

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 175 of 2020**

(Arising out of order dated 2.12.2019 passed in WPS No.9886/2019
by learned Single Judge)

- Priti Shandilya W/o Shri Umendra Kumar Nishad, aged about 30 years, R/o LIG- 9, Housing Board Colony, Thelkabod, Kanker (CG)

---- Appellant**Versus**

1. State of Chhattisgarh, through Principal Secretary, General Administration Department Mantralaya, Mahanadi Bhawan, Naya Raipur (CG)
2. The Collector, District North Bastar Kanker (CG)
3. The Director Health Services, Indravati Bhawan, Atal Nagar, Raipur (CG)
4. The Chief Medical and Health Officer Kanker, District North Bastar Kanker (CG)

---- Respondents

For Appellant	:	Mr. Shishir Dixit, Advocate
For Respondents	:	Mr. G. Patel, Government Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per Parth Prateem Sahu, J****17.02.2020**

1. Challenge in this writ appeal is to the order dated 2.12.2019 passed by the learned Single Judge in WPS No.9886/2019 declining to interfere with the order dated 1.10.2019 passed by the Grievance Redressal Committee refusing to interfere with transfer of appellant and order of transfer dated 12.7.2019.
2. Facts of the case, in nutshell, are that by the order dated

12.7.2019, the appellant, who is working as 'Staff Nurse' in District Hospital, Kanker, has been transferred, on administrative ground, from District Hospital, Kanker to Primary Health Centre, Kurner, Block Koyalibeda, District North Bastar. Aggrieved by her transfer, appellant submitted representation before respondent No.2 requesting him to cancel her transfer on the grounds mentioned therein. When nothing was heard in response to the representation of appellant, writ petition bearing WPS No.6168/2019 has been filed assailing the order of transfer dated 12.7.2019. The learned Single Judge taking into consideration the facts and grounds pleaded in writ petition, including the fact that appellant is wife of an Army man, who, at that point of time, was posted in Jammu & Kashmir, and that she is only person to take care of her in-laws, disposed off writ petition vide order dated 16.8.2019 with a direction to appellant to submit appropriate representation before respondent No.2, who, in turn, directed to consider and decide the same within a period of thirty days from the date of receipt such a representation. Learned Single Judge has also directed that till the representation submitted by appellant is decided, the effect and operation of impugned transfer order, so far as it relates to appellant, shall remain stayed.

3. In compliance of the order dated 16.8.2019, appellant submitted fresh representation before respondent No.2, which was forwarded to the Grievance Redressal Committee

constituted as per Clause-6 of the Transfer Policy, 2019 comprising of three senior Secretaries of the State Government. The said Committee dismissed representation of appellant vide order dated 1.10.2019 on the ground that appellant is transferred on administrative ground coupled with recommendation of the sitting Member of Legislative Assembly concerned. Aggrieved therewith, appellant again approached the High Court by filing WPS No.9886/2019, which came to be dismissed vide order impugned. The learned Single Judge while dismissing the writ petition observed as under:-

“4. Perusal of the order of Grievance Redressal Committee dated 01.10.2019 shows that after considering the inputs given by the Collector the transfer has been made on administrative ground. Further, transfer being incident of service, unless and until it is malafide or illegal on the face of it, the transfer do not call for any interference. In a result, I am not inclined to interfere with the order of dismissing the representation of the petitioner.

4. Learned counsel for appellant submits that the appellant is aware of the fact that transfer is an incidence of service and no government employee has legal right for being posted at any particular place for indefinite period. Appellant is also not aggrieved by her transfer and her grievance is only with respect to place where she has been transferred. Appellant

had very specifically mentioned in her representation that she being the wife of an army man, who is posted in Jammu & Kashmir, is having responsibility to look after her family members including age old in-laws and if she is compelled to join at the transferred place, which is situated about 100 kms away from her present place of posting, it will not be possible for her to adequately discharge her obligations towards her family. However, the Grievance Redressal Committee, without taking into consideration the genuine difficulty indicated by appellant in the representation, rejected representation of appellant in a mechanical manner by simply observing that transfer of appellant has been made on administrative ground based on the recommendation of concerned Member of Legislative Assembly.

Learned counsel has also drawn attention of this Court towards letter dated 07.10.2019 (Annexure P-9 to writ petition) written by the Civil Surgeon-cum-Hospital Superintendent, District North Bastar to the Director, Health Services, Raipur, forwarding representation of appellant for consideration. It has been mentioned in the said letter that out of total 60 sanctioned posts of Staff Nurse in District Hospital, Kanker, only 28 Staff Nurses are posted.

Lastly, it is submitted by learned counsel that several posts of Staff Nurse are lying vacant in nearby hospitals / health centres situated in District Kanker and looking to the genuine difficulty of appellant, she can be accommodated at

any nearby place where post of Staff Nurse is lying vacant.

5. When the matter was taken up for hearing on 12.2.2020, no submission was made by learned counsel for appellant as to the availability of vacant posts of Staff Nurse in the nearby places. On a query being put by this Court whether appellant can be accommodated in a nearby place, learned State counsel sought for time to seek instructions.
6. Today, when the matter is taken up for hearing, learned counsel for appellant produced a copy of information dated 15.2.2020 supplied to appellant by the Chief Medical & Health Officer, North Bastar, Kanker, according to which, 01 post of Staff Nurse at Primary Health Centre, Bagodor; 02 posts at Primary Health Centre, Lakhanpuri; 02 posts at Community Health Centre, Amoda, are lying vacant. Learned Counsel submits that appellant can be accommodated/transferred at any of the aforementioned place, if at all appellant is required to be transferred.
7. On the other hand, learned State Counsel has not disputed the fact that husband of appellant is an army man and presently serving in Laddakh. He only submits that a Grievance Redressal Committee comprising of senior Secretaries of the State Government is constituted under the Transfer Policy, 2019 to consider representation of the employees who have been transferred. In such a circumstances, the appellant can submit fresh representation before the said Committee for redressal of her grievance.

However, learned State Counsel has not made any submission on the document placed by learned counsel for appellant showing availability of vacant posts of Staff Nurse in nearby hospitals/health centres.

8. We have heard learned counsel for the parties and perused the record.
9. It is well understood that transfer of a government servant, who is appointed to a particular cadre of transferable post from one place to another, is a normal incidence of service and such employee cannot claim, as a matter of right, that he/she should be retained in a particular post or at a particular place as long as he/she desires. However, if any employee makes any representation with respect to his/her transfer, showing any genuine difficulty in proceeding on transfer, the same should be considered by the competent authority in a pragmatic manner rather than pedantic manner.
10. In the case at hand, it is not disputed that husband of appellant, who is an army man, is guarding our Nation at the border (Laddakh), thousand miles away from his family. Appellant is only care taker of her family including age old in-laws, she is transferred about 100 km away from a place where her family is residing i.e. Kanker. It is also not in dispute that the Transfer Policy, 2019 provides for submission of representation before the Grievance Redressal Committee, comprised of senior Secretaries of the State Government, by the employee, who has been transferred. The State

Government while framing the guidelines governing transfer of its employees, was conscious enough about the fact that there can be some genuine difficulty with some employees to proceed for transferred place or to join at the transferred place and that is why, mechanism of Clause 6 is inserted in the Transfer Policy, 2019-20 and the officers of the rank of 'Senior Secretary' have been made members of the Committee.

11. Perusal of the order dated 1.10.2019 passed by the Grievance Redressal Committee reveals that request of appellant was not acceded to on the ground that she has been transferred on administrative ground coupled with recommendation of the concerned Member of Legislative Assembly. However, this Court feels that case of the wife of a soldier, who is serving nation at the border in adverse circumstances, should have been taken by the said Committee as an exceptional one and her representation should have been decided in an objective manner by adopting a liberal and non-pedantic approach. Considering the difficulty indicated by appellant in the representation and the reason assigned for the same, the Committee could have atleast modified the order of transfer of appellant, if not cancelled.

12. In the above circumstances and looking to the fact that several posts of Staff Nurse are lying vacant in nearby hospitals/ health centres, as is discernible from document dated 15.2.2020, we direct appellant to submit fresh representation before the Grievance Redressal Committee, as per Para-6 of

Transfer Policy, 2019, along with copy of memo of appeal, documents filed along with writ petition and copy of letter dated 15.2.2020, within a period of two weeks from today raising all her grievances, as raised in this appeal, and in turn, the said Committee is directed to consider and decide representation of appellant in a liberal, pragmatic & objective manner within a period of three weeks from the date of receipt of such a representation. Till the representation of appellant is decided, the order of 'status-quo' passed by this Court on 12.2.2020 will remain in force.

13. With the above observations and directions, writ appeal stands disposed off.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-