

14.08.2024
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WPST 167 of 2024
Dr. Biswajit Saha
– *Versus* –
The State of West Bengal & Another

Mr. Amiya Kumar Dutta,
Mr. Swadesh Priya Ghosh
... for the Petitioner.

Mr. Sirsanya Bandopadhyay,
Mr. Ritesh Kumar Gaanguly
... for the State/Respondents.

The present writ petition challenges the order dated July 29, 2024, passed by the learned Tribunal in Original Application No. 351 of 2024, on the grounds that the Tribunal denied the petitioner's request to stay his transfer order dated March 7, 2024, despite such a request being made.

Mr. Dutta, learned advocate representing the petitioner, argues that the petitioner is a doctor by profession who subsequently acquired a degree of MS in Ophthalmology and became a Medical Officer (Specialist). By virtue of the impugned transfer order, he has been directed to join his new assignment as Medical Officer (CCU) at Sub-Divisional Hospital (in short, SDH), Islampur, Uttar Dinajpur. According to the petitioner, this transfer places him in a position of General Duty Medical Officer, which he contends constitutes a demotion and degradation to a lower post.

Drawing our attention to the transfer policy issued under a Memorandum dated November 9, 2011, he argues that, according to the policy, a specialist doctor should be posted in a hospital for at least three years. The petitioner

joined Tehatta SDH as an MD (Specialist) in Ophthalmology on January 15, 2022. Therefore, he has been transferred to another SDH before the completion of the three-year term.

Quite apart from that, he contends that currently, the petitioner's mother is critically ill and undergoing treatment that requires daily supervision. Therefore, at this stage, if the petitioner is relocated to Islampur, Uttar Dinajpur by virtue of the impugned transfer order, his mother's treatment will be seriously hampered.

He argues that these issues were raised before the learned Tribunal, but the learned Tribunal glossed over them and did not pass the interim order as prayed for. Instead, the next date of hearing of the OA has been fixed on 6.11.2024. He apprehends that by that time, the OA will effectively become infructuous. He prays for a direction to stay the petitioner's transfer order. To bolster his arguments, he relied on a decision, reported at (1979) 3 SCC 489 (Ramana Dayaram Shetty v. International Airport Authority of India & Ors.) and also an unreported judgment delivered in W.P. no. 20178 (W) of 2019 (Prof. (Dr.) Srimanta Sinha Roy v. The State of West Bengal & Ors.).

In rebuttal, Mr. Bandyopadhyay, learned Junior Standing Counsel, representing the State Respondents, refers to a corrigendum issued on August 12, 2024, by the Department of Health & Family Welfare, Government of West Bengal and submits that an error occurred in the transfer order regarding the nomenclature of the post to which the petitioner was transferred. This error has now

been corrected, and the petitioner has been transferred to the post of Medical Officer (Specialist). He argues that the petitioner cannot claim to have been demoted to a lower post or position and asserts that the petitioner has not suffered any financial loss due to this error.

He argues that the transfer order was challenged on two grounds: that it effectively demoted the petitioner to a lower post and that the petitioner's mother was critically ill. He contends that the argument that the transfer order was issued in disregard of the transfer policy is beyond the pleadings.

He argues that the transfer policy, which he views as a mere guideline and not legally binding, indicates that a specialist doctor is generally posted in a hospital for three years. According to him, due to administrative exigencies, a specialist doctor can be transferred even before completion of this three-year term. He argues that the petitioner could not establish any prima facie case that would warrant an interim order to stay the transfer.

Mr. Dutta submits that the petitioner has been transferred to the Child Care Unit (CCU), despite being a specialist in Ophthalmology. However, Mr. Bandopadhyay disputes this contention, arguing that the abbreviation 'CCU' could also refer to a Critical Care Unit.

Indisputably, the scope of judicial review of a transfer order is very limited. It is a well-settled principle that a transfer order may be impeached if it is mala fide, punitive in

nature, or issued in violation of statutory rules. The Court is generally reluctant to stay the operation of a transfer order unless convincing evidence is presented to demonstrate that, prima facie, the transfer is illegal, mala fide, or punitive in nature.

The corrigendum presented by Mr. Bandyopadhyay prima facie indicates that the petitioner has been transferred to the position of Medical Officer (Specialist). No documents have been provided to demonstrate that the petitioner's mother is critically ill. Additionally, the petitioner has not presented any material to show that the transfer policy mandates that a specialist doctor cannot be transferred before completing the three-year term under any circumstances.

Therefore, having regard to the contentions, as canvassed by the respective parties, we are of the view that the petitioner could not make out any prima facie case to prompt us to pass an order staying the operation of his transfer order. There is no dispute regarding the binding effect of the proposition laid down in the decisions cited by Mr. Dutta but those are distinguishable on facts.

Accordingly, we do not find any reason to interfere with the order impugned in this writ petition. Consequently, the writ petition is dismissed, however, without any order as to costs.

Urgent photostat certified copy of this order, if applied of, be supplied to the parties, upon compliance of all requisite formalities.

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