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Court : Chennai Madurai

Decided On : Aug-08-2012

Judge : Vinod K. Sharma

Appeal No. : WRIT PETITION (MD) NO. 11049 OF 2012

Appellant : M. Saravanan

Respondent : The Principal Secretary/ Special Commissioner of Integrated Child Development Scheme, Tharamani and Others

Advocate for Pet/Ap. : For the Petitioner: D.R. Murugesan, Advocate. For the Respondents: C. Selvaraj, Spl. G.P.

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of certiorari to call for the records pertaining to the impugned order passed by the first respondent herein by his Proc.No.4625/EI-2/2012 dated 26/7/2012 and quash the same as illegal.)

ORDER

1. The petitioner has approached this Court with a prayer for the issuance of a writ in the nature of certiorari to quash the order of transfer dated 26/7/2012.

2. In the affidavit filed in support of this petition, transfer order is not challenged on the ground of mala fide or violation of any statutory provision of law.

3. The grounds of challenge are (i). his daughter is studying in X Standard (ii). That there some family difficulties (iii). mid-term transfer is not permissible.

4. In support of the prayer in the writ, the learned counsel for the petitioner placed reliance from the judgment of the Honourable Supreme Court in DIRECTOR OF SCHOOL EDUCATION, MADRAS and OTHERS Vs. O. KARUPPA THEVAN and ANOTHER reported in 1994 SUPP (2) SUPREME COURT CASES - 666.

5. The Honourable Supreme Court in the peculiar circumstances of the said case had only stayed the transfer till the end of the academic year. The judgment of Honourable Supreme Court cannot be taken as a precedent, to hold that this Court can interfere with the order of transfer, in absence of allegations of malafide or violation of statutory rules.

6. The Hon'ble Supreme Court of India in UNION OF INDIA and OTHERS ..VS.. S.L.ABBAS (1993 (4) S.C.C. 357) has been pleased to lay down that the transfer is an incidence of Service, in absence of malafides or violation of any statutory provisions, the Court cannot interfere with the order of transfer. The Hon'ble Supreme Court has further laid down the guidelines for transfer, do not give any enforceable right to an employee, to come to Court to challenge transfer order.

7. This view was again re-iterated by the Hon'ble Supreme Court in RAJENDRA ROY VS.. UNION OF INDIA and ANOTHER (1993 (2) SCT 65), STATE OF MADHYA PRADESH and ANOTHER VS.. S.S.KOURAV and OTHERS (1995 LAB I.C 1574 (SC)) and MRS. SHILPI BASE and OTHERS ..VS.. STATE OF BIHAR and OTHERS (1991 (2) L.L.J. 591 (SC)).

8. In STATE OF PUNJAB ..VS.. J.S.DHUTT (1995 (4) SCT 225), the Hon'ble Supreme Court has laid down that it is entirely for the employer to decide when, where and at what point of time a public servant is to be posted and the Courts have no jurisdiction to interfere with the order of transfer unless it is actuated by malafides or is in violation of any statutory provisions of law.

9. The Hon'ble Division Bench of Punjab and Harayana High Court in PARVEEN KUMAR VS.. STATE OF PUNJAB (2008 (4) SCT 596) has laid down that the transfer policy of the State for transfer and posting of the employee from one place to another is for the guidance for its officers. The guidelines are not enforceable to challenge the transfer of a Government employee as transfer is a normal feature and incidence of service and does not change the service condition.

10. In view of the settled position of law referred to above, there being no merit, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

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