

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WA No. 90 of 2021

Smt. Saroj Mishra W/o Shri Ashwani Tiwari, Aged About 49 Years,
 Presently Posted as Ophthalmic Assistant Officer At Community Health
 Centre Tumgaon, Block -Mahasamund, District -Mahasamund, (CG).

---- **Appellant**

Versus

1. State of Chhattisgarh Through Its Secretary Health and Family Welfare Department, Mantralaya, Mahandi, Bhawan, Nawa Raipur, District -Raipur (CG).
2. Under Secretary Health and Family Welfare Department, Mantralaya, Mahanadi, Bhawan, Nawa Raipur, District -Raipur, (CG).
3. Chief Medical and Health Officer, District -Mahasamund, (CG).
4. Block Medical Officer, Tumgaon, District -Mahasamund, (CG).

--- **Respondents**

For Appellant	: Mr. Ishan Verma, Advocate.
For Respondent/State	: Mr. Ashish Tiwari, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

16/03/2021

1. Challenge in this appeal is to the order dated 19.02.2021 passed in WPS/761/2021, whereby learned Single Judge has dismissed the writ petition.
2. Shri Ishan Verma, learned counsel for the appellant submits that appellant is appointed as "Medical Officer" and posted at Community Health Centre Tumgaon, Block & District -Mahasamund. She was transferred to Primary Health Centre, Risda, District -Balodabazar vide order dated 23.08.2019. Said transfer order was challenged by way of filing writ petition on the grounds mentioned therein including the ground that petitioner is holding the post of District President of Chhattisgarh Pradesh Swasthya Karmachari Sangh and as such falls within the protected category under the Transfer Policy. Writ petition was disposed off vide order dated 11.09.2019 with a direction to the appellant to make

a detailed representation before respondent Nos.2 & 3/Chief Medical & Health Officer and Block Medical Officer, further directed the respondent authorities to decide representation in accordance with law within further period of 45 days, till then order of transfer, so far as it relates to appellant, was stayed. In pursuance of the said direction, appellant preferred a detailed representation but respondent authorities have not considered the main ground raised by appellant in writ petition and dismissed the same in a very mechanical manner by recording a finding that transfer order is passed on administrative grounds, overlooking the clause under the Transfer Policy where employee holding the post of President of a Union has been protected from transfer.

3. Per contra, Shri Ashish Tiwari, learned Government Advocate for the State submits that respondent authority after taking into consideration the direction issued by the High Court has decided the representation in accordance with law and arrived at a conclusion that order of transfer of appellant has been passed on the administrative exigencies, hence, transfer order does not require any interference. He further submits that appellant has not raised any ground with regard to mala fide against any of the authorities. It is also pointed out that by virtue of order passed by this Court in the earlier round of litigation, appellant has already worked at the present place of posting for more than one year.
4. We have heard learned counsel for the respective parties.
5. Appellant is holding the post of Medical Officer, which is transferable post. She is continuing on her present place of posting for considerable period. Appellant by virtue of order of stay passed in writ petition in earlier round of litigation continued on her present place of posting till the

decision of her representation dated 07.07.2020. The representation of appellant was dismissed on 15.07.2020 and amended order was issued on 03.09.2020. Appellant has approached this Court by way of filing writ petition only on 20.01.2021 ie after about lapse of more than 4 months. It is not the case of appellant that order of transfer is a frequent transfer order or acted with mala fide, but for the fact that as per Transfer Policy an employee holding the post of President of a Union is protected for being transferred. Transfer Policy is not having any statutory force of law, policies and guidelines for transfer are being framed only for smooth functioning of administration.

6. Transfer is an incident of service, order of transfer is not to be interfered with unless and until the competency of the authority passing such order is under challenge or it is brought to the notice of the Court that transfer order is effectuated with mala fide. In case at hand, no such ground has been raised by learned counsel for the appellant but for the fact that under the Transfer Policy, an employee holding the post of President of a Union is protected from transfer.
7. Taking into consideration over all facts and circumstances of the case, particularly the fact that even after issuance of order of transfer on 23.03.2019, appellant has worked for more than one year, we do not find any infirmity or illegality in the order passed by this Court. Appeal being devoid of merits is liable to be and is hereby dismissed.

Sd/-
(P.R. Ramamchandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge