

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
REDDY

AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.7413 of 2016

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11.03.2016

Between:

The District Educational Officer, Medak and others ..Petitioners

And

P.Sarala and another ..Respondents

Counsel for the petitioners: Government Pleader for Services (TS)

Counsel for respondent No.1: Mr.M.Ramgopal Rao

Counsel for respondent No.2: --

The Court made the following:

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

This writ petition is filed for a *certiorari* to quash the order, dated 10.12.2015 in O.A.No.4583 of 2015 with V.M.A.No.1238 of 2015 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') – respondent No.2.

2. Respondent No.1 is a School Assistant (Biological Science). While working at Medak in Government Girls High School (GGHS), Medak, she gave her option for being posted in GGHS, Siddipet, in writing on 10.07.2015. On the same day, on which option was given by respondent No.1, the then incumbent of petitioner No.1 - District Educational Officer (for short 'the D.E.O.') conducted counselling. After completion of the counselling, the then incumbent D.E.O. placed the proposals relating to various candidates, including that of respondent No.1 before the Committee headed by the District Collector as a Chair-Person as constituted under G.O.Ms.No.12, School Education (Ser.II) Department, dated 16.06.2015. After approval of the recommendations, transfer order was given to respondent No.1 by the D.E.O. on 19.07.2015. In pursuance of the said order, respondent No.1 joined duty at Siddipet. A few days later i.e., on 23.07.2015, the D.E.O., who issued transfer order, dated 19.07.2015, cancelled the same and retained respondent No.1 at her previous place. Feeling aggrieved by this order, respondent No.1 has filed the aforementioned O.A.

3. On behalf of the petitioners, a counter-affidavit was filed before the Tribunal by the successor D.E.O. – petitioner No.1, wherein, he has, *inter alia*, stated that while respondent No.1 was working at GGHS, Medak, she applied for transfer through on-line with her name figured in the transfer seniority list at S.No.10 with entitlement points of

34.96, that the vacancy at GGHS, Siddipet, arose due to the transfer option of Smt.K.Aruna Kumari, School Assistant (Bio Science), GGHS, Siddipet, who is at S.No.40 and that the said vacancy was not available to respondent No.1 for option as it arose after her turn in the counselling was completed had she participated in the counselling on that day. It is further alleged that respondent No.1 has not participated in the counselling at appropriate time and that due to the sliding of vacancies arising continuously, the place of her choice was allotted to respondent No.1 subsequently. It is also averred that without realizing that she has skipped her turn in the counselling held on 10.07.2015, respondent No.1 was allotted GGHS, Siddipet, *vide* order, dated 19.07.2015, that due to her absence, respondent No.1 has forfeited her right to participate in the counselling and she was not entitled to the posting at Siddipet and that as issuing transfer order on 19.07.2015 giving respondent No.1 posting at Siddipet was due to a mistake, the same was rectified by petitioner No.1 by issuing order, dated 23.07.2015.

4. Under the impugned order, while allowing the O.A. by setting aside the said order, dated 23.07.2015, the Tribunal has placed reliance on Clause 4 of Rule 14 of the Rules framed under G.O.Ms.No.12, dated 16.06.2015, which reads as under:

“14. Issue of transfer Orders: (4) Once transfer orders are issued by the competent authority with the approval of the Committee, review or modification of the Orders shall not be considered, either by the Committee or by the Competent Authority.”

5. At the hearing, the learned Government Pleader for Services (TS) appearing for the petitioners has submitted that respondent No.1 has deliberately refrained from attending the counselling in collusion with the D.E.O. That upon realizing that as per the order of counselling, by the time her turn comes up for exercising option in the counselling, the vacancy at Siddipet would not have been available to

her, and subsequently, she manipulated a letter, dated 10.07.2015, stating that due to her ill-health, she could not attend the counselling when her name was called during late night on 10.07.2015, her transfer order was cancelled by petitioner No.1. He has further submitted that the D.E.O., who has issued transfer orders to respondent No.1 and various others, was kept under suspension. He has invited this Court's attention to G.O.Rt.No.137, School Education (Services-I) Department, dated 04.08.2015, a perusal of which shows that Dr.A.Rajeshwar Rao, D.E.O., who passed transfer order, dated 19.07.2015, in favour of respondent No.1 was placed under suspension on the allegations that it has come to light that he has issued posting orders in case of certain teachers without proper verification, and contrary to the Rules.

5. As noted above, the only ground on which the Tribunal has set aside the order, dated 23.07.2015, of petitioner No.1 cancelling his previous order, dated 19.07.2015, transferring respondent No.1 was that once a transfer order was issued, neither the competent authority nor the committee has the power to review/modify the same. The learned Government Pleader for Services (TS) appearing for the petitioners does not dispute this position in law. However, this Court cannot overlook the serious allegations made against the D.E.O. in issuing the transfer orders to various persons including respondent No.1 allegedly contrary to the procedure. While under the Rules framed under G.O.Ms.No.12, dated 16.06.2015, petitioner No.1 has no power to pass an order cancelling his previous order, Rule 17 thereof, however, vests *suo motu* power in the Director of School Education to call for and examine the records in respect of any proceedings of transfer to satisfy himself about its regularity, legality or propriety. While we are not inclined to render conclusive opinion as to whether respondent No.1 was guilty of manipulation as alleged by the petitioners, however, we cannot completely ignore this aspect, and sustain the order of the Tribunal merely based on Rule 14 of the

aforesaid Rules. If there is truth in what the petitioners alleged, respondent No.1 cannot be allowed to get away with a fraudulent transfer.

6. Therefore, we permit petitioner No.2 to exercise his power under Rule 17 of the aforesaid Rules within a period of four weeks from today by issuing notice to respondent No.1, which shall contain the grounds on which he proposes to cancel the transfer order, dated 19.07.2015. Within a period of two weeks from the date of receipt of such notice, respondent No.1 shall submit her explanation, whereafter, petitioner No.2 shall consider the same and take appropriate decision as to whether the transfer order, dated 19.07.2015, shall be set aside or not and communicate the same to respondent No.1. Petitioner No.2 shall complete this whole exercise within a period of two months from the date of receipt of a copy of this order. Since respondent No.1 has reported to duty at Medak consequent on the cancellation of transfer order, dated 19.07.2015, she shall continue at the same place till appropriate orders are passed by petitioner No.2 as directed above.

6. Subject to the above directions, the Writ Petition is disposed of.

7. As a sequel to disposal of the writ petition, W.P.M.P.No.9475 of 2016 filed by the petitioners for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

11th March, 2016

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