

CONSTITUTIONAL WRIT

Present: **The Hon'ble Justice Pranab Kumar Chattopadhyay**

And

The Hon'ble Justice Kishore Kumar Prasad

W.P.S.T.152 of 2010.

Judgment On:26.3.2001

POINTS:

DELAYED HEARING, INTERIM ORDER----Order of transfer issued-

Delayed hearing, whether can make the application infructuous-Constitution of India, Article 226.

FACTS:

The Petitioner filed an application before the learned West Bengal Administrative Tribunal praying for issuance of appropriate interim order restraining the respondents from giving any effect and/or further effect to the order of transfer dated 25th February, 2010 issued to the said petitioner. In spite of specific prayer made on behalf of the petitioner, the Learned Tribunal fixed the date of hearing of the said application on 19th April, 2010.

In view of issuance of the transfer order on 25th February, 2010, the respondent authorities may issue release order at any point of time and in that event, the application filed before the learned Tribunal would become virtually infructuous.

HELD:

The Court is of the opinion that the learned Tribunal should have preponed the date of hearing of the application filed before it and considered the prayer for interim order on merits otherwise the application may become infructuous. Para-5

Since there is hardly any time left for sending the matter back to the Tribunal for preponing the date of hearing of the application, the Court has no other alternative but to consider the prayer for interim order made on behalf of the petitioner. Para-6

The transfer order already issued to the petitioner has not yet been acted upon, therefore the Court directs the respondents to maintain status quo as on date with regard to the present posting of the said petitioner till 21st April, 2010. Para-7

Mr. Soumen Dutta,
Mr. Gautam Pathak Banerjee. ...For the Petitioner.

Mr. Arabinda Chatterjee,
Mr. Kanti Kr. Chakraborti ...For the State.

THE COURT:

1) It has been submitted by the learned Advocate of the petitioner that an application has already been filed before the learned West Bengal

Administrative Tribunal praying for issuance of appropriate interim order restraining the respondents from giving any effect and/or further effect to the order of transfer dated 25th February, 2010 issued to the said petitioner.

2) The learned Tribunal has fixed the date of hearing of the said application on 19th April, 2010.

3) The learned Advocate of the petitioner submits that the learned Tribunal in spite of specific prayer made on behalf of the petitioner did not prepone the date fixed for hearing of the said application.

4) It has also been submitted on behalf of the petitioner that the respondent authorities may issue release order at any point of time in view of issuance of the aforesaid transfer order on 25th February, 2010 and in that event, the application filed before the learned Tribunal would become virtually infructuous.

5) Having heard the learned Counsel appearing for the parties and considering the facts and circumstances of this case, we are of the opinion that the learned Tribunal should have preponed the date of hearing of the application filed before it and considered the aforesaid prayer for interim order on merits otherwise the application may become infructuous.

6) Since there is hardly any time left for sending the matter back to the Tribunal for preponing the date of hearing of the application, we have no other alternative but to consider the prayer for interim order made on

behalf of the petitioner.

7) Considering the submissions of the learned Counsel of both the parties and further considering the fact that the transfer order already issued to the petitioner has not yet been acted upon, we direct the respondents to maintain status quo as on date with regard to the present posting of the said petitioner till 21st April, 2010.

8) Let it also be on record that we have not expressed any opinion with regard to the validity and/or legality of the impugned transfer order issued to the petitioner and the same will be considered by the learned Tribunal at the time of deciding the application on merits.

9) We also request the learned Tribunal to consider the prayer of the petitioner for granting interim order on the next date of hearing i.e. on 19th April, 2010.

10) With the aforesaid observations and directions, this writ petition stands disposed of.

11) There will be, however, no order as to costs.

12) Xerox plain copy of this order countersigned by the Assistant Registrar (Court) be given to the appearing parties on usual undertaking.

(Pranab Kumar Chattopadhyay, J.)

(Kishore Kumar Prasad, J.)

