

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.99 of 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the Learned Single Judge in W.P.M.P.No.57795 of 2016 in W.P.No.17388 of 2016 dated 05.01.2017. The respondents in the writ petition are the appellants herein. The respondent-writ petitioner filed W.P.No.17388 of 2016 to suspend the order of transfer dated 23.12.2016, and to permit him to discharge his duties in the Regional Office, Hyderabad i.e his present place of working, pending disposal of the writ petition.

By the order under appeal, in W.P.M.P.No.57795 of 2016 in W.P.No.17388 of 2016 dated 05.01.2017, the Learned Single Judge granted interim suspension of the order of transfer. It is settled law, and as has been held in catenae of judgments of the Supreme Court, that transfer is an incidence of service and, save where the order of transfer is wholly without jurisdiction or is vitiated by *mala fides*, no interference is called for in proceedings under Article 226 of the Constitution of India.

While Sri Y.Srinivas Murthy, learned counsel for the respondent-writ petitioner, would contend that the order of transfer is vitiated by *mala fides*, the person, against whom *mala fides* are alleged, has not been arrayed as a respondent eo nomine. We see no reason, therefore, to examine the plea of *mala fides*, that too in an appeal under Clause 15 of the Letters Patent preferred against the *ad interim* order passed by the Learned Single Judge, even before the respondents in the writ petition filed their counter affidavit.

The order under appeal is set aside and W.P.M.P.No.57795 of 2016 in W.P.No.17388 of 2016 is restored to file. Learned counsel for the appellants submits that the appellants herein would file their counter

affidavit in the writ petition within two weeks from today. It is open to the respondent-writ petitioner to request the Learned Single Judge to take up the W.P.M.P. any time after two weeks.

The Writ Appeal stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

23rd January, 2017
JSU



THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER



Writ Appeal No.99 of 2017

Date: 23.01.2017

JSU