

**HON'BLE MR JUSTICE R. KANTHA RAO**

**Writ Petition NO.29117 OF 2000**

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**DATE:01.06.2015**

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**BETWEEN:**

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V.Dilip Kumar .. Petitioner

And

The University of Hyderabad rep. by its Registrar, Hyderabad and another

.. Respondents

## **HON'BLE SRI JUSTICE R. KANTHA RAO**

### **WRIT PETITION NO.29117 OF 2012**

#### **ORDER:**

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking to issue a writ of mandamus declaring the office order, dated 22.08.2012 vide UH/DR(P)/2012/924 issued by the first respondent as illegal, arbitrary, contrary to the service conditions of the post of petitioner and violative of Articles 14 and 16 of the Constitution of India and consequently to set aside the same.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The petitioner joined service as Technical Assistant in the Department of History, University of Hyderabad on 20.12.1990 and was confirmed in the said post by order dated 15.03.2003. Pursuant to the employment notification issued by the first respondent-University, the petitioner applied for the post of Assistant Archivist in the department of history and was selected for the said post. According to the petitioner, the post of Assistant Archivist is a Group-A academic cadre post. While so, the first respondent issued proceedings dated 22.08.2012 transferring the petitioner to Personnel Section-I with immediate effect directing him to report to the Deputy Registrar Personnel. The contention of the petitioner is that the post of Assistant Archivist is a post specially meant for the history department requiring specialized educational qualifications and is not transferable to any other department much less to the Personnel Section. He submits that by virtue of the transfer, the nature of duties of the Assistant Archivist in the department of history which he has been discharging will completely stand altered. The petitioner is in custody of important archival documents like parliamentary debates, diaries, Indian History Congress proceedings and other important archival documents which

were carefully collected by him.

4. In this context, it requires to be noticed that even though the petitioner was transferred by order dated 22.08.2012 he applied for leave and he is continuing in the same post. The petitioner, therefore, filed the present writ petition.

5. The respondents filed the counter-affidavit contending *inter alia* as follows:

There is only one post of Assistant Archivist in the department of history for which the petitioner was selected. The main job of the Assistant Archivist is to maintain the archival records i.e. to maintain and preserve archival documents like parliamentary debates, diaries, Indian history congress proceedings and other important documents, but does not involve any teaching activity. Since the department of history requested for the post of Archivist, the same was advertised by the University and in response thereto, the petitioner applied for the post and he was selected for the said post. It is admitted that the post is presently in the department of history. The assertion made by the petitioner is that the post of Assistant Archivist is an academic cadre post. According to the respondents, it is not an academic post and there is no teaching activity involved. It is submitted by the respondents that the entry level academic position in the University is Assistant Professor and the post of petitioner is purely non-academic, non-teaching post/Grade pay. The petitioner is only maintaining the museum and keeping the records as it would be in the case of library. The University of Hyderabad has adopted Government of India CCS & CCA Rules as per FR-11 and as per the said Rule, the Government Servant is at the disposal of the government and as such, the petitioner's services can be utilized in any post of the University. The assertion made by the petitioner that his transfer to Personnel Section is totally unconnected with his academic qualification is denied by the respondents. According to the respondents, the nature of the job in the personnel department is totally in concurrence with the academic qualification which the petitioner possess and there shall be no change in the nature of his duties and the petitioner would be entrusted with additional duties of collecting, collating, organizing of the University and for accreditation by national assessment and maintenance of various records of the administration etc. The submission that the post of Assistant Archivist IS specially meant for history department and the same is not transferable is denied by the respondents. According to the respondents, as per the terms and

conditions of the government service, the employer is well within its right to utilize the service of the petitioner wherever his services are required.

6. The short question which falls for consideration in the present writ petition is whether the petitioner who is an Assistant Archivist in the Department of History, University of Hyderabad can be transferred to the Personnel Section of the University.

7. Learned counsel appearing for the petitioner contends that since the petitioner possessed some exclusive qualification he possessed was selected for the post of Assistant Archivist in the department of history and was entrusted with specific duties, his approval has to be put in the same department and must have some relevance to his duties, but in the instant case, the petitioner was transferred to the Personnel Section wherein the duties to be discharged by the petitioner are entirely different and have nothing to do with the academic qualifications. Therefore, according to the learned counsel, he cannot be transferred from the department of history.

8. On the other hand, the learned Standing Counsel appearing for the respondents would submit that the employer can transfer an employee to any place within the University and the petitioner being a non-teaching staff member, cannot question the order of transfer passed by the University.

9. Normally, the transfer being an incidence of service, though the judicial review is not totally excluded, it is permitted only on limited grounds, such as where the transfer is prompted by *mala fides* or arbitrariness or made in violation of statutory rules. In **KENDRIYA VIDYALAYA SANGATHAN v. DAMODAR PRASAD PANDEY AND OTHERS**, the Supreme Court held as follows:

*“Transfer is an incidence of service. Who should be transferred and posted where, is a matter for the administrative authority to decide. Unless the order of transfer is shown to be clearly arbitrary or is vitiated by mala fides or is made in violation of any operative guidelines or rules governing the transfer the courts should not ordinarily interfere with it”.*

9. In the instant case, though the petitioner attributed *mala fides* to the Head of the Department of History, he could not be able to place any material to show

that the transfer is a *mala fide* exercise of power, except stating that as he belongs to scheduled caste, he was subjected to harassment. Therefore, the issue of *mala fides* raised by the petitioner not being supported by any iota of evidence cannot be taken into consideration. In **VICE-CHANCELLOR L.N. MITHILA UNIVERSITY v. DAYANAND JHA**, the Supreme Court took the view that although the two posts of Principal and Reader are carried on the same scale of pay, the post of Principal has higher duties and responsibilities. Apart from the fact that there are certain privileges and allowance attached to it, the Principal being the head of the college has many statutory rights. Thus, the post of Principal cannot be treated as equivalent to that of a Reader for purposes of Section 10(14). Therefore, a Principal of a college cannot be transferred to the post of Reader in another college. In **DR. PREM BEHARILAL SKSENA v. DIRECTOR OF MEDICAL AND HEALTH SERVICES, LUCKNOW AND ANOTHER**, it is held as follows:

*“Where a Government servant has been appointed to a specific post and that post is in its very nature such that it can be performed at the particular place only he cannot under this rule be transferred to another post. In such a case the transfer order will in fact run inconsistent with the appointment itself which is not generally to any class of posts but to a specified post only. Therefore, the petitioner who was appointed by the Governor to the post of the Anesthetist attached to the State Hospitals at Kanpur and was confirmed in that post, cannot be transferred to some other post.*

*In the instant case, the petitioner who possessed the requisite qualifications for the post of Assistant Archivist was selected for the post and was appointed as such in the department of history in the University of Hyderabad. The post was notified exclusively for the department of history. If at all, the petitioner can be transferred he can only be transferred to any similar post in the department of history but not to some other department. This is because of certain specific and unique duties which are attached to the post of the petitioner. The new post to which the petitioner was transferred by the impugned order totally alters the duties of the petitioner which are required to be discharged by him. The transfer therefore, in the considered view of this Court is arbitrary*

*and legally unsustainable.”*

10. Consequently, the office order, dated 22.08.2012 vide UH/DR(P)/2012/924 issued by the first respondent is set aside. The writ petition succeeds and the same is accordingly allowed. There shall be no order as to costs.

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

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**R.KANTHA RAO, J**

Date:01.06.2015

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**THE HON'BLE SRI JUSTICE R.KANTHA RAO**

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