

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-
WRIT PETITION No.6797 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.2626 of 2014 dated 07.08.2014. The petitioner herein is the applicant in the O.A.

While he was working as an Assistant Executive Engineer, RWS&S Circle office, Vijayawada, the petitioner was placed under suspension pending enquiry, as he was allegedly involved in Cr.Nos.93 and 94 of 2013 under Sections 324 r/w 34 and 354 IPC. The petitioner herein was in judicial custody till 07.02.2013, and was later released on bail. The order of suspension was passed on 12.02.2013, on the ground of his having been arrested in connection with the said criminal case on 28.01.2013, in terms of Rule 8(2) of the A.P.C.S.(CCA) Rules, 1991 with effect from the date of his arrest i.e. 28.01.2013.

Aggrieved thereby, the petitioner filed O.A.No.2241 of 2013. The Tribunal, by its order dated 03.04.2013, suspended the impugned order of suspension dated 12.02.2013 with a direction that the petitioner be reinstated into service forthwith. Thereafter, the first respondent issued proceedings dated 08.04.2013 revoking the order of suspension pending finalization of the criminal case. However, while reinstating him into service, the petitioner was allotted to RWS&S circle, Kakinada. The petitioner filed O.A.No.2626 of 2013 questioning the said order of transfer dated 08.04.2013 and the Tribunal, by its order dated 16.04.2013, disposed of the O.A. at the stage of admission directing the first respondent to reinstate the applicant, post him at the original place i.e. RWS&S Circle, Vijayawada, and pay him salary, from the date of his suspension till the date of his

reinstatement into service, within a period of four weeks from the date of receipt of a copy of the order.

Aggrieved thereby, the Government filed W.P.No.18317 of 2013 before this Court and, by order dated 30.07.2013, a Division Bench of this Court granted interim suspension of the order of the Tribunal in O.A.No.2626 of 2013 dated 16.04.2013. The Division Bench, however, made it clear that, if the petitioner herein wished to join at RWS&S Circle, Kakinada, the Government should allow him to join. W.P.No.18317 of 2013 was disposed of by order dated 30.07.2013. The order of the Tribunal dated 16.04.2013 was set aside, and the matter was remitted to the Tribunal for its fresh consideration and for passing appropriate orders after giving the Government an opportunity of filing a counter-affidavit. Thereafter the present order, in O.A.No.2626 of 2013, was passed on 07.08.2014.

The Tribunal held that the employee cannot choose the place of his posting; no employee has any right to be posted to a particular place; the employer knows better where the services of his employee can be best utilized; transfer is an incident of service, and the employer is the best Judge to decide upon the utilization and distribution of its manpower amongst various units; the Court and the Tribunal cannot properly assess or adjudicate effectively the reasons given for transfer of employees; and the decision of the employer in such cases is conclusive and, except in the rarest of rare cases, Courts should not interfere with orders of transfer. The Tribunal further held that the order of transfer dated 08.04.2013 was valid, it did not necessitate interference, and the petitioner's request that he should be reinstated and allotted to RWS&S Circle, Vijayawada did not deserve to be granted. Aggrieved thereby, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

Sri P.V.Naga Sai, party-in-person, would draw attention of this Court to G.O.Ms.No.119 dated 17.05.2013, G.O.Ms.No.179 dated

28.11.2000 and Memo dated 22.06.2001, in support of his submission that, as there was a ban on transfers and the memo clearly stipulated that no employee would be paid salary at the transferred place, the action of the respondents, in transferring him from Vijayawada to Kakinada, is arbitrary and illegal; the Engineer-in-Chief, Rural Water Supply & Sanitation Department, Erramanzil, Hyderabad (first respondent herein) bore a personal grudge against him, and had transferred him from Vijayawada to Kakinada for extraneous reasons; his transfer from Vijayawada to Kakinada is, in fact, by way of disciplinary action, and as a measure of punishment; and the order of transfer necessitates interference.

By G.O.Ms.No.119 dated 17.05.2013, the Government ordered ban on transfers with effect from 16.05.2013 except in respect of certain categories. The G.O. specifically stipulated that all departments of the Secretariat and Heads of Departments should follow the order scrupulously. G.O.Ms.No.179 dated 28.11.2000 are the earlier executive instructions whereby all transfers were banned, except those covered under the cases mentioned therein. By Memo dated 22.06.2001, while referring to G.O.Ms.No.179 dated 28.11.2000, the Principal Secretary to the Government (Finance) stated that the salaries of the transferred employee and also the officers, who made the transfers in violation of the orders, be stopped.

It is well settled that transfer is an incident of service and the employer is the best Judge to decide where an employee should be posted. Courts and Tribunals would not, ordinarily, interfere with orders of transfer except where the order is without jurisdiction or the order of transfer is passed *malafide*. Allegations of *malafides* can be examined by the Court only in proceedings wherein the said person is arrayed as a respondent *eo nomine* and is given an opportunity of being heard (**State of Bihar and another v. P.P.Sharma and**

another^[1]). The petitioner has not arrayed the Engineer-in-Chief, against whom he alleges malice, as a party respondent *eo nomine*. In such circumstances, it would be wholly inappropriate for this Court to examine the plea of malice against the Engineer-in-Chief.

Reliance is placed on G.O.Ms.No.119 dated 17.05.2013 and G.O.Ms.No.179 dated 28.11.2000, both of which are executive instructions relating to transfers. As held by the Supreme Court, in **Union Bank of India v. S.L.Abbas**^[2], executive instructions relating to transfers are not enforceable. Neither this Court nor the Tribunal would interdict an order of transfer on the ground that such transfers were made in violation of executive instructions. The Memo dated 22.06.2001 requires the salary of both the transferred employee and the officer who made the transfers also to be stopped. It is not known whether the said Memo is still in force as twelve years have elapsed since then. In any event it was always open to the petitioner, after joining at Kakinada, to contend that the transfer was not at his volition and if, his salary had still been stopped, to then have invoked the jurisdiction of the Tribunal in this regard.

Viewed from any angle, we see no reason to interfere with the order of the Tribunal declining to set aside the order of transfer. The Writ Petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

17th March, 2015.

Tsy

[\[1\]](#) AIR 1991 SC 1260

[\[2\]](#) AIR 1993 SC 2444