

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.1284 OF 2018

J U D G M E N T

(Per Sri Justice Sanjay Kumar)

This appeal under Clause 15 of the Letters Patent arises out of the interlocutory order dated 19.09.2018 passed by a learned Judge of this Court in I.A.No.1 of 2018 in W.P.No.32530 of 2018. The appellant is the petitioner in the said writ petition. Therein, he assailed his transfer, effected *vide* G.O.Rt.No.135, Environment, Forest, Science and Technology (For.II) Department, dated 06.09.2018, and the consequential orders dated 07.09.2018 of the Principal Chief Conservator of Forests (Head of Forest Force), State of Telangana, and the District Forest Officer, Mahabubnagar, respectively. He sought a consequential direction to the authorities to retain and continue him in service as Forest Range Officer, Mahabubnagar Range. He filed I.A.No.1 of 2018 in the said writ petition seeking suspension of the impugned G.O. dated 06.09.2018 and the consequential proceedings dated 07.09.2018 and to retain and continue him as Forest Range Officer, Mahabubnagar Range. By the order dated 19.09.2018, presently under appeal, the learned Judge observed that he did not see any illegality in the transfer of the petitioner warranting interference at the interlocutory stage and dismissed the I.A. Aggrieved thereby, the writ petitioner is in appeal.

Heard Sri P.Suresh Reddy, learned senior counsel appearing for Sri C.Sai Reddy, learned counsel for the appellant, Sri D.Prakash Reddy, learned senior counsel representing Sri Gundrati Raman Goud, learned counsel for the fifth respondent, and the learned Government Pleader for Forests, State of Telangana, for the authorities.

The appellant was promoted as a Forest Range Officer under proceedings dated 16.03.2018 of the Principal Chief Conservator of Forests (Head of Forest Force), State of Telangana. He was posted as Forest Range Officer, Mahabubnagar Range, *vide* proceedings dated 22.03.2018. He joined duty as such on 31.03.2018. He was however not permitted to discharge his functions, constraining him to file W.P.No.14058 of 2018 before this Court. Pursuant to the interim order granted therein, he was permitted to discharge his duties and he started functioning from May, 2018. While so, G.O.Rt.No.135 dated 06.09.2018 came to be issued and it reads as under:

‘O R D E R:

Government hereby transfer Sri A.Veerendra Babu, Forest Range Officer, Anti Pouching Squad/Flying Squad, Mannanoor, Nagarkurnool district and post as Forest Range Officer, Mahabubnagar as a special case considering his services and work experience useful for the Haritha Vanam – Mayuri Nursary ongoing works, as well as Mahabubnagar division administration vice Sri Chandraiah, Forest Range Officer, Mahabubnagar transferred in relaxation of the ban on orders on transfers imposed vide G.O. read above.

2. The Principal Chief Conservator of Forests is directed to post Sri Chandraiah, Forest Range Officer in any one of the vacant post in Mahabubnagar district other than Mahabubnagar Division.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

AJAY MISRA
SPECIAL CHIEF SECRETARY TO GOVERNMENT (FAC)’

Based on this G.O., the Principal Chief Conservator of Forests issued proceedings dated 07.09.2018 giving effect to the transfer and requesting the appellant to handover charge of the post of Forest Range Officer, Mahabubnagar, to the fifth respondent and report for further orders. The District Forest Officer, Mahabubnagar, accordingly issued proceedings dated 07.09.2018 instructing the appellant to handover charge of his post immediately to the fifth respondent and get himself relieved so that he could report before the Principal Chief Conservator of Forests (Head of Forest Force), State of Telangana, for further orders.

Assailing these orders, the appellant filed W.P.No.32530 of 2018. In the affidavit filed in support thereof, he stated that his services had been utilised in the Forest Department since 27 years and he had also received several awards. The appellant further stated that the fifth respondent was given posting in the Anti-Poaching Squad/Flying Squad, Mannanur, only in September, 2017, upon promotion, and he had not completed one year. He alleged that only in order to accommodate the fifth respondent in his post, at the behest of the local M.L.A., the impugned transfer order had been passed.

Perusal of the order under appeal reflects that the learned Judge called for the record and perused the same. Having found the letter of the M.L.A. requesting the transfer of the appellant and posting of the fifth respondent in his place, the learned Judge opined that the same was not an illegal measure in the light of the judgment of the Supreme Court in MOHD. MASOOD AHMAD V/ s. STATE OF U.P.¹ It is on the strength of this reasoning that the learned Judge opined that there was no illegality in the transfer of the appellant, leading to the dismissal of the I.A.

The original record was produced before us. Perusal thereof reflects that the M.L.A. of 74-Mahabubnagar Constituency addressed letter dated 04.09.2018 to the Minister for Forest & Environment, Government of Telangana, wherein he stated as under:

'I would like to bring to your kind notice Sri Chandraiah who is working as a Forest Range Officer at Mahabubnagar is unable to copeup the work at Urban Lung Space, Harith Vanam Mayuri Nursary Appannapalli and other departmental activities particularly in my constituency is not upto the mark.

Further it is to inform you that Sri A.Veerendra Babu who is working as a Forest Range Officer in Anti Pouching Squad/Flying Squad at Mannanur, Nagarkurnool District is well known to me and

¹ 2007 (8) SCC 150

he well aware about the Urban Lung Space and other departmental activities particularly in my constituency his services are very useful.

Hence I request the Hon'ble Minister for Forest, and in the interest of Haritha Vanam – Mayuri Nursary on going works, as well as Mahabubnagar Division Administration, Sri A.Veerendra Babu, FRO Anti Pouching Squad/Flying Squad Mannanoor of Nagarkurnool District may be posted Mahabubnagar in place of Sri.Chandraiah FRO as special case, and Sri.Chandraiah FRO may shift other than the Mahabubnagar Division in any one of the vacant post of Mahabubnagar District.'

A similar letter was also forwarded by the M.L.A. to the Chief Minister's Office and the Special Secretary to the Chief Minister informed the Special Chief Secretary, EFS&T Department, to take necessary action. It is relevant to notice that though the local M.L.A. found that the appellant was unable to cope with the work and his letter in this regard is dated 04.09.2018, the appellant was given a cash reward of Rs.250/- by the District Forest Officer, Mahabubnagar, under proceedings dated 14.08.2018, for rendering meritorious service in detecting offences and also collecting considerable amount of 'C' Fees during the year 2017-18. No specific instance was cited by either the local M.L.A. in his letter or by the learned Government Pleader for Services before us in evidence of any inefficiency or inability of the appellant to cope with the work of a Forest Range Officer at Mahabubnagar Range. It is also relevant to note that the local M.L.A. did not stop short at complaining about the appellant but went on to state that the fifth respondent was well known to him and was well aware of departmental activities particularly in his constituency. There is no indication as to how the services of the fifth respondent would be particularly useful in the constituency of the M.L.A. as there is no evidence of his having worked with the M.L.A. earlier nor were any such details cited by the M.L.A. in his letter. It is therefore clear that the local M.L.A.

wanted a man of his choice and to his liking to be posted as the Forest Range Officer in Mahabubnagar Range.

In MOHD. MASOOD AHMAD¹, the Supreme Court was dealing with a transfer made on the recommendation of an M.L.A. Observing that transfer is an incident of service and that judicial interference therewith should be in very rare cases, the Supreme Court concluded that it should not be interfered with ordinarily by a Court of law unless it is found that the order is either *malafide* or that the service rules prohibit such transfer or that the authorities who issued orders were not competent to pass the same. It may also be noticed that in that case, the transfer at the behest of the local M.L.A. was held to be justified in view of the complaints made by the people against the said officer and in those circumstances; the Supreme Court observed that it was open to a people's representative to air their grievances. The Supreme Court further observed that there can be no hard and fast rule that every transfer at the instance of an MP or MLA would be vitiated and it would all depend on the facts and circumstances of the individual case.

Earlier, in B.VARADHA RAO V/ s. STATE OF KARNATAKA², the Supreme Court held that in the absence of an administrative exigency and if it is found that the transfer is made on extraneous considerations, interference is warranted. Thereafter, in STATE OF U.P. V/ s. SIYA RAM³, the Supreme Court held that unless a transfer is shown to be *malafide* or in violation of the statutory provisions, the same would not require interference by the Court. Similar was the edict laid down by the Supreme Court in STATE OF U.P. V/ s. GOBARDHAN LAL⁴. It may also be noted that in the latter judgment, the Supreme Court held that

² AIR 1986 SC 1955

³ 2004 (7) SCC 405

⁴ 2004 (11) SCC 402

allegations of *malafide* must be based on concrete material and must inspire the confidence of the Court.

This being the legal position, it may be noted that the appellant as well as the fifth respondent were promoted and posted as Forest Range Officers recently. The appellant was promoted to the said post on 16.03.2018 while the fifth respondent was promoted in September, 2017. They were both allotted their places of posting as Forest Range Officers upon such promotion. In terms of the service rules, their transfer from the existing place of posting would not arise in such a short period in the ordinary course. Therefore, the present transfer was only at the behest of the local M.L.A. We have already noted the contents of the local M.L.A.'s letter which indicate in no uncertain terms that he not only voiced a complaint against the appellant but specifically asked for the posting of the fifth respondent, who was stated to be well known to him. In the light of this letter, it is patent that the transfer was effected only at the behest of the political executive and not on the strength of any complaints from the people. Interference by the political executive in routine matters of administration may be warranted in just circumstances but no such circumstance is cited in the case on hand warranting the local M.L.A. asking for the transfer of the appellant and posting of the fifth respondent in particular. This was clearly a case of nepotism as the local M.L.A. wanted a person 'well known to him' and of his liking to be posted. As already pointed out, no instances have been cited before us as to how the appellant fell short in coping with the duties of a Forest Range Officer in Mahabubnagar Range. The *malafides* underlying the transfer are therefore writ large. The learned Judge failed to take note of these aspects while applying the broad principle laid down in MOHD. MASOOD AHMAD¹ to

the effect that a people's representative can ask for transfer of a Government employee in the light of the grievances put forth by affected people. That was not the situation in the case on hand.

Though Sri D.Prakash Reddy, learned senior counsel, would inform this Court that the order of transfer has already been given effect to, we are of the opinion that in the light of the aforestated facts, the said transfer, *prima facie*, cannot be sustained even if it has been acted upon.

The writ appeal is accordingly allowed setting aside the order dated 19.09.2018 passed by the learned Judge in I.A.No.1 of 2018 in W.P.No.32530 of 2018. There shall be interim suspension of G.O.Rt.No.135 dated 06.09.2018 and the consequential proceedings dated 07.09.2018. The respondent authorities shall continue the appellant as a Forest Range Officer in Mahabubnagar Range until the disposal of the writ petition or till normal transfers are undertaken, whichever is earlier.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

12TH NOVEMBER, 2018
PGS