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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 10000/2026, CM APPLs. 46530/2026 & 46531/2026
UNION OF INDIA & ANR. Petitioners

Through: Mr. Amit Tiwari, CGSC with
Ms. Ayushi Srivastava, Mr. Arpan Narwal,
Mr. Kushagra Malik and Mr. Ujjwal Tyagi,
Adv.

versus

SANJAY KUMAR SRIVASTAVA Respondent
Through: Mr. Anil Singal, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

% **23.07.2026**

C. HARI SHANKAR, J.

1. This writ petition is directed against order dated 2 June 2026 passed by the Central Administrative Tribunal¹ on the prayer for interim relief contained in the OA 2210/2026 filed by the respondent before the Tribunal.

2. The respondent is posted at Delhi and was transferred to Chennai *vide* transfer order dated 1 October 2025. He complied with the order, but submitted a representation to the petitioner, requesting that he be retained at Delhi, *inter alia* to avoid disturbance of his son's

¹ "the Tribunal", hereinafter



studies while his academic session was in progress. His representation was rejected by the petitioners on 23 April 2026.

3. Aggrieved thereby, the respondent approached the Tribunal by way of OA 1770/2026. The Tribunal decided the OA by way of order dated 22 May 2026, from which we deem it appropriate to reproduce the following paragraphs:

“11. Learned counsel for the applicant submits that, at the time of issuance of the transfer order, the applicant's son was studying in Class XI. It is further submitted that with effect from 01.04.2026, the applicant's son has been promoted to Class XII. In support of his submissions, reliance has been placed upon the Transfer Policy, particularly the provisions relating to "Protected Employees".

"ix) Protected Employee These employees shall not be transferred to other stations without their consent.

- a. Those employees who are due for retirement on attaining the age of superannuation within 12 months from the cutoff date of transfer.
- b. Employee whose children are studying in class 10th & 12th during the year of consideration.
- c. Self-disability or Employee who is care giver to dependent"

12. It is submitted that, as per said policy, employees whose children are the studying in Class X/XI during the relevant academic year are treated as protected employees. Learned counsel further submits that even at the time of filing the representation, the applicant's son was pursuing studies in Class XI/XII and, therefore, the case of the applicant deserves sympathetic consideration.

13. It is further argued that under the New Education Policy, registration for the Class XII Board Examination is undertaken at the stage of admission in Class XI itself. Thus, when the impugned transfer order was issued, the applicant's son had already commenced his studies in Class XI and was academically settled at Delhi. In such circumstances, shifting him to a new school at Chennai at this stage would seriously prejudice his studies and





academic continuity.

14. Learned counsel also submits that, as per the applicable intra-regional transfer policy for Group 'B'/equivalent employees, the prescribed tenure is two years. However, considering the peculiar facts and circumstances of the present case, particularly the educational interest of the applicant's son, the applicant may be permitted to apply in the forthcoming transfer window even before completion of the prescribed tenure, by granting relaxation/curtailment of the tenure condition.

15. On issuance of notice on 08.05.2026 learned counsel for the respondents sought time to file reply, till date no reply has been filed.

16. It is not in dispute that the transfer policy provides for a special consideration in cases where the children of the employees are in senior classes like 10th and 12th standard. Applicant's son is in class 12th and shall be appearing in board exam in Feb-March 2027 is also not disputed. The applicant has joined at Chennai in deference to the transfer order and as such his request for transfer to Delhi/nearby can be considered since he has joined at the transferred place. As such this is a fit case where the respondents can be directed to consider the representation of the applicant sympathetically and permit him to apply for transfer to Delhi, Delhi-NCR, or any nearby station in accordance with the transfer policy.

17. In view of the above, the present OA is disposed of with a direction to the respondents to consider and decide the representation/ request of the applicant for relaxation/curtailment of the prescribed tenure at his current posting so as to enable him to apply in the transfer window for posting at Delhi, Delhi-NCR, or any nearby station, keeping in view the educational interests of his son.”

4. Purportedly in compliance with the aforesaid order passed by the Tribunal, the petitioners passed a “speaking order” dated 29 May 2026, in which the request of the respondent for being retained at Delhi was principally rejected on the ground that, on the date when his transfer was passed, his son was studying in the 11th class and had been promoted to the 12th class only thereafter and that, therefore, the





benefit of paragraph 8(ii) of the transfer policy dated 25 May 2016, which treated employees whose children was studying in the 10th or 12th class as protected employees, was not available to him.

5. Before us, too, Mr. Amit Tiwari, learned CGSC appearing for the petitioners has advanced the same submissions.

6. We have deemed it appropriate to reproduce, in some detail, the order dated 22 May 2026 passed by the Tribunal in OA 1770/2026 only because it is clear, from the passages reproduced by us, that the Tribunal was alive to the fact that, on the date when the original transfer order was issued, it was the earlier policy which was in existence. Nonetheless, the Tribunal has, keeping in mind the fact that the son of the respondent had in the interregnum been promoted to class 12th, extended a beneficial construction to the policy. Paragraph 16 of the order passed by the Tribunal is unequivocal. The Tribunal has clearly expressed a *prima facie* view that employees whose children was studying in the 10th and 12th class were entitled to be extended the benefit of the policy.

7. The Supreme Court has, in as far back as in 1994, held, in ***Director of School Education v. O. Karuppa Thevan***², that the educational interest of children of employees have to be accorded primacy and that, mid academic session, it would be normally unfair to transfer an employee from the station where he is posted. There is no dispute about the fact that, by the time of the passing of the

² 1994 Supp (2) SCC 666



Tribunal of its order on 22 May 2026, the son of the respondent was already studying in Class 12. Uprooting of the respondent and his family from Delhi at this stage would, therefore, undoubtedly interfere with the studies of the son of the respondent, who is already in Class 12.

8. Moreover, if the petitioners were of the opinion that the respondent ought not to have been extended the benefit of the policy which had come into existence in 2026, the proper course to follow would have been to challenge the order dated 22 May 2026. However, the order was never challenged. Rather, in the “speaking order”, the petitioners have again relied on the fact that, at the time of passing of the original order of transfer, the son of the respondent was studying only in the 11th class and had yet to proceed to class 12.

9. We are of the view that it was not open to the respondent to adopt such a stance, specifically when the Tribunal, while passing its order dated 22 May 2026, had noted the fact that the son of the respondent was studying in Class 11 and had, nonetheless, in the interests of education of the son of the respondent, directed that a sympathetic consideration deserved to be extended.

10. There is another, and more empirical consideration which guides our decision. At the end of the day, we are dealing with an interim order passed by the Tribunal. It was always open to the petitioners to move the Tribunal for vacation of the order. Instead of doing so, the petitioners have chosen not to challenge the order.





11. We are exercising *certiorari* jurisdiction. The limits of *certiorari* jurisdiction are clearly outlined in the following passages from *Syed Yakoob v K.S. Radhakrishnan*³:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of *certiorari* under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. *A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points*

³ AIR 1964 SC 477





*cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide **Hari Vishnu Kamath v Syed Ahmad Ishaque**⁴, **Nagendra Nath Bora v Commissioner of Hills Division and Appeals Assam**⁵ and **Kaushalya Devi v Bachittar Singh**⁶).*

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. *What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record.* It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but *there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record.* If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

(Emphasis supplied)

⁴ (1954) 2 SCC 881

⁵ AIR 1958 SC 398

⁶ AIR 1960 SC 1168



12. Moreover, in *Wander Ltd. v. Antox India (P) Ltd.*⁷, the Supreme Court has identified, in the following passage, the extent to which an appellate court should interfere with interlocutory orders passed by the first court:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph*⁸:

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseinton & Co. v. Jhanaton*⁹ ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

The appellate judgment does not seem to defer to this principle.”

13. The scope of interference under Article 226 would be even

⁷ 1990 Supp SCC 727

⁸ AIR 1960 SC 1156

⁹ 1942 AC 130



more circumscribed than the scope of interference which is available to an appellate court.

14. Mr. Tiwari has also sought to point out that the respondent had already been transferred to Chennai and had joined at Chennai and that, therefore, he would not be entitled to the benefit of the protective Clause 3(ix)(b). This aspect is also covered by the order dated 22 May 2026 passed by the Tribunal in OA 1770/2026. The Tribunal has, in paragraph 16 of the order, opined, in no uncertain terms, that the respondent's son was in class 12 and was due to appear in the Board exams in February to March 2027. The fact that the respondent had joined in Chennai in deference to the transfer order has also been noticed and, even after noticing this, the Tribunal has directed a sympathetic consideration to be accorded to the respondent's request for transfer to Delhi or to a nearby station.

15. As we have earlier noted, the petitioner did not choose to challenge the Tribunal's order.

16. As such, this factor can also not be a consideration for us to interfere with the impugned order which, we repeat, is interlocutory and discretionary in nature.

17. We are of the view that the impugned interim order has been passed in the interests of education of the respondent's son, and that there is no such infirmity in the order as would justify any substitution, by us, of an alternate view, in place of the view adopted



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in the impugned order, especially as it is discretionary in nature.

18. We, therefore, decline to interfere in the present writ petition which is, therefore, dismissed in *limine*.

19. However, we clarify that our observations are restricted to consideration of whether a case for interference with the interim order passed by the Tribunal is made out. They shall have no influence on the Tribunal at the time when it proceeds to decide the OA on merits.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

JULY 23, 2026/aky