

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE T. AMARNATH GOUD

W.A.No. 1170 of 2018

JUDGMENT:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ appeal is preferred challenging the order dated 30.08.2018 in W.P.No. 20639 of 2018 passed by learned Single Judge of this Court whereby the writ petition filed by the 1st respondent herein, has been allowed.

The case of the 1st respondent – writ petitioner is that he was posted at Panchayat Raj Sub-Division, Kothur, Ranga Reddy District and he assumed charge on 11.10.2016 and was working as Deputy Executive Engineer. However, the 3rd respondent issued proceedings dated 15.06.2018 transferring and posted him as Personal Assistant to Superintending Engineer, at PR Circle, Mahaboobnagar. His further case is that he has not completed five years of stay at Kothur, therefore, he was not subjected to transfer counseling process. The place occupied by him in Kothur is not shown as vacancy and no person opted this place. While so, after completion of counselling for transfer, the 3rd respondent, by independent proceedings, transferred the 1st respondent to Mahaboobnagar as Personal Assistant to Superintending Engineer and the appellant is posted at Kothur.

The case of the appellant is that he has not opted Kothur, but opted Abdullahpurmet where there is a clear vacancy, and in fact, in the transfer exercise, the appellant's request to transfer to Abdullapurmet was accepted, however later, the 3rd respondent by proceedings dated 15.06.2018 transferred the 1st respondent to Mahabubnagar and the appellant to Kothur.

The present appeal is filed on the ground that the learned Single Judge of this Court has failed to see that the post of Deputy Executive Engineer in the office of the Superintendent Engineer, PR Circle, Mahaboobnagar is a crucial post and the competent authority felt that the appellant is suitable to be posted, but the competent authority transferred and posted the 1st respondent in the said post. Thus, the learned Single Judge has failed to appreciate that the transfer is an incident of service and the scope of interference by the Court is very limited.

To buttress his contention the learned counsel for the appellant has relied upon the judgment of the Apex Court in the State of U.P. and Others v. Gobardhan Lal¹ wherein it is held as follows:

“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

¹ (2004) 11 SCC 402; 2004 Supreme (SC) 360

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 administration 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.”

It is not in dispute that the learned Single Judge has discussed the judgment cited supra, and moreover, the appellant, in transfer proceedings, though opted to work at Abdullahpurmet, he has been posted to Kothur, and in pursuance of the transfer proceedings dated 15.06.2018, he joined duty on 19.06.2018 at Kothur and has been working over there, but by virtue of the impugned order passed by this Court in W.P.No. 20639 of 2018, the appellant has to be accommodated in the existing vacancy at Abdullahpurmet.

Now, the grievance of the appellant is that since he has already joined and working at Kothur from 19.06.2018, he has to leave the accommodation taken on rent at Kothur and take another accommodation at Abdullahpurmet which will be an unnecessary exercise, and if he continued at Kothur, it will not cause prejudice to the 1st respondent.

It is not in dispute that the appellant opted Abdullahpurmet. It is also undisputed that the impugned order passed by the learned Single Judge is not in any way illegal or perverse. The learned Single Judge has only held that the transfer proceedings dated 15.06.2018 of the 3rd respondent are illegal inasmuch as the appellant genuinely opted Abdullahpurmet and by virtue of the impugned order dated 30.08.2018 in W.P.No. 20639 of 2018, he will have to be posted at Abdullahpurmet, however he has been transferred to Kothur.

In view of the above, we are of the considered opinion that the impugned order passed by the learned Single Judge is perfectly justified and the same cannot be interfered with because in no way the appellant is prejudiced.

Hence, we find not merit in the writ appeal and the same is accordingly dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

07.09.2018

SURESH KUMAR KAIT, J

bcj

T. AMARNATH GOUD, J