

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

W.P. No.32299 of 2015

Between:

R.Lakshmanudu

... Petitioner

And

P.Sudhakar and others. ... Respondents

JUDGMENT PRONOUNCED ON 30.11.2015

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THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :

2. Whether the copies of judgment may be
marked to Law Reporters/Journals. :

3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? :

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

W.P. No.32299 of 2015

ORDER: (Per the Hon'ble Sri GC, J)

This writ petition has been filed by the petitioner questioning the order dated 24.09.2015 passed in O.A. No.4814 of 2015 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad.

The 1st respondent herein filed O.A. No.4814 of 2015 seeking to call for the records pertaining to G.O.Rt.No.600 dated 15.08.2015 and set it aside the same to the extent of posting the 3rd respondent therein, who is writ petitioner herein, to a regular post i.e. at Cuddapah while asking the applicant to draw salary from the office of the Commissioner and Director of Agricultural Marketing Committee (HOD) and hold the

action of the respondents 1 and 2 not only retaining and continuing the 3rd respondent therein in the Government of Andhra Pradesh based on baseless and untenable objections raised by the 3rd respondent therein and further giving a regular posting vide G.O.Rt.No.600 dated 15.08.2015 while making the applicant to be on compulsory wait on being relieved from the State of Telangana on his tentative allocation to the State of Andhra Pradesh and denying regular posting while providing posting to his juniors and seniors and subordinates on one hand and denying the same to the applicant on the other hand as bad, illegal, arbitrary, discriminatory and unconstitutional and contrary to the very process of allocations of state officers and consequently direct the respondents 1 and 2 therein to give regular posting and send back the 3rd respondent therein to the state of Telangana or alternatively to allow the 3rd respondent to hold the post of on tentative basis.

In the said application the applicant also sought interim relief, pending disposal of the O.A., to suspend the G.O.Rt.No.600 dated 15.08.2015 insofar as posting of the 3rd respondent therein in a regular post while asking the applicant to draw the salary from the CMF from Head Office and consequently direct the respondents therein to give the applicant regular posting.

The learned Tribunal vide its impugned order while admitting the said O.A., pending disposal of the O.A., suspended the G.O.Rt.No.600 dated 15.08.2015, insofar as it relates to the unofficial respondent therein is concerned and further directed the respondents therein to give regular posting to the applicant. Aggrieved by the same, the petitioner filed the present writ petition.

This Court on 12.10.2015 passed the following order:

“The case on hand requires further consideration.

Teething troubles are being experienced by both the

States, which have come to be formed pursuant to the provisions contained in the Andhra Pradesh State's Reorganisation Act, 2014. As of now, in State of Andhra Pradesh, 5 Joint Directors of Agricultural Marketing are available, whereas, the cadre strength of Joint Directors in the Department was only 4. So, one of them could not be given regular posting. The question is who should be kept waiting for posting and who should be given the regular posting. As at present advised, we consider that, that would be the choice of the State unless the regime is regulated by rule or regulation which is otherwise enforceable. The Court shall not substitute its discretion to that of the administration. In that view of the matter, the orders passed on 15.08.2015 in G.O.Rt.No.600 (it is time that the State Government should rectify the error, inasmuch as 15th August, 26th January and 2nd October are declared national holidays), the status quo existing as of now be maintained.

Post on 28.10.2015."

The learned counsel for the writ petitioner submitted that the main contention of the petitioner is that the Tribunal itself had no jurisdiction to entertain the O.A., that being the position, not only admitting the O.A., granting interim suspension is illegal. Further, on account of interim order substantive right of the petitioner is affected. Therefore, keeping the matter pending, this Court, *prima facie*, granted interim order of *status quo* and directed the matter to be listed on 28.10.2015. Though it is said that pending disposal of the O.A., interim suspension is granted, but it is in the nature of the final order.

On the other hand, the learned counsel for the 1st respondent herein, who is applicant in the said O.A., submitted that the impugned G.O., was issued based on tentative allotment of the candidates mentioned in the said G.O., and subsequent thereto the final allocation is made pursuant to which, the 1st respondent herein is entitled to be continued in the cadre belonging to the State of Andhra Pradesh and the writ petitioner is entitled to continue in the cadre belongs to the State of Telangana. Further, by virtue of the order of the *status quo*, the writ petitioner is trying to continue in the cadre belongs to the State of Andhra Pradesh.

It is not in dispute that the learned counsel for the petitioner sought to submit that the impugned order is passed by the learned Tribunal is pending disposal of the O.A., but it is passed in the nature of final order therefore, his submission is that the Tribunal had no jurisdiction to entertain the O.A.

On the other hand, the learned counsel for the 1st respondent herein sought to submit that maintainability of the said O.A., or otherwise is a matter to be considered by the learned Tribunal in the O.A., it is not the writ petitioner, who approached the learned Tribunal but it is the 1st respondent herein, who approached the learned Tribunal. Therefore, the writ petitioner is having ample opportunity to bring all the aspects, including the aspects of maintainability and jurisdiction, to the notice of the learned Tribunal. Further, it is also brought to the notice of this Court that subsequent to passing of the interim order by the learned Tribunal, final list of allocation is also passed by the Under Secretary to the Government of India vide order No.27(1)2015 dated 24.11.2015 wherein the writ petitioner is finally allocated to the State of Telangana and the 1st respondent herein is finally allocated to the State of Andhra Pradesh.

Having regard to the facts and circumstances of the case, we are of the view that all these aspects are *prima facie* issues on merits of the case to be considered by the learned Tribunal in one way or the other and unless and until the entire material is placed before the learned Tribunal, where the matter is pending, the *lis* between the parties cannot be resolved ultimately.

In that view of the matter, this writ petition is disposed of with a liberty to all the parties to raise their objections before the learned Tribunal and in which case, the learned Tribunal shall consider the same and pass appropriate orders, in accordance with law. Further, the order of *status quo* granted by this Court on 12.10.2015 is vacated.

As a sequel, miscellaneous petitions, if any, stands closed. There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE U.DURGA PRASAD RAO

Date: 30.11.2015

Note: Furnish C.C. in two days.

B/o.

LSK