

Case No :WP(C) 0000491/2015

Party Name : SOVA MIAH Vs THE STATE OF TRIPURA & ORS

THE HONBLE MR. JUSTICE S.TALAPATRA

Heard Mr. D. Bhattacharji, learned counsel appearing for the petitioner as well as Ms. A.S. Lodh, learned Addl. G.A. appearing for the respondents. The grievance of the petitioner falls within a very short compass. By the order dated 19.02.2015, Annexure-6 to the writ petition, the petitioner, who is an Upper Division Clerk working under the Animal Resources Development Department, has been transferred from his present place of posting at Sonamura to the office of the Assistant Director, Animal Resources Development Department, Kumarghat.

This is not in dispute that the petitioner's wife namely, Mst. Hosenara Begam is a physically challenged woman and she has physical disability to the extent of 80%.

The petitioner had earlier approached this Court for quashing the said transfer order by filing a writ petition being W.P.(C) No.282 of 2015 which was disposed of by the order dated 14.09.2015 with the following observation and directions:

"Hence this court is of the view that the challenge does not fall within the jurisdictional competence of this court for intervening the impugned transfer order. However, the petitioner is granted liberty to approach the competent authority, the respondent No.2 herein, laying down all the relevant facts for consideration of the difficulty of the petitioner with compassion. The petitioner may, alongwith the representation, furnish the other necessary materials. Such representation shall have to be filed by the petitioner within 7(seven) days from today and the respondent No.2 shall dispose of such representation, if any, after due compassionate consideration as early as possible, but by any rate not beyond 15 (fifteen) days from the date of receipt of such representation.

Till then, the respondent No.2 shall not compel the petitioner to join the new place of posting, if in the meanwhile the order of transfer has not been given effect to."

Mr. Bhattacharji, learned counsel appearing for the petitioner has submitted that the petitioner had filed such representation on 18.09.2015 within the stipulated time to the Director, Animal Resources Development Department, the respondent No.2 herein but that did not yield in any positive result. However, by the communication dated 03.10.2015, Annexure-12 to the writ petition, the Director, Animal Resources Development Department has observed that:

As per the Order of the Hon'ble High Court of Tripura dated 14.09.2015 in Writ Petition (Civil) No.282 of 2015, your representation dated 18.09.2015 (advanced copy) and 24.09.2015 (main copy) with regard to the modification/cancelling the transfer order No.F.2(350) - ARDD/ESTT/13/ 19272-03 dated 19.02.2015 has been considered. After due compassionate consideration the same has been regretted by the Government due to the following reasons:

(i) That in the past the Govt. has sympathetically considered your case by giving posting in your home town at Sonamura for the period of about 21 years out of your total service of about 26 years till date. The period of your service outside Sonamura was in Udaipur, Belonia and Bishalgarh.

(ii) That the Department is facing much problem to run the offices due to acute shortage of ministerial staff in the Dept. The instant transfer order has been made considering the requirement of staff in different offices under the Dept. in the public interest as well as in the interest of Administration.

In view of the above, your representation was disposed of and accordingly, the Order No.F.2(350)-ARDD/ESTT/13 dated 03.10.2015 was issued.

Being aggrieved by that decision, the petitioner has approached for interference in the said transfer order.

Mr. Bhattacharji, learned counsel appearing for the petitioner has submitted that the petitioner is not averse to the transfer but his only anxiety is that for care management of his wife, it would have been convenient had the petitioner been posted in a place where he would have attended the duty from his residence. The respondent No.2, the Director, Animal Resources Development Department has regretted such posting. It has been already observed in the earlier writ petition that unless the breach of statutory rules or mala-fide is pleaded in respect of the order of transfer, ordinarily the Court would not exercise its jurisdiction. No doubt, the petitioner would suffer inconvenience and that was the basis upon which, this Court reverted the matter to the respondent No.2 for considering all relevant factors and passing appropriate order having due compassion. But the respondent No.2 regretted to accommodate the prayer of the petitioner.

Ms. A.S. Lodh, learned Addl. G.A. appearing for the respondents has submitted that the deployment of the employees falls within the exclusive domain of the executive and as such, this writ petition does not have any substance.

It has been observed time and again by this Court that it is the duty of the employer to take care of the welfare of the employee and if any employee is confronted with a difficult situation, it is their duty to address that situation with compassion. If the employer does not do so, the court cannot compel the employer to act in a particular manner as it has been held in umpteen occasions that the court would not interfere in respect of any matter where an employee would be deployed for discharging his duties. Only in case of arbitrary action which is apparent on the face of record, this Court may exercise its authority. But this is not such a case where the court is called upon to exercise its jurisdiction.

Having regard to all these aspects, this writ petition is dismissed. However, the dismissal of the writ petition will not stand in the way of the petitioner to submit a representation to the Secretary, Animal Resources Development Department seeking compassionate consideration in the matter of his posting.

For the above reasons, this writ petition stands dismissed.

There shall be no order as to costs.