

Order dated 3.10.2001

Heard Shri K.K.Rath, the learned counsel for the petitioner and Shri Ashok Mohanty, learned senior counsel appearing for the respondents and perused the record.

Before considering this matter it has to be noted that in this Original Application the petitioner has prayed for quashing the order dated 9.8.1999 (Annexure-1) transferring her from the post of Primary Teacher, Kendriya Vidyalaya, Balasore to Salug (West Bengal). By way of interim relief the applicant had prayed for stay of the order of transfer. The prayer for interim relief was rejected by this Tribunal in order dated 16.9.1999. Against the order of the Tribunal the petitioner approached the Hon'ble High Court in O.J.C. No.12545/99. The Hon'ble High Court directed that the Tribunal to dispose of the O.A. as early as possible, preferably before the Summer Vacation. The Hon'ble High Court also stayed the order of transfer till the disposal of the Original Application. This order of the Hon'ble High Court is dated 27.4.2001, which was received by the Registry of the Tribunal after the Summer Vacation, i.e., on 5.7.2001 and as no reference was made to the O.A. it took sometime to traceout the record. On an enquiry from the Tribunal it was submitted by Shri K.K.Rath, learned counsel for the petitioner that he had appeared on behalf of the applicant before the Hon'ble High Court in the aforesaid O.J.C. In view of this it was incumbent on the part of Shri Rath to bring the order of the Hon'ble High Court to the notice of the Tribunal by filing a Memo, so that the matter could be disposed of before the Summer Vacation. As the Hon'ble High Court had granted stay till disposal of the O.A., the petitioner, has apparently, not pursued the matter before the Tribunal till we received the order of the Hon'ble High Court. Prima facie, this appears to be abusing the process of law.

J. Jom.

The case of the petitioner is that she has been working as Primary Teacher in Kendriya Vidyalaya, Balasore being appointed to that post in 1983 till the transfer

order dated 9.8.1999. She has challenged the order of transfer on different grounds, which will be discussed in course of this order. Respondents have filed their counter opposing the prayer of the applicant and the applicant has filed rejoinder. We have also perused the same. The learned counsel for the petitioner has relied on the decisions of the Hon'ble Supreme Court in the case of Ghaziabad Development Authority vs. Vikram Chaudhury, reported in AIR 1995 SUPREME COURT 2325 and Air India Statutory Corp. v. United Labour Union reported in AIR 1997 SC 645. We have also perused those decisions, copies of which have been furnished by Shri Rath.

The first point urged by the learned counsel is that the applicant is suffering from various ailments and the transfer order has been issued without considering her physical condition. In support of this contention the learned counsel for the applicant has filed various documents. We are not inclined to quash the transfer order on this ground, because we find that the applicant has worked in the same station from 1983, i.e., more than 18 years and admittedly the post held by her carries ~~is~~ All India transfer liability. It is also seen from the averments made by the applicant that her illness is of longstanding ~~is~~ because it has been mentioned in the O.A. that in the year 1989 she was bed-ridden for three months. Because of illness the applicant cannot expect that she will be continuing throughout her service career at Balasore. As she has completed more than her tenure at Balasore, on the ground of illness transfer order cannot be quashed. This contention of the learned counsel for the petitioner is therefore held to be without any merit and the same is rejected.

SJm.

The 2nd point urged by the learned counsel that the applicant has been declared automatic surplus, which shows that there were other primary teacher working in K.V.S., Balasore and therefore, she should not have been transferred while the persons junior to ~~her~~ her are retained at Balasore. In support of this contention the learned counsel for the petitioner has stated that the

Hon'ble Supreme Court in the case of Ghaziabad Development Authority (Supra) have indicated that in case of retrenchment the principle of Last Come First Go should be followed. The present case is not with regard to retrenchment of casual labour, but with regard to transfer and the instructions provide that persons having the longest period of stay at a particular station have to be transferred. In this view of the matter Ghaziabad Development Authority case is not applicable in the instant case. So far as Air India Statutory Authority (Supra) is concerned, this relates to Contract Labour Regulation & Abolition Act and as such this decision will not be of any help to the applicant.

The next ground urged by the learned counsel is that along with the applicant one Mrs. Gayatree Prasad was transferred from Balasore and on her representation being considered she was retained at Balasore. From the averments of the respondents in the counter, which have not been denied by the applicant in his rejoinder, it appears that Mrs. Gayatree Prasad's son was totally blind and was reading in 2nd B.A. in F.M. College. In view of this representation of Mrs. Gayatree Prasad was considered and in her place one Mr. S. Sahoo was transferred. In view of this the contention of the learned counsel that in order to retain Mrs. Gayatree Prasad the applicant was transferred is held to be without any merit and the same is rejected. Respondents have pointed out that they have taken into account the staff strength. ^{and} 3 Primary Teachers became surplus and the applicant is the 2nd senior most according to station seniority and therefore, she was transferred. In view of the above, we find no infirmity in the action of the respondents in transferring the applicant from Balasore to Salua, more so when she has worked ~~at Balasore for~~ ^{there since} more than 18 years.

In view of discussions held above, we hold that the applicant has not been able to make out a case for any of the reliefs prayed for by her. The O.A. is held to be without any merit and the same is rejected. No costs.

MEMBER (JUDICIAL)

S. Venkateswaran
VICE-CHAIRMAN

3.10.2001

Four copies of final
Order dt. 3.10.01 issued
to counsel for both sides

S. O.C.D. 410

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