

THE HON'BLE SRI JUSTIE G.CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

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W.P.NO.23899 OF 2010

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O R D E R (Per the Hon'ble Sri Justice G.Chandraiah)

Heard the Special Government Pleader appearing for Additional Advocate General for the State of Andhra Pradesh and the learned counsel for the contesting 1st respondent.

2. The 1st respondent was appointed as SGBT on 5.12.1997 in Nellore District pursuant to the DSC 1996 selections and her services were regularized on 20.8.2000 as Secondary Grade Teacher in Nellore District. The 1st respondent is native of Krishna District and the Government issued G.O.Ms.No.173 Educational, dated 18.12.2007 transferring her from Nellore as non local to Krishna District as she was found excess non-local candidate in terms of the provisions of the Presidential Order. Challenging the said G.O., the 1st respondent filed O.A.No.1704/2008 and by interim order dated 29.2.2009, the Andhra Pradesh Administrative Tribunal suspended the said G.O. Thereafter, the District Educational Officer, SPS, Nellore District conducted counseling for promotion and the 1st respondent attended and she was posted as School Assistant (Physical Sciences), MPHS, Kandaleru, and she was relieved from the MPP School, Sanayapalem, Rapuru Mandal as SGB Teacher and when sought to report in the promotional post, the Headmaster, ZPHS Kandaleru Nellore District refused to permit her in view of G.O.Ms.No.173 dated 18.12.2007 on the ground that she belongs to Krishna District. Subsequently the District Educational Officer passed orders dated 2.2.2009 canceling her promotion. Aggrieved by the same, the 1st respondent filed O.A.No.2907/2009, and by order 17.3.2010 the Tribunal considering the orders passed on similar facts and circumstances in O.A.No.4500/2009 dated 5.2.2010 and as G.O.Ms.No.173 dated 18.12.2007 was suspended by interim orders in O.A.No.1704/2008, allowed the present O.A. by setting the orders of the District Educational Officer dated 2.2.2009. Assailing the same, the Government filed the present

writ petition.

3. The learned Special Government Pleader for the writ petitioner submitted that a Division Bench of this court in W.P.Nos.2339 of 2009 and batch dated 29.12.2009 considering similar facts and circumstances, allowed the writ petition filed by the Government and refused to interfere with the impugned G.O. therein, which was issued under the policy decision of the State under G.O.Ms.No.610 dated 30.12.1985, to implement the mandate under the Presidential Order. Therefore, he sought to pass similar order in the present writ petition by setting aside the impugned order of the Tribunal.

4. The learned counsel appearing for the contesting respondent No.1 did not dispute the submission of the learned Special Government Pleader for the writ petitioner.

5. This court in W.P.Nos.2339 of 2009 and batch dated 29.12.2009, while considered the issue that *"4. The only question that arises in this O.A. and batch of O.A.'s is as to whether an order of repatriation passed against each of the applicant in the respective O.A's is factually justified. As we have discussed in the paragraphs hereinafter, the applicant in O.A.No.10431 of 2008, admittedly, belongs to local area of Guntur District but is appointed as non-local in Medak District. Her identification as liable for repatriation to her own local area is questioned in the O.A. on factual grounds apart from the ground of alleged violation of principles of natural justice."*, concluded as under:

"30. With respect to the contention of the learned counsel for the respondent that the said impugned GO violates the principles of natural justice, as countenanced by the learned Additional Advocate General by stating that all the earlier GO's which are referred to are, in fact, covered by the policy decision of the State under G.O.Ms.No.610 dated 30.12.1985, which in turn is based upon the Presidential Order. The implementation of the said policy, therefore, is not required to be preceded by any notice. We are also of the view and it is now well settled that principles of natural justice cannot apply in straightjacket formula in each and every situation. Even if a prior notice had been given in the present case, the fact situation being the admitted appointment of the respondent against a reserved local post, no useful purpose would have been served as the said factual aspect, as stated above, is not contraverted even in the OA nor could have been contraverted by the respondent in the reply to such a notice, if it had been given. The formality of notice would have been wholly redundant and unnecessary on the facts and circumstances of the present case. The contention of the respondent, therefore, that the principles of natural justice are violated is also liable to be rejected.

31. Learned counsel for the respondent also raised a contention that the repatriation, which is ordered under the impugned GO is also unsustainable, as the said term would presuppose that the employee had worked earlier at the place of repatriation and since the respondent has, from the beginning, worked in Medak District, there is no question of her repatriation to Guntur District. It is true

that the respondent has been appointed and is working in Medak District from the beginning, the word repatriation in the impugned GO is, therefore, not used in the sense in which it is understood in the service jurisprudence. The said repatriation as ordered in the impugned GO only means and refers to relegating the respondent to the local area to which she belongs so as to bring her appointment in conformity with the Presidential Order. The said impugned proceedings, therefore, merely amounts to transferring her to her local area to which she belongs. As mentioned above, while affecting the said transfer she is not put to any prejudice as she is being relegated to her own local area and her seniority is protected. The transfer of an employee being an incidence of service, the tribunal or the Court would normally be reluctant to interfere with the same unless exceptional grounds of want of jurisdiction or malafides is made out. None of the said grounds are either alleged or exist on the facts and circumstances of the present case. We are, therefore, of the view that there was no warrant for the tribunal to interfere with the impugned GO especially as it was issued so as to implement the mandate under the Presidential Order.

32. Reliance is placed by the learned counsel for the respondent on a Full Bench decision of this Court in **G. ANANTHA REDDY v. ANDHRA PRADESH ADMINISTRATIVE TRIBUNAL (2002(1) ALD 4)** and particularly Para 76 thereof.

33. It is also brought to our notice that the Honourable Supreme Court in Civil Appeal No.5141 of 2002 dated 09.10.2009 reversed the conclusions of the Full Bench so far as conclusions (b) (c) and (d) as recorded in the said judgment. The issue involved in the aforesaid decision is entirely different from the one arising in this batch of cases. The said decision, therefore, is of no assistance to the learned counsel for the respondent.

34. We are, therefore, of the view that the O.A.No.10431 of 2008 filed by the respondent before the tribunal is itself misconceived and is liable to be dismissed and is accordingly dismissed. Consequently, the interim order passed by the tribunal on 15.12.2008 suspending G.O.Ms.No.158 dated 02.12.2008 so far as the applicant/respondent herein is concerned stands vacated.

WP.No.23391 of 2009 filed by the State is accordingly allowed.”

6. In view of the above, impugned order of the Tribunal is set aside and the writ petition is disposed of in term of the above order of the Division Bench of this court in W.P.No.23391 of 2009 and batch dated 29.12.2009 *mutatis mutandis*. No costs.

7. Miscellaneous petitions pending if any, shall stand closed.

8. Copy of the order in W.P.No.23391/2009 and batch dated 29.12.2009 be annexed to this order.

G.CHANDRAIAH,J

U.DURGA PRASAD RAO,J

DATE:9—11—2015

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