

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION Nos.26001 and 26377 OF 2017**

**COMMON ORDER :**

Since the petitioners in both the writ petitions are challenging the very same impugned proceedings issued by the District Collector, Mancherial District, Mancherial-2<sup>nd</sup> respondent, both the writ petitions are being heard together and disposed of by this common order.

These writ petitions are filed challenging the order of transfer vide proceedings in Rc.No.A3/1091/2017, dated 11.07.2017 issued by the 2<sup>nd</sup> respondent transferring the petitioners from the present place to another place in the same district.

Learned counsel for the petitioners submits that the 2<sup>nd</sup> respondent has no jurisdiction to issue impugned proceedings since the 2<sup>nd</sup> respondent is not the competent authority to issue the impugned proceedings in terms of G.O.Ms.No.92, General Administration (SPF-MC) Department, dated 27.03.2017, whereunder the Government has appointed all the District Heads of erstwhile Districts as 'Nodal Officers' to look after the service matters in respect of the employees of that Department working in new Districts after reorganisation for the time being, until final allocation of employees is made; and that the 1<sup>st</sup> respondent is the 'Nodal Officer' in respect of services matters of the employees of the

erstwhile Adilabad District and that the Mancherial is carved out from the Adilabad District. He also submits that transfer is punitive in nature since allegations are leveled against the petitioners and that when the order is punitive in nature, the petitioners are entitled for affording an opportunity of hearing before passing the impugned orders which is not done in the present case and the same is in violation of principles of natural justice. In support of this contention he relied on the Judgment rendered by this Court in ***P.Anjaneyulu v. Chief Manager, A.P.Circle, Bharat Sanchar Nigam Limited and another***<sup>1</sup> and the Judgment rendered by the Supreme Court in ***S.Prakasha Rao and another v. Commissioner of Commercial Taxes and others***<sup>2</sup> and also the Judgment rendered by the Division Bench of this Court in WP.No.2757 of 2012. He further submits that the Government by Circular Memo.14221-A/929/A1/HRM.1/2016, dated 21.11.2016, imposed ban on transfers, as such the transfer could not be effected.

Learned Government Pleader for Services submits that G.O.Ms.No.92, General Administration (SPF-MC) Department, dated 27.03.2017, is issued only conferring powers to the erstwhile District Collectors as Nodal Officers to take up the issues such as compassionate appointments, postings on promotions, reinstatement to service, pending enquiry in the

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<sup>1</sup> 2001 (3) ALD 313 DB

<sup>2</sup> 1990 (4) SLR page 215

disciplinary cases, adhoc promotions etc. but not in respect of transfers. More so, Rule-38 (c) (i) of the A.P.State and Subordinate Services Rules, 1996, empowers the appointing authority to make transfers and the said power is not taken away by issuance G.O.Ms.No. 92, General Administration (SPF-MC) Department, dated 27.03.2017. He also submits that in the so called Government Circular Memo.14221-A/929/A1/HRM.1/2016, dated 21.11.2016, only guidelines are issued and they cannot be enforced in the Court of law.

It is to be seen that, para-3 of the G.O.Ms.No.92, dated 27.03.2017 reads as follows;

“3. In the representation 3<sup>rd</sup> cited, the President, Telangana Non-Gazetted Officers’ Union has represented the Government to appoint the erstwhile District Collectors as Nodal Officers to take up the issues such as, compassionate appointments, postings on promotions, reinstatement to service, pending enuiry in the disciplinary cases, adhoc promotions etc., as they were held up, due to seniority lists and other files are kept with the Heads of the concerned erstwhile Districts.”

It goes to show that transfer is not included in the purview of G.O.Ms.No.92, dated 27.03.2017.

Rule-38 (c) (i) of the A.P.State and Subordinate Service Rules, 1996 reads as follows;

“38. Postings and transfers:-(c) all transfers and postings of a member of State or Subordinate

Service shall be made subject to sub-rules (a) and (b) by the appointing authority or such other authority subordinate to the appointing authority, specified in the special rules or to whom the appointing authority has delegated such powers of postings and transfers:

(i) Provided that such power will be exercised by the appointing authority or the authority to whom the power has been delegated, within their respective jurisdiction but subject to the units of appointment under the Presidential Order, applicable to the relevant post;

The aforesaid provision goes to show that appointing authority has power to deal with the service matters.

In the present case admittedly appointing authority is the 2<sup>nd</sup> respondent, as such, it cannot be said that the 2<sup>nd</sup> respondent has no power to deal with the transfer of petitioners. As far as 'ban' of transfers is concerned it is only a Government Memo for the guidance of the Officers. The same cannot be enforced by issuance of any writ of Mandamus. More so, the impugned transfer order states that transfers are made on administrative exigency. In the counter affidavit except general allegations no specific allegations are made against the petitioners. It is also stated in the counter that for smooth running of administration, transfer has been effected. The Judgments relied on by the petitioners have no application to the facts of the present case. More so, transfer is an incidence of service. Unless transfer is malafide, without

jurisdiction or arbitrary, this Court will not interfere with the orders of transfer by exercising power under Article 226 of the Constitution of India, since it is not a punishment.

Accordingly, both the writ petitions are dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

14.09.2017  
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**A.RAJASHEKER REDDY, J**

