

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

* HONOURABLE SRI JUSTICE M. GANGA RAO

+ WRIT PETITION No.34571 of 2017

% Date: -12-2017

BETWEEN:

D.L. Viswa Murthy, /o. D.G. Lakshmaiah,
Forest Range Officer, Red Sanders Task Force,
Tirupathy, R/o. H.No.5-6-111A, Lakshmipuram Post,
Hindupur, Ananthapur District.

... Petitioner

Vs.

1. T.V. Muralidhar, Forest Range Officer, Penukonda (Territorial) Range, Ananthapur Division.
2. State of Andhra Pradesh, rep. by its Principal Secretary for Environment, Forests, Science & Technology Department, A.P. Secretariat, Velagapudi, Amaravathi, Guntur District.
3. Principal Chief Conservator of Forests, Government of Andhra Pradesh, Aranya Bhavan, Agathavarapadu, Guntur, Guntur District.
4. The Chief Conservator of Forests, Ananthapuramu Circle, Ananthapuramu.
5. Divisional Forest Officer, Ananthapuramu, Ananthapuramu District.

... Respondents

!Counsel for Petitioner

: Mr. P.V. Krishnaiah

^ Counsel for Respondent No.1

: Mr. K. Sarath

^ Counsel for Respondents 2 to 5 : G.P. for Services-I (A.P)

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? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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ORDER: (per VRS,J.)

Aggrieved by an order of the A.P. Administrative Tribunal, setting aside an order of transfer, a Forest Range Officer has come up with the above writ petition.

2. By G.O.Rt.No.130, Environment, Forests, Science & Technology Department, dated 04.07.2017, the Government ordered a chain of transfers. By the said order, the 1st respondent in this writ petition was transferred from the Forest Range Office, Penukonda Range of Ananthapur Division and was directed to report before the Principal Chief Conservator of Forests (HoFF), Andhra Pradesh, Guntur for posting orders. By the same order, the petitioner herein was transferred and posted in the place of the 1st respondent at Penukonda.

3. Challenging G.O.Rt.No.130, dated 04.07.2017, the 1st respondent filed O.A.No.1803 of 2017 on the file of the A.P. Administrative Tribunal, contending *inter alia* that he was promoted as Forest Range Officer on 21.02.2014 and posted at Ananthapur Range of Ananthapur Division; that he made a request, on the basis of which G.O.Rt.No.309, dated 21.12.2016 was passed, posting him in Penukonda Range of the very same Ananthapur Division; that the said transfer order, passed on his own request, was not implemented in view of the Election Code; that subsequently he joined at Penukonda on 24.03.2017; that while so, the impugned order G.O.Rt.No.130, dated 04.07.2017 was passed, posting the writ petitioner herein to the place of the 1st

respondent and directing the 1st respondent to report to the Principal Chief Conservator for fresh posting; that there was originally a ban on transfers, which was lifted on 21.04.2017, permitting the transfer of employees up to 24.05.2017; that pursuant to the lifting of the ban order, the department conducted a transfer counselling in which the writ petitioner herein (5th respondent in the O.A) participated and was posted to the Social Forestry, Banaganapalli; and that while things have so settled, the impugned G.O.Rt.No.130, dated 04.07.2017 came as a bolt out of the blue.

4. It appears that while ordering notice in the original application on 05.07.2017, the Tribunal granted an interim suspension of the order of transfer, on the ground that the 1st respondent herein (applicant before the Tribunal) was sought to be transferred within four months, without assigning any reasons.

5. The Assistant Secretary to Government in the Department of Environment, Forests, Science and Technology filed a Counter before the A.P. Administrative Tribunal contending *inter alia* that the 1st respondent herein (applicant before the Tribunal) made a request for posting in Penukonda Range of Ananthapur Division; that accepting the request, G.o.Rt.No.309, dated 21.12.2016 was passed, by relaxing the ban order on transfers; that thereafter, the writ petitioner herein (5th respondent in O.A), who was working in Tirupathi, Chittoor District, made a request for a posting in Ananthapur on the ground that his wife was suffering from Dysfunctional Uterine Bleeding for a long time, undergoing treatment at St. John Hospital, Bangalore; that accepting the request of the writ petitioner herein G.O.Rt.No.130, dated 04.07.2017 was passed; and that

there was nothing illegal about the order of transfer impugned in the original application.

6. If the pleadings of the original applicant and the State Government alone had been there before the Tribunal, we doubt if the Tribunal could have interfered with the order of transfer impugned in the original application. To be precise, the original application filed by the 1st respondent herein before the Administrative Tribunal, did not contend (1) either an allegation of *mala fides*, or (2) an allegation of violation of statutory rules. Therefore, the original application filed by the 1st respondent before the Administrative Tribunal was liable to be thrown out, since no pleading of mala fides or violation of statutory rules was made by the 1st respondent herein. The counter filed by the Government was to the effect (1) that on the request of the 1st respondent, he was accommodated on 21.12.2016; and (2) that on the request of the writ petitioner, he was subsequently accommodated.

7. Instead of allowing the original application filed by the 1st respondent before the Administrative Tribunal to die a natural death on its own pleadings, the writ petitioner herein, who was the 5th respondent before the Tribunal, jumped into the bandwagon and filed a detailed counter pointing out as to how the elected representatives, viz., MLAs and MPs played a major role on behalf of both the petitioner as well as the 1st respondent.

8. In the light of the pleadings made by the writ petitioner (5th respondent before the Tribunal) in his counter affidavit before the Tribunal, the Tribunal was left with no alternative except to summon the records. Upon a perusal of the records, the Tribunal came to the

conclusion that both the parties caught hold of MLAs and MPs and procured the orders of transfer in their favour at different points of time.

9. After recording such a finding, very strangely, the Tribunal set aside the order of transfer impugned in the original application, not on the ground of *mala fides* but on the ground of non-application of mind. We do not know, how a case of this nature, where an order of transfer was passed on political interferences, would fall under the category of non-application of mind. Non-application of mind is not one of the grounds on which an order of transfer could be set aside.

10. As we have stated earlier, the 1st respondent herein (original applicant before the Tribunal), did not plead even remotely that there was political interference and that the order of transfer was vitiated by *mala fides*. The counter filed by the department before the Tribunal also focused only on the request made by the writ petitioner herein on medical grounds with regard to his wife and the consideration made by the Government on humanitarian basis.

11. To put in a nutshell, in a case where an order of transfer was not challenged on the ground of *mala fides*, the Tribunal set aside the transfer order after finding political interference, especially, solely on the basis of the counter filed by the writ petitioner (5th respondent before the Tribunal).

12. Let us keep aside for a moment what the 1st respondent pleaded in his original application before the Tribunal and see what stand the Government took and what pleadings the writ petitioner made before the Tribunal. Even before us, the learned Government Pleader for Services (A.P) produced the file. The documents available in the file and the

notings contained therein disclose that both the petitioner as well as the 1st respondent have brought to bear political pressures upon the Secretary to Government and the Head of the Department. In February, 2016, the 1st respondent managed to bring political pressures to post him in Penukonda Range of Ananthapur Division. The 1st respondent was actually working in Ananthapur Range of the very same Division. The Government bent over backwards to help the 1st respondent by transferring him from Ananthapur Range of Ananthapur Division to Penukonda Range of Ananthapur Division, (1) by relaxing the ban on transfers; and (2) when the Election Code was in place. This is why, even as per the 1st respondent's own pleading in paragraph-VI (a) of his original application, he was permitted to join at Penukonda only on 24.03.2017, despite the transfer order having been passed on 21.12.2016. Therefore, the 1st respondent was the first beneficiary of a political influence.

13. In an attempt to outbeat him, the writ petitioner herein brought to bear political pressure through four MLAs and one MP and managed to procure the order of transfer assailed in the original application before the Tribunal.

14. When things became so clear to the Tribunal that both the parties are guilty of bringing up external influences upon the administration, the first option open to the Tribunal was to non-suit the person who approached the Tribunal. But unfortunately, the Tribunal allowed the original application of the 1st respondent, thereby rewarding him and restituting him, the benefit of the order procured by him through political interference.

15. Therefore, we are of the considered view that the order of the Tribunal deserves to be set aside, as (1) the 1st respondent did not go to the Tribunal with a pleading of *mala fides*; (2) the official respondents merely pleaded humanitarian consideration of the health condition of writ petitioner's wife; and (3) the Tribunal did not even record a finding of *mala fides*, but set aside the transfer order on the ground of non-application of mind.

16. But we may not be able to stop with merely allowing the writ petition and setting aside the order of the Tribunal. If we do that, the writ petitioner will become the beneficiary of his own wrong doing, viz., bringing to bear political pressure upon the administration. Both parties, viz., the petitioner as well as the 1st respondent, in our considered opinion, should be shown their places. Both of them should not be allowed to enjoy the fruits of their misconduct. As a matter of fact, Rule 24(1) makes it clear that no Government employee shall bring or attempt to bring any extraneous influence to bear upon any authority for furtherance of his interest. Therefore the appropriate course that a Court interested in upholding the Rule of law should follow is, to set at naught the fruits of the wrong doings of both parties.

17. Hence the writ petition is allowed, the impugned order of the Tribunal is set aside. The 2nd respondent is directed, within 15 days of receipt of a copy of this order, to transfer both the petitioner as well as the 1st respondent out of Ananthapur Division and file a report of compliance before this Court on 26.12.2017. The 2nd respondent may also initiate action against the petitioner as well as the 1st respondent, if both

of them are guilty of violating Rule 24(1) of the A.P. Civil Services (Conduct) Rules, 1964.

18. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

Js December, 2017.



HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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Js.

_____ December, 2017.