

Party Name : SUDHA RANJAN SAHA Vs THE STATE OF TRIPURA & ANR

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. D.K. Biswas, learned counsel appearing for the petitioner as well as Mr. J. Majumder, learned counsel appearing for the respondents.

The petitioner is serving under the respondents in the capacity of Assistant Teacher and during his tenure he served far-flung areas.

He was transferred to his home town on 01.01.2009 and thereafter he was diagnosed to suffer fatigue back syndrome which generates unbearable back pain. The petitioner is under constant medical surveillance at Agartala. On 07.08.2014 indisputably the petitioner was transferred to Bhagichand S.B. school situated in Kanchanpur Sub-Division. Having been approached by the petitioner, the said order of transfer was recalled by the Director of School Education by the memorandum dated 26.09.2014.

According to Mr. Biswas, learned counsel appearing for the petitioner, such modification was made on consideration of his ailments as indicated.

Be that as it may, on 19.11.2014, by the order under No. F.1(7-1)-SE/E(NG)/2011(L-II)(S) the petitioner was again transferred to Shetuduar(MC) S.B. School under Kanchanpur Sub-Division, which is under the TTAADC. It has been also directed that the petitioner shall be released with effect from 29.11.2014. Out of apprehension that the order dated 19.11.2014 may be implemented, the petitioner applied for leave. Mr. Biswas, learned counsel appearing for the petitioner by virtue of a huge sheaf of the medical records, Annexure-4, has submitted that the petitioner was suffering from lumbar canal stenosis causing compressive nerve lesion. He has been referred to a Neuro Surgeon on 15.12.2014 and he was also advised to avoid long journey and also to avoid standing for long time.

Mr. Majumder, learned counsel appearing for the respondents has submitted that it may be true that the petitioner has been suffering from serious predicament for his ailment, but the petitioner never made it clear by way of representation to the competent authority for consideration of his difficulty. On the contrary, his wife has made a representation to the Minister concerned, which is available at Annexure-5 to the writ petition. Mr. Majumder, learned counsel has further submitted that the petitioner does not have any indefeasible right to claim his posting in a certain place. It is the employer who has to decide where he would deploy his employees. So far the position of law is concerned, there cannot be any difference of opinion, but the statement as made by Mr. J.

Majumder, learned counsel appearing for the respondents cannot be accepted by this court. On the similar ground the Director of School Education on the previous occasion had interfered with the transfer order. This court fails to understand what prompted again to transfer the petitioner in the same area from where his earlier posting was recalled.

Having regard to these aspects of the matter, the petitioner is directed to make a proper representation supported by the medical records to the Director of School Education within a period of 15(fifteen) days from today seeking the redress that he wants to have and the Director of School Education after scrutinising the medical records, if necessary on taking the medical advice from the experts, would determine whether the petitioner should be posted in such a far-flung area which has to be covered by a long journey by a vehicle bearing strain. It goes without saying, even if the employee cannot as a matter of right demand posting in a particular post, but at the same time, it is the human duty of the employer to look that the employees are not pushed to suffer for any order which might at the end jeopardise his life. Till such exercise is complete the petitioner shall not be disturbed in his present place of posting and to that limited extent the order directing release of the petitioner stands interfered with and quashed. However, the Director of School Education shall be at liberty to pass a fresh order after due consideration as directed by this court. With this direction and observation this writ petition stands allowed to the extent as indicated above. There shall be no order as to costs.