

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

**WVMP No.211 of 2016 in WAMP No.1465 of 2015
In/and
Writ Appeal No.545 of 2015 and Writ Petition No.16974 of 2015**

COMMON JUDGMENT: (per Hon'ble the Acting Chief Justice Sri Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the Learned Single Judge in W.P.No.16974 of 2015 dated 15.06.2015 ordering notice returnable in four weeks and, by order in WAMP No.1465 of 2015 dated 07.07.2015, interim stay as prayed for was granted. The order, impugned in the Writ Petition, is the order transferring the petitioner from Composite Hospital, Central Reserve Police Force ("CRPF" for short), Hyderabad to the Composite Hospital, CRPF, Jammu, relieving him on 15.06.2015 vide circular of the 3rd respondent dated 20.05.2015, and the consequential rejection order dated 02.06.2015 issued by the 3rd respondent.

The appellant-writ petitioner, a Head Constable, was posted to the Composite Hospital, CRPF, Hyderabad on 07.07.2007 consequent on his transfer from the Composite Hospital, CRPF, New Delhi. On completion of his tenure of three years, he was transferred from Hyderabad to the Composite Hospital, CRPF, Avadi, Chennai by proceedings dated 14.02.2013. After the said order of transfer was released by the Medical Directorate, CRPF, New Delhi, the petitioner submitted a representation requesting the Inspector General of Police to defer his transfer for a period of one year on the ground of illness of his parents, and to enable him to attend the Court in connection with the maintenance case and domestic violence case filed by his wife before the Judicial

Magistrate of First Class, Medak and the Additional District Magistrate Court, Nampally, Hyderabad. The Inspector General of Police considered his request, and the order of transfer was cancelled by proceedings dated 26.03.2013 to enable the petitioner to resolve his domestic problems. After the petitioner had completed his tenure at Hyderabad, of more than 7 years, he was transferred in the summer of 2015, by proceedings dated 14.05.2015, to the Composite Hospital, CRPF, Jammu. Thereafter a circular dated 20.05.2015 was issued intimating the transfer orders to all the concerned staff. The petitioner filed W.P. No.16974 of 2015 questioning the order of transfer and, as the Learned Single Judge ordered notice, he filed the present Writ Appeal wherein an interim order of stay was granted. On a petition being filed by the Union of India to vacate the interim order, the matter is now listed before us.

Sri G.Tuhin Kumar, Learned Counsel for the appellant-writ petitioner, would rely on the judgment of the Supreme Court, in **Prasar Bharati v. Amarjeet Singh**¹, to contend that, since the appellant-writ petitioner is a Head Constable, he can only be transferred to the post of Head Constable; and as, admittedly, no such post exists in the Composite Hospital, CRPF, Jammu, he cannot be transferred to such a post.

In the counter-affidavit, filed on behalf of the respondents, it is stated that, after restructuring of the para-medical staff of the 100 bedded CRPF Composite Hospitals (i.e. at New Delhi, Hyderabad and Gauhati), the post of Head Constable/Operation Theatre Assistant in the above hospitals (2 posts in each hospital

¹ (2007) 9 SCC 539

i.e. in total 6) were abolished as per the orders of the Government of India dated 09.03.2010; thereafter, three posts of Assistant Sub-Inspector/Operation Theatre Technician were created except at the Composite Hospital, Jammu where the Assistant Sub-Inspector/Operation Theatre Technician post continued as per the previous organisation structure; after restructuring of the organisation in the CRPF hospitals, there is no post, of Head Constable/Operation Theatre Assistant, now available with the CRPF; consequent on the abolition of the post of Head Constable/Operation Theatre Assistant, by proceedings dated 09.03.2010, the post in which the appellant-writ petitioner is working has itself been abolished; and his continued stay in Hyderabad is in a non-existent post.

While the appellant-writ petitioner claimed that one post of Head Constable continues to exist at Hyderabad, we see no reason to disbelieve the assertion in the counter-affidavit that the two posts, of Head Constable/Operation theatre assistants, in each of the Composite Hospitals at Hyderabad, New Delhi and Gauhati have been abolished. It is also asserted in the counter-affidavit that, after abolition of the posts of Head Constable/Operation Theatre Assistants, the petitioner was being continued in service at the Composite Hospital, CRPF, Hyderabad against the higher rank vacancy of Assistant Sub-Inspector/Operation Theatre Technician.

Transfer of an employee from one place to another is an incidence of service. The guidelines for transfer in the respondent organisation stipulates a three year term at each particular station. The appellant-writ petitioner was transferred to Hyderabad, and has continued in service, as a Head Constable/Operation theatre

Assistant at the Composite Hospital, Hyderabad, beyond the prescribed tenure. He has continued to remain at Hyderabad for more than a year and half, after his transfer in May, 2015, under the protection of the interim order passed by this Court. As held in a catena of judgments of the Supreme Court, including in **Saxena v. Union of India**², no employee has the right to claim that he should be continued in service at a particular post/station, and not be transferred at all. Even if, as is now contended before us by Sri G. Tuhin Kumar, Learned Counsel for the appellant, the petitioner has been asked to work in the higher post of Assistant Sub-Inspector that, by itself, would not justify his being continued in the non-existent post of Head Constable/Operation theatre Assistant at Hyderabad, and to be permitted to work against the higher rank vacancy of Assistant Sub-Inspector/Operation Theatre Technician at the CRPF Composite Hospital at Hyderabad. If the petitioner can continue to work from 2010 onwards (consequent on abolition of the posts of Head Constable/Operation theatre Assistant), against the higher rank vacancy of Assistant Sub-Inspector/Operation Theatre Technician at Hyderabad, we see no reason why he should not work against the said higher rank post at Jammu also.

Reliance placed by Sri G.Tuhin Kumar, Learned Counsel for the appellant-writ petitioner, on **Prasar Bharati**¹ is misplaced. In the said case, the operational and administrative staff of Prasar Bharati were transferred. It was contended, on behalf of Prasar Bharati, that such transfers were made with a view to optimise the use of manpower available with the Corporation so that every

² (2006) 9 SCC 583

station and Kendra became fully functional. These transfer orders were questioned before the Central Administrative Tribunal, and the orders of transfer were quashed. The Writ Petition, filed against the said order of transfer, was also dismissed. The appeal preferred thereagainst was allowed by the Supreme Court holding that the opinion of the High Court, that the respondents could not be transferred by the Corporation, was not correct. Sri G. Tuhin Kumar, Learned Counsel for the appellant-writ petitioner, relies on one line in para 13 of the said judgment, wherein the Supreme Court held that transfer is limited to equivalent post in the same cadre and in the same department. These observations were made while drawing a distinction between 'transfer' and 'deputation'. Judgments of Courts cannot be read out of context. One line in a judgment cannot be understood as the declaration of law binding under Article 141 of the Constitution of India. As the appellant-writ petitioner continues to work against a higher rank vacancy in the Composite Hospital, CRPF, Hyderabad, there is no reason why he cannot be transferred, and asked to work in a similar higher rank vacancy in the Composite Hospital, CRPF at Jammu.

This appeal is also liable to be dismissed as an appeal, under Clause 15 of the Letters Patent, is not maintainable against the action of the Learned Single Judge deferring hearing of the Writ Petition by a few weeks, and in issuing notice. As held by a Division Bench of this Court in **Kunala Subbarao v. P.Nagaratnayamma**³, an appeal under Clause 15 of the Letters Patent does not lie against the hearing of the Writ Petition being deferred by a couple of weeks. The Judgment of the Division

³ AIR 1982 AP 443

Bench of this Court in **Kunala Subbarao**³ was followed by this Court in **T.M.Reddy Educational Society v. State of Andhra Pradesh** (Judgment in Writ Appeal No.918 of 2016 dated 29.09.2016). Viewed from any angle, we see no reason to continue the interim order of stay whereby the order of transfer was interdicted.

WVMP No.211 of 2016 is allowed and the interim order dated 07.07.2015, passed in WAMP No.1465 of 2015 in W.A.No.545 of 2015, is set aside. As we have examined the matter on merits, and have held that the order of transfer, impugned in the Writ Petition, does not necessitate interference, the cause in the Writ Petition does not also survive.

Both the Writ Appeal and the Writ Petition are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAMESH RANGANATHAN, ACJ

Dr.SHAMEEM AKTHER, J

Date:15.02.2017.

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