

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 17614 of 2019

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Abha Kumari W/o Sri Ramanand Singh R/v- Ward No.- 38, Behind Pariwar Sadan Chanakya Nagar, Begusarai, Vishunpur, Begusarai at present working as A- grade Nurse, Sadar Hospital, Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Health Deptt, Government of Bihar, Patna.
2. The Director-in- Chief, Health Services, Government of Bihar, Patna.
3. The Civil Surgeon Begusarai.
4. The Superintendent, Sadar Hospital, Begusarai.
5. The District Treasury Officer, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Arvind Kr Srivastava, Advocate
For the Respondent/s : Mr Ajay Bihari Sinha, GA VIII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 22-06-2020

As of now, the Courts have not resumed normal physical hearing. The matter, therefore, has been listed today for consideration through Video Conferencing.

2 Learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual Court proceedings with the aid of audio visual technology.

3 Heard learned counsel for the petitioner and the respondent-State.



4 The petitioner was working as an A Grade Nurse at Sadar Hospital, Begusarai. Under Letter dated 24.05.2019 bearing Memo No 654 (6), the Director-in-Chief, Health Services, Government of Bihar has transferred the petitioner to the office of the Civil Surgeon, East Champaran. It is this order that the petitioner is aggrieved by and has, accordingly, sought a writ in the nature of certiorari quashing the same.

5 Petitioner's counsel has submitted that the petitioner has been suffering with knee pain and she has undergone surgery in the right knee. It is submitted that the medical condition of the petitioner is such that the Director-in-Chief should not have transferred her services. In support of her claim of the physical problems, on account of knee pain and surgery, the petitioner has referred to Annexure 4 series wherein Prescriptions and Discharge Summary etc in respect of the petitioner's right knee's surgery have been annexed. The petitioner has also been on leave for some time.

6 A counter affidavit has been filed on behalf of Respondent No 2 (Director-in-Chief, Health Services). The counter affidavit highlights the fact that the petitioner is facing complains about her unauthorized absence and high handedness of her husband. The complain submitted by the Superintendent of the



Sadar Hospital, Begusarai to the Principal Secretary is dated 11.02.2019. The same has been submitted along with some other papers and Closed-circuit television (CCTV) footage to show the manner in which the petitioner's husband has been intimidating the management of the Sadar Hospital, Begusarai where the petitioner was posted as A Grade Nurse prior to the impugned transfer order. It also contains allegations that her husband Shri Ramanand Singh is working as x-ray technician in the name of Shri Rajive Kumar. It is further stated that vide Officer Order dated 25.05.2019 contained in Memo No 627, the petitioner has already been relieved by the Superintendent, Sadar Hospital, Begusarai. The various complains have been looked into by the District Magistrate as well as the Divisional Commissioner, Munger. In paragraph 13 of the counter affidavit, it has also been stated that disciplinary action is also contemplated against the petitioner.

7 This Court observes that Annexure 4 series are the documents in support of petitioner's knee surgery. From the same, it is apparent that she was operated in May, 2018. The order of transfer, which is assailed in the instant proceedings, is dated 24.05.2019, one year after her knee surgery. The only contemporary document in support of the petitioner's physical



condition is Annexure 19 dated 11.06.2019 issued by Arora Clinic.

The same is also more than 15 days after the petitioner's transfer.

8 Whether the petitioner is posted at Sadar Hospital, Begusarai or in the office of the Civil Surgeon, East Champaran has no nexus with the petitioner's knee pain or the surgery which has been performed, or proposed treatment of the petitioner. If the petitioner has a valid medical claim based on a genuine medical condition, the Service Rules contain provisions for availing the facilities in that regard including leave etc. Posting the petitioner at East Champaran in compliance of the impugned transfer order, does not in any way, come in the way of the facilities available to the petitioner for genuine medical conditions under the extant Service Rules. The transfer, therefore, cannot be assailed on the petitioner's pretext of her knee condition.

9 Learned counsel for the petitioner has not submitted that the transfer order is otherwise bad in law.

10 The instances of high handedness by the petitioner's husband highlighted by the State Counsel are just as irrelevant for the present issue, as is the petitioner's plea of her knee pain and right knee surgery.



11 In the instant case, there is no bare on transfers and, as such, the employer is free to transfer the petitioner as per administrative exigency.

12 It is trite law that transfer is an incidence of service. Grounds for interference in the transfer order by this Court exercising judicial review under Article 226 of the Constitution of India are very limited. The petitioner has not alleged that the transfer is on a lower post or to her pecuniary disadvantage. Nor has she alleged any specific mala fide. It is not a case where the transfer order is in contravention of any mandatory provision contained in any statutory Rule.

13 No grounds for interference with the transfer order have been made out.

14 Writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2020
Transmission Date	NA

