

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

+ W.P. No. 23962 of 2015

% Dated 31.07.2015

Sri P.V. Bhaskar Reddy

....Petitioner

Vs.

\$ State of Andhra Pradesh rep. by its
Special Chief Secretary, Health, Medical & Family Welfare
Department & others.

....Respondents

! Counsel for the petitioner : Sri P.V. Krishnaiah

^ Counsel for the Respondents : GP for Services (AP)

<GIST:

> HEAD NOTE:

? Cases referred

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS
WRIT PETITION No. 23962 OF 2015**

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The petitioner, who was working as an Office Superintendent in the Office of the Regional Joint Director, Department of AYUSH, YSR Kadapa District, Andhra Pradesh, has approached the Andhra Pradesh Administrative Tribunal by instituting O.A. No. 3326 of 2015, calling in question the legality and validity of the orders passed by the 1st respondent State Government, through their memo dated 20.06.2015, requesting the Commissioner, Department of AYUSH to transfer him at once to some other non-focal post as per the rules in force. As a consequence of these orders of the State Government contained in their memo dated 20.06.2015, the Commissioner, Department of AYUSH passed orders on 26.06.2015 posting the petitioner as an Office Superintendent, with immediate effect, to the Government Homeo Medical College, Kadapa. The Andhra Pradesh Administrative Tribunal dismissed the O.A. at the admission stage. That is how this Writ Petition has been brought forth before this Court.

Heard Sri P.V. Krishnaiah, learned counsel for the petitioner for considerable length of time.

The learned counsel would contend that the petitioner has been posted as an Office Superintendent in the Office of the Regional Joint Director, Department of AYUSH at Kadapa. Pursuant to the process of counselling undertaken for transferring, he has been transferred on

14.11.2014 by the Commissioner, Department of AYUSH to the Office of the Regional Deputy Director, Kadapa, while he was working as an Office Superintendent at the Government Homeo Medical College, Kadapa. He has joined in the Office of the Regional Deputy Director, Kadapa and even in less than six months' time, the present impugned action has followed. The learned counsel would point out that the government has received a pseudonymous complaint from the Convener, AYUSH Pariraksha Sangham, Kurnool on 21.11.2014 making all sorts of untenable allegations against the petitioner for his being posted back as the Office Superintendent in the Regional Deputy Director's Office. In fact, there is no such body called as 'AYUSH Pariraksha Sangham' at Kurnool. It is neither a registered one nor an unregistered one. Instead of throwing such a complaint out, the State Government entertained it and called for a report from the Commissioner, Department of AYUSH, who made his opinion available to the State Government on 30.12.2014. In the meantime, the State Government has also received a communication from the Secretariat of the Governor on 26.03.2015 pointedly drawing its attention to the very same issue. Keeping all these factors in mind, the State Government passed orders on 20.06.2015 requesting the Commissioner, Department of AYUSH to transfer the petitioner to another non-focal office. The reason that weighed with the government was that the government passed orders earlier through their G.O.Rt.No. 724, Health, Medical and Family Welfare (VC1) Department, dated 14.08.2014 to initiate departmental action by framing the following charge against the petitioner, as he has been trapped by the Anti-Corruption Bureau on 04.11.2009 when he demanded and accepted bribe from the complainant for doing an official favour.

“ Charge:-1 He demanded and accepted an illegal gratification of Rs.1,000/- from the complainant Smt. T. Shameem, W/o Late Dr.S.D. Allabakash, aged 44 years, Adapala Street, Kadiri Town, Anantapur District for doing an

official favour of delivering to the complainant the Original SSC, Intermediate Marks Certificates and School Study Certificates of the complainant's daughter."

He was, in fact, arrested on 04.11.2009 and was remanded to judicial custody till such time he has been released therefrom on 19.11.2009. Subsequently, the State Government passed orders, through their G.O.Rt.No. 135, Health Medical & Family Welfare (VC1) Department, dated 11.03.2015, appointing Dr. B. Vijaya Lakshmi, Additional Director (Ayurveda) as Inquiring Authority to inquire into the charges framed against the petitioner herein. Thus more than six months' time has been taken by the State Government, after their decision to initiate disciplinary proceedings against the petitioner, for appointing an Inquiry Officer. We are informed by Sri P.V. Krishnaiah that the Inquiring Authority has not made any move thereafter.

Now the question is whether the order passed by the State Government on 20.06.2015 making a request to the Commissioner, Department of AYUSH to transfer the petitioner from out of the Office of the Regional Deputy Director, Department of AYUSH, Kadapa to any other non-focal post and the follow-up action taken by him on 26.06.2015 are sustainable.

The learned counsel for the petitioner would submit that the post of the Office Superintendent is a non-gazetted ministerial establishment post. Therefore, the competent authority to affect transfers of such employees, as per Rule 12 of the Andhra Pradesh Ministerial Service Rules, 1998 (for short, the Rules'), is the Head of the Department. The government, being a superior authority than the Head of the Department of AYUSH, has not been vested with any power under the said Rule 12 of the Rules, to order for transfer of the petitioner. Secondly, the Andhra Pradesh Ministerial Service Rules, 1998 have been framed by the Governor, exercising the power available to him under the Proviso to Article 309 of the Constitution, and consequently, they have a statutory enforceability. When once the

exercise relating to transferability of an employee, such as Office Superintendent is governed by the sweep of such a statutorily enforceable rule, interference by any authority, whether inferior or superior, is wholly impermissible. The learned counsel would submit that when once power is conferred by a statutory rule upon a competent authority, only that authority should either act or decline to act. The discretion available with such an authority cannot be compelled to be exercised in a particular manner by a statutory authority. The word "request" is a euphemism used by the government. It nonetheless amounts to a direction to the Commission of AYUSH and consequently, the directive of the government is only to be complied with by the Head of the Department and there is no further discretion left in his hands thereafter. This apart, the government has not even applied its mind to the facts and circumstances of the case, in that there is no Sangham called as 'AYUSH Pariraksha Sangham' at Kurnool. A non-existing body makes a grievance out of the transfer and posting of the petitioner

to the Office of the Regional Deputy Director at Kadapa. It is so obvious that there are certain vested interests, which are at work, to prevent the petitioner, an honest man, from functioning as an Office Superintendent in the Office of the Regional Deputy Director. That would, obviously, suit the convenience of those vested interests that they can carry on with the affairs in that office in the manner in which that pleases them. In this context, Sri Krishnaiah would urge that the State Government should have, in the least, stuck to the principles of natural justice by putting the petitioner on notice, so that he could have explained as to how his transfer and posting in the Office of the Regional Deputy Director, Kadapa is no way foul of any legal principle. For sheer failure to adhere to the principles of natural justice by the State Government before it passed the order on 20.06.2015, the said order deserves to be set aside. It is further urged by Sri Krishnaiah that the petitioner was posted as Office Superintendent in

the Regional Deputy Director's Office, hardly six months back. He joined there on 15.11.2014 and if the petitioner were to be moved out unceremoniously in such quick time, he would lose his face amongst his colleagues and people will come to perceive his integrity as a doubtful one. Thus, it is a humiliation packaged and delivered to the petitioner. Above all, Sri Krishnaiah would urge that the Andhra Pradesh Administrative Tribunal has failed to appreciate any of the contentions canvassed before it by the petitioner and dismissed the O.A. in a mechanical fashion by not even putting the opposite parties on notice and hearing them.

It is absolutely appropriate to notice that an order of transfer of a government servant is a pure and simple exercise rooted in administrative exigencies. It is the image of the State Government vis-à-vis the necessity to keep its administration efficient and going that impel them to indulge in orders of transfer of its servants periodically. Transferring the government servants is considered to be an effective tool to prevent them from gaining certain undesirable interests at the place of work. If one developed vested interests, it is likely that it would impair the sense of objectivity with which the government servant is expected to discharge his duties apart from quickly losing the efficiency required to be exhibited all through. Therefore, the State Government has been considering it really necessary to transfer its servants at periodical intervals. At the same time, a frequent transfer of an employee from one place to another would produce the opposite of the result, which the government might consider to achieve. A demoralized employee or an employee, who has been made to face inexplicable and supernumerary problems by way of transfer from place to place is less likely to retain his high sense and objectivity and efficiency. An equally compelling obligation for him to take care of the interests of his own family would be perceived as an impediment in his way to function very effectively. Therefore, to strike an appropriate balance between the competing claims in this regard, the State

Government has been following the norm of transferring its employees once in a span of three years and that too during the time when the schools and educational institutions will have summer recess. These are, but, some of the factors, which have been conceived as a part of collective bargaining scheme between the federation of employees on one hand and the employer State on the other. The State after all is obliged to keep an eye on the welfare of its servants as well. It cannot ignore them. We are therefore, of the opinion that in matters of transfer, though for external appearances, some of those orders may tend to look like potentially penal in their sweep are still essentially administrative exigency propelled orders. In such cases of transfer of government servants, for very right reasons, the Courts have been adopting 'a slow-to-interfere policy'. In that, there is no restriction on the exercise of power by the Constitutional Courts, but, as a rule of prudence, before an order of administrative transfer is interfered with, the Court looks for very strong and compelling reasons and factors to do so. Malice, either in law or in fact, is one area, which has been chartered by the Constitutional Courts as offering a valid platform for interference and striking at administrative orders of transfer. Mercifully, in this case, we have been spared of the ordeal to explore as to whether there was any malice behind the exercise.

As is only to be noticed, the petitioner was transferred and posted form out of the Office of the Regional Deputy Director, Kadapa to that of the Government Homeo Medical College, Kadapa. Therefore, he has not been dislocated from out of Kadapa Town. He continues to function locally at Kadapa. Whole question is whether he should be found working only in the Office of the Regional Deputy Director or he should also start reporting to the Principal of the Government Homeo Medical College. The reasons assigned by the government, even if it is assumed that their fading memory of the success trap by ACB against the petitioner has been drawn attention to by a pseudonymous complaint, but yet, the government has realized that the petitioner has

been facing a very serious allegation touching upon his integrity, for the allegation of accepting illegal gratification for doing an official favour, while functioning as an Office Superintendent in the Office of the Regional Deputy Director. It is one thing that the government could have continued the petitioner under suspension pending criminal proceedings/disciplinary proceedings, as the case may be and it would be altogether a different thing to reinstate him back to service and subject him to disciplinary proceedings immediately. If an employee is placed under suspension, the inevitable result is that the government will not be able to extract any services from him, but however, to keep him and the family going, have to pay him subsistence allowance, which would be to the order of 50% of the last pay drawn in the first six months period and if no fault is attributable to him for the delay in completion of either criminal/disciplinary proceedings, the subsistence allowance thereafter, will have to be enhanced to 75% of the last wages drawn. Precious financial resources of the State, particularly in the welfare scheme oriented case, can ill-afford to indulge in the luxury of making government servants sit at home and be paid for. If any such consequence is to be avoided, it would be appropriate to explore such a possibility. It is in this perspective, obviously, the State Government considered it appropriate to reinstate the petitioner to duty and post him back to one office or the other. It is a pity that in spite of the Anti-Corruption Bureau reporting that the petitioner has been trapped while demanding and accepting illegal gratification for doing an official favour, as long back as on 04.11.2009, years are allowed to roll by in the matter of finalizing the action against him. So far, the State Government has not passed any orders to subject the petitioner to prosecution. If it has abandoned such a course for good and valid reasons, it should have at least taken meaningful efforts for securing the conclusion of the disciplinary proceedings in quick time. Most inexplicable is the manner in which the proceedings are meandering themselves meaninglessly in this

case. Government took its own time to appoint an Inquiring Authority and that Inquiring Authority has not even started off the initial blocks in spite of months rolling by. Strange are the ways of functioning of the government sometimes !

In the above factual background, where no evil or civil consequences are likely to visit an employee, by a mere transfer from out of one office to another office within the same city, we are not in a position to appreciate the contention that the petitioner has been denied an effective opportunity to put-forth his view point to the government before it passed the orders on 20.06.2015. In matters of transfer, which is a pure and simple administrative exercise, room for observation of the principles of natural justice is ruled out. However, government, being a model employer, has been evolving certain procedures to make even such administrative exercises more transparent. That was in keeping with the principle to keep its image clean. Any transparent procedure adopted would not only be fair at its outer sphere but also at its core will be absolutely impartial. As a part of this package, process of counselling or calling for options are some of the schemes, which have been evolved as part of good governance. That would lessen the heartburn amongst the working classes and it would also rule out the often times repeated criticism that only the choicest few will get plum posts while rest of the offices/establishments have been chosen for the other less favourable individuals. We are therefore, of the opinion that the fact that the petitioner has been transferred in November 2014 to the Office of the Regional Deputy Director, Kadapa after his participation in counseling process, cannot work as a kind of insulation against any possible interference by the State Government later on. If the State Government immediately has not objected, when it allowed the petitioner to participate in the counselling process and also choose the very same office where he was trapped earlier by the ACB, the fault lies elsewhere. When some one has drawn the specific attention of the

State Government to this very error of judgment as well as the Secretariat of the Governor, no sinister motive need be attributed to such exercise.

Further, allowing an employee, who was successfully trapped in accepting illegal gratification, for doing an official favour, at the very same office, would project the government in poor light.

Rule 12 of the Andhra Pradesh Ministerial Service Rules is a mere enabling provision that was obviously framed as part of the Andhra Pradesh Ministerial Service Rules, 1998, so as to avoid a possible criticism that without there being any provision relating to the transferability of the employees of the said service, transfers are being carried out, such a provision has been incorporated. The contents of this provision are not such as would regulate the question of transferability of the employees. We are therefore, of the opinion that Rule 12 relied upon by the learned counsel for the petitioner is not coming in the way of the State Government or the Head of the Department of AYUSH in transferring the petitioner.

The learned counsel has criticized the manner in which the O.A. instituted by the petitioner has been dealt with and dismissed at the admission stage by the Tribunal. The Tribunal is the creature of the Administrative Tribunals Act, entrusted with the task of deciding the *lis* that is brought before it by public servants. If the Tribunal arrives at a conclusion that a particular *lis* lacks merit, the Tribunal is as much entitled to deal with it at the admission stage as any *lis* lacking in merit would have been dealt with by the Constitutional Courts at the admission stage. Therefore, it is not necessary for the Andhra Pradesh Administrative Tribunal to invariably issue notices in every case that is brought before it to the opposite parties and only upon hearing them, the *lis* should be decided. However, we are not to be understood as suggesting that irrespective of the merits contained in a *lis* and without any valid and tenable reasons assigned, the Tribunal can go about deciding the *lis* that is brought before it, as it pleases. All

the more so, as we constantly remind ourselves that it is not our private pleasure or humor that should compel us to arrive at conclusions while deciding any *lis* that is brought before us but the tenability of the claim in law being the solitary factor that should weigh. So be it with the Andhra Pradesh Administrative Tribunal. We therefore, do not find any warrant to interfere with the orders passed by the Tribunal or with the order passed by the State Government on 20.06.2015 or the order passed by the Commissioner, Department of AYUSH on 26.06.2015.

Before we part with this case, we only remind the State Government of its obligation to complete and bring the disciplinary proceedings to their logical conclusion in quick time. Losing time by it is to the advantage of none. The uncertainty hanging over the head of the petitioner should be brought to an end. Similarly, the State Government should also deal with the measure of discipline which it expects from its servants in quick time.

The Writ Petition therefore, stands dismissed at the admission stage. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

31st July 2015

LR copy be marked
ksld