

THE HON'BLE SRI JUSTICE G.CHANDRAIAH
and
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.38111 of 2015

ORDER: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

The writ petitioner challenges the order dt:20.11.2015 in O.A.No.5048 of 2015 whereby and whereunder the learned Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal") has set aside the proceedings in Rc.No.E2/16234/2015-1 dt: 27.08.2015 issued by the 2nd respondent therein transferring the applicant therein and directed the respondents to continue the applicant as Executive Officer Grade I in Sri Kondalamma Ammavari Temple, Vemavaram Village, Gudlavalleru Mandal, Krishna District.

2) The third respondent in O.A is the writ petitioner; the applicant in O.A is the first respondent herein and respondents 1 and 2 in the O.A are respondents 2 and 3 herein.

3) The applicant filed O.A.No.5048 of 2015 and challenged the proceedings in Rc.No.E2/16234/2015-1 dt: 27.08.2015 issued by the 2nd respondent in O.A as without jurisdiction and power and against G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015 and to set aside the same and order for retransfer of the applicant. The case of the

applicant was that he was working as Executive Officer Grade-I in Sri Venkamma Perantalu Ammavari Temple, Vijayawada, Krishna District since 21.07.2011 and during transfer counseling 2014, though he applied for transfer, he was not considered by the Department but during 2015, his option for three places was considered by the 2nd respondent and he was transferred to Sri Kondalamma Ammavari Temple, Vemavaram Village, Gudlavalleru Mandal, Krishna District vide Rc.No.E2/16234/ 2015 dt: 15.08.2015 and accordingly the applicant joined in the new post on 19.08.2015 and submitted joining report on the same day and issued notice dt:19.08.2015 to the Manager for handing over the accounts of the Temple. He also took a leased residence at the transferred place on 21.08.2015 and shifted his effects. Further, the Assistant Commissioner of Endowments, Vijayawada claimed August month's salary of the applicant at the new Station.

a) His further case was that when the matter stood thus, all of a sudden, 2nd respondent issued impugned order modifying the earlier transfer order of the applicant by retransferring him to Sri Annapurna Sametha Kasivishweshwara Swamy Temple, Governerpet, Vijayawada. The applicant challenged the order on two grounds. Firstly, the 2nd respondent has no jurisdiction and became *functus officio* by virtue of the ban on transfers imposed on 16.08.2015 vide G.O.Ms.No.98 Finance (HR.I)

Department dt: 04.08.2015. The 2nd respondent tried to do by a modified order what he could not do it directly due to ban. Secondly, the impugned order is bad in law for the reason that the applicant joined in new station and claimed salary attached to the new Post from the Treasury and the Treasury will not sanction his salary if further transfer is done without the concurrence of the Finance Department. As the transfer was done without the sanction of Finance Department, it is bad in law. The other allied grounds showed by him were that he vacated the rented occupation at Vijayawada after his first transfer and it will be difficult for him now to get a rented accommodation at Vijayawada. He thus contended that the re-transfer by the 2nd respondent when the ban was in-force is bad particularly when the same was not with the permission from the Government.

4) The Commissioner of Endowments, who is the 2nd respondent in O.A filed counter and opposed the O.A. Its case was that the ban on Government Employees imposed under G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015 was temporarily lifted till 15.08.2015 and at that time considering the requests for transfers, the case of the applicant seeking to transfer in one of the three option places was considered and he was transferred to Sri Kondalamma Ammavari Temple, Vemavaram Village vide proceedings in Rc.No.E2/16234/2015 dt: 15.08.2015 and the applicant accordingly submitted joining report on

19.08.2015. Its further case was that the lifting of ban in G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015 was in respect of transfer of Government Employees only but the 3rd respondent in O.A was a Manager in Sri Kondalamma Ammavari Temple, Vemavaram Village under Sec.29(d) of the Endowments Act and he was not a Government Employee. Hence, G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015 issued by the Government lifting the ban on transfers was not applicable to him and by oversight earlier transfer orders was issued to the applicant and therefore, modified proceedings in Rc.No.E2/16234/2015-1 dt:27.08.2015 were issued retaining the 3rd respondent as Manager at Sri Kondalamma Ammavari Temple, Vemavaram Village and retransferring the applicant to Sri Annapurna Sametha Kasivishweshwara Swamy Temple, Governerpet, Vijayawada as Executive Officer. Further, there were certain development works going on at Sri Kondalamma Ammavari Temple, Vemavaram Village and for that reason also the modified orders were issued. Thus, the 2nd respondent sought to justify its modified order. It further submitted that since the second order was only a modification order to the earlier proceedings, there was no need to obtain finance concurrence in the matter.

5) The 3rd respondent who was the Manager in Sri Kondalamma Ammavari Temple, Vemavaram Village and

effected by the first transfer of the applicant, filed his counter and opposed the O.A. He denied the claim of the applicant that on transfer he took charge in Sri Kondalamma Ammavari Temple, Vemavaram Village on 19.08.2015. He submitted that the applicant has handed over the charge of his post in Sri Venkamma Perantalu Ammavari Temple, Vijayawada, to Sri N.V. Samba Siva Rao, who was kept additional charge of the said Temple, only on 21.08.2015 and therefore, the claim of the applicant that he joined in the new Post at Sri Kondalamma Ammavari Temple, Vemavaram Village on 19.08.2015 is false. The 3rd respondent denied the contention of the applicant that he shifted his residence to the new Station within the 10 days after transfer. So called lease agreements being for a period of 3 years, should be registered and as they are unregistered documents, those lease agreements were apparently created by the applicant for the purpose of O.A.

Thirdly, he contended in tune with the 2nd respondent to the effect that the lifting of the ban of transfer of Government Employees under G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015 was applicable to the Government Employees alone and not to the Managers like him who are Temple employees and therefore, by virtue of the lift of the ban, the applicant cannot be posted in the place of 3rd respondent and in turn he cannot be transferred on the basis of lifting of the ban orders to Paidamma Ammavari Temple, Pedana Village and Mandal. Recognizing the

mistake in the transfer orders dt:15.08.2015, the 2nd respondent issued modified proceedings dt: 27.08.2015 which is perfectly valid and cannot be questioned. Further, the modified order was passed due to administrative exigencies i.e, in view of ongoing development works at Sri Kondalamma Ammavari Temple, Vemavaram Village. On that ground also modified order cannot be questioned. The 3rd respondent claimed that he did not handover the charge to the applicant and so modified order was good.

6) Upon hearing both sides, the Tribunal observed that the first transfer of the applicant was effected after due counseling and accordingly he joined duty in Sri Kondalamma Ammavari Temple, Vemavaram Village but the official respondent issued modified order within a span of 10 days and again transferred the applicant to Sri Annapurna Sametha Kasivishweshwara Swamy Temple, Governerpet, Vijayawada and the only reason submitted for such transfer was that there were development works going on and for that purpose the 3rd respondent who was the Manager was retained. The Tribunal noticed that in the counter affidavit nowhere it was mentioned that the applicant was not competent to continue the development works. Further the unofficial respondent alone was challenging the averments in the O.A i.e, joining of the applicant in the new Post. The Tribunal held that since the applicant was posted to Sri Kondalamma Ammavari

Temple, Vemavaram Village after conducting counseling as per G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015, the impugned proceedings retransferring him are liable to be set aside. The Tribunal thus allowed the O.A and directed the 2nd respondent authorities to continue the applicant in Sri Kondalamma Ammavari Temple, Vemavaram Village.

Hence, the Writ Petition by the 3rd respondent challenging the order in O.A.

7) On 01.12.2015, this Court while ordering notice before admission, granted *status quo* in W.P.M.P.No.49054 of 2015 in W.P.No.38111 of 2015. The first respondent filed counter along with Vacate Stay Petition i.e, W.V.M.P.No.4625 of 2015.

8) We were informed that the official respondents 2 and 3 have not challenged the order in O.A.

9) Heard arguments of Sri P.V.S.S.S.Rama Rao, learned counsel for petitioner, Sri N.Guru Gopal, learned counsel for respondent No.1 and learned Government Pleaders for Endowments (A.P) on behalf of respondents 2 and 3.

10) The point for determination is:

“Whether there are merits in this writ petition to allow?”

11) **POINT**: The impugned order in O.A.No.5048 of 2015 relates to the retransfer of R.1. About the intervention of the

Courts and Tribunals in the matter of transfers, the Hon'ble Apex Court in a number of its decisions viz., 1) ***National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and others***^[1], 2) ***State of U.P and others vs. Gobardhan Lal***^[2], 3) ***State of Haryana and others vs. Kashmir Singh and another***^[3] and 4) ***Registrar General, High Court of Judicature of Madras vs. R.Perachi and others***^[4] held that transfer is in a incidents of service and if the transfer of a public servant is made on administrative grounds or in public interest without attaching any stigma, the Courts and Tribunals shall not intervene with the same under the power of judicial review unless it could be shown by the employee that the transfer was outcome of a malafide exercise of power or which was violative of any statutory provision or passed by an authority not competent to do so. Except in such exceptional circumstances, generally the Tribunals and Courts shall not lightly interfere in the matter of transfers. In the light of above cardinal principle, we have to see whether the impugned order of the Tribunal setting aside the retransfer of the 1st respondent and directing him to continue in the transferred place as Executive officer is factually and legally sustainable or not.

12) The facts which are not in dispute are that R.1 worked as an Executive Officer Grade I in Sri Venkamma Perantalu Ammavari Temple, Vijayawada, since 21.07.2011 and after

temporarily lifting of the ban on transfer of the Government Employees vide G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015 till midnight of 15.08.2015, the 3rd respondent authorities having considered the request of the 1st respondent to transfer him in one of the three optioned places and transferred him as Executive Officer of Sri Kondalamma Ammavari Temple, Vemavaram Village by its proceedings vide Rc.No.E2/16234/ 2015 dt:15.08.2015. According to 1st respondent, he joined at the new posting on 19.08.2015 which is disputed by the writ petitioner according to who, the 1st respondent handed over the charge of Sri Venkamma Perantalu Ammavari Temple, Vijayawada, to Sri N.V. Samba Siva Rao, who is the additional incharge of the said temple only on 21.08.2015. This aspect in our view has no much bearing on the decision in the writ petition wherein we are concerned mainly about the validity of retransfer of 1st respondent. Then the further undisputed fact is that 3rd respondent issued impugned proceedings vide Rc.No.E2/16234/2015-1 dt:27.08.2015 modifying the earlier order dt:15.08.2015 and retained the writ petitioner as Manager of Sri Kondalamma Ammavari Temple, Vemavaram Village and retransferred the 1st respondent from said temple to Sri Annapurna Sametha Kasivishweshwara Swamy Temple, Governerpet, Vijayawada as Executive Officer, Grade I. The reason shown by the 2nd respondent in issuing the impugned

proceedings is in view of ongoing development works in Sri Kondalamma Ammavari Temple, Vemavaram Village. The said proceedings were challenged by the 1st respondent in O.A.No.5048 of 2015. The Tribunal held that it was not the case of the 2nd respondent in its counter affidavit that the applicant i.e, 1st respondent herein was not competent to continue the development works and as he was recently posted as Executive Officer of Sri Kondalamma Ammavari Temple, Vemavaram Village after due counseling, his retransfer within 10 days was liable to be set aside.

13) As already stated supra, the above order of the Tribunal was challenged by the unofficial respondent alone but not by the official respondent. Be that it may, the main contention raised on behalf of the writ petitioner in support of the impugned proceedings dt:27.08.2015 is that he was officiating as Manger in Sri Kondalamma Ammavari Temple, Vemavaram Village and that he was not a Government servant but a temple employee and therefore, the temporary lifting of the ban on transfers of the Government Employees from 04.08.2015 to 15.08.2015 under G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015 has no application to him and the 2nd respondent could not effect his transfer as a Manager from Sri Kondalamma Ammavari Temple, Vemavaram Village to Paidamma Ammavari Temple, Pedana Village and Mandal, by virtue of said G.O.

Hence, the order of the 2nd respondent dt:15.08.2015 transferring the 1st respondent in his place on the strength of G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015 and thereby transferring the writ petitioner from Sri Kondalamma Ammavari Temple, Vemavaram Village to Paidamma Ammavari Temple, Pedana Village and Mandal was a mistake and realizing the same, the 2nd respondent within 10 days issued a modified order dt:27.08.2015 retaining the writ petitioner in his old place at Sri Kondalamma Ammavari Temple, Vemavaram Village and in turn retransferring the 1st respondent as Executive Officer to Sri Annapurna Sametha Kasivishweshwara Swamy Temple, Governerpet, Vijayawada and the said modified order is perfect and legally valid and the Tribunal committed grave error in setting aside the said order.

a) We are unable to appreciate the aforesaid argument for the reason that in the impugned proceedings in Rc.No.E2/16234/2015-1 dt:27.08.2015 we do not find such reason as now propounded by the writ petitioner. The 2nd respondent did not make any whisper that the writ petitioner was only a temple employee but not the Government Employee and hence the cannot be transferred and the 1st respondent cannot be posted in his place and most importantly, the proceedings dt:27.08.2015 were issued to rectify such mistake. On the other hand, what we find in the proceedings dt:27.08.2015 and as rightly observed by the

Tribunal is that the modified orders were issued as if, in view of the ongoing development works in Sri Kondalamma Ammavari Temple, Vemavaram Village. If that was the ground prompted for issuing the modified proceedings, there is no reason why the 1st respondent, who is the new incumbent of Sri Kondalamma Ammavari Temple, Vemavaram Village, cannot carry forward the development works because in the modified order there is no mention about the inability or incapacity of the 1st respondent to carry the development works of the temple. So in the impugned proceedings nothing is shown about the non-transferability of the writ petitioner on one hand and the inability of the 1st respondent to execute the development works on the other. Therefore, this contention of the writ petitioner cannot be accepted.

14) The impugned order of the 2nd respondent cannot be sustained for another important reason which was not considered by the Tribunal. A perusal of the copy of G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015 produced by the writ petitioner shows that the Government have decided to lift the ban on transfer of employees only temporarily until midnight of 15th August, 2015 and in the G.O, the Government made it clear that the imposition of ban on transfer of employees would be effective from 16.08.2015. In view of this G.O, the earlier transfer of R.1 from Sri Venkamma Perantalu Ammavari Temple,

Vijayawada, to Sri Kondalamma Ammavari Temple, Vemavaram Village is perfectly valid and there is no demur in it. However, by the time of passing the impugned proceedings on 27.08.2015 by the 2nd respondent, the ban was again re-imposed and in-force. As such, as rightly contended by the 1st respondent, the 2nd respondent should not have passed the impugned proceedings retransferring the 1st respondent from Sri Kondalamma Ammavari Temple, Vemavaram Village to Sri Annapurna Sametha Kasivishweshwara Swamy Temple, Governerpet, Vijayawada. If at all the 2nd respondent contemplated to transfer him inspite of G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015 being in force, it should have obtained permission from the Government to effect such transfer. However, in impugned proceedings dt:27.08.2015 we don't find any such permission from the Government. Therefore, we are constrained to hold that the impugned proceedings dt:27.08.2015 passed by the 2nd respondent is in violation of Rule of ban imposed by the Government. Ofcourse the 2nd respondent sought to justify the impugned proceedings on the submission that the said proceedings are only a modified order of the earlier proceedings but not a fresh transfer of the 1st respondent and hence not hit by the ban. We are afraid, this argument is not correct because though the impugned proceedings are styled as modification orders but in reality, they amount to retransfer of

the 1st respondent from Vemavaram to Vijayawada and they are hit by the ban re-imposed under G.O.Ms.No.98 Finance (HR.I) Department dt: 04.08.2015. What is not permissible directly cannot be permitted to be achieved indirectly. Therefore, though the Court is expected not to interfere with the transfers lightly, still in the instant case as the impugned proceedings were issued in violation of the ban and no permission was obtained from the Government, we uphold the order of the Tribunal in O.A.No.5048 of 2015.

15) In the result, this writ petition is dismissed. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH, J

U.DURGA PRASAD RAO, J

Dt: 22.01.2016

scs

[\[1\]](#) AIR 2001 SC 3309

[\[2\]](#) AIR 2004 SC 2165

[\[3\]](#) (2010) 13 SCC 306

[\[4\]](#) (2011) 12 SCC 137