

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.12.2016

Coram:

Hon'ble Mr.Justice NOOTY. RAMAMOHANA RAO
and
The Hon'ble Mr.Justice S.M.SUBRAMANIAM

WRIT APPEAL No.1613 of 2016
and
C.M.P.No.19981 & 19982 of 2016

R.Premkumar ... Appellant/Petitioner

Versus

1. The Government of Tamil Nadu
rep. by its Secretary,
Department of Higher Education,
Secretariat, St. George Fort,
Chennai-600 009.
 2. Personal and Administrative Reforms
Department, rep. by its Secretary,
Chennai- 600 009.
 3. The Vice-Chancellor,
Annamalai University,
Annamalai Nagar-608 002.
 4. The Registrar,
Annamalai University,
Annamalai Nagar-608 002.
- Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order passed by the learned single Judge in W.P.No.38300 of 2016 dated 18.11.2016.writ Petition filed Under art 226 of the Constitution of India, praying this court for the issue writ of certiorari to call for the records from the fourth respondent in connection with the impugned order of transfer viz. University No. 823/2016(C2) dated 23/09/2016, issued by the fourth respondent on 31/10/2016 transferring the petitioner from annamalai university, UWD Electrical Branch, Chidambaram to Directorate of Distance Education Study Center at New Delhi and quash the same.

For Appellant .. Mr.V.Prakash, Sr. Counsel for
Mr.K.Krishnamoorthy
For Respondents 1&2 .. Mr.P.S.Sivashanmugasundaram,
Spl.GP. For RR1 and 2.
For Respondents 3&4 .. Mr.V.R.Kamalanathan

JUDGMENT

(DELIVERED BY NOOTY.RAMAMOHANA RAO,J)

This appeal preferred under Clause 15 of Letters Patent, is directed against the order dated 18.11.2016, rendered by the learned single Judge, dismissing the writ petition instituted by the appellant before us.

2. The writ petition is in fact, directed against an order passed on 23.09.2016 by the Registrar of Annamalai University, Annamalai Nagar, Chidambaram, Tamil Nadu, transferring the writ petitioner to the Directorate of Distance Education, Study Centre at New Delhi.

3. The case of the writ petitioner is that he joined the services of the University as a Technical Assistant on 02.07.2009 and his services as such were regularized with effect from 15.09.2011. It is his further case that he has availed Earned Leave from 30.04.2015 up to 06.05.2015. Earned Leave applied for by him has not been sanctioned. But instead, it was treated as one of loss of pay. In those circumstances, the present writ petitioner/appellant instituted W.P.No.12157 of 2016 in this Court, which is still pending. It is thereafter, on 23.09.2016, the impugned order of transfer has been passed.

4. Learned single Judge has dismissed the writ petition relying upon the principle enunciated by the Supreme Court in *National Hydroelectric Power Corporation Ltd., vs. Shri Bhagwan-2001 (8) SCC 574* and *State of U.P vs. Govardhan Lal - 2004 (11) SCC 402*, wherein it was clearly pointed out that there is very little scope for interference against an order of Administrative Tribunal.

5. Heard Shri V.Prakash, learned Senior Counsel appearing for the writ petitioner/appellant and Shri V.R.Kamalanathan, learned Standing Counsel appearing for Annamalai University- Respondents 3 and 4 and Shri P.S.Sivashanmugasundaram, learned Spl. Government Pleader appearing for Respondents 1 and 2.

6. Though a serious attempt has been made to describe the impugned order of transfer as one of colourable exercise, but however, we are of the opinion that in the absence of strong,

reliable and adequate material in support of any such plea, it will be difficult for a Court, that too when exercising the appellate jurisdiction, to arrive at a finding that the impugned order is the result of colourable exercise.

7. What stands out for inspiring the above plea, is that the writ petitioner/appellant applied for Earned Leave for a period of five weeks. The same was not accorded and on the other hand, it was treated as one of loss of pay. We are not here called upon to make any pronouncement thereon as that lis was engaging the attention of this Court in a pending writ petition No.12157 of 2016. In our opinion, refusal to grant leave and immediately thereafter issuing the order of transfer may not necessarily lead to an inevitable conclusion that the attitude indulged in by the University in dealing with the petitioner is the result of vindictive or unfair attitude adopted by the University.

8. Notwithstanding, what has been noted by us supra, the fact remains that the writ petitioner/appellant is a lowly paid small time employee occupying the post of a Technical Assistant. The place where he is presently working that is Chidambaram town is a small time town and the living standards therein are considered to be relatively as the same as that of any good rural area. Consequently, even small time employees with meagre wages can live with dignity and minimum comforts of life without much of difficulty. Can the same be said about New Delhi? Not, that lowly paid employees or small time employees are not found living in New Delhi at all. The innumerable hardships they face on day to day basis marks the difference. But however, these are all matters which must be taken into account and consideration by the Human Resources Managers. A model employer is one who takes care of interests of all segments meaningfully into account. But at the same time paramount consideration is liable to be shown to the requirements of the service of the Organisation. Institutional interests, nothing counts more importantly than the interests of the institution. Hence, we are not inclined to interfere with the impugned order of transfer or the order rendered by the learned single Judge.

9. However, we have mooted on the last occasion of the hearing of this appeal, with Shri V.R.Kamalanathan, as to whether the writ petitioner/appellant, can be shifted to any other place in the State other than to the far off New Delhi, and Shri V.R.Kamalanathan, it appears had an useful round of discussions with the University Administrators. He has now brought to our notice that the University is having a complex of its own at New Delhi and it is a 20 year old complex requiring certain periodical maintenance works to be undertaken and so far the maintenance work is being outsourced by the University and for a variety of reasons including the expenditure involved in that regard and also not so satisfactory services rendered by the

outsourced employees, necessitated, as a result, for the University to take steps to improve its upkeep immediately. The task may require six months to one year tenure. Keeping this factor alone in mind, the University has stated to have transferred the writ petitioner to far off New Delhi, as he is a Technical Person. Further, at the suggestion of Shri V.R.Kamalanathan, the University has now come up specifically that as soon as the task assigned to the writ petitioner/appellant is completed either in six months or in close proximity thereof, the writ petitioner/appellant would be brought back to the University campus or he would be accommodated suitably around the University campus where his services could be utilized once again. Placing on record our sincere appreciation to the efforts made by Shri V.R.Kamalanathan and also recording the appreciation of the decision makers to convey to us, the sense of objectivity with which they have received our suggestions, we dispose of this writ appeal recording our hope and trust that what has been informed to us would be lived up to.

10. It is needless for us to observe that the disposal of this writ appeal, in no way would come in the way of the respondents while finalizing the rest of the conditions of services including issue relating to absorption of employees of the University into Government, pursuant to the decision of the State Government to take over the University to manage by itself, and the writ petitioner would not suffer any disadvantage.

11. With this observation, the writ appeal stands disposed of. No costs. Consequently, C.M.P.Nos.19981 & 19982 of 2016 are closed.

Sd/
Assistant registrar (CS VI)

/true copy/

sub assistant registrar

gr.

To

- 1) The Secretary Govt. Of Tamil Nadu,
Department of Higher Education Secretariat
St. George Fort, Chennai-9.
- 2) The Secretary Personal and Administrative
Reforms Department, Chennai-9.
- 3) The Vice Chancellor , Annamalai University,
Annamalai Nagar- 608 002.

4) The Registrar, Annamalai University
Annamalai Nagar-608 002.

+1 CC to Mr. K. KrishnaMoorthy SR 74764

+1 CC to Govt. Pleader SR 76400

+1 CC to Mr. V.R. Kamalanathan SR 74377

W.A.No.1613 of 2016

VGI
sp/11/1



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