

ORDER SHEET

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : **HON'BLE JUSTICE SOUMITRA PAL,**      **HON'BLE CHAIRMAN &**

**HON'BLE SAYEED AHMED BABA,**      **ADMINISTRATIVE MEMBER.**

Case No. – OA 77 of 2021.

BEAUTY MAHALANABISH– VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. Debabrata Karan, Mr. Sankhasuvra Roy, Mr. Debapriyo Karan, Advocates.
<u>4</u> 22.3.2022	For the State respondents	: Mr. S. Ghosh, Advocate.

In this application Beauty Mahalanabish, Health Assistant (Female) has prayed for certain reliefs, the relevant portion of which is as under :-

*“a) ...An order be passed directing the responding authorities to set aside the Order of transfer dated 18/08/2020 issued by the respondent no. 3 transferring the applicant from Tesimla GPHQ, Mal Block, Jalpaiguri to Fulbari-II GP Sub Centre under Rajganj Block, Jalpaiguri;*

*b) An order be passed directing the respondent no. 5 to issue an order of release of the applicant with the approval of the respondent no. 2 and 3 from Fulbari II GP Sub Centre under Rajganj Block and to direct the respondent no. 4 to allow the applicant to join at Tesimla GPHQ under Mal Block or to direct the respondent no. 3 to place the applicant to any GP Sub Center under Mal Block, in the District of Jalpaiguri;*

*c) An order be passed directing the respondent nos. 2 and 3 to transfer the applicant from Fulbari-II GP Sub Centre to any GP Sub Centre under Mal Block in the District of Jalpaiguri so that the petitioner can do her duty without any hindrance;....”.*

Mr. D. Karan, learned advocate appearing on behalf of the applicant relying on the original application and the supplementary

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affidavit submits that the order of transfer dated 18<sup>th</sup> August, 2020 is at variance with the order dated 14<sup>th</sup> October, 2009 issued by the Director of Health Services, West Bengal. Since the applicant was pregnant and was transferred, the issue is covered by the judgement in Shelly Jaffri Latif : 2004(2) CLJ (Cal) 26 and in Tapas Sil-versus- Union of India & Ors : 2012(1)CLJ(Cal). According to him as the joining letter dated 27<sup>th</sup> October, 2020 to the Block Medical Officer of Health, Mal Block, Manabari, Jalpaiguri, - the respondent no. 4, was made under duress and that too during the Covid-19 period, the transfer order may be quashed.

Mr. S. Ghosh, learned advocate appearing on behalf of the State respondents submits that though directions were issued upon the respondents to file reply, since the applicant on his own had joined at the transferred place of posting on 27<sup>th</sup> October, 2020, as evident from page 83 of the original application, and as the issue was found to be over, no reply has been filed. Submission is since the applicant has joined at the transferred place of posting, the application may be dismissed.

Heard learned advocates for the parties.

It appears from facts that the transfer order dated 18<sup>th</sup> August, 2020, appearing at page 31 of the application, was issued when she was pregnant. Subsequently as evident from page 83 of the application, she was released from Teshimla GP H.Q. under Mal Block, Jalpaiguri and was transferred temporarily at Fulbari-II GP Sub centre under Rajganj Block in the same district and had joined on 27<sup>th</sup> October, 2020 without any protest. Though Mr. Karan during his submission had submitted that such joining was under protest, however, on perusal of the said letter, it appears that she had joined on her own.

So far as the judgement of Shelly Jaffri Latif (supra) is concerned, emphasis has been laid on the “ *convention on the*

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*elimination of all forms of discrimination against women” particularly during pregnancy. The applicant as it appears was pregnant in the year 2020 and during the said period she had voluntarily joined at the transferred place of posting. Therefore the law laid down in the judgements in Shelly Jaffri Latif (supra) and in Tapas Sil (supra) are not applicable.*

In this context, it is appropriate to refer to the judgement of the Supreme Court in State of U.P. and Others – versus- Gobardhan Lal (2004) 11 Supreme Court Cases 402 is as under :-

*7. “...It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so , an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any*

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*place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.*

*8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer....”.*

Since the applicant after issuance of the order of transfer from Teshimla GP H.Q. under Mal Block, Jalpaiguri and to Fulbari-II GP Sub centre under Rajganj Block in the same district, had joined the place of

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posting on 27<sup>th</sup> October, 2020 voluntarily, no order is passed on the application. The application is disposed of.

Later

After judgement is delivered, Mr. Karan submits liberty may be granted to the applicant to file representation ventilating her grievances.

Heard Mr. S. Ghosh, learned advocate for the State respondents.

In view of the submission made by Mr. Karan on behalf of the applicant, the applicant is at liberty to file representation ventilating her grievances before the appropriate authority.

(SAYEED AHMED BABA)  
MEMBER(A)

(SOUMITRA PAL)  
CHAIRMAN.

Sk.