

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 16070 of 2021

Dr. Madhumita Das
Vs.
The State of West Bengal & Ors.

Mr. Duke Banerjee
... For the petitioner

Ms. Chaitali Bhattacharyya
Mr. Mrinal Kanti Ghosh
... For the State

The petitioner was appointed in the post of AYUSH Medical Officer at Kurhmun BPHC Burdwan Sadar, Block-1, East Burdwan. The petitioner subsequently got married. The petitioner's matrimonial home is at Uttarayan Pally, Sonarpur, Kolkata – 700150. The petitioner was transferred to Namkhana Block, South 24-Parganas from East Burdwan vide a transfer order dated 24th December, 2018 issued by the Executive Director, BSH & FW Samity. The said transfer order is in relation to 66 persons and, as such, has chain effect, that is to say the petitioner was to join Namkhana Block on the person engaged at the relevant centre at Namkhana Block vacating his office and accepting his/her transferred post. Either due to such chain effect or otherwise, the end-result is that the transfer order dated 24th December, 2018 was not given effect to in case of the

petitioner. The petitioner says that due to family reasons, it is very difficult for the petitioner to stay away from her matrimonial home at Sonarpur and work at East Burdwan. The petitioner has made a subsequent representation on 26th July, 2021 which has been duly delivered to the Executive Director, being the respondent no.2, but the same has not yet been considered.

The respondents have raised preliminary issue that the appointment of the petitioner, being contractual in nature, no writ petition is maintainable. The respondents also say that the petitioner has been in unauthorised leave for a considerable period which, according to her, conditions of appointment disentitles her to continue in the engagement. The petitioner, according to the respondents, is trying to shield her unauthorised leave by way of this instant petition. This submission is, however, disputed by the petitioner.

There are divergent views on the maintainability point by a contractual employee like the petitioner. I am inclined to accept the view which allows the writ petition to be maintained by the petitioner considering the facts of the instant case. Admittedly, there was a transfer order which has not been given effect to. The petitioner is, therefor, entitled to have her representation dated 26th July, 2021 to be considered by the respondent no.2.

The respondent no.2 is, therefor, directed to consider the only issue of transfer of the petitioner from

East Burdwan to any place nearby to the petitioner's present residence i.e., her matrimonial home at Sonarpur taking into consideration the vacancies and/or other related factors.

This order, however, will not regularise or be construed to have regularised any unauthorised leave that may have been availed by the petitioner as the respondents allege that she had been absent without proper leave. The respondents, at the same time, should not include any ground of unauthorised leave, if any, by the petitioner while considering her transfer issue as no steps for any unauthorised leave has yet been taken by the employer against the petitioner.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)