

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Justice Soumitra Pal, Hon'ble Chairman****& The Hon'ble P. Ramesh Kumar, Administrative Member.****Case No –OA-998 of 2019.****Smt. Kakali Kundu Chatterjee. –Vs- The State of West Bengal & Others.**

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<p style="text-align: center;"><u>5</u> 27.02.2020.</p>	<p><b>For the Applicant : Mr. D. K. Saha, Advocate.</b></p> <p><b>For the State Respondents : Mr. A. L. Basu, Advocate.</b></p> <p>In this application, Kakali Kundu Chatterjee, Superintendent of Banipur State Welfare Homes, North 24 Parganas, has challenged the order dated 13<sup>th</sup> December, 2019 transferring her to Dudhkundi State Welfare Home, Jhargram on certain grounds, the relevant portion of which is as under :</p> <p style="text-align: center;"><i>“I. For that the Respondents authorities ought to have appreciate that the petitioner has been suffering some critical decease and she has one son and one daughter and save and except of the petitioner there is other family members in her family to look into her son and daughter.</i></p> <p style="text-align: center;"><i>II. For that the Respondents authorities have taken steps earlier transferring the petitioner as Superintendent of State Welfare Home, Suri in Birbhum</i></p>	

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	<p><i>to Banipur State Welfare Home, North 24-Parganas vide order dated 24.03.2018 passed by the Director of Mass Education Extension &amp; E. O. Additional Secretary, MEE &amp; LS Department, Govt. of West Bengal but unfortunately she was again transferred by the Respondents authorities to Dudhkund State Welfare Home, Jhargram which is for distance of her locality."</i></p> <p>The applicant has prayed for certain reliefs, the relevant portion of which is as under :</p> <p><i>"a) An order directing to the respondents particularly the respondent nos. 1 and 2 to withdraw and/or cancel the Impugned order being Memo. No.DMEE/G-121/1(14) dated 13.12.2019 and allow the petitioner to continue her service as Superintendent in the Banipur</i></p>	

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	<p style="text-align: center;"><i>State Welfare Homes, North 24-Parganas without any disturbance from any corner. "</i></p> <p>It is submitted by Mr. Saha, learned advocate for the applicant that since the transfer of the applicant from Banipur State Welfare Homes, North 24 Parganas to Dudhkundi State Welfare Home, Jhargram will cause difficulty and she is not physically fit and as it is second transfer within a period of eighteen months, appropriate order may be passed quashing the impugned order of transfer. In support of his contention he has relied on the judgments of the High Court passed In re : Dr A N Dutt : 1985 (II) CHN 175, S. V. Singh-Vs.-Union of India &amp; Ors. : 92 CHN 276 and Smt. Kanika Das-Vs.-State of West Bengal &amp; Ors. : CAL. LT. 1992(1) HC 264.</p> <p>Mr. A. L. Basu, learned advocate appearing on behalf of the State authorities submits on instruction that after the order of transfer dated 13<sup>th</sup> December, 2019 was issued, the applicant has remained absent since 14<sup>th</sup> December, 2019 and is absent till date. The order of release was issued on 16<sup>th</sup> December, 2019. As it could not be served, as evident from the police</p>	

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	<p>report dated 17<sup>th</sup> December, 2019, a stand release order was issued on 19<sup>th</sup> December, 2019.</p> <p>In reply Mr. Saha submits that the applicant was admitted in a nursing home.</p> <p>It appears that the applicant was appointed on 9<sup>th</sup> March, 1999 and was posted as Superintendent of Bankura State Welfare Home. Thereafter on 7<sup>th</sup> January, 2003 she was transferred to Suri State Welfare Home. It appears from the application that during her posting she made representation to transfer her to a place near her residence. Thereafter, she was transferred on 24<sup>th</sup> March, 2018 from Suri State Welfare Home to Banipur State Welfare Homes, North 24 Parganas where she joined. Subsequently, it appears that on 13<sup>th</sup> December, 2019 she was transferred from Banipur State Welfare Homes, North 24 Parganas to Dudhkundi State Welfare Home, Jhargram which is under challenge. Though it is contended on behalf of the applicant that the order of transfer is vitiated by malafide and bias, no pleading has been made as evident from the grounds. No statutory provision or statutory rule or regulation has been shown to demonstrate that the transfer is bad in law. The</p>	

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	<p>judgment of the Calcutta High Court relied on by the applicant is not applicable as the Supreme Court in State of U. P. and Others -Vs. Gobardhan Lal : (2004)11 SCC 402 while allowing the appeal had held as under :</p> <p style="text-align: center;"><i>“..... 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</i></p>	

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	<p><i>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 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,</i></p>	

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	<p><i>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.</i></p> <p><i>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</i></p>	

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	<p><i>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. ...."</i></p> <p>Since we find that no statutory provision has been shown to demonstrate that the order of transfer is bad in law, no order is passed on the application. The application is dismissed.</p> <p>After the judgment is delivered Mr. Saha submits that liberty may be granted to the applicant to file representation before the authorities ventilating her grievances.</p> <p>In view of such submission made, after the</p>	



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Sourav.	<p>applicant joins her transferred post at Dudhkundi State Welfare Home, Jhargram, she is at liberty to file representation before the Director of Mass Education Extension, Government of West Bengal, - the respondent no. 2, within four weeks and if such representation is filed within the time as stipulated, the respondent no. 2 shall dispose of the same by passing a reasoned order within eight weeks, to be communicated to the parties, after giving an opportunity of hearing and after verifying the records.</p> <p>(P. RAMESH KUMAR) MEMBER (A)</p> <p>(SOUMITRA PAL) CHAIRMAN</p>	