

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.Nos.21134 & 21551 of 2018

COMMON ORDER:

Heard learned counsel for the petitioner and the learned government Pleader for Services-II appearing for the respondents. None appears for respondent Nos.4 and 5 in W.P.No.21551 of 2018 though notice in the Writ Petition was served on them.

2. The issue raised herein relates to the transfer of Senior Assistant in the Medical and Health Department as well as Public Health Department of the State of Telangana.

3. Petitioners are aggrieved by the action of the respondents in affecting their transfers while retaining respondent Nos.4 and 5 in W.P.No.21551 of 2018 in the place where they are employed even though they have completed more than six years of service as Office Bearers contrary to G.O.Ms.No.61 Finance (HRM-I) Department dt.24-05-2018 and Circular Memo No.20914/S.W.I/A2/2012-1 General Administration (SW-I) Department dt.26-06-2012.

4. There was a ban imposed on transfers in the Government of Telangana which came to be lifted only on 15-06-2018 vide G.O.Ms.No.61 Finance (HRM-I) Department dt.24-05-2018.

5. According to the petitioners, the 4th respondent in W.P.No.21551 of 2018 along with others was elected as Office Bearer for three years from 2009-12 for the Telangana Non-Gazetted Officers

Union, Osmania Medical College Unit, Hyderabad and he was also re-elected for the period 2013-15 and for a three year period from February 2016 to February 2019.

6. Petitioners contend that as per G.O.Ms.No.61 dt.24-05-2018, standing instructions on transfers of Office Bearers of employees' union recognized by the Government of Telangana, in Circular Memoes dt.26-06-2012 and 30-06-2012, were directed to be followed; that as per Circular Memo dt.26-06-2012, Office Bearers of recognized service associations were protected for only period of six years, that too, at District/Divisional/Taluk Head Quarters; and Memo dt.30-06-2012 even permitted the transfers of Office Bearers of recognized service associations during the six years' period on administrative ground after recording reasons.

7. Petitioners contend that Osmania College, where the 4th respondent in W.P.No.21551 of 2018 is working, could not be treated as a Unit as was done by the respondents in the first place and since he had anyway completed six years at that place, he could not be retained there contrary to the Memoes dt.26-06-2012 and 30-06-2012. Petitioners further contend that another Memo No.7782/B2/2013 dt.08-05-2013 was issued by the then Government of Andhra Pradesh Health, Medical and Family Welfare Department which provided protection from transfer only to persons holding posts of President, Secretary and Treasurer; and the 4th respondent, who was only President of the Osmania Medical College Unit and not the President

of the Telangana Non-Gazetted Officers Union, cannot therefore get any benefit.

8. Petitioners further contend that the 5th respondent in W.P.No.21551 of 2018 is also retained at the Osmania Medical College, Hyderabad, though she is elected as Secretary (Women) of the Central Union particularly when there is a General Secretary to the said union, who only could be considered; that apart, even the 5th respondent had been elected like the 4th respondent for three years from 2009-12 and again from 2013-15 and again from 2016-19 and has completed more than six years at the said place.

9. Learned counsel for the petitioner further contended that the respondents simply accepted whatever was informed to them by the Telangana Non-Gazetted Officers Union (Central), Hyderabad, in its letter No.50/TNGOs/CG/2018 dt.12-06-2018 addressed to the Director of Public Health and Family Welfare, without verifying whether the persons mentioned by the said officers' union are entitled to the benefit of the retention or not individually by applying their mind to G.O.Ms.No.61 dt.24-05-2018 as well as the Circular Memoes dt.26-06-2012 and 30-06-2012.

10. In the counter affidavit filed by the respondents, it is contended that there was process of on line counselling.

11. If so, how the respondents, without verifying the claims of the respondent Nos.4 and 5 in W.P.No.21551 of 2018 about the

period of service already rendered by them at the place where they were working, blindly relied upon the request of the Telangana Non-Gazetted Officers' Union made to the Director of Public Health and Family Welfare, is not explained.

12. It is further stated in the counter that responsibility lies with the said union to inform the Director of Public Health and Family Welfare the period of serving as Office Bearers, and because of time constraint and heavy work load, the Director had no option but relied on what was informed by the said union.

13. This is a clear admission on abdication of responsibility by the Director of Public Health and Family Welfare and outsourcing of decision making by him to the Telangana Non-Gazetted Officers Union, which is clearly impermissible in law. It was the duty of the Director of Public Health and Family Welfare to verify whether the details furnished to him by the Telangana Non-Gazetted Officers' Union, in its letter dt.12-06-2018, are factually correct or not, more particularly, whether the persons mentioned therein are in fact eligible for retention or not.

14. It is stated that as regards the 5th respondent in W.P.No.21551 of 2018, her name was mentioned in the list submitted by the officers' union as their Office Bearer and so she was given benefit of retention. Obviously, the Director had not verified whether the post which the 5th respondent in W.P.No.21551 of 2018 was

holding was such as would entitle the 5th respondent to the benefit of retention.

15. Learned Government Pleader for Services-II has cited before me judgment in **State of U.P. and others Vs. Gobardhan Lal¹**, wherein the Supreme Court observed as under:

“7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

¹ (2004) 11 S.C.C. 402

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

16. The said decision in fact deals with power of interference by a Court with the transfer of an employee affected by the employer and not with cases of retention of employees, arbitrarily, by the employer, contrary to norms laid down by the Government itself. More so, when the Director of Public Health and Family Welfare had totally abdicated his responsibility and outsourced his decision making to the Telangana Non-Gazetted Officers' Union, and accepted as gospel truth whatever was mentioned in the letter dt.12-06-2018 addressed by the said Association.

17. Accordingly, the both Writ Petitions are allowed with costs of Rs.1,000/- (Rupees One Thousand only) to be paid to the each of the petitioners by 3rd respondent; the proceeding dt.20-06-2018 retaining the respondent Nos.4 and 5 at the place where they were working on the said date while simultaneously transferring the petitioners is declared as illegal, arbitrary and violative of Article 14 of the Constitution of India; and the 3rd respondent is directed to

consider the matter afresh both with regard to the postings of respondent Nos.4 and 5 as well as the petitioners within six weeks from the date of receipt of copy of this order.

18. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27-11-2018

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