

S/L 6
11.02.2022
Court. No. 19
GB

W.P.A. 12237 of 2021

Dibyendu Bhattacharya
VS
The State of West Bengal & Ors.

*Mr. Jayanta Narayan Chatterjee,
Mr. Debashis Banerjee,
Mr. Supreem Naskar.*

...for the Petitioner.

*Mr. Raja Saha,
Mr. Biswabrata Basu Mallick.*

...for the State.

The petitioner was working as a 'Nirman Sahayak' under different Gram Panchayats. Lastly, the petitioner was working under the Hariharpur Gram Panchayat. The petitioner joined his service on December 22, 2004. The petitioner met with an accident in 2012 and underwent a dynamic hip screw surgery.

It is the contention of the petitioner that since the surgery, the petitioner has not been able to live a normal life at least, in so far as it relates to travelling, waking long distance, etc. The petitioner was transferred for administrative reasons in terms of his service conditions to Sridharnagar Gram Panchayat.

According to the petitioner, in order to serve in the office of Sridharnagar Gram Panchayat, the petitioner would have to undertake a journey of about 60kms. each way, from his residence. According to the petitioner, there is no direct mode of travel to Sridharnagar Gram Panchayat from his

residence at Jaynagar and he has to travel by bus, ferry, e-rickshaw and also walk a considerable distance.

Challenging such transfer the petitioner moved this Court. A coordinate Bench of this Court directed that a Medical Board be constituted and the transfer of the petitioner would be subject to the decision of the Medical Board about the fitness of the petitioner. The Medical Board was duly constituted but the petitioner was released from the Hariharpur Gram Panchayat before a copy of the said report of the Medical Board was supplied to the petitioner.

Challenging the release order, the petitioner moved another writ petition before this Court. By an order dated March 8, 2021, this Court directed that the report of the Medical Board must be furnished to the petitioner. Pursuant to the receipt of the report of the Medical Board, this writ petition has been filed praying for setting aside the order of transfer.

Transfer is an incidence of service and unless any *mala fide* is shown, the writ court normally does not interfere with the order of transfer. However, in this case there is already an order of Court directing a Medical Board to be constituted in order to examine the petitioner and ascertain whether it would be difficult for the petitioner to travel to the new place of posting. The Medical Board has prepared a report. Observations of the Medical Board and the advice are quoted below:

“1. According to the department of Orthopaedics surgery:

He is advice to avoid squatting, cross sitting, long distance walking and prolong standing due to Dynamic Hip Screw operation done on 2012 in a private hospital.

2. According to the department of General Medicine, patient is a known case of Hypertension, Ischemic Heart Disease, Benign Hypertrophy Prostate gland and Nephrolithiasis with bleeding per rectum. He needs further check up in the department of Cardiology, Urology & Gastroenterology in any state run superspeciality hospital where those department is existing.”

Mr. Saha, learned advocate appearing on behalf of the State respondents submits that the Medical Board did not opine that it would not be possible for the petitioner to travel to the transferred place of posting. He next submits that the petitioner suffered an operation in 2012 and if it was difficult to travel long distance, he should find an accommodation near the transferred place of posting. He further submits that the release order was not issued upon consideration of the report of the Medical Board, but prior to the decision of this Court for consideration of the said prayer. Thus, he denies that there has been any *mala fide* action on the part of the Block Development Officer, Magrahat-I Development Block in issuing the release order.

Heard the rival contentions of the parties. The travel of the petitioner to the transferred place of posting is too long and tedious. In view of the advice of the Medical Board that long walks, continuous standing were not permitted in case of the petitioner, the Additional District Magistrate (P & RD), South 24 Parganas, the respondent no.4 herein, shall dispose of the writ petition as a representation, upon considering the order of this court, the report of the Medical Board and the submissions of the petitioner. If the authorities find that there

are suitable vacancies closer to the petitioner's residence, the authorities shall consider the issue with the sincerity, sensitivity and compassion that the case of the petitioner deserves and explore the possibility of re-transferring the petitioner to a suitable office at a shorter distance.

A reasoned order shall be passed and communicated to the petitioner.

The entire exercise shall be completed within a period of two months from the date of communication of this order

Accordingly, the writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of server copy of this order and the learned advocate's communication.

(Shampa Sarkar, J.)