

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.606/2020

For Petitioner(s) : Mr. P Roy Barman, Advocate.

For Respondent(s) : Mr. Debalaya Bhattacharjee, Govt. Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

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07/10/2020

Petitioner has challenged an order date 5th September, 2020 by which she is transferred from her present place of posting of Procurement Division in West Tripura, Agartala, to join the establishment of Superintendent of Police, Gomati.

[2] Briefly stated, the facts are that the petitioner is a Lady Constable. She joined the police department in the year 2006. Her husband is an advocate. She was posted at Agartala under the Procurement Division of the Police Department. By the impugned order she is transferred under the Superintendent of Police, Gomati District. Her case is that the order of transfer is actuated by *mala fides*. The transferring authority being the Director General of Police, to sustain such allegations of personal *mala fides* she has joined the said authority by name as respondent No.4. According to her, her husband had been tested positive

for Coronavirus. He was admitted in AGMC and G.B.P Hospital, Agartala and treated as an indoor patient between 20th August, 2020 to 24th August, 2020. On 13th September 2020, “Dainik Sambad” a daily published from Agartala in vernacular language published an article which carried the experience of the husband of the petitioner as a patient in the said Government hospital. It appears that as per the said report, the husband of the petitioner had complained about the facilities and the treatment at the hospital during his stay. The petitioner has averred that soon after the publication of this article her husband was contacted by some influential people. He was asked to disown the statements published in his name in the said newspaper and do so publicly, failing which there would be repercussions. However, the husband of the petitioner was not willing to do so. As a result, the petitioner by way of punishment was transferred from her present place of working immediately on 15th September, 2020.

[3] In addition to highlighting the sequence of events of the husband of the petitioner making critical statements about the treatment and facilities at the Government hospital and the transfer of the petitioner soon thereafter, counsel for the petitioner submitted that even without service of the order of transfer on the petitioner, she was relieved from her present posting. Counsel further submitted that petitioner is a volleyball player

and represents the State police team in the said event. According to the petitioner, all such sportspersons and athletes, in the police department, by way of policy are posted in Agartala. In the rejoinder, the petitioner has referred to as many as 35 such sportspersons in the police department who according to her have been posted at Agartala since several years. Petitioner is the only sportswoman who has been transferred outside the district. Counsel submitted that it is a policy of the police department to concentrate all sportspersons at Agartala so that they can regularly practice and participate in national games. In order to participate in team games particularly, it would be of great importance that all members of the team are posted at the same station, failing which practicing for any the team game would not be possible.

[4] Based on these factual averments, learned counsel for the petitioner vehemently submitted that the order of transfer passed by the authority is illegal and deserves to be set aside.

[5] On the other hand, learned Government Advocate Mr. Debalaya Bhattacharjee, opposed the petition contending that the petitioner has been posted at Agartala ever since her appointment more than 13 years back. This is her first transfer. As a person holding a transferable post she has a liability to serve anywhere in the State. Allegations of *mala fides* are

denied and in any case not established by any material on record. Unless and until there is clear proof of *mala fides*, the Court would not act on mere allegations and general statements. He pointed out that the order of transfer dated 15th September, 2020 is not passed only against the petitioner but 8 other staff members are also transferred to various places.

[6] Counsel relied on the decisions of Supreme Court in Case of *Smt. Shilpi Bose(Mrs.) and Ors. Vs. State of Bihar and Ors.* reported in (1991) *Supp.(2) SCC 659* and *Union of India and Ors. Vs. S L Abbas* reported in (1993) *4 SCC 357* to contend that where to post a Government servant is within the discretion of the administration and the Court in exercise of writ jurisdiction would not interfere with the orders of transfer. Counsel relied on *Kedar Nath Bahl Vs. The State of Punjab and Ors.* reported in (1978) *4 SCC 336* and *State of Bihar and Anr. Vs. P.P. Sharma, IAS and Anr.* reported in *1992 Supp.(1) SCC 222* in which the Supreme Court has discussed the concept of *mala fides* and how it must be proved in a writ petition before it can be accepted.

[7] It is undoubtedly true that a Government servant holding transferable post and who has transfer liability across the State cannot lightly complain about such transfer which is otherwise passed for administrative reasons. However, the facts of the present case require

further consideration and minute examination. Hence, Rule, returnable for **18th December, 2020.**

[8] For the interim relief that I propose to grant I prefer to record short reasons. The record would suggest that the husband of the petitioner who is a practicing advocate, had contracted Coronavirus for which he had to be treated as an indoor patient for about 5 days in the Government hospital. A daily newspaper published on 13th September, 2020 carried an article attributing certain statements to the husband of the petitioner which were critical of the facilities and the treatment at the said hospital. On 15th September, 2020 that is barely 48 hours after the publication in the newspaper, the petitioner were transferred. These aspects are not seriously disputed by the respondents also.

[9] In addition to this, it would *prima facie* appear that the petitioner is a sportsperson. She represents the Police Department in volleyball. She has stated in her rejoinder that as per the Government policy, ordinarily such sportspersons are retained at Agartala in the police department. In support of this statement, she has stated that large number of such sportspersons are kept at Agartala for long without subjecting them to transfer. This does not mean that a sportsperson has any immunity from transfer. However, this would be a relevant factor while examining the

allegations of *mala fides* made by the petitioner. Further, the petitioner has made serious allegations why the order of transfer is not based on the requirement of the administration but because her husband was critical of the facilities at the Government hospital, which statement he refused to withdraw. The petitioner has also joined the Director General of Police as a respondent in his personal capacity, he being the transferring authority. Such allegations of *mala fides*, need to be denied by the authority against whom the same are made. The affidavit-in-reply filed by the Government is sworn by the Deputy Secretary to the Government of Tripura, Home Department. It does not refer to the source from which he could have denied the allegations of *mala fides* made against some other authority.

[10] Quite apart from these aspects, I am acutely concerned about the order of transfer being passed in close proximity to the statement of the husband of the petitioner criticizing the Government facilities being published in the newspaper. If the origination of the transfer process was prior to 13th September 2020, I would have been far more confident in discarding this theory of transfer order being *mala fide*. With this purpose in mind, I had requested the learned Government Advocate to make available the original transfer file. He was kind enough to have the same produced in the shortest possible time. I have perused the file. This file

contains no paper, no proposal, no background of the transfer of the petitioner earlier than 15th September, 2020. I find that on 15th September, 2020 an office note was prepared which stated this:

“As desired by the authority, transfer order of following 9 police personnel is prepared and placed in the file (Flag-A) for kind perusal and signature, if approved.”

Below this, there is a list of 9 police officers who are under proposal for transfer, the petitioner being one of them. This submission was first placed before AIGP(East) who put his remarks on the same day i.e. on 15th September, 2020. In turn, the file seems to have been placed before the Director General of Police who put his remark “approved” and signed it on 15th September, 2020. On 15th September, 2020 itself the transfer order was issued which is placed at page No.203 of the file.

[11] It can thus be seen that the entire proposal of the transfer of the petitioner originated and culminated into order of transfer on 15th September, 2020 itself. Proposal for this transfer, therefore, does not date back to a period prior to 13th September, 2020.

[12] All these aspects make out a strong *prima facie* case in favour of the petitioner for staying the order of transfer. The petitioner is undoubtedly liable for transfer in ordinary course. Having spent 13 years

at one station, in any case, it was always open for the administration to utilise her service at some other station if the interest of the administration was better served in such manner. However, the close proximity between the publication of the statement of the husband of the petitioner criticizing Government hospital facilities and the order of transfer of the petitioner would persuade me to stay the same till final disposal of the petition. The right of freedom of speech and expression would include the freedom of being critical of the public administration or authority. Abrogation or afferent of such right need not necessarily be always direct, it can also be indirect. Any inroad into such freedom howsoever stealthily made, constitutional court will step in. I would like to examine all these aspects of the matter before arriving at a final conclusion.

In the result, by way of interim relief, impugned order 15th September 2020 in so far as the petitioner is concerned the same is stayed. The petitioner would be allowed to discharge her duties at Agartala in Procurement Division where she was posted.

(**AKIL KURESHI, CJ**)