

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.18089 of 2017

ORDER:

Heard Sri L.Ravi Chander, learned Senior Counsel, appearing for Sri S.Lakshmi Kanth, learned counsel for petitioner, learned Advocate General, appearing for 1st respondent and also on behalf of Sri T.Sudhakar Reddy, learned counsel for 2nd respondent and Sri G.Vidya Sagar, learned Senior Counsel, appearing for Sri T.Balaji, learned counsel for 3rd respondent.

2. In this writ petition, the petitioner has assailed proceedings No.2626/B1/2011/3553 dt.03-06-2017 of the 2nd respondent transferring him from the post of Director (Projects-I) to the post of Director (Revenue and UFW) in the Hyderabad Metropolitan Water Supply & Sewerage Board (the 2nd respondent).

3. The 2nd respondent organization is a body constituted under the Hyderabad Metropolitan Water Supply Sewerage Act,1989 (for short 'the Act').

4. It is not in dispute that the petitioner was initially appointed in 1982 as Additional Assistant (Engineering) in the 2nd respondent organization and thereafter promoted as Deputy General Manager and as General Manager (w.e.f. 01-01-2005). Vide order dt.24-08-2008, he was later promoted to the post of Chief General Manager (Engg), and by order dt.04-07-2014, he was further

promoted as Director (Projects) and was working as Director (Projects-I) just prior to the issuance of the impugned order.

CONTENTIONS OF THE COUNSEL FOR THE PETITIONER:

5. Though learned counsel for the petitioner raised several other contentions, his principal contention is that the transfer made is from a cadre post (Director (Projects-I)) to a non-cadre post (Director (Revenue & UFW)), that this was done to favor the 3rd respondent and to prevent the petitioner from attending a conference to be held in Philadelphia, USA from 11-06-2017 to 14-06-2017 on account of political pressure and also because petitioner belongs to S.C. community.

6. Learned counsel for the petitioner contended that the post of Director (Projects-I), which the petitioner was holding before the passing of the impugned order, was created vide G.O.Rt.No.15 MA & UD Department dt.04-07-2014. According to him, when the 2nd respondent sought permission of the State Government (1st respondent) for creating two posts of Directors on 12-09-2008, the Government permitted the 2nd respondent to create two posts of Directors (Operations) to be filled from eligible Chief General Managers (Engg.) on experimental basis for six months only; vide letter No.15235/C/2008-01 dt.23-10-2008 and vide letter No.15235/C/2008-02 dt.02-03-2009 of the Principal Secretary, Municipal Administration and Urban Development department, he permitted filling up these two posts of Director (Operations) from the

eligible Chief General Managers (Engg.); that on the letter dt.02-03-2009 referred to above itself, there is an endorsement by the Director (Personnel and Administration) of 2nd respondent on 03-03-2009 that letters from the Principal Secretary would not be an authorization to create new posts and a G.O. or a Board Resolution would be advisable; and since there is no G.O. for creation of the two posts of Director (Operations), such posts are non-cadre posts. He contended that the 2nd respondent had sought permission of the 1st respondent to create further post of Director (Revenue & UFW) vide Lr.No.MD/Staffing Pattern/2013/3051 dt.12-06-2013 and Lr.No.MD/Staffing Pattern/2013/2238 dt.10-07-2013, but the Principal Secretary of the above department addressed Lr.No.25344/C/2012 dt.19-07-2013 to rename the post of Director (Operations-II) as Director (Revenue & UFW) only; since the posts of Directors (Operations) themselves were not created by a G.O. or Board Resolution, they are non-cadre posts; and consequently even the post of Director (Revenue & UFW) (which is the new designation to the post of Director (Operations-2) is a non-cadre post and the petitioner cannot be transferred from a cadre post of Director (Projects-I) to such a non-cadre post of Director (Revenue & UFW). He contended that transferring and posting the petitioner from a cadre post to a non-cadre post amounts to demotion notwithstanding the fact that the nomenclature of 'Director' is used even for the latter post.

7. He further contended that when the Principal Secretary to the Government directed that the post of Director (Operations) be filled up only from the cadre of Chief General Managers (Engg.) in its letter No.15235/C/2008-2 dt.02-03-2009 which was also reiterated in the letter No.25344/C/2012 dt.19-07-2013, it was not permissible for the 2nd respondent to fill up the said post by way of transfer i.e. by transferring the petitioner, who was holding post of Director (Projects-I) to the post of Director (Operations-II) which was renamed as Director (Revenue & UFW).

CONTENTIONS OF THE RESPONDENT NOS.1 to 3:

8. In the counter affidavit of 2nd respondent, it is stated that there are six engineering functional directors in the 2nd respondent organization as shown hereunder:

<i>“Sl.No.</i>	<i>Name of the Post</i>	<i>Sanctioned Vide G.O./Govt. Letter</i>
<i>01</i>	<i>Director (Technical)</i>	<i>G.O.Ms.No.582 dt.17.11.1994</i>
<i>02</i>	<i>Director (Personnel and Administration)</i>	<i>G.O.Ms.No.582 dt.17.11.1994</i>
<i>03</i>	<i>Director (Revenue & UFW)</i>	<i>Govt.Lr.No.25344/C/2012 dt.19.07.2013</i>
<i>04</i>	<i>Director (Operation)</i>	<i>Govt.Lr.No.15235/E/2008-1 dt.23.10.2008 and Govt.Lr.No.15235/C/2008-2 dt.02.03.2008</i>
<i>05</i>	<i>Director (Projects-I)</i>	<i>G.O.Rt.No.15 MA&UD Dept. dt.04.07.2014</i>
<i>06</i>	<i>Director (Projects-II)</i>	<i>G.O.Rt.No.15 MA&UD Dept. dt.04.07.2014</i>

9. Copies of the above referred Government Orders were filed in the material papers.

10. The learned Advocate General appearing for 2nd respondent contended that the petitioner's transfer is for administrative reasons; that transfer is to a post existing since 2013; that it is equivalent to the post of Director (Projects-I) that the petitioner was holding prior to the passing of the impugned order; the post of Director (Revenue & UFW) is also a technical post; that the transfer was not to a different place since the petitioner would be working at Hyderabad only as before; and the petitioner cannot claim that he wants a particular post. He also contended that there is no alteration in the petitioner's salary or perks or status and there is no violation of statutory or fundamental rights of petitioner. According to him, the Chief Controlling Authority of 2nd respondent is the Managing Director of the 2nd respondent under Section 110 of the Act' and the impugned order was validly issued by the said authority and no fault can be found with it. He relied upon the decision of the Supreme Court in **Rajendra Singh and others Vs. State of Uttar Pradesh and others**¹.

11. Sri G.Vidya Sagar, learned Senior Counsel, appearing for Sri T.Balaji, learned counsel for 3rd respondent, adopted the above submissions and stated that the 3rd respondent had assumed charge on 05-06-2017 prior to the filing of the Writ Petition.

¹ (2009) 15 S.C.C. 178

THE CONSIDERATION BY THE COURT:

12. It is settled law that the transfer is an incident of service and an employee has no vested right to remain posted at a place of his choice. Courts are always reluctant to interfere with the orders of transfer of employees unless there is violation of statutory provisions or if the transfer is *mala fide* (**Rajendra Singh and others** (1 supra)).

13. However if the transfer of an employee by his employer is *not to an equivalent post*, the Court would then interfere. In **Tejshree Ghag v. Prakash Parashuram Patil**², the Supreme Court declared:

“15. The orders of transfer were passed by Authority in purported exercise of its executive power. Executive power can be exercised only in terms of the extant rules. It is well settled that where executive order results in civil consequences, principles of natural justice are required to be complied with prior thereto. It is not a case where an order of transfer was passed by way of change of place of employment within an organisation simpliciter. An order of transfer ordinarily should be in terms of the existing rules. Transfer may even be incidental to the conditions of service, but thereby nobody can be deprived of his existing right. Existence of a power and exercise thereof are two different concepts. An executive power in absence of any statutory rules cannot be exercised which would result in civil or penal consequences. Such exercise of power must, moreover, be bona fide. It cannot be done for unauthorised purpose. An executive order passed for unauthorised purpose would amount to malice in law. An order of transfer cannot prejudicially affect the status of an employee. If orders of transfer substantially affect the status of an employee, the same would be violative of the conditions of service and, thus, illegal. Transfers must be

² (2007) 6 S.C.C. 220

made to an equivalent post. (See *Ramadhar Pandey v. State of U.P.*³, *Hussain Sasan Saheb Kaladgi v. State of Maharashtra*⁴ and *P.C. Wadhwa v. Union of India*⁵.)

16. In Vice-Chancellor, L.N. Mithila University v. Dayanand Jha⁶ it was held: (SCC p. 11, para 8)

“The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. Although the two posts of Principal and Reader are carried on the same scale of pay, the post of Principal undoubtedly has higher duties and responsibilities. Apart from the fact that there are certain privileges and allowances attached to it, the Principal being the head of the college has many statutory rights, such as: (i) He is the *ex officio* member of the Senate. (ii) He has the right to be nominated as the member of the Syndicate. (iii) As head of the institution, he has administrative control over the college Professors, Readers, Lecturers and other teaching and non-teaching staff. (iv) The Principal of a constituent college is also the *ex officio* member of the Academic Council of the university. And (v) he has the right to act as Centre Superintendent in the university examinations. It is thus evident that the High Court was right in holding that the post of Reader could not be regarded as an equivalent post as that of Principal in the legal sense. Maybe, when the affairs of a college maintained by the university are mismanaged, the Vice-Chancellor may, for administrative reasons, transfer a Professor or Reader of any department or college maintained by it to the post of the Principal of such college, but the converse may not be true. While the Professors and Readers by reason of their learning and erudition may enjoy much greater respect in society than the Dean or Principal of a college, it does not follow that the post of Principal must be treated as equivalent to that of a Reader for purposes of Section 10(14) of the Bihar State Universities Act, 1976, as amended.”

³ 1993 Supp (3) S.C.C. 35

⁴ (1988) 4 S.C.C. 168

⁵ AIR 1964 S.C. 423

⁶ (1986) 3 S.C.C. 7

17. The orders of transfer impugned before the Tribunal in any event could not have been passed without complying with the principles of natural justice.”

14. Therefore keeping in mind the above decision, I will first consider whether the post of Director (Revenue & UFW), the post to which the petitioner is transferred, is a sanctioned/cadre post or not.

15. It is not in dispute that two posts of Director (Projects) were created by the 1st respondent vide G.O.Rt.No.15 MA & UD Dept. dt.04-07-2014. In one such post i.e. Director (Projects-I), the petitioner was working prior to the passing of impugned order.

16. It is not in dispute that two posts of Director (Operations) were created vide letter No.15235/C/2008-I and letter No.13235/C/2008-2 dt.02-03-2009 of the Principal Secretary to the Government, Municipal Administration and Urban Development Department.

17. On the letter dt.02-03-2009 itself, the Director (Personnel and Administration) of 2nd respondent endorsed on 03-03-2009 that a mere letter of the Principal Secretary of the said Department would not suffice and would not be an authorization to create a new post and that a Government Order (G.O) or a Board Resolution is necessary for the said purpose.

18. Later one of the posts of Director (Operations) was renamed as Director (Revenue & UFW) vide letter No.25344/C/2012

dt.19-07-2013 of the Principal Secretary to the Government, Municipal Administration and Urban Development Department.

19. The question is whether a post can be created by a mere letter of the Principal Secretary or a Government Order is required.

20. The Supreme Court in **State of Rajasthan Vs. Rajendrakumar Rawat and others**⁷, observed that *administrative orders* would be necessary for creating posts even though financial provision is made in the budget to meet expenses for posts and for creation of posts. It held that merely because a provision is made in the budget of the State Government for creation of posts, there is no obligation on the part of the Government to fill up the posts and a writ cannot be issued to the State Government to fill up the posts. This principle was reiterated in **Sanjay K Sinha-II and others Vs. State of Bihar**⁸.

21. The Act does not specifically deal with appointment of functional directors of the type with which we are concerned in the Writ Petition though Section 6 empowers the Board of the 2nd respondent to appoint some persons as Chief Engineer etc.

22. Obviously because creation of posts involves financial implications, the 2nd respondent had been writing to the Municipal Administration and Urban Development Department for creation of posts of functional directors from time to time. It is not even seriously

⁷ 1989 Supp. 2 S.C.C. 268

⁸ (2004) 10 S.C.C. 734

disputed by the respondents that permission of the State Government is required for creation of posts of Directors.

23. Therefore in my considered opinion, since such permission of the State Government is normally given through Government Orders as was done for creation of the posts of Director (Projects) in the 2nd respondent organization, in the absence of such Government Order creating posts of Director (Operations) [later renamed as Director (Revenue & UFW)], the post of Director (Revenue & UFW) cannot be treated as a cadre post.

24. Therefore the transfer of the petitioner under the impugned order is from the sanctioned post/cadre post of Director (Projects-I) to a non-cadre post/a post not sanctioned through a Government Order. Therefore his transfer is not to an equivalent post and therefore he does suffer serious prejudice by being transferred from a cadre post to a non-cadre post resulting in lowering of his status.

25. It is akin to posting a person holding a constitutional post such as that of Advocate General to a non-constitutional post of Additional Advocate General though the nature of responsibilities and financial benefits may be same. It cannot be disputed that in the said event, there is undoubtedly a lowering of status of the person.

26. Also I agree with the contention of Counsel for petitioner that when the State Government directed that the post of Director

(Operations) [renamed as Director (Revenue & UFW)] be filled up *by promotion* only from the cadre of Chief General Managers (Engg.) in its letter No.15235/C/2008-2 dt.02-03-2009 which was also reiterated in the letter No.25344/C/2012 dt.19-07-2013, it was not permissible for the 2nd respondent to fill up the said post *by way of transfer* i.e. by transferring the petitioner who was holding post of Director (Projects-I) to the post of Director (Operations-II) renamed as Director (Revenue & UFW).

27. In this view of the matter, the impugned order cannot be sustained. It is accordingly set aside and the respondents are directed to restore *status quo* ante prior to the passing of impugned order.

28. Accordingly, the Writ Petition is allowed. No costs.

29. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-06-2017

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