

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.4572 of 2017 in WPMP.No.43078 of 2017 in
WP.No.34648 of 2017

And

WP.No.34648 of 2017

COMMON ORDER :

The petitioner has filed this Writ Petition assailing the Memo No.ED (HRD&Plg) DS(P) / AS(P) / PO.ES.1 / JPO.1 / 4001332 / 17 dt.09.10.2017, issued by the 2nd respondent transferring the petitioner (who is working as Assistant Divisional Engineer at Simhachalam) to Markapur in Nellore District.

2. The counsel for petitioner contends that there was a general transfer order issued on 24.06.2017 pursuant to which petitioner joined as Additional Divisional Engineer at Simhachalam, and according to guidelines for general transfers issued vide TOO (Addl. Secy-Per) Ms.No.450 dt.17.05.2017 (which was later amended on 19.06.2017), transfer orders are not to be issued after 24.06.2017 except on vigilance / disciplinary grounds.

3. The petitioner further contends that the impugned transfer order is *mala fide* and is contrary to the above guidelines, and the petitioner could not have been transferred from Simhachlam where he had started working only on 24.06.2017 under the impugned order dt.09.10.2017. The petitioner specifically contended that the transfer order is punitive in nature and was made on the basis of the recommendation of the Superintending Engineer, OMC

Visakhapatnam on the ground that certain allegations / complaints were received against the petitioner, and therefore, the said order cannot be sustained.

4. The counsel for petitioner relied upon the decision of the Supreme Court in **Somesh Tiwari v. Union of India and others**¹.

5. On 16.10.2017, in WPMP.No.43078 of 2017 in WP.No.34648 of 2017, this Court suspended the impugned order on the ground that the transfer appeared to be contrary to the guidelines framed by the A.P. Transco, and also arbitrary.

6. WVMP.No.4572 of 2017 is filed to vacate the order dt.16.10.2017 in WPMP.No.43078 of 2017 in WP.No.34648 of 2017.

7. In the vacate stay application / counter-affidavit, the respondent nos.2 to 6 have taken a stand that petitioner was transferred to Markapur based on the report of the Superintending Engineer, OMC, Visakhapatnam on the allegation / complaint submitted by certain employees in order to maintain discipline among the employees in the larger interest of the organization.

8. The said recommendation of the Superintending Engineer dt.29.08.2017, which was referred to in reference no.3 in the impugned order of transfer, specifically refers to three complaints made against the petitioner, and therefore, it is clear that the transfer

¹ Civil Appeal No.7308 of 2008 dt.16.12.2008

of petitioner from Simhachalam to Markapur is only as a measure of punishment and not on administrative grounds.

9. Though the learned Standing Counsel for A.P. Transco, appearing for respondent nos.2 to 6, placed reliance on a decision of the Supreme Court in **Rajendra Singh and others v. State of Uttar Pradesh and others**² and **S.C. Saxena v. Union of India**³, to support the action taken by respondent nos.2 to 6, I am of the opinion that the said decision would apply only if the transfer is based on administrative grounds.

10. However, in **Somesh Tiwari** (1 supra), the Supreme Court categorically held as under :

“19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law.

20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground, i.e., on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

² (2009) 15 SCC 178

³ (2006) 9 SCC 583

11. This legal position is not disputed by the learned Standing Counsel for respondent nos.2 to 6.

12. In this view of the matter, WVMP.No.4572 of 2017 is dismissed, and the order dt.16.10.2017 passed in WPMP.No.43078 of 2017 in WP.No.34648 of 2017 is made absolute.

13. Accordingly, WP.No.34648 of 2017 is allowed. The memo dt.09.10.2017, insofar as petitioner is concerned, is set aside. The respondents are directed to continue the petitioner as A.D.E/Lines/Simhachalam, and strictly adhere to the guidelines framed by them. No order as to costs.

14. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01.02.2018

Ndr/*