Wadrafnagar,
District Balrampur, Ramanujganj C.G. ---- **Petitioner**

Versus

1. State Of Chhattisgarh Through: Secretary, Department Of Health
And Family Welfare Mahanadi Bhawan, Mantralaya, Capital
Complex, Naya Raipur, District Raipur, (Chhattisgarh)
2. The Collector, Balrampur- Ramanujganj, District Balrampur-
Ramanujganj, (Chhattisgarh)
3. The Chief Medical And Health Officer, District Balrampur-
Ramanujganj, (Chhattisgarh)
4. Dr. Govind Singh, Working As Medical Officer At Community
Health Center Wadrafnagar, P.S. Basantpur, Tahsil Wadrafnagar,
District Balrampur Ramanujganj, (Chhattisgarh) --- **Respondents**

For Petitioner	:	Shri A.K. Yadav, Advocate
For State	:	Shri D.R. Minj, Dy. G.A.
For Respondent No.4	:	Shri Sanjay Agrawal with Ms. Reena Singh, Advocate

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

20/01/2017

Heard.

1. The transfer order dated 24.06.2016 is under challenge on the ground that the petitioner has been transferred only to accommodate respondent No.4.
2. Learned counsel for the petitioner submits that while petitioner and respondent No.4 both were working under Community Health

Centre at Wadrafnagar, an order of transfer of respondent No.4 was passed on 07.05.2016 transferring him to District Malaria Office where respondent No.4 was not inclined to proceed and he avoided one way or the other. On 21.06.2016, the Collector sent a memo to the Secretary of the Department of Health Family Welfare for taking disciplinary action against respondent No.4. However, three days thereafter, the impugned order came to be passed by which the petitioner has now been transferred from Wadrafnagar to District Hospital at Balrampur on a fabricated ground that there is no lady doctor in the district hospital. It is submitted that the impugned order amounts to attachment which is not permissible under circular dated 04.06.2001. Secondly, it is also contended that the posting, in fact, amounts to transfer from Wadrafnagar to Balrampur, therefore, it being a case of transfer and there being a ban operative, under transfer policy dated 11.06.2016, the petitioner could be transferred only by process of coordination. Therefore, the Collector had no authority to direct transfer of the petitioner. Lastly it is submitted that now, during the pendency of this petition, another lady doctor has been posted in the Government Hospital. Therefore, there is no longer any administrative exigency to post the petitioner at the District Hospital Balrampur. He also submits that the Collector, otherwise, has no authority to transfer a Class -II Gazetted Officers in view of transfer policy dated 11.06.2016. During transfer season from 15.06.2016 to 15.07.2016, the Collector could transfer only Class-III and Class-IV employees that too with the approval of the Incharge minister of the District. After that period, the Collector has no power to transfer.

3. On the other hand, learned State counsel submits that transfer of the petitioner is on administrative exigency. He submits that the operative reason for transfer of the petitioner from the present place of posting to District Hospital is that in the District Hospital, there is no lady doctor. He submits that as far as the contemplation of disciplinary action against respondent No.4 is concerned, that is a matter pending consideration before the competent authority in view of letter dated 21.06.2016 of the Collector but that does not mean that the petitioner could not be subjected to transfer. It is next contended that the transfer

policy only provides for transfer during transfer season and other connected matters, however, the State Government has been issuing various orders from time to time and one of such order dated 10.12.2014 relating to transfer and posting of officer in the Health Department for rationalization of medical officers and other paramedical staff. He submits that this circular is applicable whenever there is need arising for posting of paramedical staff and medical officers for rationalization which is intended to cater to the needs of the hospital, dispensary working under the Health Department as Government. The petitioner was sent to District Hospital under this circular of the Government, the Collector has been empowered. It is also submitted that present is not an order of attachment because the petitioner is being transferred to work and not to sit idle without any vacant post to accommodate her. There is a vacant post of the medical officer against which the petitioner has been transferred, therefore, it is not an attachment.

4. Transfer orders shows that the petitioner has been transferred from Wadrafnagar to District Hospital Balrampur because there is no lady doctor in the District Hospital. The petitioner could not dispute this fact that at the time when the transfer order was passed, there was no lady doctor working in the District Hospital. The place where the petitioner is being transferred, is a district hospital located in the District Headquarter at Balrampur. Therefore, if there is no lady doctor working in the district hospital and for that reason, the petitioner, who is a lady doctor, is chosen for transfer, no fault can be found with the transfer on such administrative exigency.

5. As far as challenge to the jurisdiction of the Collector is concerned, circular dated 10.12.2014 has been issued by the Health Department which confers power on the Collector to transfer paramedical staff and medical officer within his district from one hospital/dispensary to the other as a measure of rationalization. The transfer of the petitioner is made only to provide a lady doctor in the Government Hospital at the district headquarter. Therefore, the argument that the Collector does not have power to transfer the Class -II

Gazetted employee or that he has no power to transfer except in the manner prescribed under transfer policy dated 11.06.2016 and that to only from 15.05.2016 to 15.06.2016, cannot be accepted.

6. Transfers do not affect any employee's terms and conditions of service. The transfer is an incident of service. The Government issues transfer policy from time to time to regulate its own affair of transfer. Unless the transfer is shown to be vitiated by illegality or malafide or that the authority who passed the order does not have jurisdiction or if it is demonstrated to the Court that in a given case, due to exceptional circumstances, the employee would be suffering serious hardship, normally transfer orders are not interfered with by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

7. The allegation that the transfer has been made in order to accommodate respondent No.4, does not appeal to this Court. May be that respondent No.4 was transferred to District Malaria office but he was not prepared to join and Collector has already sent communication for initiating disciplinary action, it does not have any connection with requirement of a lady doctor in District hospital in the District Headquarter. May be that on account of requirement of a lady doctor in the Government Hospital in the District Headquarter and shifting of the petitioner, the official respondents might have thought that for the time being, respondent No.4 may be continued at Wadrafnagar wherefrom he was earlier transferred vide order dated 0705.2016. What action should be taken against respondent No.4 for non compliance of the transfer order and violating the Government instructions and dereliction in performance of duties, is a matter to be considered by the Government but that would not give the petitioner a ground to challenge her own transfer to the District Headquarter Hospital because at the time when the order was passed, there was no lady doctor in the district hospital.

8. The submission that, later on, a lady doctor has been posted at District Hospital at Balrampur, would not give the petitioner ground to

challenge order of transfer. The Correctness and validity of the order is to be judged on the basis of the material available on the date of passing of the order. It goes without saying that it shall always be open for the competent authority to take into consideration subsequent circumstances. As far as this Court is concerned, I am not inclined to interfere with this matter.

9. With the aforesaid observations, this petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge