

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITON No.33080 OF 2017

ORDER:

This writ petition is filed challenging the proceedings of the 2nd respondent transferring the petitioner vide proceedings No.3053/A1/AEs/2016(1), dated 23-09-2017 and consequential proceedings in Procs.Rc.No.590/DEE/2017, dated 26-09-2017, wherein and whereby petitioner was transferred from Chitvel to Rajampet while working as Assistant Engineer (A.E.).

The transfer of the petitioner is challenged on the ground that the petitioner has been transferred to present place i.e.Rajampet only by order dated 15-08-2015 within two years, again he has been transferred at the instance of political leaders who bore grudge against him for not allotting the houses at their whims and fancies and transfer was also challenged on the ground that his transfer was issued in ban period when the petitioner is in leave from 23-09-2017 to 26-09-2017 and he joined duty on 27-09-2017 and he was served copies of transfer orders. It is also the case of the petitioner that he has to handover the charge to the 4th respondent though working as Inspector, do not have qualification to work in Rajampet Mandal. He also submits that the 4th respondent is not qualified to work as A.E. as held in WP.No.21523 of 2012.

Counter affidavit is filed by respondents 1 to 3 stating that the petitioner has joined as A.E. at Rajampet Mandal on 19-08-2015 and he was given target of 1273 houses under NTR Rural Housing 2016-17, Gramin, NTR (Rural Housing) 2017-18

and Pre-NTR Housing in Rajampet Mandal for the financial year 2017-18. As against the said target of 1273 houses, the petitioner has completed only 124 houses. Further the petitioner has generated the estimates for (31) against (206) stage updation, but only three estimates were in progress. In review meetings and video conferences, the petitioner was instructed to speed-up the work in order to upgrade the performance of the said Mandal. As the progress in Rajampet Sub-Division has drastically come down, the petitioner was transferred on administrative grounds to Lingala Mandal of Pulivendula Sub-Division of Proddatur Division. It is also stated that in WP.No.21253 of 2012 the petitioner, who was Work Inspector, who kept as Mandal in-charge was sought to be posted back as Work Inspector and said writ petition was disposed of on some observations and the same has no application to the present case. It is also stated that petitioner was transferred vide proceedings dated 23-09-2017 by the 2nd respondent and the petitioner applied for permission for one day i.e. on 24-09-2017 and casual leave on 25-09-2017, he was relieved on the forenoon of 26-09-2017 on which date he was on duty. The petitioner knowing about his transfer through e-mail at 1.33 PM on 26-09-2017 applied leave for 26-09-2017 to 27-09-2017. In response to the same, the 3rd respondent informed the petitioner that since fore noon of 26-09-2017 he was relieved by the 2nd respondent, he has no authority for granting leave. It is also stated that the 4th respondent has

joined duty on 26-09-2017 and the petitioner filed writ petition and status-quo was granted by this Court on 04-10-2017 by which date, the petitioner was relieved from Rajampet and the 4th respondent reported at Rajampet.

Heard learned counsel for the petitioner, who submits that this Court granted status-quo on 04-10-2017 and the petitioner was relieved on 26-09-2017. Though this Court granted status-quo order on 04-10-2017, the respondents have forcibly taken the charge of godown from the petitioner and the respondents have violated the orders passed by this Court.

Reply affidavit is also filed reiterating the contents of writ affidavit and denying the contents of counter affidavit of respondents 1 to 3.

On the other hand, learned Standing Counsel for respondents 1 to 3 submits that transfer is incidental to service and the petitioner has suppressed the fact that disciplinary proceedings have been initiated against him and he stated that he was working to the satisfaction of superior officers. On the ground of suppression of facts, the writ petition is liable to be dismissed. In support of his contention he relied on the judgment of **K.D.Sharma v. Steel Authority of India Limited**, (Civil Appeal No.4270 of 2008 arising out of Special Leave Petition (Civil) No.17005 of 2006), wherein the Apex Court held in para Nos 27 to 29 as follows:

27. In Kensington Income Tax Commissioner, Viscount Reading, C.J. observed:

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".
(emphasis supplied)

28. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under [Article 32](#) or of a High Court under [Article 226](#) of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

29. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts and 'clean breast' cannot hold a

writ of the Court with 'soiled hands'. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.”

Though it is stated that petitioner was transferred at the instance of political leader, in place of petitioner some third person has been transferred to Rajampet and there is chain of transfers. After reviewing the work progress, the respondents wanted a better person to work at Rajampet. Transfer is incidental to service. In the counter affidavit as stated by respondents that after examining the position at Rajampet, they wanted better person to be posted at his place and the petitioner has not denied the fact that disciplinary proceedings were initiated against him and pending as on today. Learned Standing Counsel produced article of charge before this Court. The same is not disputed by learned counsel for the petitioner. It is to be seen that in this case transfer is on administrative grounds and it is not the case of petitioner the same is without jurisdiction. As per version of the respondents, the G.O. issued by Government regarding ban of transfer is not applicable to the respondent-Corporation.

In view of the above facts and circumstances, this Court is not inclined to interfere with the impugned order of transfer by exercising judicial review under Article 226 of Constitution of India.

In view of the same, I do not see any reason to entertain the writ petition and accordingly, the same is dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

11-12-2017
Nvl

A.RAJASHEKER REDDY,J





