

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

-
WRIT PETITION No.6142 of 2015

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

Heard Sri N.Subba Rao, learned counsel for the petitioner, and Sri V.Ravichandran, learned counsel for the fourth respondent, and with their consent the present Writ Petition is being disposed of at the stage of admission.

The petitioner herein is the fourth respondent in O.A.No.6870 of 2014 filed by the fourth respondent herein. The O.A was filed to set aside the order of transfer issued by the second respondent dated 22.11.2014 transferring the fourth respondent herein and posting the petitioner in his place. Both the petitioner and the fourth respondent were working at Vijayawada. The petitioner was initially transferred from Vijayawada to Eluru. On an application filed by him, seeking his transfer back to Vijayawada on the ground of physical disability, he was posted not to his original place but to the place where the fourth respondent was hitherto working. In turn, the fourth respondent was transferred to Machilipatnam.

Questioning the said order of transfer, the fourth respondent herein invoked the jurisdiction of the Tribunal contending, among others, that the transfer was effected for extraneous reasons; his wife is employed at Guntur; and the transfer guidelines required spouses to be posted either at the same place or in places which are proximate to each other. By the order under challenge in this Writ Petition, the Tribunal held that the respondents had not given any reason for transferring the fourth respondent within such a short span of time, and in reposting the petitioner even though he had also worked in Vijayawada for about three years.

While Sri N. Subba Rao, learned counsel for the petitioner,

would contend that transfer is an incident of service and the Tribunal could not have interfered with the action of the Government in transferring the petitioner back to Vijayawada and in transferring the fourth respondent to Machilipatnam, Sri V.Ravichandran, learned counsel for the fourth respondent, would submit that the very same transfer guidelines, on which the petitioner relied on to claim that he is entitled for preference in posting on the ground of physical disability, also requires spouses to be accommodated at the same place as far as possible.

It is settled law that transfer is an incident of service, and no employee can claim that he should be posted at a particular place or not to be transferred therefrom. The only grounds on which a transfer can be interdicted is on the ground of malice or if the order of transfer is passed by an officer/authority who lacks jurisdiction to effect transfers. It is not even the case of the fourth respondent herein, that the order, transferring him from Vijayawada to Machilipatnam, was passed without jurisdiction.

While a vague plea appears to have been taken by him in the O.A, that the transfer order was passed for extraneous reasons, allegation of *malafide* can only be examined if malice is alleged against a particular person, and he is arrayed as a respondent *eo nomine*. In **State of Bihar and another v. P.P.Sharma and another**^[1] the Supreme Court held that the person, against whom malafides are imputed, should be impleaded *eo-nominee* as a party respondent to the proceedings, and be given an opportunity to meet those allegations; and, in his absence, no enquiry into those allegations would be made. The fourth respondent has neither named the person who is said to have acted *malafide*, nor has he arrayed any one, other than the petitioner herein, as a respondent *eo nomine* in the O.A. Both the grounds, on which order of transfer can be

interdicted, are absent in the present case.

As held by the Supreme Court, in **Union Bank of India v. S.L.Abbas**^[2], transfer guidelines do not have the force of law; and are not enforceable. While the Government should, no doubt, adhere to the guidelines issued by it, no employee can invoke the jurisdiction of this Court, or the Tribunal, contending that, in view of the transfer guidelines, he should be posted at a particular place or retained thereat.

As the fourth respondent claims that the transfer guidelines require spouses to be posted at the same place, or in close proximity with each other, he is permitted to make a representation in this regard to the Government which shall consider the same in accordance with law, and pass orders thereupon within two weeks from the date of receipt of the representation. The order of the Tribunal, interdicting the order of transfer, must be and is, accordingly, set aside.

The Writ Petition is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

12th March, 2015.

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^[1] AIR 1991 SC 1260

^[2] 1993 (2) SC 2444