

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice G.Shyam Prasad

Writ Petition No.3224 of 2017

Date: 03.08.2017

Between:

G.Murali

... Petitioner

and

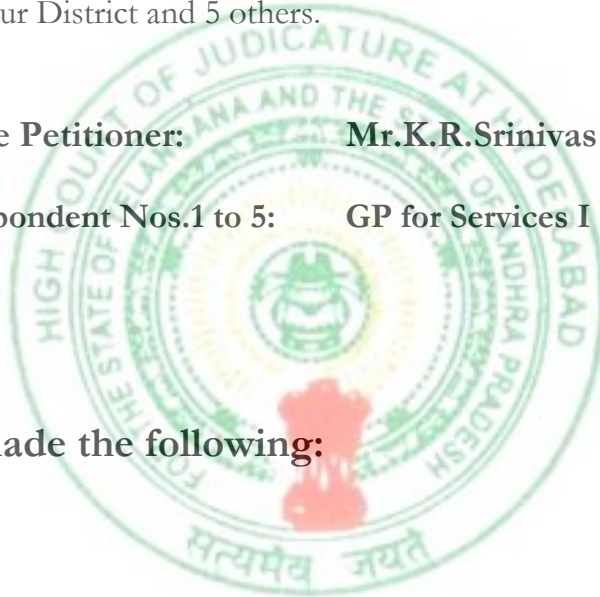
The State of Andhra Pradesh
Rep. by its Prl.Secretary
Health, Medical & Family Welfare dept.,
Velagapudi Guntur District and 5 others.

...Respondents

Counsel for the Petitioner: Mr.K.R.Srinivas

Counsel for respondent Nos.1 to 5: GP for Services I (AP)

The Court made the following:



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

This Writ Petition is filed feeling aggrieved by Order, dated 02.12.2016, in OA.No.4170 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') whereby it has dismissed the said OA.

The brief facts leading to the filing of this Writ Petition are that the petitioner is a Lab Technician, Grade II, working in Primary Health Center in Srikakulam District. While he was under temporary deployment at the Primary Health Center, Tilaru, respondent No.2 *vide* proceedings in Rc.No.1686/E6/2015, dated 29-07-2015, directed the Medical Officer of the said Primary Health Center to relieve the petitioner from that place to enable him to work at the Primary Health Center, Battili. Accordingly, the petitioner was relieved and he has joined at the Primary Health Center, Battili. Thereafter, the petitioner has made an application requesting for his transfer to Budithi. Acceding to his request, respondent No.2 has issued proceedings in Rc.No.1259/E6/2016, dated 29-06-2016, transferring him to Budithi. Since the transfer was made at his request, he was held not entitled to TTA and joining time. The petitioner has, accordingly, joined at the Community Health Center, Budithi. About four months

thereafter, respondent No.2 has issued proceedings in Lr.No.2577/E6/2016, dated 08-11-2016, redeploying him to the Primary Health Center, Battili. This proceeding was questioned by the petitioner in OA.No.4170 of 2016.

The main plank on which the petitioner has questioned his retransfer to Battili is that having been transferred to Budithi on his own request, his retransfer in the guise of redeployment constitutes arbitrary exercise of power. He has placed reliance on letter, dated 04-11-2016, addressed by respondent No.4 to the Project Officer, ITDA, Seethampeta, wherein it is stated that the Primary Health Center, Budithi, upgraded to Community Health Center in the month of February, 2016, is undertaking lot of activities such as performing Ceaserean, Hysterectomy and other major surgeries besides receiving a number of snake bite and diarrhea cases during the rainy season. He has, accordingly, requested the latter to continue the petitioner as Lab Technician in Budithi for smooth running of the Health Center. The petitioner has also filed a copy of the Certificate issued by the Senior Public Health Officer, Community Health Center, Kotturu, wherein it is stated that while the Primary Health Center, Battili, has one Lab Technician Post, two Lab Technicians viz., K.Devadasu and M.Govinda Rao have been working there. The Tribunal,

however, declined to interfere with the retransfer of the petitioner on the ground that the same was done in exigency of services.

It is relevant to note that the OA was dismissed at the admission stage even without calling for counter from the respondents to justify the transfer of the petitioner within four months of his posting at Budithi made on his own request.

In this Writ Petition, a counter-affidavit was filed by respondent No.2 wherein the only reason given for retransfer of the petitioner from Budithi to Battili was exigency of services. It is also averred therein that his deployment cannot be treated as harassment. Respondent No.2, however, failed to meet the specific averment made by the petitioner in Paragraph 2 of the affidavit filed in support of the OA, which reads as under:

“The 4th respondent addressed letter on 4-11-2016 to continue the applicant at CHC, Budithi, as there is one Lab Technician in CHC which is 30 bedded Hospital and there is no reply. In this letter, it is also enclosed that there is only one post of Lab Technician at PHC, Battili and 2 Lab Technicians by names K.Devadasu and M.Govinda Rao are working and on account of the impugned order, the applicant will be the 3rd Lab Technician and the CHC, Budithi will be without any Lab Technician.”

If, as against one sanctioned post of Lab Technician, two persons have already been working in the Primary Health Center

of Battili, we do not find any reason whatsoever to retransfer the petitioner within four months of his posting at Budithi. As obviously, respondent No.2 could not defend the order of retransfer of the petitioner, he camouflaged his action by putting forth a vague and unjustifiable reason of “exigency of services”. It is not the pleaded case of respondent No.2 that K.Devadasu and M.Govinda Rao, who have already been working as Lab Technicians at Battili, were found deficient in discharging their functions. We are told that the distance between Battili and Budithi is about 150 kms. Subjecting an employee to frequent transfers would result in displacement of his family apart from causing hardship to himself, thereby, reducing his efficiency of work, which would not be in the interests of the Institution itself. As respondent No.2 failed to offer any satisfactory explanation for the retransfer of the petitioner to Battili, his action is liable to be termed as wholly arbitrary and whimsical constituting harassment of the petitioner.

For the afore-mentioned reasons, the Order of transfer impugned in OA.No.4170 of 2016 before the Tribunal cannot be sustained and the same is, accordingly, set aside. Consequently, Order, dated 02-12-2016, in OA.No.4170 of 2016, on the file of the Tribunal is also set aside.

The Writ Petition is, accordingly, allowed.

As a sequel, WPMP.No.3814 of 2017, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(G.Shyam Prasad, J)

Dt: 3rd August, 2017
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