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OA-490/98

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Notice may be
issued to all
espte. by 24.9.98
084/A.D.

Patra
23/9/98

Munim
23.09.98
S.O

For consideration
of intercession
prayer.

Patra
23/9

Bench

Patra

This matter was fixed to to-day for considering the prayer for interim relief after hearing the learned counsel for the petitioner and learned Government Advocate apparing on behalf of State of Orissa. The petitioner, who is an I.F.S. Officer and was working as D.F.O.(Kendu Leaf)Keonjhar for about a year has been transferred in order dated 14.9.1998 as D.F.O.(Kendu Leaf) Bolangir. He has come up in this O.A. for quashing the transfer order. By way of interim relief it has been prayed that the transfer order should be stayed pending adjudication of the O.A.

We have heard learned counsel for the petitioner and learned Government Advocate ShriK.C.Mohanty appearing on behalf of State of Orissa. It is submitted by the learned counsel for the petitioner that he has been working at Keonjhar for about a year and during the mid academic session he has been transferred to Bolangir. He further submits that his children are studying at Keonjhar. His latest daughter is going to appear M.A.(Part-1) examination in October, 1998, his second daughter is going to appear final degree examination in November, 1998 and his son will also appear pre-degree examination in November, 1998, under the University of Keonjhar. In view of this it is submitted by the learned counsel for the petitioner that though as an honest Government servant he is to obey he transfer order, the same may be given effect to after the educational session of his children is over in March, 1999. In support of his contention it is submitted by the learned counsel for the petitioner that the Government itself in their circular dated 20.5.1995 issued by the then Chief Secretary have indicated that normally the transfer should be effected keeping in mind the academic session, but in this case the transfer has been done in the midst of academic session. It is submitted by the learned Government Advocate that against the order of transfer the applicant has filed a representation on 15.9.1998 and has immediately thereafter rushed to the Tribunal seeking stay of the transfer order. In view of this it is submitted by the learned Government Advocate that an appropriate direction maybe issued to Government for disposing of his representation within a reasonable time. It is also submitted by the learned Government Advocate

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that according to circular dated 20.5.1995 issued by the Government and relied upon by the petitioner, an officer can be transferred even during academic session before April, 15, but only after obtaining the orders of the next higher authority and in this case order might have been issued in pursuance of this provision. In this case one Shri Abhiram Dash, who was working as D.F.O., Nowrangpur has filed a ~~Cavlet~~ stating that he is a necessary party in this case, but the petitioner has not deliberately made him a party and he has prayed that before passing any interim order in this case, he should be heard. Accordingly we have heard Shri A.K. Mishra, learned counsel appearing for Shri Abhiram Das. It is submitted by Shri Mishra that prior to issuing of this order dated 14.9.1998 Shri Abhiram Das was relieved by joining of a substitute about 10 days ago and he was without a posting and after the transfer order was issued in order dated 14.9.1998 he has already joined in place of the petitioner as D.F.O.(KL)Keonjhar by ~~ag~~suming charge on 16.9.1998 and has started functioning exercising powers of D.F.O.(KL)Keonjhar including the financial powers. In view of the learned counsel for Shri Abhiram Das submits that as this part of the transfer order has been given effect to, question of staying the transfer order does not arise.

We have considered the submissions made by the learned counsel for both sides and have also perused the record. It is a fact normally transfer orders are made after closing of the academic session and in this case the petitioner, who according to his submission has completed just one year at Keonjhar has been transferred in the mid academic session to Bolangir. It is also noted that according to averment of the petitioner his children are going to appear University examinations in October and November 1998. If at this stage the petitioner has to shift his family to Bolangir which is under a different University, he will naturally suffer severe difficulties. Hon'ble Supreme Court in Varada Rao case reported in AIR 1986 SC 1955 has indicated that transfer order sometimes affects the Govt. officials adversely in so far as the education of their children is concerned, but at the same time the Hon'ble Supreme Court

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in a series of cases have laid down that Courts and Tribunals can interfere with the orders of transfer only when the same is issued with malafide and ^{an} violation of statutory rules. In this case there is no allegation of malafide or violation of any statutory rules, but only violation of instructions dated 20.5.1998 issued by the Government. In consideration of the facts and circumstances of the case we dispose of the prayer for interim relief by issuing a direction to Res.1 to dispose of the representation of the applicant within a period of 15 days and communicate the result to the applicant within a period of seven days thereafter. As the applicant has been transferred during mid academic session, while disposing of his representation, in case applicant could not be accommodated at Keonjhar, the department will consider, if possible, in some new place nearby to Keonjhar to accommodate him. In view of the difficulties expressed by the petitioner so far as education of his children is concerned, the petitioner, who is in occupation of Govt. quarter should be allowed to retain the quarter till 31st December, 1998.

With the above direction the prayer for interim relief is disposed of.

Hand over copies of the order to learned counsel appearing for the parties.

P. S. M.
24.9.98
VICE-CHAIRMAN
MEMBER (JUDICIAL)

Order No. 3 dt 21.12.98

C.B. not received from Respondent 1 & 2.
Posted to 4/12/98 for appearance and
filing counsel.

P. S. M.
21.12.98
VICE-CHAIRMAN
MEMBER (JUDICIAL)

A copy of the
order dt 24.9.98
may be given
to the counsels
for both sides.

P. S. M.
24.9.98

Received on 24.9.98
P.R. Khampush Adv.

P. S. M.
24.09.98
S.O.

Received copy
24.09.98
24.09.98

Received a
copy of order dt 24.9.98
24.9.98