

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.6815 OF 2012

DATED 20th MARCH, 2015

Between:

P. Anjaneyulu

.. Petitioner

and

Telugu Academy, Hyderabad,
and another

.. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.6815 OF 2012

ORDER

This writ petition was filed by a Project Assistant working in the Telugu Academy, Hyderabad, the first respondent, assailing its proceedings dated 06.03.2012 in so far as it related to him. Thereunder, he was transferred from Hyderabad to Guntur.

At the time of admission of this writ petition on 13.03.2012, this Court granted interim suspension of the operation of the impugned proceedings in so far as it related to the petitioner. W.V.M.P.No.4548 of 2012 was filed by the first respondent Academy to vacate the said order. The second respondent, being the named Director of the Academy, against whom *malafides* were alleged, also filed his counter through learned counsel. The matter is therefore amenable to final disposal and the learned counsel for the parties consent thereto. Hence, this final order.

The petitioner was appointed as a Project Assistant on contract basis in the Telugu Academy on 05.02.2004 in view of his educational background and experience in the field of computers. He was subsequently appointed on regular basis to the said post by a duly constituted Selection Committee on 21.05.2005 and his probation was declared on 17.01.2009. He claimed that right from the creation of this post and his appointment thereto, he was stationed at the Academy's Head Office at Hyderabad, as the Printing Section in which this post was created, was at Hyderabad. While matters stood thus, he was issued the impugned proceedings dated 06.03.2012 whereby he, along with others, was subjected to transfer. His attack against the said proceedings is two fold. On the one hand, he alleged that it was arbitrary and unconstitutional, and on the other, he imputed *malafides* to the Director of the Telugu Academy, impleaded *eo nomine* as the second respondent

herein. The petitioner contended that there was only one post of Project Assistant and the same was at the Academy's Head Office at Hyderabad. He asserted that he could not be transferred to Guntur as no such post existed at the Academy's Sub-Centre there.

In so far as the ground of *malafides* is concerned, the petitioner contended that the second respondent, being the Director of the Academy, bore a personal grudge against him as they had a fall out on the issue of the petitioner's claim for promotion to the post of Printing Superintendent. The petitioner alleged that he was constrained to approach the Vice-Chairman of the Academy in this regard time and again but the second respondent failed to act upon the directions of the Vice-Chairman. He further stated that at his instance, the Minister for Marketing and Warehousing, Government of Andhra Pradesh, also intervened in the matter but to no avail. The petitioner claimed that the second respondent took strong exception to his directly approaching the higher authorities and reprimanded him in his chamber. It is in this factual backdrop that the petitioner alleged that the second respondent developed a grudge against him and that the transfer order was a result thereof.

The petitioner also put forth personal grounds as to why he ought not to be transferred from Hyderabad. He stated that his sons were at school in Hyderabad and that his wife was also privately employed at Hyderabad. He also asserted that his aged parents were staying with him and that his father required medical treatment. He therefore sought a declaration that the impugned proceedings dated 06.03.2012 were illegal, arbitrary, unconstitutional and vitiated by *malafides*.

In the counter affidavit filed in support of its vacate stay petition, the first respondent Academy asserted that being an employee, the petitioner could not object to being transferred as transfer is an incident of service. His transfer was stated to have been effected on administrative grounds so that computerization works could be undertaken smoothly. It was pointed out that the petitioner, by his own admission, was in over all control of computerization works in all the Academy centres in the State and it was reiterated that his transfer was necessary as new centres were

started at various places in the State, including Guntur. It was also pointed out that the Director was the administrative and academic Head of the Academy under Bye-law No.12 of the Telugu Academy Bye-laws and that he was empowered to supervise the conduct and work of the staff. The Academy further asserted that there was no change in the nature of the job and that the petitioner would not be put to any loss of emoluments because of the transfer. The Academy further stated that the issue of his transfer was distinct and separate from that of the promotion claimed by the petitioner and he could therefore not be permitted to mix them up. The Academy concluded by stating that the order of transfer was issued in its best interests and no motives could be attributed therefor.

In a separate counter-affidavit, the second respondent alleged that he had been wrongfully charged with *malafides* for actions taken in his official capacity. He asserted that transfer was an incident of service and that no employee could assert a right to continue at a particular place of posting. He reiterated the stand of the Academy that the petitioner's transfer was effected on administrative grounds. He pointed out that the averments made in the writ affidavit manifested that the petitioner was trying to bring undue pressure on the Academy to secure a promotion though he did not possess the relevant qualification. He stated that this fact had been informed by him to the Vice Chairman of the Academy. He concluded by stating that the petitioner had made vague and unsubstantiated allegations against him, by impleading him in his personal capacity, without substantiating the same.

In his reply affidavit, the petitioner pointed out that the second respondent had failed to deny the allegations of *malafides* specifically and asserted that in the absence of such denial, the allegations were deemed to have been admitted. He reiterated that the post of Project Assistant was positioned at Hyderabad only and that he had been transferred to Guntur only to victimize and harass him.

The organizational set up of the Telugu Academy, as per the material placed on record by the petitioner, demonstrates that the Academy was registered as an autonomous body under the Societies

Registration Act, 1350 Fasli, and its staff position with a total cadre strength of 160, comprised 43 categories of posts relating to the Academic Wing and 117 categories of posts pertaining to the Administrative Wing. The post of Project Assistant in the Printing Section falls under the Administrative Wing. The duties assigned to a Project Assistant, as per the organizational set up, are as under:

“PROJECT ASSISTANT: He will attend all the activities related to the computerization of Telugu Academy. Providing technical support to all computers in Telugu Academy and processing of all the files relating to the Composing Unit. In addition to the above, verification and enrollment of new DTP Units, title design, format of DTP pages and to attend the other work entrusted by concerned Officers.”

The Academy's cadre strength and vacancy position details up to 30.11.2011, filed by the petitioner, indicates that the Head Office of the Academy is situated at Hyderabad and its Regional Sales Centres are located at Vijayawada, Visakhapatnam, Tirupati, Anantapur, Warangal and Hyderabad with a Sub-Centre at Guntur.

On the basis of the material on record, this Court cannot conclude that the post of Project Assistant only relates to the Head Office of the Academy at Hyderabad. The organizational set up does not indicate so. On the other hand, the nature of duties assigned demonstrates that the Project Assistant is required to attend to all activities relating to computerization of the Academy. When the Academy has Sales Centres and a Sub-Centre at various locations in the State, the Project Assistant would necessarily have to undertake all computerization related activities at all these locations depending upon the exigencies and he may also be transferred to such locations for the required period of time. The petitioner, being the Project Assistant, cannot therefore assert that he must always be stationed at Hyderabad and be deputed on short-term basis to various locations for undertaking computerization related activities. It is for the management to decide as to how long the petitioner would be required to discharge his duties as a Project Assistant at a particular location. As rightly pointed out by the first respondent Academy, transfer is an incident of service and no employee can assert a

right to be continued in service only at a particular location.

In so far as the petitioner's allegation of *malafides* against the second respondent is concerned, this Court is not inclined to accept or act upon the same. Though the petitioner set out at length the alleged conversation stated to have taken place in the chamber of the second respondent and the second respondent did not specifically advert to the same in his counter-affidavit, he did deny such allegations by stating that the petitioner had made vague and unsubstantiated allegations in his affidavit by making him a party respondent in his personal capacity without substantiating the same on the basis of material. Mere averments in the writ affidavit without further proof would not be enough to substantiate *malafides*. Further, once there is a denial of such an allegation, even in general terms, the burden would shift upon the person making the allegation to make good the same and the doctrine of *non traverse* would not stand attracted, as claimed by the petitioner.

In this regard, it may be noticed that the material placed on record by the petitioner himself indicates in no uncertain terms that he wasted no effort in moving the powers that be for securing a promotion. Even if the second respondent, being the Director of the Academy at that point of time, was influenced to some extent by such conduct on his part, the fact remains that the petitioner, being an employee, was liable to be transferred on administrative grounds and no material has been placed before this Court to conclude that there was no computerization work at Guntur which necessitated his transfer. The second respondent is stated to have demitted office about 3 to 4 months ago and despite the same, the first respondent Academy is still insistent upon the petitioner's transfer order being given effect to. This clearly shows that even in the absence of the second respondent in the Academy, the petitioner's transfer is sought to be acted upon. The allegation of *malafides* leveled against the second respondent therefore pales into insignificance.

Sri P. Govind Reddy, learned counsel for the petitioner, placed reliance on ***T.RAMAMURTHY V/s. VICE-CHAIRMAN AND MANAGING DIRECTOR, NIZAM SUGAR FACTORY LTD., HYDERABAD***^[1] in support of his contention that the petitioner could not have been

transferred from Hyderabad to Guntur. Perusal of the said judgment however reflects that the petitioner in that case had been appointed as a General Manager (Marketing) in the respondent organization but was sought to be transferred to the wholly unconnected post of General Manager (Machinery Division). The test, *per* the Court, was whether the petitioner was appointed to one of the posts in a group of inter-transferable posts or to a post constituting a class by itself and it was held that in the case of the latter category, such an employee could not be transferred to another post unless he agreed to such transfer. This Court is at a loss to understand as to how this decision furthers the case of the petitioner. It is nobody's case that the petitioner was transferred from the post of Project Assistant to any other post. Only the place of his posting was sought to be changed by way of the transfer order. The Academy has gone on record that neither the nature of his duties nor his emoluments would be changed to his detriment by virtue of such transfer. Given this undertaking, the petitioner cannot object to the change of his posting in the same post which, in any event, is not shown to be a post aligned only with the Academy's head-quarters at Hyderabad.

It is no doubt true that the petitioner may be put to some inconvenience owing to the avocations of his family members at Hyderabad, but being an employee of the Academy he is bound to abide by the orders of the management, including transfer orders. However, as the petitioner has been continued at Hyderabad till date by virtue of the interim orders granted in this writ petition, the Academy shall give effect to the impugned transfer order, in so far as it relates to the petitioner, at the end of this academic year.

Subject to the above observation, the writ petition is dismissed. Interim order dated 13.03.2012 shall stand vacated. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

20th MARCH, 2015

Svw

[\[1\]](#) 1992(5) SLR 829 (AP)