

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.23297 OF 2017

ORDER :

This writ petition is filed seeking writ of mandamus; a) declaring the letters No.ENC/IW/P&M/NTPA/W1/1649/2017, dated 16.06.2017, dated 29.06.2017 issued by the 1st respondent and Memo No.DEE/SD-1/PW/WS&S/W.C.Employees/2017-18/06, dated 07.07.2017 issued by the 3rd respondent as illegal, arbitrary and unconstitutional and consequently to set aside the same.

b) declaring the action of the respondents in disposing of the machinery to private persons and entrusting work to private contractors instead of modernizing the workshop and filling up the vacant posts and disposing of the machinery to private persons, much less, by way of scrap and taking steps to allot the land to private persons for other purposes as illegal, arbitrary and violating Articles 14, 16 and 21 of the Constitution of India.

2. It is the case of the petitioners that the Nizam Government established the General Superintendent, PW Workshop, Central Stores in Hyderabad to provide mechanical assistance to the Government such as manufacturing iron boxes, locks, and equipment for soldiers, guns, bullets and project gates, gear boxes, doors for projects and also for executing irrigation projects and roads. That the workshop also used to manufacture certain accessories for road rollers etc and that the Nizam Government, certain type of machines were imported from other countries like

Britain and USA for the purpose of executing the works by investing huge amounts. That after importing the said machines, the Nizam Government used to build various accessories to various departments like Irrigation, Hospitals, Government Schools, Roads and Buildings Departments. That since 1963, the Government of Andhra Pradesh had been running the Central Stores as Central Mechanical Unit (CMU) under the supervision of Superintendent, situated at Red Hills, Hyderabad, in Acs.5.00 of land, which was approved by the Central Government. Fitters, mechanics, electricians, welders and helpers used to attend the works entrusted to them and they were called as work charged crew. Though the skilled labour available in the CMU, the Government is utilizing the services of private people for manufacturing and maintaining project gates and vehicle repairs. CMU Workshop was converted to Regional Workshop and Machinery Division (RWM) and that the maintenance of small project gates and vehicle repairs were done in the workshop. Besides the other works, whenever emergency services are required for Ganesh immersion, management of natural calamities like floods etc., the employees in the workshop used to attend work even midnight or whenever authorities called for the same. Without any authority or without there being any provision of law or Rule, without any notice to the petitioners or seeking options from them, the 1st respondent issued impugned letters dated 16.06.2017 and 29.06.2017 and proposing diversion of 151 employees to work on OD basis to the units mentioned in the letter under the Control of Commissioner, P & D of Godavari

basin and requested unit officers to repost all the 151 including the petitioners. Respondents are trying to shift the petitioners from Hyderabad permanently to other places till their retirement, without having any such power. The authorities are trying to sell the machinery as scrap, as such, the action of the respondents in issuing impugned notice is contrary to presidential order, as the workshop is one unit and therefore, the petitioners cannot be transferred to other units as held by the Hon'ble Supreme Court in the case of Jagannatha Rao v. State of A.P reported in AIR 2002 SC 77. Aggrieved by the action of the respondents, present writ petition is filed.

3. Counter affidavit is filed by the 3rd respondent denying the averments in the affidavit filed in support of the writ petition stating that the Government had not issued any orders declaring the work charged crew as surplus and made efforts to transfer them from Engineering Department and Workshop to other Government Departments. That P.W Workshops and stores, Hyderabad and RW & M Division are functioning with 193 numbers of work charged personnel in all cadres working in different sections. That from the year 2004 onwards, the government started number of irrigation projects but on EPC (Turnkey) basis in order to complete the works in a fixed time frame and to derive early irrigation benefits, which reduced the work load of the workshop. As per EPC system, the Executing Agencies of the projects have to conduct detailed investigations, prepare suitable designs of the project, procure all the materials and complete the construction of the project including all civil

and mechanical components in a time bound manner and that is the reason due to which the works could not be entrusted to the PW Workshops, Hyderabad. That in due course of time, most of the skilled and experienced work charged personnel have retired upon attaining the age of superannuation and the strength of work charged employees came down to just 193 and that the cost of maintenance of the machinery also increased due to their prolonged usage and the performance accuracy has also come down. With the staff available, minimum maintenance works and emergency works to flood gates of the project during flood season are being attended, as such, it is not possible to carry out the fabrication and erection of huge flood gates of major and medium irrigation projects in P.W.Workshops, Hyderabad. Skilled workmen in the workshop not only have to attend the work of fabrication of gates at the workshops at Hyderabad but also have to attend the work of erection of the flood gates of the projects. That the CMU, Workshops i.e., Regional Workshops & Machinery Division has been attached to the General Superintendent, P.W workshops & stores, Hyderabad vide Commissioner Proc.No.CN/1365/08/VOL.X, dated 20.04.2009 in terms of G.O.Ms.No.50 Finance (SMPC) Department dated 19.02.2009, as there is no substantial work load and that one sub-division was also diverted to the high priority ongoing project Kaleshwaram vide proceedings dated 01.12.2016 as part of effective utilization of staff. That the fabrication and erection of gates and hoists has practically halted due to inclusion of mechanical works in the civil work as both have to be carried

simultaneously to ensure speedy execution of work. To avoid huge expenditure for purchase of vehicles upfront and to create self-employment to the youth, government had introduced the policy of hiring private vehicles instead of purchasing new vehicles and that no officer of the workshops have been engaging their own vehicles in the name of others as alleged by the petitioners. In view of the exigencies of the work on dams/projects i.e., flood monitoring of major and medium irrigation projects, the services of the petitioners have been diverted on O.D basis for flood season of 2017 only and there is no attempt or proposal to shift the petitioners from Hyderabad permanently. As the petitioners themselves admitted that they have technical skill and knowledge to work on maintenance of gates, repairs of gear boxes, fastening of bolts and nuts, application of lubrication and attending to any emergency breakdown to mechanical components, they have been entrusted to similar works to which they have been attending since their induction into the workshop. It is stated that the S.E/M&W Circle, Hyderabad functioning under the control of Commissioner/P&D of G.B, Hyderabad, who in turn functions under the control of the Engineer-in-Chief (IW). Hence, the 1st respondent-Engineer-in-Chief is the principal employer of the petitioners and has full authority and jurisdiction to utilise the services of the employees wherever necessary as and when required without seeking their consent or willingness and that it is in accordance with State & Sub-ordinate service rules and fundamental rules. No such proposals to handover the workshop

land and machinery to private parties as alleged by the petitioners. In view of the exigencies of the work on dams/projects i.e., flood monitoring of major and medium irrigation projects in Telangana State only, the services of the petitioners have been diverted on OD basis for flood season of 2017 only and there is no attempt or proposal to shift the petitioners from Hyderabad permanently. Petitioners have been posted to various units of the projects where their duties are to attend operation and maintenance of gated structure during flood season of 2017 for effective monitoring of flood of major and medium projects in Telangana State only. That a barest minimum work-charged employees of the P.W.workshops and RWM divisions have been retained to attend emergency break down of gates of major and medium projects during flood season, loading and unloading works of Khairatabad Ganesh Idol and disposal of obsolete machinery besides attending watch and ward and sweeping duties of the premises of both workshops and that the retention is based on their suitability to the above mentioned jobs, but not on the basis of union leadership or any other reason. Government is incurring huge expenditure on the pay and allowance of the work charged employees without any substantial work in the last ten years. Petitioners are habituated to staying idle and receiving their pay and allowances every month and are trying to avoid working and challenging the diversion orders in the court of law by making false allegations against the government and authorities.

4. Heard Sri P.V.Krishnaiah, learned counsel for the petitioners and learned Government Pleader for Irrigation appearing for respondents.

5. Learned counsel for the petitioners while reiterating the averments in the affidavit filed in support of the writ petition, submits that the 1st respondent, without any authority, issued impugned letters, transferring the petitioners on OD basis to other places. He submits that though the petitioners' work shop is available, Government is allotting the works to the private agencies and causing loss to the exchequer. He submits that the officers of the respondent authorities are trying to sell away the machinery and equipment as scrap and so also the land in which work shop is located, to private agencies, thus causing loss to the exchequer.

6. Learned Government Pleader for Irrigation while reiterating the averments in the counter affidavit and submits that the 1st respondent being the head of the Department, has every jurisdiction and authority to divert the petitioners on OD basis to work on other irrigation projects as and when need arises and that there are no malafides on the part of the respondents in diverting the petitioners on OD basis to other places.

7. In this case, it is to be seen that though the learned counsel for the petitioners argued strenuously that the 1st respondent has no jurisdiction or authority to divert the services of petitioners on OD basis, no such material placed before this Court evidencing that the 1st respondent has no authority or jurisdiction to divert the services of the petitioners on OD basis or that some other

authority has such power. On the other hand, in the counter filed by the 3rd respondent, it is categorically stated that 1st respondent is the highest authority of the I & CAD Department, as such, Engineer-in-Chief-1st respondent is the principal employer of the petitioners and has full authority and jurisdiction to utilise the services of the employees wherever necessary, as and when required, without seeking their consent or willingness and that it is in accordance with State & Sub-ordinate Service Rules and Fundamental Rules. When once learned Government Pleader for Irrigation submits that there is no attempt or proposal to shift the petitioners from Hyderabad permanently and that they have been diverted on OD basis for flood season of 2017 only, the submission of the learned counsel for the petitioners that the respondents are trying to shift the petitioners permanently, cannot be accepted. Moreover, the 3rd respondent has stated in the counter affidavit that they are no attempts to transfer the petitioners permanently from Hyderabad and that no reply is filed by the petitioners to the counter affidavit of the 3rd respondent.

8. Though the learned counsel for the petitioners raised several other contentions such as the Officers of the respondent authorities are trying to sell away the machinery and equipment as scrap, that they are trying to allot the Acs.5.00 of land to third parties causing loss to the exchequer, that the officers are running their own vehicles in the name of others for the purpose of execution of work all are denied. Though counter affidavit of the 3rd respondent is filed on 27.07.2017, no reply is filed by the

petitioners till date denying the averments in the counter affidavit of 3rd respondent. In the absence of the same, it cannot be said that the 1st respondent has acted arbitrarily in diverting the services of the petitioners on OD basis, that too, when once the petitioners are government employees, they are supposed to work as per the orders of the Head of the department.

9. Learned counsel for the petitioners vehemently contended that the petitioners cannot be transferred to far off places from Hyderabad, defeating the purport of Presidential Order under Article 371-D of the Constitution of India. As already observed supra and even as per the counter affidavit of the respondents, the petitioners are being deputed only for the flood season 2017 only and that they have not transferred the petitioners permanently to far off places, as alleged by the learned counsel for the petitioners. As such, the violation of Presidential Order issued under Article 371-D of the Constitution of India by the respondents does not arise at all.

In view of the same, I do not see any merit in the writ petition and same is liable to be dismissed.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition shall stands dismissed.

A.RAJASHEKER REDDY, J

19.09.2017
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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