

**HIGH COURT OF TRIPURA
AGARTALA**

I.A. No.1 of 2020
in W.A. No.145 of 2020 [D.O]

For Applicant (s)	:	Ms. S. Deb Gupta, Adv.
For Respondent (s)	:	Mr. D. Sharma, Addl. GA

**HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

Order

30.09.2020

Heard Ms. S. Deb Gupta, learned counsel appearing for the applicant-writ petitioner as well as Mr. D. Sharma, learned Addl. G.A. appearing for the respondents.

By the order dated 09.03.2020, the intra-court appeal being W.A. No.145 of 2020 was disposed of with the following observation:

"We express our appreciation to Mr. D Sarma, learned Addl. GA who has taken pains to impress upon the Director of School Education to produce a list of schools where the post of Headmaster is vacant.

In the said list, at Sl. No. 8 a school named as Acharya Prafulla Chandra Roy Smrity Vidyamandir, Sadar, AMC is there. That school is currently being administered by one Asst. Headmistress, namely, Smt. Rama Dewan Mog. When we proposed that whether the petitioner can be accommodated in that vacant post of Headmaster, Mr. Sarma, learned Addl. GA has submitted that we can pass the appropriate order.

In view of this situation and considering the nature of the disability the petitioner is suffering from, we direct the Director of School Education to accommodate the petitioner for the time being in the said school as the Headmaster, in observance of the state policy.

Hence, the earlier order of transfer as reflected in the notification No. F.2(11-4)-SE-E(G)/2018 dated 21.07.2020, so far the petitioner is concerned, is interfered with for purpose of posting the petitioner.

Needless to say, this order has been passed in terms of the policy of the Government of Tripura as reflected in the Memorandum No. F.85-W-21/SW/97(L-6) dated 30.12.1998 (Anenxure-13 to the writ petition) whereby the State Government has stated that the Committee formed by the Government has decided that all the departments may be requested to consider the posting of the disable Government employees at the place of their convenience as far as possible.

In view of this, the order of the learned Single Judge, declining to interfere with the impugned action of the respondents stands modified."

Thereafter, it had been recorded by us that the modified of transfer should be issued shortly. In the order, one statement of Mr. D. Sharma, learned Addl. GA was noted. It may be clarified that Mr. Sharma, learned Addl. G.A had stated to this court that if the order is passed, necessary action would follow shortly. As we did not lay any time, frame the writ petitioner has been put to a Tantalus situation. Neither he can join the new place of posting nor can he continue in his earlier place of posting, inasmuch as, pursuance to the said order dated 03.09.2020 no order has been issued by the competent authority.

In these circumstances, the writ petitioner by filing this petition being I.A.1 of 2020, arising from W.A.145 of 2020 [disposed of] has urged this court to pass an appropriate order.

On 24.09.2020 Mr. D. Sharma, learned Addl. GA took accommodation for obtaining instruction. Today, Mr. D. Sharma, learned Addl. GA has produced a copy of the note No.25 which is taken on the record. In the said note, it has been observed that no specific time has been mentioned by the court for complaisance of the said order dated 03.09.2020. On reading of the said note, it has surfaced that the state government had been advised to challenge the said order. In this regard, this court cannot have any say inasmuch as it is the right of the respondents to challenge any order by which they stand aggrieved. But this court had directed by the order dated 03.09.2020 delivered in W.A. No.145 of 2020 [disposed of] that the Director of School Education '*to accommodate the petitioner for the time being in the said school as the Head Master, in observance of the state policy.*' The state policy has clearly postulates that while posting the '*disabled government employees*' they be posted at the place of their convenience as far as possible.

A cursory glance to our order dated 26.08.2020 delivered in WA No.145 of 2020 [disposed of] would reveal that '*to reach the place of posting where he has been transferred to as reported by Ms. Deb Gupta, learned*

counsel for the petitioner, the petitioner has to take a walk for 2 miles but the petitioners' disability will not permit him.' From the records of the writ petition being W.P.(C) No.475 of 2020 [disposed of] a copy of the disability certificate dated 28.02.2019 can be perused. It has been noted therein that on 28.02.2019 [Anexure-4 to the said writ petition] the petitioner was aged about 56 years and his case is of '**Neuro-Myelopathy and Cervical Degerative Disease and the petitioner's disability was 50%**'. There is no dispute about the disability of the petitioner as that has been assessed and certified by the State Level Appellate Board, AGMC & GBP Hospital, Agartala. Even no special reason has been shown why the petitioner has been transferred to a place which would cause inconvenience, according to the petitioner.

We were not oblivious while passing our order dated 03.09.2020 of the Chapter-II of the Rights of Persons with Disabilities Act, 2016 where the legislature has mandated the appropriate government to ensure the persons with disability enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. It has further mandated that the appropriate government shall take steps to utilize the capacity of the persons with disability by providing appropriate environment. The directives in the said act are many. From the records what has transpired this court is that the petitioner was urging for providing him 'appropriate environment' as provided under Section 3(2) of Rights of Persons with Disabilities Act, 2016. The petitioner had urged for a posting in a school within the district situated along the main roads so that he is not required to take a walk for long to reach his place of posting.

In that background, our order dated 03.09.2020 was passed. But the respondents have not implemented the order showing the reason amongst others that there is no time frame. There cannot be any other view but that the petitioner has been stuck in a situation which is really unacceptable. Hence, we direct the respondents particularly, the Director of School

Education to issue the posting order in terms of the order dated 03.09.2020 for the time being by 06.10.2020. As the note that has been placed before us recorded the views of the respondents, the said order of transfer may be made subject to the decision of the superior court or any future order.

In terms of the above, this application stands disposed of.

A copy of this order be supplied to the counsel of the parties forthwith.

JUDGE

JUDGE

Sufay

