

14.05.2024
Item No.11
Court No.11
Avijit Mitra

WPCT 134 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Dilip Das
- Versus -
The Union of India & ors.

Mr. Sourav Kumar Mukherjee,
Ms. Sananda Pal,
Mr. Souhardya Mitra
... for the petitioner
Mr. Soumitra Banerjee
...for the respondents

The present writ petition has been preferred to question the justifiability of the order dated 23rd April, 2024 passed by the learned Tribunal in O.A. No. 350/00346/2024. By the order dated 23rd April, 2024, the original application, as preferred by the petitioner was dismissed.

Shorn of unnecessary details, the facts leading to this writ petition are that the petitioner was working as Pharmacy Officer (NFG), ESIC State Medical Officer's Office at Salt Lake, Kolkata. Sometimes in 2023, one office order was circulated among the employees of ESIC to exercise option for transfer and/or posting through online module for Annual General Transfer for the year 2023 within the period specified therein.

The petitioner exercised option showing the DCBO, Bankura as his 5th option. By an order dated 8th December,

2023, the petitioner was transferred to the DCBO, Bankura. On 12th December, 2023, the release order was also issued. Aggrieved by the aforesaid transfer order, the petitioner preferred an original application being O.A. No.1636 of 2023, which was ultimately disposed of by an order dated 10th January, 2024 granting liberty to the petitioner to submit a comprehensive representation to the competent committee and the committee was directed to decide the same.

Record reveals that the Grievances Redressal Committee, which was constituted by the respondents to address such issue, considered the representation but by passing an order dated 6th March, 2024, the Committee rejected the petitioner's prayer.

Assailing the said order of rejection dated 6th March, 2024, the petitioner moved another original application being O.A.No.350/00346/2024 before the learned Tribunal. Upon contested hearing, the learned Tribunal dismissed the original application by an order impugned in the writ petition.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that the petitioner's wife is an employee of the State Government and presently posted in Kolkata. He contends that as per transfer policy of the respondents, an endeavour should have been made by the respondents to transfer the petitioner to a post nearer to the place of posting of his wife.

Though this issue was agitated before the learned Tribunal on behalf of the petitioner but the learned Tribunal glossed over the issue and no finding was returned on the same. According to him, such infirmity warrants interference with the order impugned.

He submits that a direction should be given so that the petitioner can be posted at any place nearer to the place of work of his wife.

Mr. Banerjee, learned advocate appearing for the respondent nos.1 to 5 vehemently opposes such prayer and he submits that following the transfer policy in vogue, the petitioner has been transferred to one of his preferred posts. He asserts that the learned Tribunal passed a reasoned order and as such, there is no scope to interfere with the same.

Heard the learned advocates appearing for the respective parties and perused the materials on record placed before us.

Record reveals that the petitioner rendered his service in the present place of posting for the last 7 years. On being asked, the petitioner exercised option showing his preferred places of posting. The petitioner was transferred to one of his preferred place of posting.

In terms of the order dated 10.01.2024 passed in O.A. no. 350/1636/2023, his representation was considered by the Grievance Redressal Committee. The Committee observed that the petitioner had never informed the Transfer Committee that his wife is a State

Government employee and posted in Kolkata. The Committee further observed that the petitioner will get the chance in future also as per Transfer Policy dated 07.12.2022 to serve in Kolkata.

Indisputably, the transfer is an incident of service and it is well-settled principle that normally, a judicial institution and/or Court shall not interfere with the order of transfer unless the same is punitive in nature or mala fide.

We have not found any justification to infer that the transfer order was mala fide or punitive in nature.

We do not find any error, least to say any patent error or jurisdictional error in the order impugned in the writ petition warranting interference with the same.

Accordingly, the present writ petition is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

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