

17.05.2024
Item No.11
Court No.11
Avijit Mitra

WPCT 145 of 2024

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

And

Dr. Bandana Das
- Versus -
Union of India & ors.

Mr. P.C. Das ,
Ms. Tithi Paul
... for the petitioner
Mr. Sahasrangshu Bhattacharya,
Mr. Partha Ghosh,
Mr. Rivu Dutta,
Mr. Madhu Jana,
Mr. Rhitam Chatterjee
...for the respondents

The present writ petition has been instituted to question the legality of the order dated 23rd April, 2024 passed by the learned Tribunal in O.A. 350/1202/2023 rejecting the original application.

Sans unnecessary details, the facts which need to be adumbrated for effective adjudication of the writ petition are that the petitioner happens to be a Senior Chief Medical Officer (SAG) attached to the CGHS Wellness Centre located at Netaji Subhas Chandra Bose International Airport, Kolkata. By an order of transfer dated 28th August, 2023 issued by Additional Director, CGHS, Kolkata, she was transferred to CGHS Wellness Centre, Siliguri.

The petitioner made a representation to the Additional Director with a prayer for re-consideration of

her transfer but by an order dated 8. 9.2023, the petitioner's representation was rejected. She was released from her present place of posting by an order dated 11.9.2023.

Aggrieved by the order of transfer and its consequential order of release, the petitioner approached the learned Tribunal with the original application which ultimately suffered dismissal. Hence, this writ petition.

Mr. Das, learned advocate appearing in support of the writ petition, seeks to question the justifiability of the order of transfer mainly on two counts. He argues that the order of transfer was issued by the Additional Director but he was not empowered to do so. His next plank of argument was that the order of transfer was issued in contravention of the transfer policy in vogue. He elaborates his contention by contending that the order of transfer was required to be routed through a placement committee consisting of certain members and the Additional Director was not member of that committee. He contends that in terms of the transfer policy, the authority was required to ask the petitioner to exercise option showing her preference towards 3(three) places of posting but without affording such opportunity, the petitioner has been served with the order of transfer.

Quite apart from the above, he submits that the petitioner is aged about 57 years. The petitioner's husband has been suffering from various ailments and the petitioner is only care-giver to him. If such order of transfer is given

effect to, the petitioner's entire family would be in great hardship.

He further submits that though these issues were raised before the learned Tribunal without addressing those issues, the learned Tribunal has rejected the original application. According to him, such infirmity warrants interference of the order impugned.

Mr. Ghosh, learned advocate appearing for the respondents vehemently opposes the contention canvassed by Mr. Das.

Inviting our attention to one office memorandum dated 21st May, 2021, he contends that presently, the transfer policy, which was introduced by this office memorandum, governs the field. In terms of the Standard Operating Procedure prescribed in this transfer policy, the Additional Director is competent enough to transfer the petitioner. He submits that it is a routine transfer and there was no mala fide intention to transfer the petitioner to CGHS, Siliguri.

Mr. Ghosh, upon instruction, submits that tenure in CGHS, Siliguri is only for one year.

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

The transfer policy, as produced by Mr. Ghosh makes provision for constitution of a committee under the chairmanship of the Director for taking decision on inter-city transfer of CGHS staff.

However, in the case at hand, admittedly, the petitioner is attached with CGHS Wellness Centre, N. S. C. Bose International Airport, Kolkata since last 20 years.

We asked Mr. Ghosh once again to clarify whether or not the tenure in Siliguri is only for one year. The answer came from him in affirmative. As such, after completion of her tenure in Siliguri, there shall be a scope to re-transfer her to CGHS, Airport, Kolkata.

Having regard to the factual situation, particularly the fact that the tenure in CHGS, Siliguri is only for one year, we are not inclined to interfere with the order of transfer and its consequential order of release. For these reasons, we are also not inclined to interfere with the order impugned.

The petitioner is directed to join her next assignment within a week from this date and her tenure in Siliguri will start from the date of her joining.

Record reveals that the petitioner has already attained the age of 57 years and is having only 5 years left to superannuate and she is only care-giver to her ailing husband. It is expected that after completion of her tenure in Siliguri, the authority shall transfer her taking these factors in consideration.

Accordingly, the writ petition is dismissed.

There shall 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.)