

(2019) 08 MAN CK 0026
In the Manipur High Court
Case No : Writ Petition (c) No. 83 Of 2019

Commissioner, Navodaya Vidayala Samiti Others	APPELLANT
Vs	
A.Athia	RESPONDENT

Date of Decision : 16-08-2019

Acts Referred:

Citation : (2019) 08 MAN CK 0026

Hon'ble Judges : Ramalingam Sudhakar, CJ;Kh. Lanusungkum Jamir, J

Bench : Division Bench

Advocate : S.Samarjeet, Thoi Thoi Meetei

Final Decision : Disposed Off

Judgement

R.S., CJ

[1] The prayers in this writ petition are as follows:-

"i) to admit this Writ Petition and issue a rule nisi:

(ii) pass any other orders/ directions as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

(iii) to issue a writ of certiorari for quashing and setting aside the order dated 21/08/2018 passed by the Hon'ble Central Administrative Tribunal, Gauhati Bench in O.A No. 042/00275/2018.

(iv) In the interim, it is prayed that the order dated 21/08/2018 may be stayed till the disposal of the writ petition as the ends of justice may call for."

[2] Admit.

[3] Heard Mr. S.Samarjeet, learned CGC for the petitioners as well as Mr.Thoi Thoi Meetei, learned counsel for the respondent.

[4] The present writ petition has been filed by (1) the Commissioner Jawaharlal Navodaya Samiti, Department of Education & Literacy, Govt. of India, (2) the

Deputy Commissioner, Jawaharlal Navodaya Samiti, Regional Office, Temple Road, Barik Point, Lachumiere, Shillong and (3) the Principal, Jawaharlal Navodaya Vidyalaya, Mao, Senapati against the respondent who is the applicant in O.A. No.043/00275/2018 praying to set aside the final order dated 21.8.2018 passed by the Central Administrative Tribunal, Gauhati Bench. The operative portion of the order reads as follows:-

"7. By taking into consideration the entire conspectus of the case as well as ratio laid down by the Hon'ble Gauhati High Court mentioned above, we direct the respondent authority to allow the applicant to continue in her present place at JNV, Mao, Senapati, Manipur under Shillong Region of NVS till her date of retirement. Consequently, the impugned final Transfer List (Round 1 & 2) - ATD 2018 shown in the official website on 13.08.2018 in respect of the applicant is hereby quashed and set aside."

[5] The cause of action for filing the Original Application before the Tribunal was the final transfer list (Round 1 and 2)-ATD 2018 dated 13.8.2018. In that, the respondent is working as a Staff Nurse, Jawaharlal Navodaya Vidhyalaya, Mao, Senapati. She is suffering from suspected cancer of the cervix with cervical polyp with Benign Proximal Positional Vertigo (BPPV) and is under treatment. By the impugned transfer list ATD 2018 dated 13.8.2018, the Department wants to shift the respondent, Staff Nurse from Jawaharlal Navodaya Vidhyalaya, Senapati, Manipur, Shillong to JNV, Mirzapur, Uttar Pradesh, Lucknow Region. She filed a representation dated 11.7.2018 which was not accepted forcing her to file this O.A. on 19.8.2018.

[6] As per the date given in the O.A., it shows the date of signature as 19th August, 2018. 19.8.2018 was a Sunday. The only possible date for filing the O.A. was 20.8.2019 i.e. Monday and on 21.8.2018 i.e. Tuesday. A final order dated 21.8.2018 has been passed in favour of the respondent herein. The order specifically states that none appears for the Union of India and three other respondents shown therein. Even in the order of the Tribunal, there is no reference of notice being sent to the Standing Counsel or the parties concerned, namely, the Union of India and three others. Without hearing the other side, the final order has been passed at para No.7, which has been already recorded above.

[7] Aggrieved by this, the present writ petition has been filed by the three petitioners mentioned earlier, prima facie, pleading that a final order has been passed without notice and without being heard. No opportunity was given to anyone of the respondents before the Tribunal to appear and object to the proceedings and therefore, there is a failure of principles of natural justice. It is pleaded that the Tribunal acted in an arbitrary and unreasonable manner by taking up the case on Monday, disposing it of on Tuesday (i.e.) next day and setting aside the transfer order. The order is in violation of procedures prescribed by law and offending due process of law.

[8] In the present writ petition, notice was ordered on 31.5.2019. Mr. Gunabanta, learned counsel entered appearance for the respondent. The following order was passed.

"31.5.2019.

Heard Mr. S. Samarjeet, learned CGC for the petitioner.

Issue notice.

Mr. M. Gunedhor, learned counsel enters appearance and accepts notice on behalf of the sole respondent.

Accordingly, notice on the respondent is complete.

List the matter on 19th July, 2019 for motion."

[9] On 19.7.2019, the following order was passed.

"19.7.2019.

Notice was already issued on 31 -05-2019.

Mr. S. Gunabanta, learned counsel for the respondent prays for two weeks' time to file counter affidavit.

List the matter again on 16th August, 2019."

[10] Today, when the matter is taken up, no counter affidavit is filed despite opportunity given. However, Mr. S.Gunabanta, learned counsel when posed with the question on the plea of violation of principles of natural justice, given the facts and circumstances as above mentioned, he fairly states that the order suffers from the error as pointed out by this Court. He has no objection for remanding the case back to the Tribunal for hearing all the parties on merit. That the respondents therein, the present writ petitioners department can also file objections.

[11] We notice that the Tribunal has passed this order in haste by taking up the case filed either on 20th or 21st August, 2018 and disposing it of immediately thereafter without notice to the respondents before it. No opportunity was given to the respondents therein, namely, the Union of India and three others. The Tribunal should not have resorted to such a short cut method for disposing of cases which has resulted in unwanted litigation of this nature. We are aware of the fact that this order has been passed by a judicial member overlooking the sound judicial principles of hearing all necessary parties before deciding the matter. The order of Tribunal should give details of notice issued and the parties who appeared and failed to appear despite notice, The Tribunal cannot arbitrarily pass a final order at the admission stage. We disapprove the approach of the Tribunal in the present case.

[12] Only on the ground of violation of principles of natural justice and

arbitrariness in the proceeding of the Tribunal, we are incline to set aside the impugned order. We direct the Tribunal to hear both the parties and decide the issue on merit as expeditiously as possible preferably on or before 18.9.2019.

[13] With the above, the writ petition stand disposed of.