

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21379 of 2018

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Arti Kumari, wife of Sri Mithilesh Kumar Singh of Shashi Palace, Ram Krishna Avenue (Nala Road), P.S. Kadamkuan, Town & Distirct Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Additional Secretary, Department of Health, Government of Bihar, Patna.
3. Director-in-Chief, Health Services, Bihar, Patna.
4. The Superintendent, Government Ayurvedic College Hospital, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Banwari Sharma, Advocate
		Mr. Shiv Kumar, Advocate
For the Respondent/s	:	Mr.Kamlesh Kishore, AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 16-04-2019

Heard the counsel for the parties.

2. The petitioner, who is Nurse Grade-A and has been promoted to the post of Matron is aggrieved by the order of transfer dated 08.10.2018 contained in Memo No. 982 (6) issued under the signature of the Director-in-Chief, Health Services, Bihar, Patna (respondent No. 3) whereby the services of the petitioner has been handed over to the Civil Surgeon, Patna for him to post her at an appropriate place according to the requirement.

3. It is the case of the petitioner that in view of the



Circular of the Health Department of the year 1992, a person cannot be transferred outside the cadre. The issue with respect to promotion to higher post in the cadre of Health services has been decided by a Bench of this Court in Md. Kalimullah & Ors versus The State of Bihar & Ors, 1994 (1) PLJR-757 wherein it has categorically been held that even on promotion, the cadre of employee in the Health Department does not change and if the rules do not permit any inter-cadre transfer, the same has to be adhered to.

4. The petitioner, in the aforesaid instance, who was posted in Government Ayurvedic Hospital, Patna has been transferred without indicating the place of transfer but giving her services to the disposal of the Civil Surgeon, Patna to be posted according to the need of the situation and as desired by the Civil Surgeon, Patna.

5. The petitioner is a Nurse Grade-A and she can only be transferred to a government hospital anywhere in the State of Bihar.

6. With the aid of the counter affidavit, the learned counsel for the State has sought to defend the aforesaid



order on the ground that under Clause-VI of the Rules of 1992, which has been referred to in the present writ petition, there is a provision for transferring any person anywhere in the State, even beyond the cadre, under special circumstances on administrative grounds but only after taking the approval of the government. The order impugned does not refer to any such facts viz. special condition and the approval of the State before transferring the petitioner outside the cadre and placing her services at the disposal of the Civil Surgeon, Patna.

7. For the aforesaid reasons, the order of transfer, so far as it relates to the petitioner, cannot be sustained in the eyes of law.

8. The petitioner is therefore directed to make a representation before the Director-in-Chief, Health Services, Bihar, Patna (respondent No. 3) along with a copy of this order within a period of two weeks from today. Should such a petition be filed, the Director-in-Chief, Health Services, Bihar, Patna (respondent No. 3) shall, after going through the rules with regard to the transfer of the petitioner and



other similarly situated employees, take a decision and pass a reasoned order in accordance with law within a further period of four weeks thereafter.

9. Till such time, the order of transfer with respect to the petitioner shall remain in abeyance.

10. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19/04/2019

