

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION No.13728 of 2015

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

This Writ Petition is preferred against the order passed by the Andhra Pradesh Administrative Tribunal in O.A.No.4986 of 2014 dated 30.03.2015. While the petitioner was working as a Hostel Welfare Officer, Social Welfare Girls Hostel (Special) Mylavaram in Krishna District, she was transferred on administrative grounds by order dated 11.08.2014 to the Social Welfare Girls hostel, Gollanapalli in the same District. Questioning the same, she invoked the jurisdiction of the Tribunal. Before the Tribunal she contended that, as she had not completed the minimum period of service at Mylavaram and had been posted thereat by order dated 15.05.2013, she ought not to have been transferred; the order of transfer is stigmatic; it amounts to a punishment; a Division Bench of this Court, in **A.Venugopal Rao v. Executive Engineer, Panchayat Raj, Machilipatnam, Krishna District**, had held that merely because a transfer order is stated to have been passed on administrative grounds, it is not conclusive; and the Court can pierce the veil and give a finding on whether the transfer is made on an administrative grounds or by way of punishment.

The Tribunal held that, in the present case, there was no need to pierce the veil since the order itself sets out the alleged illegalities/irregularities, noticed on 27.07.2014 during the course of inspection by the District Collector himself; the transfer order sets out ten irregularities found in the hostel by the District Collector, which irregularities include variations in number of inmates of the hostel with reference to the registers, variation in stocks, non-disbursement of amount to the boarders towards cosmetic charges etc; it was also noticed that the petitioner had indulged in quarrelsome behaviour which had affected the progress of boarders in the hostel; the transfer order was self-explanatory; on the basis of the inspection report, charges were framed against the petitioner, and departmental enquiry was initiated; and, since an enquiry was

pending against the petitioner, it would not be desirable to continue the petitioner at the same place where the irregularities were found and, on which irregularities, disciplinary enquiry is initiated against the petitioner. The Tribunal did not find any reason to interfere with the impugned transfer order.

Sri N.Subba Rao, learned counsel for the petitioner, would submit that the impugned order of transfer is, in effect, an order of punishment; even otherwise, the transfer guidelines require transfer to be effected only through a process of counselling; transfer of the petitioner, in the present case, was without conducting the process of counselling; and, therefore, the order of the Tribunal necessitates interference.

Transfer of an employee, appointed to a class or category of transferable posts, from one place to another is not only an incident, but a condition, of service necessary too in public interest and efficiency in public administration. No government servant has a legal right to be posted forever at any one particular place or a place of his choice. (**Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey; Major General J.K. Bansal v. Union of India; Union of India v. Janardhan Debanath; National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan.**). Transfer of a public servant, on administrative grounds or in public interest, should not be interfered with unless there are strong and compelling grounds rendering the transfer order improper and unjustifiable. (**Chief General Manager, (Telecom) N.E.Telecom Circle v.Rajendra Ch. Bhattacharjee**). Who should be transferred, and posted where, is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any operative guidelines or rules, Courts should not, ordinarily, interfere with it. (**Kendriya Vidyalaya Sangathan²; Union of India v. S.L. Abbas; Major General J.K. Bansal³; Abani Kanta Ray v. State of Orissa.**

A government servant has no legal right to insist on being posted at any particular place. A person holding a transferable post, unless specifically provided in his service conditions, has no choice in the matter of posting. (**Rajendra Ch. Bhattacharjee⁶**). Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. (**Pearlite Liners (P) Ltd. v. Manorama Sirsi**). In a transferable post, an order of transfer

is a normal consequence and personal difficulties are matters for consideration of the department, and not the Court. (**Rajendra Roy v. Union of India**). Unless the order of transfer is shown to be an outcome of a malafide exercise of power or as violative of any statutory provision (an Act or rule) or is passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or for every type of grievance sought to be made. (**State of U.P. v. Gobardhan Lal**).

Courts should not, ordinarily, interfere with a transfer order made in public interest and for administrative reasons. A government servant holding a transferable post has no vested right to remain posted at one place, and is liable to be transferred from one place to the other. Transfer orders, issued by the competent authority, do not violate any of his legal rights. (**Shilpi Bose v. State of Bihar; Major General J.K. Bansal**³). Transfer is an incident of service and is made in administrative exigencies, and such orders should not be interfered with except where the transfer has been made in a vindictive manner. (**Public Services Tribunal Bar Assn. v. State of U.P.**; **Tushar D. Bhatt v. State of Gujarat**).

Order of transfer should not be interfered with lightly by a Court of law in the exercise of its discretionary jurisdiction, unless the Court finds that either the order is malafide or that the service rules prohibit such transfer or that the authority, who issued the order, had not the competence to pass the order. (**State Bank of India v Anjan Sanyal**). A challenge to an order of transfer should, normally, not be countenanced by Courts or Tribunals as though they are appellate authorities over such orders. Courts or Tribunals cannot substitute their own decisions, in the matter of transfer, for that of the competent authorities. (**Gobardhan Lal**¹¹; **Kendriya Vidyalaya Sangathan**²; **Janardhan Debanath**⁴; **National Hydroelectric Power Corpn. Ltd.**⁵; **S.L. Abbas**⁷; **B.C. Chaturvedi v. Union of India; Major General J.K. Bansal**³). In the present case, grave and serious allegations have been levelled against the petitioner, and a charge memo was issued to her; and the transfer order was issued to ensure that the petitioner did not tamper with evidence.

While a process of counselling is, no doubt, prescribed for effecting transfers, the prescription is by way of administrative guidelines. Executive

instructions, issued by the Government/public authorities with regard to transfers, are in the nature of guidelines and do not have statutory force. (**S.L. Abbas**⁷). Transfer guidelines do not enable an employee to claim a posting of his choice as of right, if the authorities do not consider it feasible. This aspect should be considered, along with the exigencies of administration, (**Bank of India v. Jagjit Singh Mehta; S.L. Abbas**⁷), by the authority ordering the transfer and he should keep in mind the guidelines issued by the Government/public authorities on the subject. Guidelines regarding transfer do not confer upon the Government employee a legally enforceable right. (**S.L. Abbas**⁷; **Major General J.K. Bansal**³). Administrative guidelines, regulating transfers or containing transfer policies, may at best afford an opportunity to the officer or servant concerned to approach their higher authorities for redress, but cannot have the consequence of depriving or denying the competent authority of his power to transfer a particular officer/servant to any place in public interest, and as is found necessitated by the exigencies of service, as long as the official status of the employee is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. (**Gobardhan Lal**¹¹). Courts or Tribunals would not quash orders of transfer merely because administrative instructions/guidelines are not followed. (**S.L. Abbas**⁷). An order of transfer, made even in transgression of administrative guidelines, cannot be interfered with, as they do not confer any legally enforceable right unless it is shown to be vitiated by malafides or is made in violation of any statutory provision (**Gobardhan Lal**¹¹) and, instead, the affected party should be relegated to approach the higher authorities in the department. (**Shilpi Bose**¹²; **Major General J.K. Bansal**³).

Viewed from any angle, the order of the Tribunal does not suffer from any legal infirmity necessitating interference in proceedings under Article 226 of the Constitution of India. The Writ Petition fails and is, accordingly, dismissed. It is made clear that the disciplinary enquiry initiated against the petitioner shall be continued uninfluenced by any observations made either in the order of the Tribunal or the order now passed by us. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

01st May, 2015.

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