

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION No.32349 of 2014

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This writ petition is filed against the order passed by the A.P. Administrative Tribunal in O.A.No.3283 of 2014 dated 14.05.2014.

By proceedings dated 12.11.2008, the 1st respondent herein was selected by the District Collector to work as incharge of the Government Social Welfare Girls Hostel. The said order records that the 1st respondent was permitted to work as Incharge to the said hostels; and the Incharge Hostel Welfare Officers should hand over charge of the hostels to the selected teachers. The District Educational Officer, Mahabubnagar was requested to relieve these individuals; and issue instructions to the Mandal Educational Officers concerned to pay their salary through the concerned schools after getting a certificate from the Assistant Social Welfare Officer concerned where they were working as Incharge of the Social Welfare Hostels. Thereafter, by proceedings dated 20.01.2011, the teachers, including the 1st respondent, who were stated to be working as Hostel Welfare Officers on deputation basis were directed to be paid salary by the Deputy Director, DTO, Mahabubnagar. By proceedings dated 01.05.2014, the 1st respondent, who was said to be working on deputation basis upto 31.04.2014, was repatriated to her parent department i.e., Education Department with instructions to report before the District Educational Officer, Mahabubnagar. The Hostel Welfare Officer, Midjil was kept as Full Additional Charge of the post of Hostel Welfare Officer, Kalwakurthy with effect from 01.05.2014. Questioning the said order, the 1st respondent invoked the jurisdiction of the Tribunal and, consequent on interim orders being passed, she continues to work as a Hostel Welfare Officer, Grade-II, at the same place.

Learned Government Pleader for Services would contend before us that the 1st respondent was merely sent on deputation and, as such, was repatriated to her parent Department after completion of her tenure on 31.04.2014; deputation is akin to transfer and no employee can claim any right to continue in the post to which he/she is deputed; and, while the order under challenge is an interlocutory order, the

Tribunal had exceeded its jurisdiction in continuing the 1st respondent as Hostel Welfare Officer, Grade-II and interdicting the order repatriating her to her substantive post of teacher.

On the other hand Sri P.Veerabhadra Reddy, learned counsel for the 1st respondent, would place reliance on Rule 8 of the A.P.Social Welfare Subordinate Service Rules (for short 'the Rules) to contend that the 1st respondent was appointed by transfer as Hostel Welfare Officer, Grade-II, and not by way of deputation; the 1st respondent was not deputed, as Fundamental Rule 110 read with Fundamental Rule 9(7) of the A.P. Fundamental Rules bars deputation to such posts; and, even otherwise, the District Collector is not competent to depute the 1st respondent as Incharge of the Social Welfare Hostel.

Rule 3 of the Rules notified in G.O.Ms.No.189, dated 31.12.1997, prescribes 'the method of appointment and the appointing authority'. At serial No.4 in Class-A is the post of Hostel Welfare Officer, Grade II. The method of appointment to the said post is (i) by direct recruitment; (ii) by promotion from the category of Class-IV employees of Social Welfare Hostels and Class-IV employees of Social Welfare Department; and (iii) by transfer from any other Department/Service. The appointing authority is stipulated to be the Collector. Rule 5 prescribes the 'qualifications' and provides that no person shall be eligible for appointment to the categories specified in column (1) of the Annexure to these rules by the methods specified in column (2) unless he possesses the qualifications specified in the corresponding entry in column (3) thereof. For the post of Hostel Welfare Officer, Grade-II, the qualification prescribed, for appointment by transfer from any other Department/service, is that the teachers should have an unblemished record of service and should possess "Graduation with B.Ed.". The said Rules were amended by G.O.Ms.No.20, dated 28.02.2004 and, as against the qualification of "Graduation with B.Ed. Degree", the word "Graduation" was substituted. Under the note thereto, the proportion in which the vacancies were to be filled up was stipulated to be 70:20:10.

Even for appointment by transfer, eligible candidates could only have been considered through a regular process of selection. In her application filed before the Tribunal, the 1st respondent did not state that she possessed the qualifications prescribed to be appointed by transfer as Hostel Welfare Officer, Grade-II, or that she was appointed pursuant to a regular process of selection. The proceedings dated 12.11.2008, whereby the 1st respondent was initially appointed, makes no reference to her having been appointed by transfer in terms of the aforesaid Rules, and merely records that she was selected to work as Incharge of the Social Welfare Girls Hostel. The

subsequent proceedings dated 20.01.2011 categorically states that she was working as Hostel Welfare Officer on deputation. It is evident, therefore, that the 1st respondent was deputed to work as incharge of the Social Welfare Girls Hostel. Deputation is akin to transfer, and no employee has a right to claim that he/she should be continued/retained in the post to which he/she is deputed.

The submission of Sri P.Veerabhadra Reddy that the 1st respondent could not have been sent on deputation in terms of Fundamental Rule 110 read with Fundamental Rule 9(7), even if accepted, can only mean that the initial deputation of the 1st respondent itself was illegal, in which event her deputation in the year 2008, not being in accordance with the Fundamental Rules, would be illegal and she would, therefore, be entitled only to continue as a teacher in her parent department. The order of the Government, repatriating her to her parent department, cannot be said to be illegal. While we would, ordinarily, not have interfered with an interlocutory order of the Tribunal, the impugned order necessitates interference as it is evident that the 1st respondent is not entitled to continue in the post in which she was hitherto working on deputation. The order of the Tribunal is, accordingly, set aside.

The writ petition is allowed. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

04th February 2015.

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Date: 04.02.2015

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