

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**W.V.M.P.No.3904 of 2015 in W.P.No.31773 of 2014****&****W.P.No.31773 of 2014****ORDER:**

Heard the learned counsel for the Writ Petitioner, learned Government Pleader for Education appearing for respondent Nos.1 to 3 and Sri K.K.Chakravarthi, learned counsel for 4th respondent and Sri K.Jagannadha Reddy, learned counsel for 5th respondent.

2. The point that arises for consideration is whether the petitioner was entitled to issue proceedings dt.24-09-2014 and 26-09-2014 transferring 4th respondent who is working as SGT in the petitioner-school at Ravipadu to its own school at Khammam where the 5th respondent is working and posting the 5th respondent at Ravipadu.

3. Learned counsel for the petitioner contends that even though the petitioner institution has sought ratification from 3rd respondent on these transfers which are affected to schools under its own management, 3rd respondent has not passed any orders.

4. On 30-10-2014 in W.P.M.P.No.39722 of 2014 in W.P.No.31773 of 2014, this Court passed the following order:

“It is submitted by the learned counsel appearing for the petitioner that in making transfers, the petitioner management did not commit any violation of the rules nor is

there any financial commitment to the Government in view of the aforesaid transfers.

Therefore, the respondents are directed to pay the salaries to the teachers working in the petitioner's school management within a period of two weeks from the date of receipt of a copy of this order."

5. W.V.M.P.No.3904 of 2014 is filed by respondent Nos.1 to 3 to vacate the said order.

6. The 2nd respondent filed counter affidavit relying on G.O.Ms.No.104 dt.30-01-1978 which provides transfer of teachers would be only beginning of the academic year that too with the approval of the District Education Officer. It is stated that the petitioner had affected transfer of respondent Nos.4 and 5 in the month of September 2014 without the approval of District Education Officer and requested for ratification and this is violative of Government instructions under G.O.Ms.No.104 dt.30-01-1978.

7. Learned counsel for the Writ Petitioner however pointed out that a Division Bench of this Court in W.A.No.1943 of 2004, in its order dt.06-12-2004, recorded that G.O.Ms.No.104 dt.30-01-1978 had been struck down on 19-09-1979 in W.P.No.471 of 1979 and that it is no longer in force.

8. This fact is not refuted by the learned Government Pleader for Education appearing for respondent Nos.1 to 3.

9. Therefore, it is not open to the respondent Nos.1 to 3 to contend that the Writ Petitioner has violated G.O.Ms.No.104

dt.30-01-1978 since it is not in force as on the date when the impugned transfer orders were made by the petitioner.

10. In the counter affidavit filed by respondent Nos.1 to 3, reference is also made to Rule 10 (32) of G.O.Ms.No.1 Education dt.01-01-1974 which provides that educational agency should carry out instructions issued by the Government and other competent departmental authorities in relation to academic and administrative matters. It is not the case of the respondent Nos.1 to 3 that any instructions were issued by them which had been disobeyed by the Writ Petitioner. Therefore, the argument based on G.O.Ms.No.1 is equally untenable.

11. In this view of the matter, the Writ Petition is allowed and the respondents are directed to ratify the transfers affected by the petitioner by proceedings dt.24-09-2014 and release all the benefits to the respondent Nos.4 and 5 in accordance with law.

12. Accordingly, W.V.M.P.No.3904 of 2015 is dismissed. Consequently, the Writ Petition is allowed. No costs.

13. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-01-2017
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