

OD-4

APOT 128 of 2021
with
WPO 444 of 2021
IA No. GA 1 of 2021

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

DR. KRISHNA SANKAR GANGULY
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE SUBRATA TALUKDAR
AND
The Hon'ble JUSTICE KESANG DOMA BHUTIA
Date : 8th September, 2021.

Appearance:
Mr. Amales Ray, Adv.
...for the appellant.

Mr. Ranajit Chatterjee, Adv.
Mr. Swapan Kumar Debnath, Adv.
Mr. Subhrangsu Panda, Adv.
...for the KMC.

The Court : Party/parties is/are represented in the order of their name/names as printed above in the cause-title.

Under challenge in this appeal is the order passed by the Hon'ble Single Bench dated 17th of August, 2021.

By the said impugned order, the Hon'ble Single Bench was pleased to direct the appellant/writ petitioner to join his transferred place of posting in a hospital under the Kolkata Municipal Corporation (KMC) within a specified period. It was made clear by the Hon'ble Single Bench that the transfer of the appellant shall not be a demotion and shall be on the same status as in the post held by him prior to such transfer.

The Hon'ble Single Bench directed the respondents/KMC to intimate the appellant of the fact that the transfer shall not be treated as a demotion and the appellant shall be entitled to all normal financial and other service benefits.

Mr. Ray, learned counsel appearing for the appellant, submits that the order of transfer dated 11th of August, 2021 only posts the appellant to a hospital under the KMC without making any reference at all to the particular post in which the appellant is expected to serve. It is submitted that the appellant has been working as an Executive Health Officer enjoying administrative duties under the KMC and, in terms of the Schedule of Posts under the KMC, the appellant is entitled to be transferred to only to a post of Executive Health Officer which has a sanctioned strength of ten. It is submitted that there is no provision to post an Executive Health Officer to a hospital.

It is pointed out that the impugned order of transfer is a counter-blast to the reply of the appellant to a show cause notice issued against him in his pre-transferred place of posting as Executive Health Officer, Borough-IX. It is submitted that the appellant is only entitled to be posted in an administrative capacity in a Borough and, not to a hospital.

Per contra, Mr. Chatterjee, learned counsel appearing for the respondents/KMC with Mr. Panda, learned Counsel, submits that Section 21 of the KMC Act, 1980 (for short, the 1980 Act) permits the KMC to transfer an officer from one post to another carrying an identical scale of pay. It is submitted that such officer may be employed by the KMC in a manner as the KMC requires for administrative conscience.

It is additionally pointed that a communication dated 25th of August, 2021 addressed by the Chief Municipal Health Officer, Health Department, KMC to the appellant issued in terms of the direction of the Hon'ble Single Bench dated 17th of August, 2021, intimating in writing to the appellant that there shall be no demotion of his

post, duties and responsibilities and his promotional and other avenues of service benefits shall remain unaltered has been complied with by the KMC.

Having heard the parties and considered the materials placed, this Court has no disagreement with the proposition that in law and, as provided in Section 21 of the KMC Act, the services of an employee can be utilized by the KMC at a transferred place of posting maintaining the status of such employee at such transferred post.

Therefore, the transfer of the appellant to the hospital to discharge administrative duties and preserving his status in his pre-transferred post, cannot be faulted. However, in the facts of the case, this Court is definitely of the view that the allotment of duties vide Serial no.3 of the order of transfer dated 11th of August, 2021 whereby and whereunder the appellant has been peculiarly granted the responsibility of '*superior supervision*' of a burning ghat appears to be against the natural course of duties which the appellant is expected to regularly perform. Hence, the allotment of duties of Serial No.3 appears to be contrived.

It is accordingly directed that the appellant shall join his transferred place of posting and perform regular duties minus the allotment of duties at Serial no.3 of the office order dated 11th of August, 2021.

Both **APOT 128 of 2021** with **IA No.GA 1 of 2021** stand thus **disposed of**.

All parties to act on server copy of this order downloaded from the official website of this Court.

In the backdrop of the above discussion and directions, affidavits are not necessary and neither invited. All allegations shall be deemed to be denied and disputed.

(KESANG DOMA BHUTIA, J.)

(SUBRATA TALUKDAR, J.)