

03
09.09.2024
Ct. No. 11
Jayanta

WP.CT 239 of 2024

**Ratna Biswas
Vs.
Union of India & Ors.**

Mr. Debabrata Karan
Mr. Debopriyo Karan
Mr. Souvik Naiya

....For the Petitioner.

Mr. Samrat Chowdhury
Ms. Parna Dutta

....For the Respondents.

The present writ petition has been preferred challenging an order dated 12th August, 2024 passed by the learned Tribunal in the original application (in short, OA), being OA 1129 of 2024. The said OA was preferred challenging, *inter alia*, an order of transfer issued *vide* memo dated 15th March, 2024 transferring the petitioner, an Assistant Nursing Superintendent, under Employees State Insurance Corporation (in short, ESIC) from Joka, West Bengal to Beltola, Assam, an order of release issued *vide* memo dated 5th August, 2024. By the order impugned in the present writ petition, the learned Tribunal directed the concerned respondent to consider the representation dated 7th August, 2024 submitted by the petitioner but refused to stay the order of release.

Dr Karan, learned advocate appearing for the petitioner submits that while relegating the matter for consideration to the competent authority, the learned

Tribunal ought to have stayed the operation of the release order which was issued about five months after the issuance of the order of transfer. Neither the recommendation of the Grievance Redressal Committee (in short, GRC) nor the order of the competent authority, approving such recommendation was disclosed by the respondents.

He argues that the respondents did not take into consideration the fact that the petitioner's mother, who is aged about more than 80 years, is presently bed ridden and is totally dependent upon the petitioner though in terms of the policy of transfer, the respondents are under an obligation to consider the family issues and other grievances of the employee prior to issuance of the order of transfer and release, as would be explicit from clauses 4.2 (i), (ii), 13.4 and clause 4 in annexure - I of the transfer policy, as annexed at page 113 to 129 of the writ petition.

Referring to clause 7.10 of the transfer policy, he argues that it is incumbent upon the respondents to post the employees in different units in a rationalised manner so as to maintain parity. The petitioner is being transferred from Joka where there are 500 beds for which there is a necessity 18 nurses whereas at Beltola, Assam there are 5 nurses for only 80 beds. From such sequence it is explicit that no parity was maintained.

He argues that a perusal of the GRC recommendation, as subsequently obtained by the petitioner, would reveal that the GRC did not take into consideration the fact that petitioner's mother was suffering from severe ailments and was bed ridden. The petitioner would be facing unsurmountable inconvenience in the event the transfer order and the release order are given effective. In support of the arguments, reliance has been placed upon unreported judgments delivered in the cases of *Kr. Kala C. Mohan – vs.- Employees State Insurance Corporation & Ors.* And *Dr. Annie Mareena Issac -vs.- Employees State Insurance Corporation.*

Mr. Chowdhury, learned advocate appearing for the respondents, however, denies and disputes the contention of the petitioner and drawing our attention to clause 2.3 of the transfer policy and clause 10 of the order of transfer, he submits that West Bengal and Assam fall within the same zone and as such there is no illegality in the order of transfer by which the petitioner has been transferred from West Bengal to Assam. In the present case, the petitioner is at Joka, West Bengal since 1995 and she has not been transferred to any other post till the issuance of the present order of transfer.

He further informs this Court that the petitioner's daughter is an adult. She is presently aged about 28

and is also engaged on contractual basis in the unit at Joka, West Bengal where the petitioner was serving prior to the issuance of order of transfer. In the said conspectus, the petitioner cannot allege that except herself there is none else to look after her ailing mother.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

It is well settled that the transfer is an incident of service and that the same is not interfered with if the same is vitiated by *mala fide* or if the same is not made in the public interest but has been issued for some collateral purpose with oblique motive and in colourable exercise of power. The transfer guidelines have no statutory flavour and are meant for guidance.

Indisputably, the petitioner is working at Joka, West Bengal since the year 1995. She has a daughter, who is an adult and is presently serving under ESIC at Joka, West Bengal. Being an adult, the petitioner's daughter can certainly take care of her grandmother. Furthermore, no *mala fide* has been pleaded against the respondents. The judgments upon which reliance has been placed by Dr. Karan are also distinguishable facts. In view thereof, we are not inclined to exercise any discretion in favour of the petitioner. As we have considered the grounds urged by the petitioner

challenging the transfer order and release order, there is no further necessity for consideration of the petitioner's representation by the concerned respondent, as directed in the order impugned.

The writ petition is, accordingly, dismissed.

There shall, however, be 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.)