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O.A. No. 299 of 2008

Order dated: 12.08.2008

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member(J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

Legally accepted principle is that transfer is incidence of service, However, such a transfer can be interfered by a Court of Law or any other authority if it finds that the transfer is on extraneous consideration or it would cause irreparable injuries to the entire family life of a Government employee.

2. The short facts now revealed in this O.A. are that while the applicant was working as Sweeper, a menial staff attached to the office of the 2nd Respondent, he was transferred to Rourkela to a distance of about 500 Kms from the present place. The applicant had narrated his grievances in his previous O.A. 213/08. When the above O.A. came for consideration, at the admission stage without considering the merits of the contentions raised by the applicant, this Tribunal had passed an order as follows:-

".....the applicant has filed a representation dated 08.05.2008 under Annexure-A/2 addressed to the Chief Commissioner of Income Tax to cancel his transfer to Rourkela. This representation appears to be pending. The applicant has since been relieved w.e.f. 15.5.2008 vide Annexure-A/4. In the circumstances, the Respondent No.1 is directed to consider the representation and convey his decision to the applicant within a period of 15 days from today and till then the status quo of the applicant would continue."

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3. In the light of the above direction, the representation filed by the applicant has been considered by the authorities and now the impugned order under Annexure-A/7 has been passed. At present, counsel for the applicant in this O.A. invited the attention of this Tribunal to the miseries and the plights face by the applicant. The main contention urged in the application is that the applicant is suffering from certain ailments including Anemia and piles for which he is getting regular treatment from the SCB Medical College, Cuttack. Apart from that the applicant is having two children studying in the high school level and the wife of the applicant is also suffering from some ailments. Further the applicant submits that at this mid of the academic year, though the order of transfer has been passed in May, if the applicant is transferred it will cause irreparable injury to the applicant and it will disturb prosecution of the studies of his children.

4. We heard Ld. Sr. Standing Counsel Mr. U.B.Mohapatra appearing for the Respondents on notice. The Ld. Counsel in answering to the contentions raised in the O.A. submits that the applicant is working at Bhubaneswar for last 10 years and he is now transferred to Rourkela within the range of Orissa and this is a general transfer. Further the counsel submits that there is no violation of any guidelines of transfer and posting of the employees in the department. However, considering the points raised by the counsel appearing for the applicant especially the plight which the applicant now faces if obeys



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the transfer order, we are of the view that at this distance of time after passing the transfer order and that the applicant is still in Cuttack it is only proper for this Tribunal to give a direction to Respondents to consider the matter afresh. Attention of this Tribunal is invited to Annexure-A/7 order passed by the Respondent Authorities also. Reading of Annexure-A/7 would show that none of the grounds urged by the applicant in his representation has been considered and it can not be as a speaking order. Further we are of the view that a Sweeper may not be ordinarily transferred to such a distance of 500 to 400 Kms from his residence.

5. Looking at the above ~~angle~~^{angle}, we are of the view that the matter requires fresh consideration by the authorities. Hence, we quash Annexure-A/7 order and direct the Respondents to consider the matter afresh and to pass appropriate orders in the matter. We have also noted that the applicant is ordered to be as ~~a~~ deemed relieved, if so, the matter shall be considered by the authorities without ^{untrammelled} ~~untrammelled~~ by the relieving order and the applicant may be accommodated at Bhubaneswar at least to the end of this academic year. ^{While} ~~By~~ passing the orders, the authorities may bear in mind that no substitute is also posted in Bhubaneswar till this date and hence the applicant deserves sympathy.

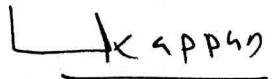
6. With the above observation and direction, this O.A. is allowed to the extent indicated. The final orders in the above matter shall be passed by the Respondent Authorities as early as possible at any rate within 15 days of the receipt of the copy of this order.

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7. Copies of this order be served on the Ld. Counsel appearing for either sides for information and follow of action.


MEMBER (A)


MEMBER (J)

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