

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

Writ Appeal No.126 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The 5th respondent in the writ petition has filed this appeal under Clause 15 of the Letters Patent, aggrieved by the order passed by the learned Single Judge in W.P. No. 31773 of 2014 dated 4.1.2017. By the order under appeal, the learned Single Judge directed the official respondents to ratify the transfers effected by the petitioner by proceedings dated 24.9.2014 and release all benefits, to respondent Nos. 4 and 5 therein, in accordance with law.

In the order under appeal, the Learned Single Judge, after referring to Rule 10(32) of the Rules notified in G.O. Ms. No.1 dated 1.1.1974 which provides that educational agencies should carry out instructions issued by the Government and other competent departmental authorities in relation to academic and administrative matters, observed that it was not even the case of the official respondents that any instructions were issued by them which had been disobeyed by the 4th respondent-writ petitioner. The writ petition was allowed, and the official respondents were directed to ratify the transfers effected by the 4th respondent-writ petitioner by proceedings dated 24.9.2014.

Sri K. Jaganmohan Reddy, learned counsel for the appellant, would submit that, since the subject posts are grant-in-aid posts, the respondent-petitioner school is required to obtain prior approval even for effecting transfer of teachers from one school under the same management to another; the appellant was not

even intimated of his having been transferred, let alone a copy of the order of transfer being served on him; the appellant has not been paid salary for the past two years, besides being prevented from discharging his duties; and, in the absence of any statutory obligation cast on the official respondents to ratify the action of the 4th respondent-writ petitioner in transferring teachers from one school to another, no mandamus could have been issued to the official respondents to ratify the action of the school management in effecting transfers.

On the other hand Sri C. Sunil Kumar Reddy, learned counsel for the 4th respondent-writ petitioner, would submit that, since G.O. Ms. No.104 dated 30.1.1978 was struck down by this Court in W.P. No. 471 of 1979 dated 19.9.1979, the said G.O. is no longer in force and would not bar the 4th respondent-writ petitioner from effecting transfers. Sri K.K. Chakravarthy, learned counsel appearing on behalf of respondent No.5 in the writ appeal and respondent No.4 in the writ petition, would submit that, though the 5th respondent in the writ appeal has been transferred, he has not been paid salaries till date as the District Educational Officer has not released grant-in-aid funds; for no fault of his, the 5th respondent is being denied payment of salaries; if the respondent-writ petitioner has the power to effect transfers, the 5th respondent is then liable to be paid salary in the transferred post; if, on the other hand, the respondent-writ petitioner lacked power to effect transfers, then the 5th respondent must be re-transferred to the original school and be paid salary; and, in either event, the 5th respondent cannot be denied payment of his salary.

The fact that the posts, in which the writ petitioner-school has effected transfers, are admitted to grant-in-aid is not in dispute. The contention urged before the learned Single Judge was that it is the prerogative of the school management to effect transfers. If that be so, it does not stand to reason that, while the school management would have the unbridled right to effect transfers, the Government would be required, without application of mind and without examining the matter, to automatically ratify the action of the school management in effecting transfers. As it is not in dispute that these posts are all grant-in-aid posts, and as the Government is obligated to extend grant-in-aid to the teachers even in their transferred posts, we find it difficult to accept that the Government is mechanically required to ratify the action of the school management in effecting transfers of its teachers from one school to another.

While this question may have necessitated detailed examination in the writ appeal, all counsel are in agreement that it would suffice if the order under appeal is modified, and the Government is directed to consider the request of the 4th respondent-writ petitioner to ratify, the orders of transfer passed by them, in accordance with law. The submission of both Sri K. Jagan Mohan Reddy, learned counsel for the appellant, and Sri K.K. Chakravarthy, learned counsel for respondent No.5, is that, before any orders are passed by the Government in this regard, they should also be given an opportunity of being heard as it is they who would be affected by any orders passed by the Government on the respondent-writ petitioner's request for ratification of their action in having effected transfer of teachers from one school to another. It

is wholly unnecessary for us therefore to examine in detail whether or not the Government is obligated to accept the request of the school management in effecting transfers, and whether they are bound to mechanically ratify the action of the respondent-writ petitioner's request in this regard.

We consider it appropriate, in such circumstances, to permit both the appellant and the 5th respondent to submit their representations to the 3rd respondent, raising objections, if any, to the respondent-writ petitioner's request to ratify their action in having effected transfers, within two weeks from today. The 3rd respondent shall consider the respondent-writ petitioner's application seeking ratification of their earlier action in effecting transfers, and the representations, if any, submitted both by the appellant and the 5th respondent, in accordance with law, and pass a reasoned order at the earliest and, in any event, not later than six weeks from today. It is open to the appellant, the respondent-writ petitioner and the 5th respondent to communicate a copy of the order now passed by us to the 3rd respondent.

The order under appeal is modified accordingly and the writ appeal is disposed of. 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)

31st January, 2017

Note:
Furnish c.c. in three days.
b/o
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Date: 31.1.2017

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