

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice G.Shyam Prasad

Writ Appeal No.853 of 2016

Date: 22.09.2016

Between:

H.Babu Yogish

... Appellant

and

The Insurance Regulatory and Development
Authority of India (IrDAI)
rep. by its Chairman,
Hyderabad and another

... Respondents

Counsel for the Appellant: Mr.J.Sudheer

Counsel for the respondents: Mr.MV.Suresh

The Court made the following:



Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Feeling aggrieved by the denial of interim order by the learned Single Judge pending the Writ Petition, the Writ Petitioner has filed this Writ Appeal.

The main grievance of the appellant as projected by his Counsel in this Writ Appeal is that the learned Single Judge has not passed a reasoned order while denying interim relief.

In the light of this grievance, we have heard the learned Counsel for both parties in order to weigh the elements of *prima facie* case, balance of convenience and irreparable injury.

The admitted facts of the case reveal that the appellant was appointed as Assistant Director with respondent No.1 on 01-07-2008 and had been working since then at Hyderabad. By Order, dated 24-02-2015, he was promoted as Senior Assistant Director. On 06-03-2015, an order transferring him to Mumbai Regional Office with effect from the date of opening of such office was made. Consequent on opening of such office, posting order was given to the appellant on 15-09-2015. The appellant has challenged his transfer order by terming the same as punitive. According to him, the complaint made by him in

the year 2010 to the National Commission for SCs & STs on certain grievances of the employees belonging to the SC & ST Community was the cause for his transfer. He has also alleged that since he has filed WP.No.4471 of 2013, questioning the promotion policy of respondent No.1 wherein he has impleaded its Chairman as *eo nomini* party, he was subjected to discriminatory treatment and transferred deliberately.

The respondents have filed a counter-affidavit wherein they have denied the allegation that the transfer is *mala fide*. They have averred that recognising the efficiency of the appellant, he was given promotion as Senior Assistant Director and posted in non-life department at Regional Office, Mumbai, as he was found suitable for successfully holding such position. It was further averred that along with the appellant various others were transferred to different places; that therefore, the transfer was not punitive; and that on the contrary, the same was made on administrative grounds.

Mr.J.Sudheer, learned Counsel for the appellant, strenuously submitted that though several employees were transferred along with the appellant, all others were

retransferred on their request and that the appellant was the only person, who was transferred against his will and interest.

Mr.M.V.Suresh, learned Counsel representing the respondents, pointed out that one Triloki Nadh, Junior Officer, was also transferred like the appellant and that he has not made any request.

Since the Writ Petition is pending, we do not intend to record our conclusive opinion on the merits of the case. However, for the limited purpose of appreciation of *prima facie* case, we considered the facts, which disclose that the appellant, who was working as the Assistant Director from the year 2008 at Hyderabad, has been transferred to Mumbai in March, 2015. If the appellant's transfer is termed as punitive, one cannot lose sight of the fact that he was given promotion as Senior Assistant Director on 24-02-2015 *i.e.*, a few days before he was transferred. Though *mala fides* have been alleged by the appellant, no material is filed in support thereof. If the complaint made to the National Commission for SCs & STs has triggered the appellants transfer, it is not in dispute that the said complaint was made as far back as the year 2010. The

appellant was allowed to continue at Hyderabad for five years after such complaint was made.

As regards the allegation that the appellant has impleaded the Chairman of respondent No.1 as *eo nomini* party in WP.No.4471 of 2013, which evidently prejudiced the Management, the said Chairman is stated to have retired in the year 2013 itself and for two years thereafter, the appellant was continued at Hyderabad.

As regards the allegation that no other employee was transferred unilaterally, the appellant has not denied the fact that one Triloki Nath, Junior Officer, was also transferred without his request. These facts *prima facie* show that the appellant failed to establish malice. On the contrary, the transfer of the appellant appears to be necessitated consequent on his promotion as Senior Assistant Director and opening of the Regional Office at Mumbai.

The learned Counsel for the appellant submitted that the appellant is suffering from the ailment of retinal detachment and that he needs constant medical treatment.

With regard to the above submission, Mumbai being a better city than Hyderabad, the appellant can avail better medical treatment and that cannot be a ground to interfere with the transfer order.

Transfer being not only an incident but also a necessary condition of service, the Courts seldom interfere with the same except on the ground of *mala fides*. As the Writ Petition is still pending, the allegation of *mala fides* need to be considered therein. In the absence of *prima facie* material in support of these allegations, we are not inclined to interfere with the transfer order as well as the order passed by the learned Single Judge.

The Writ Appeal is, accordingly, dismissed.

As a sequel to dismissal of the Writ Appeal, WAMP.Nos.2040, 2041 and 2042 of 2016, filed by the appellant for interim relief, are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(G.Shyam Prasad, J)

Dt: 22nd September, 2016
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