

(1998) 02 J&K CK 0043

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1752 of 1997

Mehboob Ahmed Bhat

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (1998) 3 SCT 562

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : D.S. Chauhan, P.N. Bhat, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.

1.Counsels heard.

Petition is taken up for disposal.

An order of transfer is the subject matter of challenge in this petition.

It is settled law that under normal circumstances, no judicial review is permissible so far as transfer matters are concerned. In the present case, the

petitioner stands transferred from High School, Gandoh to the High School, Kharangal. The distance between these two schools is about 4 kms.

This is stated in the objections filed by respondent authorities.

2. In view of the above, no interference is called for in the present petition.

3. The learned counsel for the petitioner however, submits that mid term transfer should not be made.

4. This contention of the learned counsel for the petitioner is accepted. This view was laid down by the Supreme Court in the case reported as

1994 Supp (2) SCC 666 : 1996(2) SCT 402 (SC), Director of School Education, Madras and others v. O. Karuppa Thevan and another,

1996(2) SCT 402 (SC)". In the aforementioned case, the Supreme Court of India has observed that an employee should not be transferred during

mid session. The short judgment given by the Supreme Court is reproduced below :

The Tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to

be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the

respondent contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during

midacademic term. Although, there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are

studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to

point out there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic

year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the

current academic year. The appeal is allowed accordingly with no order as to costs.

5. Respondent authorities would accordingly take notice of the aforementioned judgment of the Supreme Court of India and take such decision as

is permissible under law. Till a decision is taken, the order of transfer be kept in abeyance. This is, however, subject to the condition that the order

passed by this court is made available to the respondent authorities by the petitioner along with the writ petition, which will be treated as a

representation by the concerned authorities within ten days. If this is not done interm directions contained in this order shall stand vacated.

6. The writ petition is disposed of with the observations made above.