3The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Sri Justice M. GANGA RAO

+ WRIT PETITION No.33686 OF 2016

%Date:29.12.2017

Between:

K. Surender Rao S/o.Tirupataiah,
59 years, DCTO (under orders of repatriation),
R/o.Plot No.15, 1st Venture, Vysali Nagar,
Champapet, Hyderabad

...Petitioner

Vs.

$ State of Telangana, Rep. by its
Principal Secretary to Government,
Revenue (CT) Department, Secretariat Buildings,
Hyderabad and others.

... Respondents

! Counsel for Petitioner : P.V. Krishnaiah
and the petitioner appearing in person.

^ Counsel for Respondents : G.P. for Services (TG)
G.P. for Services (TG)

< Gist :

> Head Note :

? Cases Referred : Nil

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.33686 OF 2016

ORDER: *(per V. Ramasubramanian, J)*

Aggrieved by the Trishanku Swargam created by the States of Telangana and the Andhra Pradesh, with the State of Telangana insisting on repatriation of the petitioner to the State of Andhra Pradesh and the State of Andhra Pradesh turning back the petitioner, the petitioner has come up with the above writ petition without finding a Vishwamithra for creating a separate Heaven for him.

2. Heard Mr. K. Surendar Rao, petitioner appearing in person, learned Government Pleader for Services (TG) and the learned Government Pleader for Services (AP).

3. The petitioner is admittedly a native of Kurnool District. He was selected by the Andhra Pradesh Public Service Commission and appointed as Assistant Commercial Tax Officer, in the year 1995 and allotted to Zone-VI (Hyderabad). In Zone-VI, he got promotion as Deputy Commercial Tax Officer on 20.06.2008 and subsequently, as Commercial Tax Officer on 22.08.2013.

4. Immediately after his promotion to the post of Deputy Commercial Tax Officer on 20.06.2008, the Government issued G.O.Ms.No.1042 Revenue (CT III) Department, dated 19.08.2008, repatriating several employees of the Commercial Tax Department including the petitioner, to other zones, on the ground that they were appointed in different zones without these candidates coming within the 70%quota reserved for local candidates in those zones. The Government purportedly followed G.O.Ms.No.610 for ordering such repatriation.

5. The repatriation order was challenged by the petitioner in O.A. No.7037 of 2008 on the file of the Andhra Pradesh Administrative Tribunal. But, in the meantime, the Government itself issued a memo dated 30.08.2008 keeping the repatriation orders in G.O.Ms.No.1042 in abeyance. The result was that even after the order of repatriation dated 19.08.2008, the petitioner continued in Zone-VI and also gained promotion to the post of Commercial Tax Officer in Zone–VI on 22.08.2013.

6. It is pertinent to point out that the challenge of the petitioner to the order of repatriation, was rejected by the Tribunal by an order dated 23.04.2012, passed in O.A No.7037 of 2008. It is only after the rejection of his challenge to the repatriation that the Government of Telangana granted promotion to the petitioner to the post of Commercial Tax Officer on 22.08.2013.

7. The State was bifurcated on 02.06.2014 under the Andhra Pradesh Re-Organization Act, 2014. Immediately thereafter, the State of Andhra Pradesh passed Amendment Act No.4 of 2014 enhancing the age of retirement of State Government employees from 58 to 60 years.

8. The State of Telangana did not enhance the age of retirement. The petitioner thereafter filed an application in O.A. No.1250 of 2015 on the file of the A.P. Administrative Tribunal seeking a direction to the Government to implement the repatriation orders issued in G.O.Ms.No.1042 dated 19.08.2008. At the time of admission of the said Original Application O.A. No.1250 of 2015, the Tribunal granted an interim order directing the respondents to arrive at the number of vacancies meant for open category in all zones and to find out whether the petitioner will come within the quota meant for open category or the quota meant for local candidates.

9. In the meantime, the State of Telangana passed G.O.Ms.No.115 dated 21.07.2015 taking a stand that the petitioner was actually appointed under the 70% quota reserved for locals, in zone-VI, without taking note of the fact that he was a non-local in Zone-VI. In other words, the stand taken by the State of Telangana was that the petitioner ought not to have been allotted to Zone-VI in the year under the 70% quota for locals.

10. However, when the Public Service Commission filed its response before the Tribunal, things became very clear as to whether the petitioner was appointed in Zone-VI under the 70% quota for locals or under the 30% quota available for open category.

11. In its response, the A.P. Public Service Commission maintained that the last of the candidates selected in Zone-IV to which the petitioner belonged, had secured 485 marks while the petitioner had secured 480.05. Therefore, the Service Commission opined that the petitioner could not have been allotted to Zone-IV at the time of selection under the 70% quota. On the contrary, the Service Commission pointed out that the petitioner was allotted under the 30% quota meant for open category in Zone-VI.

12. If a person is allotted to a particular Zone, based upon his own merit, either as a local under the 70% quota or as an open category person under the 30% quota, the question of repatriation would not arise. Therefore, the Tribunal rejected the application O.A. No.1250 of 2015 filed by the petitioner, on the ground that his repatriation by the State of Telangana in G.O.Ms.No.115 dated 21.07.2015 was wrong and that the Government of Andhra Pradesh was right in refusing to accept him.

13. Aggrieved by the dismissal of his Original Application i.e. O.A No.1250 of 2015, the petitioner has come up with the above writ petition.

14. In the meantime, the petitioner completed 58 years of age on 31.07.2015. He retired obviously from the State of Telangana.

15. But, unfortunately, his terminal benefits have not been settled either by the State of Telangana or by the State of Andhra Pradesh, on the ground that he belonged to the other State. Therefore, the petitioner is now nowhere and he is in a no man's land. The State of Telangana claims that he must go to the State of Andhra Pradesh and the State of Andhra Pradesh claims that he does not belong to that State.

16. If the claim of the petitioner and the stand taken by the State of Telangana are sustained, two consequences would follow, namely, (a) that the petitioner will go to the State of Andhra Pradesh, continue up to the age of 60 years and (b) get all his terminal benefits from that State. If the claim of the petitioner and the stand taken by the State of Telangana are not accepted, only one consequence would follow, namely, that the State of Telangana will be obliged to settle all the terminal benefits.

17. Keeping this in mind, if we go back to the core issue, it could be seen that the entitlement of the petitioner to go to Zone-IV, depended solely upon the category under which he was selected and allotted to Zone VI. If the petitioner had been selected as a local candidate under the 70% quota in Zone-VI it is clearly wrong since he belonged to Zone-IV. Therefore, his repatriation would be justified and the State of Andhra Pradesh cannot refuse to accept him.

18. But on the contrary, if the petitioner had been selected under the 30% quota for open category, and allotted to Zone-VI, he

cannot seek repatriation especially if he did not come within the zone of consideration under the 70% quota for locals in Zone-IV. The stand taken by the Public Service Commission has made things very clear that the petitioner was not selected based upon his merit under the 70% quota for locals in Zone-IV, but was selected under the 30% quota for open category in Zone-VI. Therefore, his repatriation was actually wrong.

19. That takes us to the next question as to whether in the light of a challenge to the order passed in the first round of litigation in O.A No.7037 of 2008, sustaining the order of repatriation, it was open to the respondents to take a different stand.

20. It is true that the original order of repatriation in G.O.Ms.No.1048 was sustained by the Tribunal in O.A No.7037 of 2008. But, the same was done without reference to the merit list and the manner of allotment that happened in the year 1995. In such circumstances, it is not open either to the petitioner or to anyone else to fall back upon sG.O.Ms.No.1042, which was upheld in O.A.No.7037 of 2008.

21. The petitioner contended that all other persons covered by G.O.Ms.No.1042 were accommodated in the State of Andhra Pradesh. But we do not know under what circumstances, they were accommodated. The question whether a person was selected as a local or as a non-local, is individualistic to everyone of the candidates. Therefore, there can be no comparison.

22. In the light of the above, we find no error in the order of the Tribunal warranting our interference. But, there is one difficulty for the petitioner that should certainly be addressed. Despite the petitioner having retired on 31.07.2015, no terminal benefit has been paid and no

pension has been paid so far. It may be up to both the Governments to fight each other as to who should settle the terminal benefits. But, the employee cannot wait till both the Governments settle the disputes among themselves. That will be very unfair for an employee who had admittedly rendered about 22 years of service before retirement.

23. Therefore, the writ petition is partly allowed, modifying the order of the Tribunal with a direction to the State of Telangana to settle all terminal benefits and also pay the arrears of pension together with the interest as applicable under the relevant Rules relating to payment of terminal benefits, within a period of four (4) weeks from the date of receipt of a copy of this order. *Prima facie,* we are imposing the burden upon the State of Telangana for the reason that it was the State of Telangana which granted promotion to the petitioner in the year 2013 as Commercial Tax Officer, even after the dismissal of O.A No.7037 of 2008 in the year 2012. After settling the terminal benefits and the pensionary benefits, it may be open to the State of Telangana to make a claim upon the State of Andhra Pradesh, but the same should not be cited as a factor not to settle the benefits to the petitioner. In other respects the order of the Tribunal is confirmed.

24. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

December 29, 2017
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