

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE ANIS

WRIT PETITION No.8967 of 2016

Date:18.3.2016

Between:

Sk.Saleem Basha,
S/o Late Shaik Abdul Jabbar

....Petitioner

And:

The State of A.P., repled., by its
Principal Secretary, Home (Police)
Department, Hyderabad and five others.

.....Respondents

Counsel for the petitioner: Mr. C.Sai Reddy
For Mr. J.Konda Reddy

Counsel for Respondent Nos.1 to 4: GP for Services (AP)

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Petition is filed by the applicant in O.A.No.361 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') feeling aggrieved by order, dated 09.02.2016, whereby the Tribunal has rejected his plea and dismissed the said O.A.

The petitioner was initially appointed on 30.6.1981 as an Armed Reserve Police Constable (ARPC) in respondent No.4-Unit. By order, dated 29.10.1983,

respondent No.4 has transferred the petitioner, on his request, to respondent No.3-Unit. On 07.11.1983, the petitioner joined in respondent No.3-Unit as a Constable. After undergoing Basic Armourer Course/Training between 09.11.1992 and 20.11.1993, he was promoted as Armed Railway Head Constable (ARHC), Armourer, by respondent No.3 on 20.4.1995. Respondent No.3 has, however, issued proceedings, dated 20.01.2016, purportedly repatriating him to respondent No.4-Unit. Feeling aggrieved by the said order, the petitioner filed O.A.No.361 of 2016 before the Tribunal. By order, dated 09.02.2016, the Tribunal has dismissed the same.

Mr. C.Sai Reddy, learned counsel representing Mr. J.Konda Reddy, learned counsel for the petitioner, submitted that once the petitioner was transferred from respondent No.4-Unit to respondent No.3-Unit, he is deemed to have been absorbed in the latter unit and that, therefore, his repatriation from respondent No.3-Unit to respondent No.4-Unit is illegal. In support of his submission, he has placed reliance on Clause-(g) of Fundamental Rule-14 and Clause-(e) of Fundamental Rule-14-A and Note-II of Fundamental Rule-14-B. He has further submitted that even if the petitioner's transfer is considered valid, his appointment as Constable amounts to reversion.

Learned counsel further submitted that as far back as 1995, the petitioner was promoted as Head Constable in respondent No.3-Unit and therefore, he is at least entitled to be continued as Head Constable in respondent No.4-Unit.

Learned Government Pleader for Services (Andhra Pradesh) appearing for respondent Nos.1 to 4 opposed the above submissions of the learned counsel for the petitioner and submitted that respondent Nos.3 and 4 are separate Units of the same department i.e., Andhra

Pradesh Police Department and therefore, the petitioner who was appointed in respondent No.4-Unit cannot resist his re-transfer to the said Unit from respondent No.3-Unit. She has further submitted that the phrase “repatriation” used in the proceedings, dated 20.01.2016, of respondent No.3 is inappropriate and that, the same should be treated as ‘re-transfer’.

As regards the submission of learned counsel for the petitioner that the transfer of the petitioner as Constable amounts to reversion, learned Government Pleader contended that since the posts of Head Constables were available in respondent No.3-Unit, the petitioner was temporarily promoted to the said post and that, unless the petitioner has sufficient seniority to be promoted as Head Constable in respondent No.4-Unit, he is bound to work as Constable as, he will take his original position of seniority in respondent No.4-Unit.

We have carefully considered the respective submissions of the learned counsel for the parties.

Clause-(g) of Fundamental Rule-14 and Clause-(e) of Fundamental Rule-14-A and Note-II of Fundamental Rule-14-B, which were inserted by way of amendment, vide G.O.Rt.No.144, Finance (FR.I) Department, dated 19.5.2009, by the erstwhile Government of Andhra Pradesh, read as under:

“(g) The Lien of (i) a Government employee, appointed outside the regular line from the date of his relief; (ii) a Government employee who resigned/are relieved from a post to join in a different post to which he is selected by direct recruitment, from the date of his resignation/relief from the old post; and (iii) a Government employee who is transferred from one department to another on request or otherwise by way of departmental transfers from the date of his relief shall stand automatically suspended even if it is not

mentioned in such orders and such Govt. employees shall automatically acquire provisional lien in the new departments, in which they join/”

(e) The Lien of a Government employee, which was automatically suspended from the date of his relief in the parent department under clause-(g) under F.R-14 shall automatically get terminated in the parent department on the date on which his probation is declared to the new department or on the date on which his probation is deemed to have been declared in the new department or the date of his further promotion in the new department whichever is later subject to a maximum period of three (3) years.”

Note-I: The existing employees who are working in the department other than parent departments shall exercise option within two (2) months from the date of issue of these orders and if no option is exercised within two (2) months, the employee is deemed to have opted to continue in the other service and his lien in the parent department shall automatically be terminated. However, after exercising the option within two (2) months, they may be allowed four (4) months to get relief from other department and to join in parent department i.e., total six (6) months time shall be allowed.”

A close reading of the above-mentioned Clauses would clearly show that the same apply to the cases of transfer from one department to another.

Learned counsel for the petitioner has not disputed that respondent Nos.3 and 4 are part of the same department and that, they only constitute separate Units. Indeed, on 29.10.1983, the petitioner was transferred, at his request, from respondent No.4-Unit to respondent

No.3-Unit and he continued in the said Unit till he was re-transferred. Therefore, in our opinion, the submission of the learned counsel, based on the above mentioned Fundamental Rules, has no merit.

We also agree with the submission of the learned Government Pleader that the phrase “repatriation” mentioned in proceedings, dated 20.01.2016, of respondent No.3 is a misnomer as, the question of repatriation would arise only if there is inter departmental transfer.

Here, admittedly, respondent Nos.3 and 4 constitute the same department, but, different Units. Therefore, the appropriate expression should have been ‘re-transfer’ instead of ‘repatriation’.

With regard to the submission of the learned counsel that the transfer of the petitioner as a Constable amounts to his reversion, the same has to be mentioned only to be rejected as, the promotion of the petitioner is based on the seniority prevailing in respondent No.3-Unit. Unless he is senior enough to be promoted as Head Constable in respondent No.4-Unit, he shall continue in the post of Constable and such continuance would not amount to his reversion. However, if the petitioner finds that any of his juniors have been working in higher posts, he is entitled to make a representation to respondent No.4 and on such representation being made, the said respondent shall consider and communicate its decision to the petitioner.

Subject to these directions, the Writ Petition is dismissed.

As a sequel to dismissal of the Writ Petition, WPMP.No.11367 of 2016 filed by the petitioner for interim relief is dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE ANIS

18th March 2016
DR