

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No. 350 of 2022**

Sri Ajoy Pal

vs

The State of Tripura & 2 Ors.

For Petitioner(s)	: Mr. A. Bhaumik, Adv.
For Respondent(s)	: Mr. M. Debbarma, Addl. GA.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

27/04/2022

Heard Mr. A. Bhaumik, learned counsel appearing for the petitioner. Also heard Mr. M. Debbarma, learned Addl. GA who has appeared on advance notice for the respondents. By means of this writ petition the petitioner has challenged the memorandum No. F.1(19-1)DEE/ESTT/2021(L-49)/13 dated 05.04.2020 [Annexure – 8 to the petition] whereby the petitioner has been transferred from his existing place of posting in the office of the District Education Officer, West Tripura, Agartala to Naireng Kami SB School under Inspector of Schools, Mandai, West Tripura. The petitioner has been released from that establishment w.e.f. the after-noon of 06.04.2022 i.e. on the following day of issuance of the memorandum dated 05.04.2022.

Mr. Bhowmik, learned counsel has submitted that the petitioner has not joined the new place of posting in consideration that his representation that was filed on 07.04.2022 [Annexure – 11 to the writ petition] will be favorably

considered in the fact and circumstances of the case. Indisputably, the petitioner was earlier transferred from his place of posting at Sishu Bihar H. S. School, Agartala, West Tripura to Damcherra Class XIII School, Damcherra, North Tripura by the memorandum No.F. 1(19-1)-DEE/Estt/2021(L-18)/1861 dated 18.10.2021. By the memorandum No. F. 1(19-1)-DEE/Estt/2021(L-18)/3219 dated 13.01.2022 [Annexure 7 to the writ petition], the petitioner's transfer order dated 18.10.2021 was modified on humane consideration as the petitioner's father is a physically challenged person. The petitioner was thereafter posted in the office of District Education Officer, West Tripura, Agartala by way of modification. In this regard, it is to be mentioned that the petitioner's father namely, Monoharan Pal is a physically impaired person & 85 years. His father is suffering from permanent disability of ears (67%) and Locomotor disability (70%) and total physical disability being 85%.

According to the policy adopted by the Government of Tripura as circulated by the memorandum No. F. 23(39)-GA(P&T)/2021, dated 15th November, 2021 [Annexure 4 to the writ petition], a government employee who is the caregiver of the dependent daughter/ son/ parents/ spouse/ brother/ sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability, as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016, may be exempted from the routine exercise of transfer/ rotational transfer subject to the administrative constraints.

Mr. A. Bhaumik, learned counsel has submitted that while modifying the transfer order dated 18.10.2021 [Annexure – 6 to the writ petition] this compassionate provision for the care-giver of the physically challenged persons

was not duly considered while issuing the impugned memorandum dated 05.04.2022 [Annexure 8 to the writ petition] by transferring the petitioner to the Naireng Kami SB School. This provision as it appears was not taken into consideration even the order of modification dated 13.01.2022 [Annexure – 7 to the writ petition] was also not properly considered. While modifying the earlier transfer order dated 18.10.2021 [Annexure 6 to the writ petition] status of the disabled father and requirement of care giving by the petitioner were taken into consideration and that was the ground for modification of the transfer order dated 18.10.2021, but at the time of retransferring the petitioner by the impugned memorandum dated 05.04.2022 [Annexure 8 to the writ petition] that aspect of the matter was not taken care of; or inadvertently was not taken into consideration.

Mr. Bhaumik learned counsel had been categorical while stating before this court that the petitioner is the only caregiver to his father, Monoharan Pal. Monoharan Pal as it appeared from the disability certificate, issued by the District Disability Board, West Tripura, that the petitioner's father has been suffering 85% benchmark disability, details of which have been recorded in the said disability certificate available at Annexure – 1 to the writ petition.

Mr. M. Debbarma learned Addl. G.A. appearing for the respondents has submitted that the petitioner has been transferred to a place so that he can commute everyday from his place of residence to the place of posting and it is not far way station. But the petitioner will not be able to provide care to his father. There had been due consideration, while issuing the impugned memorandum dated 05.04.2022.

In the representation dated 07.04.2022 at Annexure – 11 to the writ petition, the petitioner has raised the issue of providing care to his disabled father as he is the only caregiver in the family. He has raised the issue that when the earlier transfer order was modified by the memorandum dated 13.01.2022, that aspect of the matter was duly considered. On query of this court, Mr. M. Debbarma learned Addl. G.A. has further submitted that the petitioner has failed to make out any ground for interference in the order of transfer by this court. There is no illegality. The order is not visited by any serious or malafide. There is no such allegation and as such, this court may not interfere with the impugned memorandum.

Having appreciated the rival contentions as raised by the learned counsel for the parties, this court finds sufficient force in the submission of Mr. M. Debbarma learned Addl. GA that ordinarily in absence of allegation of illegality or pleaded malafide with substantial proof, the court will not interfere an order of transfer. But in this case, this court has noticed that at the time of issuing the impugned memorandum, the due consideration was not extended in terms of the government's own policy, as circulated by the memorandum dated 15.11.2021 [Annexure – 4 to the writ petition] as well as on the touchstone of their own inference as recorded in the memorandum dated 13.01.2022 [Annexure – 7 to the writ petition]. Hence the respondent No. 2 is directed to consider all the grounds as adverted in the representation dated 07.04.2022 [Annexure 11 to the writ petition] in the light of the government policy as well as the observation made in the memorandum dated 13.01.2022 [Annexure 7 to the writ petition]. Till such consideration is made, the respondents are restrained from

giving any effect to the impugned memorandum dated 05.04.2022 [Annexure 8 to the writ petition].

The petitioner is given further liberty to file a fresh representation if the petitioner feels it necessary. But such fresh representation shall be filed within 7(seven) days from today to the Directorate of Elementary Education, Government of Tripura, the respondent No. 2.

In terms of the above, this writ petition stands disposed of.

There shall be no order as to costs.

A copy of this order be supplied to Mr. M. Debbarma, learned Addl. GA forthwith.

JUDGE

