

06
02.05.2024
Ct. No. 11
Jayanta

WP.CT 124 of 2024

Dr. (Ms) Anindya Das
vs
Union of India & Ors.

Mr. Kishore Datta, Ld. Sr. Adv
Mr. Ujjal Ray
Mr. Arpa Chakraborty
..... For the Petitioner.
Mr. D. N. Ray
Mr. Rajesh Kumar Shah
..... For the UoI.

The present writ petition has been preferred challenging an order dated 26th April, 2024 passed by the learned Tribunal in the original application being O. A. 350/538/2024. The said original application was preferred by the petitioner, who is presently working as the Director (Chemistry), Geological Survey of India, RHQ/ER/Kolkata challenging *inter alia* an order of 18th April, 2024 passed by the respondent no. 2 pursuant to an earlier order dated 10th April, 2024 passed by the learned Tribunal in an earlier original application being O.A. 350/00466/2024. The said original application was preferred challenging *inter alia* an order of transfer dated 4th April, 2024 transferring the petitioner from her present place of posting to RHQ/CR/ Nagpur.

Mr. Datta, learned senior advocate appearing for the petitioner submits that the petitioner is an unmarried lady and she is residing in Kolkata with her aunt, who is presently aged about 88 years and is suffering from

multiple old age ailments with restricting movement and chronic problems for which she is under regular medical care and domestic assistance. Except the petitioner, there is none to look after her ailing aunt and in view thereof, she would face unsurmountable inconvenience in the event she is now transferred to Nagpur. In such circumstances, the respondents ought to have considered the petitioner's claim sympathetically but by the impugned order, such prayer was rejected abruptly on a ground that there is no document in the service records to establish that the petitioner's aunt is dependent upon her. Such finding is absolutely unfounded in as much as there are documents in the service records of the petitioner, which would reveal that her aunt is dependent upon her. In support of such contention, our attention has been drawn to the documents annexed at pages 98 and 99 of the writ petition.

He argues that the earlier order of transfer was passed on 4th April, 2024 and the order impugned in the original application being O. A. 350/538/2024 was passed on 26th April, 2024. During the said period, there had been no change in the circumstances. The situation remains the same and in view thereof, the respondents, prior to rejection of the petitioner's claim, ought to have considered the provisions of Clause 8.1 of the transfer

and placement policy, annexed at pages 89 of the writ petition.

Mr. Ray, learned advocate appearing for the respondents, however, denies and disputes the contention of the petitioner and submits that the respondents had all along been sympathetic towards the petitioner and she had been allowed to work in different offices and at different places at Kolkata itself for a period of more than 13 years. To be precise, she was in CHQ, Kolkata for 12 years 11 months and at RHQ, ER, Kolkata for 1 year. During the said period, it was incumbent upon her to make alternative arrangements but she did not. It is also an impossibility on the part of the respondents to retain the petitioner at Kolkata for an indefinite period.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Transfer is an incident of service and an employee is transferred in the interest of public service. Such order of transfer is not interfered with unless the authorities had acted *mala fide* or the order of transfer is punitive in nature.

We have been informed that the release order dated 19th April, 2024 would become effective on and from tomorrow. This Court appreciates the problems that may be faced by the petitioner in the event the transfer order

is immediately given effect to and she is transferred to Nagpur. But at the same time, the authorities also cannot be directed to retain her in Kolkata for an indefinite period, as such direction may be an instance of misplaced sympathy.

In such circumstances and to resolve the issue once for all, we direct that the respondents shall not give effect to the impugned order of transfer dated 4th April, 2024 and the release order dated 19th April, 2024 for a period of six months from this date. After expiry of the said period, the respondents would be at liberty to give effect to the order of transfer dated 4th April, 2024 or to issue any fresh order of transfer.

It is made clear that such steps taken by the respondents after six months would be accepted by the petitioner without raising any objection whatsoever and to that effect the petitioner has also submitted an undertaking in the form of an affidavit. Let the same be taken on record.

We further direct the respondents to take all appropriate steps, as expeditiously as possible, to ensure that the petitioner gets her salary regularly in her present place of posting.

This order has been passed in the peculiar facts and circumstances of the case and the same shall not be treated as a precedent.

With the above observations and directions, the writ petition 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.)