

HIGH COURT of CHHATTISGARH, BILASPUR

Judgment reserved on 19.11.2019

Judgment pronounced on 28.11.2019

WA No. 485 of 2019

(Arising out of order dated 04.10.2019 in WPS- 8111 of 2019)

- Smt. Sangeeta Singh, W/o Shri Ashutosh Singh, Aged About 42 Years Superintendent At State Resources And Rehabilitation Center, Raipur, District Raipur, Chhattisgarh, R/o H-8, Near Anita Heights, Bhawna Nagar, Shankar Nagar, Raipur, District Raipur, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh through the Secretary, Social Welfare Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh
2. The Under Secretary, Chhattisgarh State, Social Welfare Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Atal Nagar, Raipur, District Raipur, Chhattisgarh
3. The Director Social Welfare Directorate, Raipur, Chhattisgarh
4. Collector Raipur, District Raipur, Chhattisgarh

-----Respondents

For Appellant	: Shri Dharmesh Shrivastava, Advocate
For Respondents/State	: Shri Sudeep Agrawal, Deputy Advocate General

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. Aggrieved by an Order dated 04.10.2019 in WPS- 8111 of 2019 passed by the learned Single Judge in which the Writ Petition filed by the appellant challenging her transfer from State Resources and Rehabilitation Centre, Raipur to Office of Deputy Director and Orthopaedic Handicapped Child Home, Bastar was dismissed.

2. Facts of the case are that the appellant was working as Upper Division Teacher (UDT) and promoted to the post of Superintendent/ Assistant Director. Presently she is working at State Resources and Rehabilitation Center, Raipur and vide order dated 07.08.2019 issued by respondent- 2, she has been transferred to Office of Deputy Director, Social Welfare and Orthopaedic Handicapped Child Home, Bastar. Appellant challenged her order of transfer by filing a Writ Petition on the grounds that her mother is a cancer patient and is undergoing Chemotherapy in Mittal Institute of Medical Science, Raipur (for short, 'Mittal Institute'); and her son is in Class X at MGM School, Raipur. It was also case of the appellant that she is only daughter at Raipur to take care of her mother. Learned Single Judge vide impugned order declined to interdict with order of transfer of the appellant and dismissed the Writ Petition.

3. Learned counsel for the appellant submits that learned Single Judge had not considered the grounds raised by the appellant, particularly medical ailment of her mother, wherein she is suffering from Cancer and no treatment of Cancer is available at Bastar, ie transferred place of posting. It was also submitted that her son is studying in Class X, which is milestone standard in a student's career and by changing of school, his studies will be adversely affected.

4. Per contra, learned counsel appearing for the State submitted that the appellant since her date of appointment, is continuously posted at district- Raipur and therefore, in exigency of service, she has been transferred to Bastar. It was also submitted that the transfer place of

posting is part of service and as the transfer has been made as appearing from the order of transfer on administrative ground, learned Single Judge has rightly dismissed the Writ Petition.

5. Perusal of the grounds raised by the appellant in her Writ Petition and documents enclosed in support would show that one of the grounds raised is of medical ailment of her mother. Annexure P3 is a medical prescription of Mittal Institute wherein it has been specifically mentioned that patient was admitted in the hospital on 13.09.2019 for 3rd month 3rd week Chemotherapy cycle and further date has been shown to be on 20.09.2019. Age of the patient, namely, Mrs Phooltara was shown to be 72 years.

6. On an earlier date of hearing, on being mentioned by the appellant that four posts are vacant at Raipur itself, we directed learned Deputy Advocate General to ascertain the position and to get instructions in this regard.

7. Learned State counsel today submitted a letter dated 18.11.2019 written by the Director, Social Welfare, CG to the Office of learned Advocate General. In para-11 of this letter it has been mentioned that in the four Offices of Raipur District/Raipur, at present, the post of Superintendent is being officiated by other Officers of Department on additional charge.

8. From the aforementioned letter it is apparent that post of Superintendent is not occupied by a regular employee ie the Superintendent but some other Officer/Employee is working on additional

charge. This being the position, it cannot be said that there is no available vacant post of Superintendent in the Office of Respondent/Department within Raipur District/Raipur. It appears that the respondents are adamant and not willing to accommodate the appellant, ignoring the serious medical ailment of her mother, which is unfortunate.

9. Normally, orders of transfers of Government Servants are not to be interfered by the Court as transfer is an incident of service. But at the same time, the practical difficulty of an employee to join the new transfer place, that too in cases of medical ailment of employee him/her self or family members, humanitarian and pragmatic approach is required to be taken. The other thing mentioned in the letter that the appellant did not bring to the notice of the medical ailment of her mother to department earlier is concerned, there may not be any such occasion as is now. But the other aspect will be that the appellant continued to discharge her duties even after taking care of her mother in those days also and not let her official duties to be affected in any manner.

10. In the case at hand, it was not disputed by learned counsel for the State with respect to suffering of mother of the appellant with Cancer and the treatment of the same not available at the transferred place of posting of the appellant.

11. Taking into consideration the aforementioned facts and circumstances of the case, particularly, suffering of mother of the appellant with cancer and treatment being taken at Mittal Institute and undergoing Chemotherapy, we set aside the order of transfer dated 07.08.2019

(Annexure P1), so far as it relates to the appellant at SI No.7 (Smt Sangeeta Singh). As emerging from the letter dated 18.11.2019 of the Director, respondent- 3 that in the four Offices of Raipur District the post of Superintendent is being occupied by other Officers/Employees of department on additional charge, we direct the respondents/State to post the appellant at Government Deaf and Blind Disabled School, Mathpuraina, Raipur, or in any one of the said posts as a regular hand.

12. Writ Appeal is allowed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge