

WP.ST 10 of 2024

**Dr. Enamul Hoque
Vs
The State of West Bengal & Ors.**

Mr. Ibrahim Shaikh
Ms. Benazir Shaikh

..... For the Petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP
Ms. Sangeeta Roy

..... For the State/respondents.

The present writ petition has been preferred challenging an order dated 12th December, 2023 passed by the learned Tribunal in an original application being O. A. No. 348 of 2028. By the said order the petitioner's challenge against an order of transfer dated 17th April, 2023 was turned down.

Mr. Shaikh, learned advocate appearing for the petitioner submits that by an order dated 17th April, 2023, the petitioner was transferred from Jangipur SDH, Murshidabad to Kurseong SDH, Darjeeling. On the very next date, the petitioner submitted a representation to the respondent no. 2 on 18th April, 2023 stating *inter alia* that he was aged about 61 years and was suffering from various ailments and due to such deteriorating health condition, it is impossible on his part to join the transferred post which is about 600 kms away from his present place of posting. Since the month of April, 2023, his salaries have been withheld and it has become almost

impossible for him to undergo his treatment and to survive.

He submits that in view of his physical incapability and severe ailments, the petitioner also submitted a representation for voluntary retirement and as the same was not considered, he was constrained to prefer an original application being OA No. 346 of 2023 and the same is still pending before the learned Tribunal. Keeping in abeyance the consideration of his application for voluntary retirement, the respondents have transferred him in a vindictive manner. Such facts and circumstances were not taken into consideration by the learned Tribunal while rejecting his prayer by the order impugned in the present writ petition.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents, however, submits that the transfer order is neither *mala fide* nor arbitrary and in view thereof, the learned Tribunal rightly did not interfere with the same. Upon instruction, he submits that the petitioner did not receive the release order issued on 18th April, 2023 and that the respondent no. 4 has already sent all the relevant documents, i.e., the petitioner's service book along with LPC certificate to the Chief Medical Officer of Health and his prayer for disbursement of salary would be processed through the said office. Let the written instruction, as produced, be kept on record.

It is well settled that transfer is an incident of service. An order of transfer can be interfered with in case, the same has been exercised in an arbitrary manner or if the same is *mala fide* or punitive in nature. The learned Tribunal discounted the petitioner's prayer as there was nothing on record to infer that the transfer order was arbitrary or had been issued in a *mala fide* manner. In view thereof, learned Tribunal refused to exercise any discretion in favour of the petitioner and we do not find any infirmity in the order impugned.

However, it appears that the petitioner is suffering from several ailments and his representation for voluntary retirement has not yet been disposed of by the respondents and his salaries had been withheld. Answering our query, Mr. Mukherjee submits that the transferred post at Kurseong is still vacant and that if the petitioner approaches the authorities, he would be allowed to join the same.

Upon joining the transferred post, the petitioner would be at liberty to submit representations for transfer in the vicinity of Jangipur Sub-Division and also for disbursement of all his arrears and current salary. Needless to observe, in the event such representations are submitted, the respondents would consider the same sympathetically.

With the above observations, the writ petition being WP.ST 10 of 2024 is disposed of.

There shall, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)