

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT APPEAL No. 1135 OF 2015

J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Writ Appeal is directed against the order dated 02.12.2015 passed by the learned Single Judge in Writ Petition No. 38640 of 2015 dismissing the Writ Petition instituted by the appellant herein.

The petitioner-appellant was appointed as a Machinist in the National Institute for the Mentally Handicapped (NIMH) at Manovikasanagar, Secunderabad in the year 1991. He was holding the technical qualification of ITI (Mechanical) Trade Certificate. He is currently discharging the duties as Vocational Instructor in that Institute and keeps functioning as a Mechanical Fabricator, but however, by an order passed on 13.11.2015, the 3rd respondent Deputy Director (Administration) of the Institute has transferred and posted him at the Resource Centre, Gangtok, Sikkim State. It is this order, which has been challenged to show as to how it is not justifiable, on various grounds.

An administrative transfer is an incidence of service in every public employment, but however, if it is tainted with malice or it is a colourable exercise of power to achieve some other oblique objective, then, perhaps, the Courts would be justified in gathering the antecedent circumstances for the purpose of making an assessment as to whether the administrative exercise has been carried out *bona fide* or for extraneous considerations.

It is urged before us by Sri C.M.R. Velu, learned counsel for the appellant that the incumbent Deputy Director (Administration) is facing all sorts of difficulties, including facing a prosecution for an alleged offence said to have been committed by him under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is also the case of the petitioner – appellant that he is a principal witness

on behalf of the prosecution in the said case. The 3rd respondent was apprehensive that the petitioner – appellant might depose before the criminal Court where he is being prosecuted. Therefore, to prevent the petitioner – appellant from deposing before the criminal Court in connection with the alleged crime committed by the 3rd respondent, he has passed the impugned order of transfer.

If the 3rd respondent incumbent is truly facing any prosecution before the criminal Court, as alleged, it is the duty of Respondents 1 and 2 to ensure that the petitioner – appellant is sanctioned necessary permission to leave Gangtok and travel to Hyderabad/Secunderabad and then, depose before the competent criminal Court. It would also be equally open to them to allow the petitioner – appellant to depose on the Internet by participating in video-conferencing facility, provided such facility is available at the criminal Court. Otherwise, using ‘skype’ technology also, any such deposition of the petitioner – appellant may be urged to be recorded by the criminal Court, but however, the necessary permission for the appellant to leave the Resource Center, Gangtok for the said purpose, should be sanctioned.

Insofar as the justifiability or the lack of it behind the transfer, though it is styled as a temporary transfer for facilitating the new centre at Gangtok to be established, is concerned, since the appellant apprehends that he will not be brought back to the Institute at Manovikasnagar, Secunderabad after the expiry of the six-month period, it would be for Respondents 1 and 2 or either of them to entertain the representation of the petitioner – appellant and deal with it objectively and fairly as expeditiously as is possible, within a maximum period of two weeks from the date of receipt of such representation. It shall also be open to Respondents 1 and 2, with whom the petitioner – appellant is entitled to take up this issue, to grant appropriate interlocutory relief of directing the 3rd respondent not to relieve the petitioner – appellant till any such representation addressed to them is decided by them, provided such representation is

made within one week from today. Otherwise, we have not found any reason whatsoever to interfere with the order passed by the learned Single Judge.

With this, the Writ Appeal stands disposed of. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

15th February 2016

Issue CC in three days.
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