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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/351/695/2018

Date of Order: 13.11.18

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Ved Prakash Mishra,

Son of Late Rama Shankar Mishra, aged about 55 years, by occupation service as Vice Principal, GSSS Prothrapur, South Andaman, under the Directorate of Education, Andaman and Nicobar Administration, Port Blair, residence at Dollygunj, Port Blair 744103.

--Applicant.

1. Andaman and Nicobar Administration, service through the Lt. Governor,

For The Applicant(s) : Mr. B. Samanta, Counsel

For The Respondent(s): Mr. A. Chakraborty, Counsel

O R D E R (O R A L)

Per: Bidisha Banerjee, Member (J)

This O.A has been filed in order to seek the following reliefs:

- a) "Direction do issue, quashing and/or setting aside the impugned reasoned order date 14.05.2018, being Annexure "A-5" hereto, and the order of transfer dated 13.03.2018, being Annexure "A-2" hereto in respect of the applicant along with orders/circulars/notifications purporting to release the applicant from his present place of posting, and thereupon issuing mandatory directions directing the respondent authorities to retain the applicant at Port Blair Zone VI by forthwith issuing appropriate orders in this regard;
- b) Direction do issue directing the respondent authorities to regularise the leave period of the applicant and thereupon disburse the salaries of the applicant month by month;
- c) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the impugned reasoned order dated 14.05.2018, being Annexure "A-5" hereto, and the order of transfer dated 13.03.2018, being Annexure "A-2" hereto in respect of the applicant along with orders/circulars/notifications purporting to release the applicant from his present place of posting.
- d) Direction do issue upon the respondent authorities directing them to produce and/ or cause to be produced the entire records of the case and upon such production being made to render conscionable justice by passing necessary orders thereon.

- e) Cost and costs incidental thereto;
- f) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper."

2. The brief facts leading to the application are as under :

(1) Vide an order dated 13.03.28, issued by the Directorate, Education A&N Administration, the applicant Vice Principal of SSS Prothrapur, Port Blair (Zone VI), was transferred to SS Paschim Sagar (Zone III) against the existing vacancies along with 42 persons.

(2) He represented to the Chief Secretary A&N Administration on 20.03.2018 alleging the following arbitrariness:

(i) That the junior Officers were holding higher posts in Education Department;
 ii) He has been transferred from Prothrapur within 7 months, whereas, he has completed only 2 years tenure against a tenure of 4 years applicable to the zone.

iii) It is a mid academic session transfer and would hamper education of his children one of whom was studying at Class XII (Sc.) and due to appear CBSE-2018 exam while the other one was studying B.Sc (Zoology) final year in JNRM, Port Blair.

(3) After the transfer order was issued, he preferred O.A 430/2018, assailing the transfer order on the ground that it was in violation of the transfer guidelines of the respondents. The O. A was disposed of on 28.03.2018 with a direction to issue a reasoned and speaking order within one month and till such time to maintain the status quo.

(4) Speaking order was issued on 14th May, 2018 justifying the transfer in the following manner:

(i) That the transfer was made on the basis of Station Seniority in the post of Vice-Principals.

ii) He had served only 2 years in Zone -III (North Andaman) against the prescribed tenure of 4 years and therefore the transfer was issued in conformity with existing transfer guidelines.

On 28.04.2018, the applicant who was on medical leave rejoined his place of service.

In this present O.A, the speaking order dated 14th May, 2018 has been challenged on several grounds inter alia including that it is a product of non application of mind, a product of malice in law and malice in fact, a product of extraneous consideration, it is an unfair, unjust, unreasonable, etc.

3. At hearing, ld. counsel for the applicant, would strenuously urge that in terms of the transfer policy issued on 5th December, 2014, the applicant who has crossed the age of 55 years, would be entitled to retention. He would place the provisions of revised transfer guidelines as infra: (particularly with reference to the dish highlighted portions thereof)

NOTIFICATION

Port Blair, dated the 5th December, 2014

No. 164/2014/F. No. 1-27/95/D.III (PF).-In supersession of Notification NO. 91/2014/F.No. 1/27/95/D.III (PF) dated 11th July, 2014 and as amended vide Notification No. 198/2003/F. No. 1/27/2003/D.III (PF) dated 9th September, 2003 and in pursuance of the judgment dated 09.07.2001 pronounced by the Hon'ble High Court Calcutta Circuit at Port Blair passed in CPA No. 7 of 2001 arising out of WP No. 69/2000 (John M. Lobo vs- Lt. Governor and Others), the Lt. Governor (Administrator), A&N Islands is pleased to revise transfer guidelines for all Teaching and Non-Teaching Staff of the Education Department of A&N Administration, namely:-

1. SHORT TITLE AND COMMENCEMENT:-

- (i) These may be called revised guidelines for transfer/postings all Teaching and Non-Teaching Staff of Education Department of A&N Administration.
- (ii) They shall come into force with immediate effect.

2. GUIDELINES ARE:

- vii) Normally the request of teachers /officials whose spouses are also working in the Education Department for posting in the same station shall be considered sympathetically subject to availability of vacant posts for

both of them at the station. The request for posting them together in Zone-V&VI shall be considered provided they have completed their tenure in Zone - I to IV. Otherwise, their cases will be normally be considered for posting together in outlying areas. Similarly request of one of the spouses to allow to continue in a particular area will be decided on merit basis.

viii) Considering that a large number of teachers have their spouses working in non transferable Govt. Service at Port Blair. It may not be possible to continuously keep the teachers posted at Port Blair. However, tenure will be reduced to half of the tenure fixed for other categories (except Zone - I A) of teachers in different zones and their cases for transfer back or other Zones can be considered after they have completed half the tenure prescribed for Zone (Subject to completion of academic session).

ix) Request of teachers whose spouses are holding transferable posts in Govt. for their posting in the same will be considered on merit in consultation with respective Heads of the Department provided such proposals are received in time (i.e beginning of academic session). Only joint applications shall be entertained individual representation shall normally be rejected.

VI) Teachers who attained age of 55 years or above shall be considered for their desired place of posting as far as possible subject to the following conditions:-

- a) Those who have already served the prescribed tenure atleast in Four Zones and with service of prescribed tenure in any one of the Hard Zones namely Zone I, II & III.
- b) Those whose children may be studying in Class xii in Port Blair area or respective stations of their postings
- c) Genuine request desired posting on medical grounds , subject to written recommendations of Medical Board.
- d) Those who have already crossed 59 years of age and are retiring within the academic session itself and transferring them at midway of the

session may not be in the public interest, apart from causing additional burden on Govt. in the shape of transfer TAs claim.

The cases falling the above four categories, the teachers who have already been attained 55 years will be posted or continued at the posting of their choice, subject to availability of vacancy.

By order and in the name of the Lieutenant Governor,

A&N Islands. "

4. Citing the provisions supra, in support of his claim, Id. counsel for the applicant would vociferously argue that, having completed the prescribed tenure at a hard zone, namely 1,2 & 3 as evident from the speaking order itself and being a parent of a child studying in class 12 in Port Blair, the applicant would be entitled to be retained at Port Blair or continued at the posting of his choice.

5. Per contra, Id. Counsel for the respondents vehemently opposing the continuation would submit that such concession was applicable to only those who crossed 59 years of age and would be retiring. Id. Counsel would invite our attention to para (vi) (d) supra to contend that such concession was applicable to only to those who have crossed 59 year so age and that to subject to availability of vacancies and not to the ones who completed 55 years etc. and that in absence of clear vacancy at his desired place of posting, the applicant could not seek consideration in terms of the said provisions.

6. At that juncture, Id. Counsel for the applicant would further vociferously submit that the status quo order granted on 28.03.2018 should be deemed to be continued till this date, in view of the fact that the applicant was on medical leave after issuance of the speaking order and, therefore, no release order could be served on him and the earlier release order dated 27.03.2018, relieving incumbent retrospectively from 14.03.2018 was non est in the eye of law because of its retrospectivity.

7. Id. Counsels were heard and materials and records were perused. We noted the facts as under:

(i) By virtue of the order dated 27.03.2018 issued prior to stay of transfer/status quo order on 28.03.2018 the release/relieving of the applicant had already taken effect as on the date such status quo order was issued. Therefore, as on the date 28.03.2018, the status of the applicant while moving O.A. 430/2018 was that of a relieved Vice Principal. This Tribunal had only allowed the status quo as on 28.3.18 to be maintained till disposal of the representation by way of a speaking order, assuming that the applicant was not yet relieved. Such relieving was bound to take effect as soon as the speaking order was issued when the relieving became supposedly automatic requiring no formal order since a formal relieving order dated 27.03.2018 already existed and held the field being never challenged or stayed in the O.A. Therefore, the argument that the applicant was at liberty to stay away without joining his place of transfer, under the aegis of a status quo order, has no force.

(ii) In view of such regulations as supra, we further note that Class 12 Examination of 2018 is already over and therefore the applicant could not have sought for consideration on the ground of school going children in terms of the para (vi) (b) of the guidelines extracted supra.

8. In such view of the matter, we permit the applicant to join the place of transfer within a fortnight from the date of the copy of the orders and to seek a regularisation of the leave, if he wishes to.

9. We have already noted that the allotted tenure of Zone I is 2 years and the applicant has already served at the zone for 3 years 2 months. Therefore, he is not permitted to raise a hue and cry on the ground that the transfer is a premature one.

10. The O.A is accordingly disposed of in terms of para 9 above. M.A, accordingly also stands disposed of. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)