

(2010) 02 CAL CK 0072
In the Calcutta High Court
Case No : W.P.S.T. 495 of 2009

Kalyan Kumar Banerjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-02-2010

Acts Referred:

Citation : (2010) 2 CALLT 32

Hon'ble Judges : Pranab Kumar Deb, J; Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : P.S. Bhattacharyya, for the Appellant; Prassenjit Basu, for the Respondent

Final Decision : Allowed

Judgement

The Judgment of the Court was as follows:

1. The petitioner herein being a group-C employee of the Health Department has undisputedly reached at the fag end of his service career. The said petitioner has been transferred from Dhubulia Chest Sanatorium to Medinipur Medical College and Hospital. In view of the office Memorandum dated 28th February, 2002 issued by the Department of Health and Family Welfare, Government of West Bengal, posting of a government servant three years before retirement should be in a station or near about the said station where he/she intends to settle after retirement. Furthermore, the Chief Medical Officer of Health, has also been requested by the aforesaid Office Memorandum to make transfers within the respective districts.

2. Clause (vii) and (viii) of the said Office Memorandum dated 28th February, 2002 are set out hereunder:

vii) 2 (three) years before the retirement of a Government servant, his/ her posting should be in a station where he/she intends to settle after retirement or near about as far as practicable;

viii) Chief Medical Officer of Health may make transfers within their respective districts. As regards other employees including those who are under the Directorates of Aurveda and Homoeopathy and in the event of inter-district transfers, the Director of Health Services, West Bengal, the Director of Ayurveda, West Bengal and the Director of Homoeopathy, West Bengal, as the case may be, will be the appropriate authority.

3. Referring to the aforesaid Memorandum, learned Advocate of the petitioner submits that the petitioner herein should not have been transferred to the Medinipur Medical College and Hospital at this stage since the said petitioner will retire from service on attaining the age of superannuation in the year 2011, i.e. admittedly within a period of less than three years from the date of issuance of the transfer order dated 23rd April, 2009.

4. Mr. Basu, learned Advocate representing the State-respondents, took a very fair stand in the matter and submits that although the State Government reserves the right to transfer a Group-C and D employee at any time, however, in the facts of the present case, considering the date of retirement of the employee concerned, appropriate order may be passed by this Court.

5. Having heard the learned Advocates representing the petitioner as well as State-respondents and considering the facts and circumstances of the case, we are of the opinion that the petitioner herein should not have been transferred just on the verge of retirement specially when the Office Memorandum issued by the Government of West Bengal dated 28th February, 2002 prohibits such type of transfer.

6. Accordingly, we set aside the impugned order of transfer dated 23rd April, 2009 issued by the Government of West Bengal in favour of the petitioner herein and direct the respondent authorities to allow the petitioner to resume his duties in the Dhubulia Chest Sanatorium immediately.

7. Needless to mention that the respondent authorities will also pay admissible salaries and allowances regularly to the said petitioner after joining the duties. The period of absence of the petitioner should be adjusted against admissible leave, if available to the said petitioner, otherwise, if necessary, special leave should be granted by the competent authorities in order to regularise the entire period of absence of the said petitioner.

8. With the aforesaid directions, this petition stands allowed and the impugned order passed by the learned Tribunal on 11th June, 2009 in OA No. 739 of 2009 is set aside.

In the facts and circumstances, of this case, there will, however be no order as to costs.