

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 948 OF 2020
(@ SLP (C) No(s). 2938/2020)**

THE STATE OF WEST BENGAL & ORS.

Appellant(s)

VERSUS

TARAK UPADHYAY

Respondent (s)

O R D E R

Leave granted.

Heard counsel.

This appeal is against an interim order dated 1.10.2019 passed by the Calcutta High Court in W.P.S.T. No.152 of 2019, staying an order of “detailment” issued against the Appellant by the Director of Personnel & Ex-Officio Chief Engineer, Irrigation and Waterways Directorate, under Rule 2(10b) of the West Bengal Service Rules, Part-I, as also the order of release of the Respondent.

By a Memo No. 1070-E dated 31.05.2012, the Respondent, had been appointed as Group D staff under the Irrigation and Waterways Directorate, Government of West Bengal on compassionate ground, as his father who used to work in the same Department had died in harness.

The Respondent was initially appointed at the Kasai Section under Panskura Sub-Division II and later transferred to Amgachia Section under

Contai Division. By an order dated 5.8.2019 issued by the Director of Personnel & Ex-Officio Chief Engineer, Irrigation and Waterways Directorate, Government of West Bengal, the Respondent was placed at the office of the Executive Engineer, Coochbehar Irrigation Division, Irrigation and Waterways Directorate, on detailment basis, in the interest of public service, until further orders.

By an office order dated 21.8.2019 issued by the Sub-Divisional Officer, Etamogra(I) Sub Division, Mahishadal, Purba Medinipur, the Respondent was released from the aforesaid office with the direction to report for duty at the office of the Executive Engineer, Coochbehar Irrigation Division, Irrigation and Waterways Directorate (on detailment basis).

Instead of reporting for duty at the office of Chief Executive Engineer, Coochbehar, Irrigation Division, as directed, the Respondent submitted an application in the requisite Form 40 praying for earned leave from 21.8.2019 to 20.9.2019. On 19.9.2019, the Respondent filed Original Application No.677/2019 in the State Administrative Tribunal, West Bengal challenging the order of detailment.

By an order of 19.9.2019, the Tribunal dismissed the application, with the observation that detailment, which was for a limited period, was different from transfer.

Being aggrieved by the aforesaid order dated 19.9.2019 passed by the Tribunal, the Respondent filed a Writ Petition being WPST No.152 of 2019 in the High Court of Calcutta, whereupon the High Court passed an interim

order dated 1st October 2019, staying the order of detailment as well as the release order, which is impugned in this appeal.

The short question in this appeal is, whether any interim order could have been passed by the High Court ignoring the well settled principles for grant of interim relief.

Before granting an interim stay, the Court has to satisfy itself that the party seeking interim stay has been able to make out a strong *prima facie* case; the balance of convenience is in favour of an interim stay being granted and refusal of interim stay will cause grave prejudice to the party seeking interim relief. In this case, the Tribunal refused to entertain the application with the observation that interference was not warranted since the detailment was for limited period and different from transfer.

The Division Bench of the High Court apparently did not consider whether any *prima facie* case had been made out by the Respondent. There is no *prima facie* finding that the order of the Tribunal was erroneous. The Division Bench observed that it was conscious that the Respondent had not been transferred but detailed to perform duty at Coochbehar. The Division Bench, however, stayed the detailment order, observing that the Division Bench needed to be enlightened on the qualitative difference between an order of transfer and an order of detailment. The High Court also observed that there was nothing on record to suggest the reasons for which it was considered necessary to detail the Respondent at Coochbehar.

In our considered opinion, in the absence of a strong *prima facie* case of error by the Tribunal, the High Court ought not to have granted an interim order staying the detailment, only to gain time to understand the difference between transfer and detailment. It is true that the interim order was a limited interim order till 30.11.2019. We are, however, informed that the interim order has from time to time been extended. The detailment is for a short period of six months of which over five months have already elapsed.

We, therefore, deem it appropriate to set aside the impugned interim order passed by the High Court and request the High Court to finally decide the writ petition expeditiously.

The appeal is accordingly allowed.

.....J.
(INDIRA BANERJEE)

.....J.
(A.S. BOPANNA)

NEW DELHI
FEBRUARY 03, 2020

ITEM NO.7

COURT NO.15

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 2938/2020

(Arising out of impugned final judgment and order dated 01-10-2019 in WPST No. 152/2019 passed by the High Court At Calcutta)

THE STATE OF WEST BENGAL & ORS.

Petitioner(s)

VERSUS

TARAK UPADHYAY

Respondent(s)

Date : 03-02-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Ms. Madhumita Bhattacharjee, AOR
Mr. Chanchal Kumar Ganguli, Adv.
Mr. S. Bandyopadhyay, Adv.

For Respondent(s) Mr. Uddyam Mukherjee, AOR
Ms. Madhurika Ray, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, are disposed of.

(NEELAM GULATI)
AR cum PS

(RAJINDER KAUR)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)