

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2748 of 2020

Smt. Rita Ambalker W/o Shri Navin Ambalker Aged About 48 Years
R/o Village Nara, Post - Bhansoj, Police Station And Tahsil Aarang,
District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Chairman, Committee Of Senior Secretary, (For Transfer Matter),
General Administration Department, Mahanadi Bhavan,
Mantralaya, Police Station And Post Rakhi, Atal Nagar, Raipur,
District Raipur Chhattisgarh.
2. Secretary, State Of Chhattisgarh, Department Of Health And Family
Welfare, Mahanadi Mantralaya, Police Station And Post - Rakhi,
Atal Nagar, Raipur, District Raipur Chhattisgarh.
3. Chief Medical And Health Officer (CMHO)) Office Of CMHO, Raipur
District Raipur Chhattisgarh.
4. Block Medical Officer (BMO) Office Of BMO, Community Health
Centre, Aarang, District Raipur Chhattisgarh.

---Respondents

For petitioner – Shri Abhishek Pandey, Advocate.
For State- Smt. Richa Shukla, Dy G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

07/08/2020

1. Heard.
2. This is second round of litigation. In the earlier round of litigation challenge was made to the transfer of the petitioner from Primary Health Center Bhansoj, District Raipur to Primary Health Center Bagbahra, District Mahasamund. This court in WPS No.8110/2019 on 17/10/2019 has passed the following orders:-

“1. Grievance of the petitioner is that the petitioner is working as Staff Nurse at Primary Health Center Bhansoj, District Raipur has been transferred to Primary Health Center Bagbahra, District Mahasamund.

2. It is contended that the petitioner's mother is a cancer patient and she is completely dependent upon the petitioner. The counsel referred to the document Annexure P-4 and would submit that under the circumstances the transfer of the petitioner may be reconsidered. It is further submitted that in transfer from one District

to another District, the seniority is likely to get affected so the promotional avenues also get affected.

3. Given the aforesaid facts and circumstances of the case, after perusal of document, it is ordered let the petitioner make a detailed representation to the Respondent No.1 in this regard within a period of 15 days from today, who in turn shall consider all the aforesaid grounds raised by the petitioner and decide the representation within a period of 45 days. Till then the petitioner shall not be relieved from the present place of posting and the impugned order shall remain stayed so far as the petitioner is concerned.

4. The writ petition accordingly stands disposed of.”

3. Learned counsel for the petitioner would submit that pursuant to the order passed in WPS No.8110/2019 the petitioner has preferred a representation by Annexure P-3 wherein grounds were raised that with the transfer of the petitioner to other district seniority and promotion of the petitioner would be affected alongwith other personal ground about the ailment of the mother of the petitioner. It is contended that while deciding the representation on 26/05/2020 by Annexure P-4 the primary ground raised by the petitioner that by transfer from one district to other would affect the seniority has not been touched upon and no discussion have been made and rejection of the representation is made without assigning any reason.

4. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the petitioner and would submit that the representation of the petitioner was considered as a whole and after due application of mind, the same has been decided and the order rejecting the representation is well merited which do not call for any interference.

5. Perusal of the earlier order passed by this Court would show that the categorical submission was made by the petitioner that by transfer of the petitioner from one district to another district the seniority and promotional avenue of the petitioner would be affected. Consequent upon it this Court passed the order to make a representation within specified

period of time. Perusal of the representation Annexure P-3 shows that as ground number one the petitioner has raised the issue that by transfer of the petitioner from one district to other it would affect the seniority and promotion and another ground raised was that the petitioner's mother is ailing and is cancer patient, therefore transfer may be reconsidered. While deciding representation by Annexure P-4 omnibus orders have been made that transfer has been made on the administrative ground. When there is a specific order passed by this Court then it has to be taken in its true spirit. The representation when contains the fact that the seniority of the petitioner would be affected coupled with other grounds and when it is supported by the order of this Court, the same cannot be shelved.

6. The Supreme Court in the case of ***Secretary and Curator, Victoria Memorial Hall Versus Howrah Ganatantrik Nagrik Samity and others*** {(2010) 3 SCC 732} has held thus in para 41 & 42 which are reproduced herein below:-

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha Vs. State of Bihar AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of U P (2008) 3 SCC 172; SAIL Vs. STO (2008) 9 SCC 407; State of Uttaranchal Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana (2009) 3 SCC 258; Mohd Yusuf Vs. Fajj Mohammad (2009) 3 SCC 513; and State of H P Vs. Sada Ram (2009) 4 SCC 422].

42. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected.

7. Therefore, when the order rejecting the representation is translated into the principles as has been laid down by the Supreme Court as also

coupled with the fact that the order of the High Court, it does not satisfy the requirement. In a result, the order dated 26/05/2020 is set aside. The matter is remitted back to the concerned authority who has rejected the representation. It is expected that a reasoned order would be passed with respect to the grounds raised in the representation. The said exercise shall be completed within a period of 60 days from the date of receipt of this order. Till the representation is decided, the transfer order in respect of the petitioner shall not be given effect to.

8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE