

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT APPEAL No.711 of 2018

JUDGMENT: (Oral)

(Per Suresh Kumar Kait, J)

Vide the present appeal, filed under clause 15 of the Letters Patent, the appellant-University has assailed order dated 19.03.2018 passed in W.P.No.44761 of 2017 by a learned single Judge of this Court, allowing the writ petition filed by the 1st respondent/writ petitioner.

2. We have heard Shri N. Sriram Murthy, learned counsel appearing on behalf of the appellant-University, Shri Sreenivasa Rao Bodduluri, learned counsel appearing on behalf of the 1st respondent/writ petitioner and perused the material on record.

3. Learned counsel appearing on behalf of the appellant-University submits that the learned single Judge should have held that the transfer of the 1st respondent/writ petitioner was pursuant to transfer orders vide Memo No.25891/Ser.II/A1/2017 dated 08.12.2017 and 22.12.2017 into a vacant post of Associate Professor at Agricultural College, Mahanandi. The 1st respondent/writ petitioner was not transferred into a non-existing post as he was promoted as Professor under Career Advancement Scheme (CAS). The persons those who are promoted under CAS can be posted in any one of the vacant posts of Assistant

Professor/Associate Professor/Professor as per the UGC Regulations under clause 6.3.8 which read as follows:

“CAS promotions being a personal promotion to the incumbent teacher holding a substantive sanctioned post, on superannuation of the individual incumbent, the said post shall revert back to its original cadre.”

4. Learned counsel for the appellant-University further submits that as per the above Regulation, the 1st respondent/writ petitioner was promoted in the Professor cadre under CAS and he has been posted in one of the existing posts of Associate Professor; accordingly, he was posted against the vacant post of Associate Professor at Agricultural College, Mahanandi as per the UGC Regulations. Thus, the 1st respondent/writ petitioner was not transferred to a non-existing post. In such a view, the learned single Judge gravely erred in holding that the 1st respondent/writ petitioner was transferred to a non-existing post.

5. Learned counsel further submits that the Vice Chancellor, being the competent authority, approved the transfer, however, order of transfer has been issued by the Registrar of the University. Therefore, the observation of the learned single Judge, that though Vice Chancellor is the competent authority, however order of transfer has been issued by the Registrar, is contrary to the record.

6. Learned counsel further submits that the learned single judge should have held that there is a sanctioned post of Hon. Director,

Cost of Cultivation Scheme at Headquarters (Guntur) of ANGRAU and, as such, the University has decided that the Cost of Cultivation Scheme to be placed in the Dept. of Agricultural Economics, Agricultural College, Bapatla and Dr.D.V.Subba Rao, Professor, NABARD Chair was kept in-charge till the bifurcation process of the scheme is completed and will act as Hon. Director to look after the routine current duties only.

7. Learned counsel further submits that unless an order of transfer is made with a *mala fide* intention, Courts and Tribunals should not interfere with the same. In support of his above submissions, he relied on the following decisions:

- Rajendra Roy v. Union of India¹
- State of M.P. and another v. S.S. Kourav and others²
- Venkateswarlu Gadde v. Union of India and others³

8. The case of the 1st respondent/writ petitioner is that he worked as Assistant Professor in Agricultural Economics, Palem from 1989 to 1991; he was a Researcher at Rajendra Nagar from 1991 to 1995; he worked as Field Supervisor at Rajendra Nagar between 1995 to 2008; he worked as Assistant Agricultural Economics/Assistant Director/Deputy Director etc., from 2008 to 2013 and he again worked as Field Officer at Rajendra nagar from 2013. Further, he has been working as Principal Scientist

¹ AIR 1993 SC 1236

² (1995) 3 SCC 270

³ 2017 (1) ALD 609 (DB)

(Agricultural Economics) right from 14.03.1993 till date. For all these 34 years, he has been involved in research, study, supervision and monitoring, however, never involved in teaching. On the other hand, the 2nd and 3rd respondents have been working as Dean and Registrar respectively on ad hoc basis for a very long period with extensions of three months each time contrary to the provisions of the Andhra Pradesh Agriculture University Act, 1963. They perceived him as a professional threat as the writ petitioner is more eligible and experienced than them for working in the said posts. This contradiction between him and respondents 2 and 3 grew worse as he questioned the laxity on the part of the administration in securing part of the 'Cost of Cultivation Scheme' of the Government of India, which after the bifurcation in 2014, has been given wholly to Prof. Jayasankar Telangana State Agricultural University, Rajendra Nagar, Hyderabad.

9. As the issue in this appeal is regarding transfer, we have not delved into further details of the 1st respondent/writ petitioner as well as the appellant-University. What we are concerned with is only whether the transfer of the 1st respondent/writ petitioner is under administrative exigency or with a *mala fide* intention on the part of the appellant-University.

10. On a perusal of page No.32 of the material papers filed along with the appeal, it is clear that the 1st respondent/writ petitioner has

been working from 1983 only on research, study, supervision of field staff, Technical and Admn. Head and Planning and Monitoring. The said information depicts that the 1st respondent/writ petitioner has never been posted as a Teacher at any place right from the date of his appointment because he is from research stream.

11. It is not in dispute that the 1st respondent/writ petitioner was transferred along with the post and posted as Hon. Director, 'Cost of Cultivation Scheme', Guntur on 28.08.2017 vice Dr.D.Vishnushankar Rao transferred. Thereafter, vide impugned order dated 08.12.2017, the 1st respondent/writ petitioner was transferred and posted as Professor (CAS) Department of Agricultural Economics, Agricultural College, Mahanandi, vice Dr.K.N.Ravi Kumar transferred.

12. It is also not in dispute that Agricultural College, Mahanandi is an Agricultural Degree College and Dr.K.N.Ravi Kumar remained in the said college for around 10 years. Fact remains that the said Ravi Kumar was posted at the above-noted college when he was Assistant Professor and at the said college itself, he was promoted as Associate Professor and then as a Professor. In the order dated 08.12.2017, it is clearly mentioned that, on relief, Dr.K.N.Ravi Kumar, Professor is transferred and posted as Professor, Department of Agricultural Economics, S.V.

Agricultural College, Tirupati against the vacant post of Associate Professor. The post of Associate Professor is upgraded to that of the post of Professor in Mahanandi College as long as he continues to hold the post.

13. On a perusal of the order dated 08.12.2017, while transferring the 1st respondent/writ petitioner, it is nowhere mentioned that he is transferred with post, whereas the said post was initially Assistant Professor, then upgraded to Associate Professor and finally to Professor till Dr.K.N.Ravi Kumar continued in the said post.

14. It is pertinent to mention here that as per Annexure III at page No.52 of the material papers filed along with the appeal - cadre-wise faculty strength during 2013-14, in Agricultural College, Mahanandi, there is no post of Professor/Principal Scientist. Firstly, the 1st respondent/writ petitioner was transferred on 28.08.2017 to Guntur as mentioned above and thereafter, vide order dated 08.12.2017, to Agricultural College, Mahanandi, in a non-existing post of Professor.

15. It is further pertinent to note that the 1st respondent/writ petitioner made serious allegations against respondents 2 and 3, who are working as Dean and Registrar respectively on ad hoc basis for a very long period with extension of three months each time contrary to the provisions of the Andhra Pradesh Agriculture University Act, 1963. Respondents 2 and 3 perceived the

1st respondent/writ petitioner as a professional threat as he was more eligible and experienced than them for working in the said post. The contradiction between him and respondents 2 and 3 grew worse as he questioned the laxity on the part of the administration in securing part of the 'Cost of Cultivation Scheme' of the Government of India, which after the bifurcation in 2014, has been given wholly to Prof. Jayasankar Telangana State Agricultural University, Rajendra Nagar, Hyderabad. Despite, before the learned single Judge, respondents 2 and 3 have not filed any counter-affidavit to rebut the same even though they were impleaded as such in their individual capacity. The present appeal is filed by the Registrar in his official capacity, not in his individual capacity.

16. We have gone through the decisions relied on by the learned counsel for the appellant-University, wherein it is held that unless order of transfer is passed with *mala fides* or in violation of the Rules of Service and guidelines for transfer, without proper justification, the Tribunals and Courts should not interfere with the order of transfer. We do not dispute the settled legal position.

17. However, in the present case, transfer of the 1st respondent/writ petitioner was made with a *mala fide* intention. Firstly, he was transferred to Guntur on 28.08.2017. Thereafter, within four months of the said order, order dated 08.12.2017 has

been issued posting him to Agricultural College, Mahanandi, in a non-existing post of Professor. It is not disputed by the learned counsel for the appellant-University that Dr.K.N.Ravi Kumar was initially posted as Assistant Professor, then promoted as Associate Professor and finally the said post was upgraded to Professor. The said Ravi Kumar/Professor was transferred with post, which he carried along with. In the order dated 28.08.2017, it is specifically mentioned that transfer of the 1st respondent/writ petitioner is with post, whereas in the order dated 08.12.2017, it is nowhere mentioned as to whether the transfer of the 1st respondent/writ petitioner is in an existing post (with post) or in a non-existing post (without post).

18. Further, it is to be seen that Agricultural College, Mahanandi, is a Degree College. The 1st respondent/writ petitioner has put in 35 years of service in research, study, supervision and monitoring. He never involved in teaching. Moreover, he is going to retire in another 1 ½ year and at the fag end of his career, he is posted to teach undergraduate students. It can, therefore, safely be said that the order of transfer, transferring the 1st respondent/writ petitioner to a non-existing post is nothing but vindictive and passed with a *mala fide* intention.

19. We have perused the original record. The Dean of the College prepared office note on 08.12.2017, the same has passed

through various channels before reaching the Vice Chancellor and finally the transfer order was issued by the Registrar on the same day hastily with ulterior motive. Therefore, the transfer order dated 08.12.2017, having been issued with a *mala fide* intention, cannot be sustained in the eye of law. In that view of the matter, the learned single Judge rightly allowed the writ petition by setting aside the transfer order dated 08.12.2017. Accordingly, we see no reason to interfere with the same.

20. The appeal is bereft of merits and is accordingly dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand only). Out of the said amount, Rs.10,000/- (Rupees Ten Thousand only) shall be paid in favour of the High Court Legal Services Committee and Rs.15,000/- (Rupees Fifteen Thousand only) shall be paid in favour of the 1st respondent/writ petitioner. Further, it is made clear that out of Rs.25,000/- costs, Rs.10,000/- (Rupees Ten Thousand only) shall be paid by the Vice Chancellor of the University out of his pocket.

As a sequel, miscellaneous petitions, if any pending in the appeal, stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

June 28, 2018
MRR