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

*****

WRIT PETITION NO.6331 OF 2018

P. Ramesh Babu

.. Petitioner

Vs.

State of Telangana rep., by its Principal Secretary, Transport, Roads & Buildings (S&V) Department, State Secretariat, Hyderabad and others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 09.07.2018

SUBMITTED FOR APPROVAL:

*** HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN**
AND
*** HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?

2. Whether the copies of judgment may be marked to Law Reports/Journals

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

THOTTATHIL B. RADHAKRISHNAN, CJ

*** HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN**
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.. Respondents

! Counsel for the petitioner: Sri K. Satyanarayana Murthy

^ Counsel for the respondents: GP for Transport (TS);
GP for GAD (TS); GP for Transport (AP)

< Gist:

> Head Note:

? CITATIONS:

HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BNLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.6331 OF 2018

ORDER: (per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

1. The petitioner, who is a Motor Vehicles Inspector, presently facing disciplinary proceedings at the hands of the Telangana Government, challenges the rejection of his request for inter-State transfer from that State to the State of Andhra Pradesh.

2. We have heard the Learned Counsel for the petitioner, the Learned Government Pleader for Transport (Telangana) for 1st respondent, the Learned Government Pleader for GAD (Telangana) for 2nd respondent and the Learned Government Pleader for Transport (Andhra Pradesh) for 3rd respondent.

3. The petitioner, following certain surprise checks conducted in certain offices, stands subjected to disciplinary proceedings, details of which we need not have to go into, in this Writ Petition. His request for transfer to State of Andhra Pradesh stands refused by the Government of Telangana, through the proceedings dated 15.02.2018 (Ex.P-1). This means that he will have to continue to be in the employment of the Government of Telangana.

4. The Learned Counsel for the petitioner referred to G.O.Rt. No.180 dated 31.03.2016 (Ex.P-5) under which another employee was transferred and submitted that the material otherwise available would show that the person covered by Ex.P-5 order was also one who was under disciplinary proceedings. On that premise it is argued that the situation is one of hostile discrimination infracting Articles 14 and 16 of the Constitution of India. While

issuing Ex.P-5 order, the State Government is not seen to have taken note of any disciplinary action pending against the employee covered by that order of transfer. We are unable to hold that the said material evidences any conscious decision by the Government of Telangana that all employees who apply for transfer to the State of Andhra Pradesh, would be granted that request even if disciplinary proceedings are pending against that person. Ex.P-5 is of no precedential value even in relation to administrative action as part of governance, to decipher hostile discrimination in the case in hand.

5. The Learned Counsel for the petitioner, thereafter, relied on circular memo No.9940/SPF&MC/2015-2, dated 06.10.2017 (Ex.P-8). That provides, among other things, that employees against whom disciplinary proceedings are pending should not be considered for deputation. This document is referred to by the Learned Counsel for the petitioner to argue that it was only at that point of time, i.e. on 06.10.2017, that pendency of disciplinary proceedings was treated as an embargo against inter-State transfer. Ex.P-8 deals with deputation. It does not deal with any mode of lending or transfer of service which would deprive the employer of the requisite disciplinary control over a delinquent covered by disciplinary proceedings. We are unable to accept the plea and argument on behalf of the petitioner, based on Ex.P-8. We reject it.

6. The employer, who has initiated disciplinary proceedings, should have control over the employment of the delinquent concerned for continuing the disciplinary proceedings. This is the

fundamental principle on which disciplinary proceedings are permitted to continue, although regulated, even after retirement; and for post retiral benefits and post retiral purposes of certain categories as are contemplated to apply in service jurisprudence. In that view of the matter, we do not find any legal entitlement for any employee to insist that, even while facing disciplinary proceedings, the employer could be compelled to provide inter-State transfer, thereby changing the employer and taking the employee out of the clutches of the disciplinary jurisdiction of the current employer for this fundamental reason in law. Any decision to grant inter-State transfer to an employee covered by disciplinary proceedings could be made, only at the volition of the employer. Even that could be had only by also saddling the employee to continue to face disciplinary proceedings, which would also be passed on to the transferee State. To be so transferred, even while covered by disciplinary proceedings, is not a matter of choice to be made by the government servant concerned.

7. The Writ Petition fails and is, accordingly, dismissed.

8. The miscellaneous petitions pending, if any, shall stand closed. No costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

RAMESH RANGANATHAN, J

Date: 09.07.2018.

Note: L.R. copy to be marked.
B/o
MRKR/CS