

V.Karpagam Vs. the District Elementary Educational Officer and ors.

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Court : Chennai

Decided On : Dec-22-2011

Judge : T.Raja, J.

Appeal No. : W.P.(MD).No.14928 of 2011 and M.P.(MD) No.1 of 2011

Appellant : V.Karpagam

Respondent : The District Elementary Educational Officer and ors.

Advocate for Def. : Mrs.S.Bharathi, Adv.

Advocate for Pet/Ap. : M/s.A.Thirumurthy, Adv.

Judgement :

This writ petition has been filed seeking for the issuance of a Writ of Certiorarified Mandamus calling for the impugned transfer order passed by the first respondent by his proceedings in Na.Ka.No.1960/Aa2/2011 dated 21.12.2011 and quash the same.

2. Heard Mr.A.Thirumurthy, the learned counsel appearing for the petitioner. Mrs.S.Bharathi, learned Government Advocate takes notice for the respondents.

3. By consent of both parties, this writ petition itself is taken up for final disposal.

4. The learned Counsel appearing for the petitioner would submit that on 17.09.2011, the petitioner was promoted from the post of Secondary Grade

Headmistress to B.T.Assistant (English) and posted in P.Malayur, Natham Union, Dindigul District. Subsequently, on 14.12.2011, the petitioner made a request for transfer to be posted at Paralipudur. The first respondent on receipt of the said representation dated 14.12.2011 partly considered and posted the petitioner at P.Malaiyur, by proceedings dated 15.12.2011 which is 30 kilometers from Paralipudur. Thereafter, on the next day viz., on 16.12.2011 the petitioner was transferred from P.Malaiyur to Paralipudur, where the request for transfer was made. After three days she was relieved from P.Malaiyur to enable the petitioner to join at Paralipudur by order dated 19.12.2011. Thereafter, by another order dated 21.12.2011 she was re-transferred from Paralipudur to P.Malayur. The said order is under challenge.

5. The learned Counsel appearing for the petitioner would submit that when the petitioner was transferred from P.Malaiyur to Paralipudur by order dated 16.12.2011 and subsequently relieved from P.Malaiyur by order dated 19.12.2011 and the petitioner was re-transferred again back to P.Malaiyur by another order dated 21.12.2011 without any reason is liable to be interfered with by this Court and for the another reason that the petitioner's children going to school are unnecessarily disturbed in view of the relieving order dated 21.12.2011. In support of his submission he would rely upon a judgment of the Hon'ble Apex Court in the case of Director of School Education, Madras and others v. O.Karuppa Thevan and another, reported in 1994 Supp (2) Supreme Court Cases 666 for the proposition that if the employee's children are studying that should be given due weight, if the exigencies of the service are not urgent.

6. In reply, the learned Government Advocate appearing for the respondents by opposing the said relief would submit that when the petitioner was transferred by way of promotion from the post of Secondary Grade Headmistress to the post of B.T. Assistant (English) she was posted at P.Malaiyur by order dated 17.09.2011 and immediately thereafter, she came with a request for transfer on 14.12.2011 to be posted at Paralipudur. The first respondent considering the fact that though there was no vacancy at Paralipudur posted her at P.Malaiyur by order dated 15.12.2011. But the petitioner after being promoted and posted at P.Malaiyur as B.T.Assistant (English), she went on medical leave for 85 days from

22.09.2011 to 15.12.2011 headless to the consequences to be met by the students studying in middle school. When the petitioner went on medical leave from 22.09.2011 to 15.12.2011 for about 85 days, the respondents, by considering her request for transfer posted her at Paralipudur by order dated 16.12.2011. But in view of the administrative exigencies as the respondents are found that the petitioner should be posted at P.Malaiyur, within two days from the date of relieving order dated 19.12.2011, posted the petitioner back to P.Malaiyur which is also within the distance of about 30 kilometers by order of re-transfer dated 21.12.2011. Therefore, it is not necessary for the respondents to assign any reason to post the petitioner at P.Malaiyur. The said submission finds force for consideration by this Court.

7. As mentioned earlier when the petitioner had gone on medical leave from 22.09.2011 to 15.12.2011 for about 85 days though she was promoted to the post of B.T. Assistant (English) from the post of Secondary Grade Headmistress was transferred to P.Malaiyur to Paralipudur by order dated 15.12.2011, but the petitioner till 15.12.2011 did not join duty. Only after accepting the request for transfer when she was posted to Paralipudur by order dated 16.12.2011 the petitioner has gone and joined at Paralipudur. Thereafter, within two days viz., on 21.12.2011 the petitioner was re-transferred on administrative reasons. Further, the judgment of the Hon'ble Apex Court relied on by the learned Counsel appearing for the petitioner also says that if the employee's children are studying that should be given due weight, if the exigencies of the service are not urgent. No doubt, the petitioner's children are going to school but the petitioner has been posted to a distance of 30 kilometers, from her village and therefore, there may not be any difficulties for the petitioner to shift his family as the distance is not far off.

8. It is a fact that when the petitioner was transferred to Paralipudur by order, dated 16.12.2011, on the presumption that the excess vacancy can be created to accommodate the petitioner. , but,after finding that there is no staff strength for the middle school at Paralipurur to accommodate the petitioner within three days, finding this difficulties to accommodate the petitioner in the middle school at Paralipurur, the impugned order has been passed re-transferring the petitioner to P.Malaiyur. Therefore, there is no merit or substance in finding fault with the

impugned order.

9. Further an impression has been made before this Court that the petitioner has been transferred three times within three months. This is not correct. Firstly, the petitioner made a request transfer on 14.12.2011 to be posted on Panchayat Union Middle School, Paralipudur. Considering the request for transfer partly accepting the transfer, the petitioner was posted at P.Malaiyur by proceeding dated 15.12.2011. It is 30 Kms from Panchayat Union Middle School, Paralipudur. Therefore this transfer is not occasioned on administrative grounds as it is only on the basis of the request made by the petitioner. Secondly, the petitioner by order dated 16.12.2011 was transferred from Panchayat Union Middle School, P.Malaiyur to Panchayat Union Middle School, where the petitioner really wanted to go as per her original request for transfer. However, when the said transfer order was passed, the department was under the impression that she could be accommodated in the Panchayat Union middle school at Paralipudur by increasing the strength of the teachers therein whereas the Panchayat Union Middle School at Paralipurur was not permitting any excess teacher strength to accommodate the petitioner . Therefore finding this difficulties, the petitioner was again re-transferred by the impugned order within three days to Panchayat Union Middle School, P.Malaiyur. Under these circumstances, it cannot be pleaded that the petitioner was subjected to frequent transfer.

9. The Honourable Apex Court in the case of Mrs. Shilpi and others .vs. State of Bihar and others reported in AIR 1991 SUPREME COURT 532 has categorically held that where a competent authority issues transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered with by the Court merely because the transfer orders were passed on the request of the employees concerned. . The relevant portion is also extracted hereunder:

“The Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule of on the ground of mala fide. A Government Servant holding transferable post has no vested right to remain

posted at one place or the other, he is liable to be transferred from one place or the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department.”

10. When the dictum of the Apex Court is very clear that the Courts shall not interfere with the transfer order made in public interest or for administrative reasons, I do not find any infirmity or error in the impugned order.

11. In view of the above reasons, this Court is not inclined to interfere with the impugned order of transfer dated 21.12.2011. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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