

HON'BLE SRI JUSTICE R.KANTHA RAO

W.P.No.34544 OF 2015

ORDER

Heard learned counsel appearing for the petitioners and learned Standing Counsel appearing for the respondent-Corporation.

The petitioners 1 to 3 are Head Constables and the petitioners 4 to 6 are constables in the respondent-Corporation. They formed TSRTC Security Staff Welfare Association, which was registered under the Societies Registration Act. The first petitioner was elected as President of the said association on 26.04.2015 and intimation regarding election of members of the association was sent to the respondent-Corporation. There are 400 members in the Association. After bifurcation of the State of Andhra Pradesh, a separate association by name Telangana RTC Security Staff Welfare association was formed. As per the bye-laws of the Association, outsiders also can be elected as office bearers and accordingly, one Prabhakar Rao was elected as Zonal Chief Adviser. Subsequently, he was elected as the State Honorary President. The 2nd petitioner is working as the State Vice President, the 3rd petitioner is also working as the State Vice President, the 4th petitioner is working as Zonal Secretary, the 5th petitioner is working as President and the 6th petitioner is working as the Zonal Vice President of Karimnagar Zone. While so, the second respondent issued a notice on 19.09.2015 to the 1st, the 4th and the 5th petitioners alleging that one Prabhakar Reddy, who is an outsider, submitted a representation to the Chief Minister of Telangana complaining against the officers of the respondent-Corporation. Subsequently, when it was brought to the notice of the association, it convened a meeting and expelled the said

Prabhakar on 30.08.2015 and the same was also published in Telugu Daily newspapers. Further, the 2nd respondent bent upon victimizing the office bearers of the association for obvious reasons and not relishing the welfare activities being carried on by the office bearers of the Association. With regard to the notice issued by the respondent-Corporation alleging misconduct, the petitioners submitted an explanation and the respondents, who are fully aware of the allegations levelled against the petitioners adopted a device by transferring office bearers of the Association under the guise of administrative grounds. Further, the transfer orders issued by the 2nd respondent are not tenable and they are nothing but act of victimization and unfair labour practice. The transfer cannot be resorted by way of punishment in relation to some alleged misconduct. The respondents ought not to have transferred any employee on the pretext of administrative grounds. As far as the constables are concerned, they have to work within the region, but not outside. The transfer of constables i.e., petitioners 4 to 6 is *ex facie* invalid and without any jurisdiction. Even as per the Circular issued by the respondent-Corporation, the transfer orders would not have been given effect to in the middle of the academic year, as the children of the employees are studying in various schools and colleges and it would disturb the family and cause mental agony to the children and transferring the petitioners on administrative reasons are totally not *bona fide* and it is only to victimize the office bearers of the Association and to wreck vengeance for the complaint lodged by Honorary President of the Association. It is further submitted that the Chief Adviser of Security Staff Welfare Association filed W.P.No.5228 of 2015 and this Court directed the respondents to look into the representation submitted by the Chief Adviser of Security Staff and Welfare Association and take necessary action within a period of eight weeks. But the respondents did not respond the interim order granted by this Court and resorted to transfer the petitioners, which is punitive in nature. Hence, the writ petition.

Counter-affidavit has been filed on behalf of the respondents *inter alia* contending that after bifurcation of the State of Andhra Pradesh, APSRTC has been bifurcated into APSRTC & TSRTC in the month of June, 2014 and no notification was issued so far for conducting elections to the Security Staff Welfare association by the Corporation and the Association in question is not recognized by TSRTC. It is stated that in terms of APSRTC (Conduct) Regulations *vide* item No.23 A, no employee of Security Department shall associate either with the existing trade unions or form into a new trade union under the Trade Union Act, 1926, canvass or otherwise interfere or use his influence in connection with or taking part in election to any Trade Union. However, the employees in Security Department are permitted to form an association of their own for representing the grievances of security employees. Petitioner Nos.1 to 6 are not members of the Security Staff Welfare Association and the TSRTC has also not recognized the alleged Security Staff Welfare Association till date. Writ Petition No.5228 of 2015 filed by the Chief Advisor of Security staff Welfare Association is still pending before this Court. Further, the transfer orders are affected on administrative grounds after seeking prior approval from the competent authority i.e., Joint Director (Vigilance), Hyderabad and the said orders are effected within the Zone comprising of five regions i.e., Adilabad, Karimnagar, Khammam, Nizamabad & Warangal and therefore, the same cannot be assailed by filing the present writ petition. It is stated that the petitioners are not residing in the present places of their posting. As per the guidelines of the Corporation, the Security Staff are expected not to leave the place of working and should be available to meet the exigencies. Thus, according to the respondents, the families of the petitioners were set up at one place and they are working elsewhere and therefore, the question of disturbing the family and causing mental agony to them does not arise. The version of the respondents is that the

transfer orders are issued against the petitioners for smooth functioning of the administration and to safe guard the interest of the Corporation. Pursuant to the transfer orders, the petitioners have already been relieved and without joining at their new stations, they have approached this Court and filed the present writ petition on untenable grounds. According to the respondents, the administrative authorities concerned are of the opinion that more staff is required in any particular area than in another depending upon their assessment of the situation and other considerations. The transfer of the petitioners is purely on administrative grounds and the Courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. Contending as such, the respondents sought dismissal of the writ petition.

Reply affidavit has been filed on behalf of the petitioners stating that the transfer orders were made outside the region. Even if it is approved by the competent authority, illegality cannot be cured. The association of the petitioners is not a self styled association. The petitioners' association duly informed the 1st respondent on 15.06.2015 about the registration of the association enclosing the details of office bearers of the Association. Further on 26.04.2015, the members of the association totalling to 240 who were working in various zones attended the meeting and elected the office bearers. Therefore, the allegation of the respondents that it is self styled association is devoid of any merits. The petitioners' association is not a trade union and it was registered under Societies Registration Act. It is stated that the Security Staff Welfare Association was recognized by the respondent-Corporation even before bifurcation of State of Andhra Pradesh and when State and Corporation was bifurcated the said Association was also bifurcated and thus members of Telangana and members of Andhra Pradesh were separated and subsequently elected separate set of office bearers for their respective state

associations. The contention put forth by the respondent Corporation that the transfer orders were passed on administrative grounds is false and this Court could pierce the veil and examine that whether the transfer is made on administrative grounds or as a measure of punishment.

I have heard Sri A.K.Jayaprakash Rao, learned counsel appearing for the petitioners and learned Standing Counsel appearing for the respondent-Corporation.

Normally, this Court will not exercise judicial review in respect of an order of transfer which is made on the administrative grounds. If the party is able to show that the transfer is punitive in nature or prompted by *mala fides* or made in violation of any circular instructions or statutory provisions, this Court can exercise the power of judicial review to examine the validity of the transfer.

Learned Standing Counsel appearing for the respondent-Corporation placed reliance on the judgment of the Apex Court in *Rajendra Singh etc v. State of UP* and others wherein it is held as under:

“We are pained to observe that the High Court seriously erred in deciding as to whether respondent No.5 was a competent person to be posted at Ghaziabad-IV as Sub-Registrar. The exercise undertaken by the High Court did not fall within its domain and was rather uncalled for. The High Court entered into an arena which did not belong to it and thereby committed serious error of law. The only question required to be seen was whether transfer of respondent No.5 was actuated with *mala fides* or otherwise in violation of statutory rules.”

Learned Standing Counsel placed reliance on another judgment of the Apex Court in *Airports Authority of India vs Rajeev Ratan Pandey and ors*, wherein it was observed as under:

“In a matter of transfer of a government employee, scope of

judicial review is limited and High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the Courts do not substitute their own decision in the matter of transfer. In the present case, High Court fell into a grave error in staying the transfer order which, if allowed to stand, may cause prejudice to the administrative functioning of the appellant.”

Learned Standing Counsel further relied on another decision of the Apex Court in *State of Haryana and others v. Kashmir Singh and another*, wherein it is held as under:

Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back.”

In the case on hand, it has to be seen as to whether this Court can exercise the power of judicial review to examine the impugned order of transfer whereby and whereunder the petitioners were transferred.

Learned Standing Counsel appearing for the respondent-Corporation contends that no statutory rule is violated while making the transfers and the petitioners did not attribute any *mala fides* to the respondents for the purpose of making transfers.

To examine this issue the entire contents of the affidavit and reply affidavit filed by the petitioners have to be taken into consideration.

The petitioners specifically alleged that the transfer orders are punitive in nature. They asserted that since one Prabhakar Reddy, who was Honorary President of the Security Staff Welfare Association sent certain complaints against the officials of the

respondents to the Chief Minister, the transfer orders were passed. The contention of the petitioners is that there are no *bona fides* on the part of the respondents in making the transfer orders. In the light of the allegations levelled against the respondents in the affidavit, it cannot be said that the petitioners did not attribute any *mala fides* to the respondents. Further, the petitioners have also contended that circular instructions of the respondent-Corporation have been grossly violated in effecting the transfers. There is no denial to the fact that the Chief Advisor of Security Staff Welfare Association sent complaints to the Chief Minister against some of the officials, he also filed W.P.No.5228 of 2015 before this Court seeking a direction to enquire into certain allegations levelled against the officials and this Court directed to look into the representations submitted by the Chief Advisor of the Association within a period of eight weeks.

In this back ground, learned counsel appearing for the petitioners would submit that the transfer is punitive in nature and it is also prompted by mala fides and therefore, it is liable to be set aside. Learned counsel invited attention of this Court to Circular dated 7.2.1994 issued by the Andhra Pradesh State Road Transport Corporation prescribing certain guidelines for transfer of employees on administrative grounds which are set out as under:

“Guidelines for transfer of employees on administrative grounds:

Employees are liable to be transferred:

- (i) Where there are specific adverse reports on the performance like chronic absenteeism, dislocation of services/work.
- (ii) When an employee is involved in unruly behaviour pending or leading to disciplinary action.
- (iii) Where an employee is involved in malpractices like money lending or running of private chit funds etc.
- (iv) Wherever an employee is involved in an enquiry effecting his integrity or moral turpitude and his continuance is likely to result

in tampering of evidence.

Note: Legitimate union activity and expression of grievance shall not constitute ground of any transfer, unless employee's behaviour is violent and abusive and transgresses the limits of legitimate union activity.

As far as possible, the office bearers of the recognized union viz., Depot Secretary, Divisional Secretary and Central Office Bearers viz., President, Vice-President, Secretaries and Treasurer not exceeding 15 in number, in case any of them figure in the long standing list, may not be normally transferred till the expiry of their term of office or 3 years whichever is earlier, if a request is made by the General Secretary of the recognized union.

Note: For transfer on administrative grounds as enumerated at para 2 above, this protection will not apply.

In another circular of the respondents dated 17.11.2004, instructions have been issued that no transfers on long standing basis shall be made after 10th June and before 1st April of the year. Further, the issue has since been reviewed and it is decided that no transfers on long standing basis shall be made before 1st March and after 20th May of the year. However, such transferred employees can be relieved before 10th June of the year. In the Circular of the respondent-Corporation dated 3.7.1996, it is mentioned that seniority of Security guards has become Regional level for placement and Zonal level for next promotion, they will continue in the same Region where they are presently working for placement and take next promotion in the Zone to which their Region is attached. As such the Security Guards need not exercise any option either for placement or for next promotion.

In view of the said Circular, the petitioners 4 to 6, who are the Constables, cannot be transferred outside the region. Therefore, the transfer of the petitioners 4 to 6 is in clear violation of the afore mentioned circular.

Though the transfer is an incidence of service and cannot be interfered with by this Court in exercise of powers of judicial

review, in normal course it cannot be resorted to as a measure of punishment. If the employee is guilty of any misconduct, the employer has to take action against him in accordance with law but the transfer cannot be used as a substitute for punishment.

In *A.Venugopal Rao v. Executive Engineer*, Division Bench of this Court held that merely because the transfer is stated to have been ordered on administrative grounds, it is not conclusive – The Court can pierce the veil and give a finding whether the transfer is made on administrative grounds or by way of punishment.

On careful examination of the facts of the present case, obviously, the Advisor of Security Staff Welfare Association sent complaints to the Chief Minister against some of the officials and filed writ petition before this Court, demanding action against them. The second respondent issued notice to petitioners 1 to 3 alleging some misconduct that at their behest, a third party was levelling false allegations against the officials of the respondent-Corporation, for which they replied. These incidents preceded the transfer orders. This court has to examine the issue having regard to the facts and circumstances of the case to find out as to whether there exists any legal malice while passing the impugned orders of transfer. If the Court comes to the conclusion that the orders of transfer are illegal, it can certainly interfere with the same in exercise of powers of judicial review. The way in which the transfer orders were passed contrary to the circular instructions, which have been referred herein above, coupled with the back drop of the transfer proceedings clearly indicates existence of legal malice while passing the said orders of transfer. Further, they are made in the middle of the academic year, which is contrary to the circular instructions issued by the respondent-Corporation. Therefore, the impugned transfer orders are liable to be set aside.

Accordingly, the Writ Petition is allowed setting aside the

impugned orders of transfer. The respondent-Corporation is directed to continue the petitioners in their respective stations during the current academic year.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE R.KANTHA RAO

28th October, 2015

Note: LR copy to be marked

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