

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 34225 of 2015

and

CONTEMPT CASE No. 2404 of 2015

COMMON ORDER: (*Per VRS,J*)

The petitioner is working as School Assistant at ZPP High School, Chintalapalem of Gattupalli Village, Jaladanki Mandal, S.P.S.R.Nellore District. It appears that he was posted to the said school in November, 2005.

2. Even according to the petitioner, a teacher, who had completed 6 years of service, was liable to be transferred, by virtue of G.O.Ms.No.63, Education (SER.II) Department, dated 31.08.2015. Contending that the transfers of teachers under G.O.Ms.No.63 were regulated, and that he was not given the appropriate entitlement points on the basis of the results produced by him, the petitioner first approached the Andhra Pradesh Administrative Tribunal in O.A.No.5488 of 2015. The prayer made by the petitioner in the said application before the Tribunal was for a direction to the respondents to award three entitlement points, in terms of a particular Rule in Andhra Pradesh Teachers (Regulation of Transfers) Rules, 2015-16.

It is relevant to point out that at the time when the petitioner approached the Tribunal, he had not been ordered to be transferred out of the said place. In other words, the application filed by the petitioner was anticipatory in a way and preemptive in another way.

3. The Tribunal passed an interim order on 24.09.2015, directing the Committee for Transfer of Teachers to award entitlement points, in tune with the contentions raised by the petitioner, while taking up his case in the transfer counselling.

4. Within a month of the said interim order passed by the Tribunal, the petitioner directly approached this Court with the writ petition, W.P.No.34225 of 2015, seeking larger reliefs, namely, the relief of a declaration that the Government teachers and Panchayat teachers cannot be placed on par, in view of a judgment of the Division Bench of this Court in W.P.No.17548 of 2006, dated 28.02.2007, which was also confirmed on appeal by the Supreme Court in Civil Appeal No.4886 of 2009 and batch. It is relevant to point out that the writ petition was filed on 12.10.2015, when the transfer counselling was in progress and the petitioner had not been subjected to any order of transfer. In other words, even the writ petition was virtually preemptive in nature.

5. On 14.10.2015, this Court passed an interim order in the said writ petition, which reads as follows:

“The writ petitioner teacher seems to have rendered really good service by achieving 100% results for consecutively two years. He has a grievance against the Committee for transfer of teachers and also the action of the District Educational Officer, Nellore.

Therefore, we issue notice before admission.

Until further orders are passed by this Court in this writ petition, the order of transfer, if any passed against the petitioner, shall not be given effect to.

Post on 28.10.2015.”

6. However, it appears that by a common order passed on 31.10.2015, in respect of a number of individuals, the respondents transferred various teachers including the petitioner herein. Therefore, contending that the transfer order, dated 31.10.2015, was in utter violation and willful disobedience of the order passed by this Court, the petitioner has come up with the contempt petition, C.C.No.2404 of 2015. Therefore, the writ petition and the contempt petition were taken up together for disposal.

7. The main contention of Mr. P.V. Krishnaiah, learned counsel for the petitioner, is that compelling the petitioner to attend counseling, after he had secured an interim order of direction from this Court, was a gross and willful disobedience of the order of this

Court, and that what is at stake is the majesty of the Court and the respect for the rule of law. Therefore, he contended that apart from committing a contempt, the attempt on the part of the respondents to justify the transfer of the petitioner is something, that is to be taken adverse notice by this Court.

8. Insofar as the writ petition is concerned, the contention of the learned counsel is that the principles formulated in G.O.Ms.No.63 are also contrary to the decision of this Court, as confirmed by the Supreme Court, since a set of Rules have been framed in common for teachers of both Government schools as well as Zilla Parishad schools. If both of them do not represent a common stream, it is not possible for the Government to formulate those Rules. Therefore, the learned counsel contends that there should be a declaration that the Government Order should be read down, in the light of the judgment of this Court, creating a dichotomy between the Government schools and Zilla Parishad schools.

9. We have carefully considered the above submissions.

10. At the outset, we do now know how the petitioner could have approached the Tribunal, even before an order of transfer was passed. His case before the Tribunal was that under the Rules framed under G.O.Ms.No.63, he was entitled to be awarded entitlement points. But,

his case before this Court is that G.O.Ms.No.63 should not be applied to the Zilla Parishad schools. In other words, after seeking a prayer before the Tribunal for a relief, in tune with G.O.Ms.No.63, the petitioner is seeking to declare that G.O.Ms.No.63 should have no application. Therefore, the writ petition deserves to be dismissed on this simple score.

11. Insofar as the contempt petition is concerned, the petitioner had not challenged any order of transfer. Time and again, the Supreme Court has pointed out that an order of transfer can be interfered only under two contingencies, namely, (a) *mala fide* exercise of power, and (b) violation of Statutory Rules. The procurement of hundred-percentage result of a teacher, is actually the call of his duty and not part of something that can be taken credit for, for the purpose of avoiding transfers. If there are good teachers, who secure hundred-percentage results, their services are as well required in other schools. Therefore, the stay of an order of transfer of a teacher, on the ground that he had secured hundred-percentage results, cannot be accepted.

12. As repeatedly pointed out by the Supreme Court, contempt is a matter between the Court and the contemnor. The petitioner has participated in the counselling, after the interim order was passed by the Tribunal. It was an online transfer counselling held. Therefore, if

an order has been passed on the basis of such participation in the online counselling, the petitioner cannot make out a grievance about the violation of the interim order.

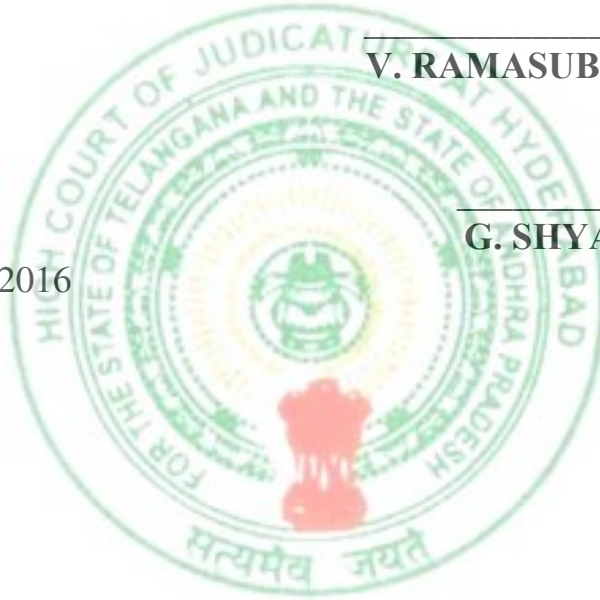
13. Therefore, the Writ Petition as well as the Contempt Petition are dismissed.

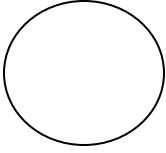
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

24th October, 2016
cbs





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THE HON'BLE SRI JUSTICE G. SHYAM PRASAD



Writ Petition No.34225 of 2015
and
Contempt Case No. 2404 of 2015
(Per VRS,J)

24th October, 2016

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