

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.V.M.P.Nos.423 & 1183 of 2017 In W.P.No.333 of 2017

And

WRIT PETITION No.333 of 2017

O R D E R:

These applications are filed to vacate the order dated 03.01.2014 in WPMP.No.370 of 2017 in W.P.No.333 of 2017.

Heard counsel for petitioner in writ petition and the Government Pleader for Services for respondents 1 and 2.

None appears for 3rd respondent, though the name of M.Janardhan Rao is printed in the cause list.

The petitioner has questioned the proceedings dated 19.11.2016 issued by the 1st respondent transferring the petitioner from Integrated Check Post, Adilabad to the post of DTO, Jangaon.

Counsel for the petitioners has raised two contentions:

- (a) That the petitioner is the President of Telangana Gazetted Officers Association and as per the Circular Memo No.21635/Ser.Wel/2002-01 dated 19.06.2002 issued by the General Administration Department, office bearer of an Association is not entitled to be transferred for a period of six (06) years from the position he was holding at a particular place. Admittedly, the petitioner was working in Integrated Check Post in Adilabad from 11.10.2013. Therefore, the petitioner is contending to continue the service in said post upto 10.10.2019.
- (b) The 2nd ground raised by the petitioner is that the Hon'ble Minister, BC Welfare, Forest & Environment had

issued a D.O.Letter dated 15.12.2016 to the 1st respondent to post the 3rd respondent in the place where the petitioner is working, by relieving the petitioner, and this also vitiates his transfer. Counsel for petitioner contends that petitioner cannot be transferred under the instructions of political executive only to accommodate 3rd respondent.

It is also the contention of the petitioner that there were no complaints against continuation of petitioner at the present location in Adilabad, warranting the political executive to intervene and seek his transfer to different place.

The Government Pleader (Services) for respondent 1 and 2, however, contends that the Circular dated 19.06.2002 being relied on by the petitioner is no longer valid in view of the creation of State of Telangana from 02.06.2014 and the consequent creation of new Districts in the State of Telangana, giving rise to administrative difficulties requiring transfers to be made for administrative exigencies.

It is further contended by the Government Pleader that the Supreme Court in Civil Appeal No.4360 of 2007, decided on 18.09.2007 has expressed a view that transfer made on a recommendation of MLA would not vitiate the transfer order. He also contended that the request of Hon'ble Minister was only to post the 3rd respondent in the place where the petitioner is working but there was no malafide intention against the petitioner. It is also pointed out that in fact vide G.O.Rt.No.705, dated 19.11.2016, the petitioner was transferred initially from

the Integrated Check Post from Adilabad to the post of DTO Jangaon but the same was kept in abeyance on 24.11.2016 and merely because the petitioner is the office bearer of the Union, he cannot resist the transfer.

I have noted the submissions of counsel for petitioner and the Government Pleader for Services.

It is no doubt that transfer is an incident of service but if there are instructions of the nature contained in Circular Memo dated 19.06.2002 directing that the office bearers of recognized Service Association should not be transferred till they complete 6 years from the present place of work, they ought to be followed. It is not in dispute that petitioner is the President of Telangana Gazetted Officers Association in Adilabad District. Without the said Circular being withdrawn, the 1st respondent cannot transfer the petitioner from the post he was holding in Adilabad.

Though the learned Government Pleader sought to contend that G.O.Ms.No.647 dated 08.11.2010 was issued superseding the said Circular, the contents of the said Circular do not support the said contention. The said G.O.Ms.No.647 dated 08.11.2010 records that recognition was to the Telangana Gazetted Association, accorded by the Government for a period of one year to enable them to make representation regarding their conditions of service and other matters.

That apart, the letter addressed by the Hon'ble Minister for BC Welfare, Forest and Environment to the 1st respondent states as under:

“D.O.Lr.No...../M(BCW&FE)/2016;Dt:15-12-2016

I would like to bring to your notice that the Government has issued orders in respect of Sri.B.Bhadru Naik, MVI, who recently posted as District Transport Officer, Mahabubabad in the District Re-organization from Mancherial was again transferred and posted to Karimnagar. And Sri.A.Shyam Naik, MVI, Boraj Check Post, Adilabad Dist.was transferred to Jangoan Dist. And in this regard I request you to kindly post Sri.Bhadru Naik, MVI at Boraj Check post duly relieving Sri.A.Shyam Naik, MVI immediately.

I shall be highly obliged if you could kindly look into the request and do needful”

There is no reference to any complaints leveled against the petitioner and his posting in the Integrated Check Post, Adilabad. It is clear from the above letter that the Hon’ble Minister wanted the 3rd respondent to be put in the place where the petitioner is working and directed the 1st respondent to relieve the petitioner on the ground that he had already been transferred to Jangaon District, though the said transfer has been kept in abeyance.

The decision of the Supreme Court relied upon by the learned Government Pleader in my considered opinion does not come to the assistance of the respondents for the reasons that in the said case, the observation that a transfer made on recommendation of MLA would not vitiate the transfer order was made in the context of complaints being made against officer whose transfer was recommended by MLA. In the absence of any such complaint against the petitioner regarding discharge of his duties in the Integrated Check Post at Adilabad, the

intervention by the Hon'ble Minister in the matter to favour the 3rd respondent, cannot be countenanced.

It is clear that the 1st respondent acted under the dictate of the Hon'ble Minister and issued the impugned transfer order ignoring the Circular Memo dated 19.06.2002 issued by the erstwhile Government of A.P.

In my considered opinion, the transfer of the petitioner is contrary to the Circular, that too at the instance of the Hon'ble Minister to favour the 3rd respondent and is clearly arbitrary and violative of Article 14 of the Constitution of India.

Accordingly, WVMP's are dismissed and Writ Petition is allowed and the proceedings dated 19.11.2016 in G.O.Rt.No.705, T.R&B (Tr.S&V) Department as well as proceedings in R.No.5711/C3/2016, dated 28.12.2016 are declared as arbitrary and illegal and are set aside, the petitioner is directed to be continued in the subject post of Motor Vehicle Inspector, Boraj Check Post, Adilabad till he completes a period of six years from the date he joined in the said post i.e., 10.10.2019. No costs.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

31.01.2018.
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