
(2014) 06 MEG CK 0020
In the Meghalaya High Court
Case No : W.P. (C) No. 225/2014

O. Rilando Challam

APPELLANT

Vs

The State of Meghalaya and Others

RESPONDENT

Date of Decision : 27-06-2014

Acts Referred:

Citation : (2014) 06 MEG CK 0020

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : H.S. Thangkhiew, Sr. Advocate and N. Mozika, Advocates for the Appellant; K. Khan, Addl. Sr. G.A, Advocates for the Respondent

Judgement

T. Nandakumar Singh, J.—Heard Mr. H.S. Thangkhiew, learned senior counsel assisted by Mr. N Mozika, learned counsel appearing for the petitioner and Mr. K. Khan, learned Addl. Sr. GA appearing for the respondents.

2. The petitioner being aggrieved by the portion of the order dated 24.06.2014 for transferring him to Williamnagar Government College, Williamnagar on promotion to the post of Principal of Williamnagar Government College. Mr. H.S. Thagnkhiew, learned senior counsel appearing for the petitioner submits that the petitioner only aggrieved by the portion of the said transfer order to Williamnagar Government College, Williamnagar. It is fairly settled that if transfer is incidental of service, the Court is not normally interfering with the transferring and posting order unless transfer order is issued in violation of the rules and also affecting the care of the Govt. employees. In the present case, learned senior counsel appearing for the petitioner contended that as the petitioner's son aged about 25 years is mentally retarded and compounded by an acute case of epilepsy, his son requires constant attention, as there is nobody in the family to take care of the petitioner's retarded son. Over and above, the petitioner's mother aged about 75 years is also suffering from hypertension is required personal and medical attention.

3. In case, the petitioner joins the Williamnagar Government College, Williamnagar, there shall be nobody to look after the petitioner's retarded son and his aged mother. Learned senior counsel appearing for the petitioner also contended that the Govt. of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training issued an Office Memorandum dated 06.06.2014 wherein and where-under, it is stated that the Govt. servant, whose disabled child is suffering from the type of illness mentioned in the Office Memorandum dated 06.06.2014, shall be exempted from the routine exercise of transfer and rotational transfer subject to the administrative constraints. Copy of the Office Memorandum dated 06.06.2014 is available at Annexure-10 to the writ petition and it reads as follows:--

"No. 42011/3/2014-Estt.(Res.) Government of India Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training

North Block, New Delhi Dated the 6th June, 2014

OFFICE MEMORANDUM

Sub: Posting of Government employees who have differently abled dependents - reg.

There has been demand that a Government employee who is a care giver of the disabled child may not have to suffer due to displacement by means of routine transfer/rotational transfers. This demand has been made on the ground that a Government employee raises a kind of support system for his/her disabled child over a period of time in the locality where he/she resides which helps them in the rehabilitation.

2. The matter has been examined. Rehabilitation is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, and psychiatric or a social functional level. The support system comprises of preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care including hospitals, therapists and doctors, etc. Thus, rehabilitation is a continuous process and creation of such support system takes years together.

3. Considering that the Government employee, who has disabled child serve as the main care giver of such child, any displacement of such Government employee will have a bearing on the systemic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. Therefore, a Government servant who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word "disabled" includes (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities.

4. Upbringing and rehabilitation of disabled child requires financial support.

Making the Government employee to choose voluntary retirement on the pretext of routine transfer/rotation transfer would have adverse impact on the rehabilitation process of the disabled child.

5. This issues with the approval of MoS (PP).

6. All the Ministries/Departments, etc. are requested to bring these instructions to the notice of all concerned under their control.

(Debabrata Das) Under Secretary to the Govt. of India Tel. No. 23093307"

4. The instructions in the said Office Memorandum dated 06.06.2014 may not have the force of law, but the instructions had been issued for compliance. Learned senior counsel appearing for the petitioner contended that the said Office Memorandum dated 06.06.2014, the petitioner would had been exempted from routine exercise of transfer and rotational transfer subject to the administrative constraints. Learned senior counsel further contended that there may not be administrative constraints in the present case inasmuch as, the petitioner could be posted at any Govt. colleges nearby to his resident so as to enable him to take personal and medical attention to his said retarded son and aged mother. This point is to be decided by the administrative authority.

5. In the above factual backdrop, this writ petition is disposed of by directing the petitioner to file a representation to the Principal Secretary Education Department, Govt. of Meghalaya ventilating all his grievances in transferring or posting the petitioner to Williamnagar Government College within a period of five days from today. The Principal Secretary Education Department, Govt. of Meghalaya on receipt of the said representation shall consider the case of the petitioner keeping in view of the said Office Memorandum of the Govt. of India dated 06.06.2014 and with human touch within a period of two weeks" from the date of receipt of the representation. It is made clear that till the representation so filed by the petitioner pursuant to the directions of this Court is considered and disposed of by passing a reasoned order, the petitioner shall not be transferred to the Williamnagar Government College, Williamnagar.

6. With the above observations and directions, this writ petition is disposed of.