

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

WRIT APPEAL NO.1647 OF 2018

J U D G M E N T
(Per Sri Justice Sanjay Kumar)

Sri Venkateswara Veterinary University, Tirupati, and its constituent NTR College of Veterinary Science, Gannavaram, Krishna District, respondents 1 to 3 in W.P.No.35579 of 2018, are in appeal aggrieved by the interim order dated 14.11.2018 passed by a learned Judge of this Court in I.A.No.1 of 2018 filed therein. The said writ petition was filed by the first respondent. Her prayer in I.A.No.1 of 2018 was to direct the appellant-University to implement the order dated 30.07.2018 and the letter dated 29.08.2018 of the State of Andhra Pradesh and to pay her salaries from June, 2018, onwards pending disposal of the writ petition.

By the order under appeal, the learned Judge granted an interim direction as prayed for. The reasons for grant of the said interim direction, as set out in the order, are as follows:

'Having regard to clause (6) of the proceedings No.286/SC/2007 dt.30-07-2007 issued by 1st respondent University stating that transfers shall be as per a policy decided by the University based on the orders of the State Government issued from time to time, and since the State Government's policy contained in G.O.Ms.No.54 Finance (HR.I-PLG. & Policy) Department dt.02-05-2018 permitted transfers only on certain contingencies, which do not apply to the petitioner, *prima facie* the 5th respondent had jurisdiction to pass the order dt.29-05-2018 keeping in abeyance the transfer orders issued by 1st respondent on 23-05-2018 including the transfer of petitioner.'

The facts are as follows: The appellant-University effected general transfers of its teaching staff *vide* Memo No.2500/Services.I/2018 dated 23.05.2018. Thereunder, as many as 42 Teachers working in various constituent colleges of the appellant-University were transferred. The first

respondent-writ petitioner figured at Serial No.8 in this list of transferred employees and she was transferred from NTR College of Veterinary Science, Gannavaram, Krishna District, to the College of Veterinary Science at Proddatur, Anantapur District. The Memo made it clear that all the posts to which Career Advancement Scheme (CAS) promotees were posted would be deemed to have been upgraded to the respective cadres that they were holding with effect from the date of joining till such time they continued in those posts. Sri P.V.S.S.S.Rama Rao, learned counsel for the first respondent-writ petitioner, does not dispute the fact that his client is an Assistant Professor who was given the benefit of CAS and is presently working in the scale of a Professor. She would therefore be covered by the aforestated rider included in the Memo.

At that stage, the Principal Secretary to the Government (FAC), Animal Husbandry, Dairy Development & Fisheries (AH-II) Department, Government of Andhra Pradesh, addressed letter dated 29.05.2018 to the Registrar of the appellant-University. Perusal of this letter demonstrates that, basing upon a representation made by the President, Teachers Association, NTR College of Veterinary Science Teachers Association, Gannavaram, the Government requested the appellant-University to examine it and to keep the transfer orders in abeyance until further orders. However, one day prior to the issuance of the aforestated letter by the Government, the appellant-University relieved the first respondent-writ petitioner from her post at NTR College of Veterinary Science, Gannavaram, under Memo dated 28.05.2018, upon a joining report being submitted by Dr.M.Pratap Singh Tomer, Assistant Professor, who was transferred to NTR College of Veterinary Science, Gannavaram, in her place.

By letter dated 30.05.2018, the appellant-University informed the Government that it had adopted the general transfer policy for teaching and non-teaching staff under the proceedings dated 22.02.2018, after due approval by the Board of Management of the University, *vide* resolution dated 27.01.2018, and after conducting counselling for teaching staff, duly giving them an opportunity to exercise options, the general transfers were issued under the Memo dated 23.05.2018. It was further stated that the Teachers Association of NTR College of Veterinary Science, Gannavaram, had submitted representation dated 23.05.2018 stating that spouse cases were not considered, whereupon the said representation was examined in detail and modified transfer and posting orders were issued on 26.05.2018. The Registrar of the University further stated that transfer of teaching staff was done keeping in view the requirements and exigencies at different establishments of the University and the said transfer orders had been implemented to a great extent. As most of the teaching staff had been relieved and joined at the place of posting or were in transit availing the permissible joining time, he asserted that keeping in abeyance the said transfer orders would result in chaos. He further stated that the representation of the Teachers Association of NTR College of Veterinary Science, Gannavaram, regarding the applicability of G.O.Ms.No.54, Finance (HR.I-PLG & Policy) Department, dated 02.05.2018, had been examined carefully and it was found that the transfer guidelines prescribed in the said G.O. were not applicable to the teaching staff of higher education and therefore, the contention of the Teachers Association in that regard was not tenable. He cited the particulars indicating severe shortage of faculty at the College of Veterinary Science at Proddatur and stated that the situation did not warrant keeping the transfer orders in abeyance. He further stated that

any employee having a valid and genuine grievance could make a representation to the University for consideration as per its transfer policy. He ended the communication by stating that it was not practically plausible and feasible to keep the transfer orders in abeyance at this juncture as it would seriously jeopardize the academics, farm research and the administration of the University.

Having received this communication, the Principal Secretary, Animal Husbandry, Dairy Development & Fisheries (AH-II) Department, Government of Andhra Pradesh, addressed letter dated 30.07.2018 to the Registrar of the University. Thereunder, the Government referred only to the case of the first respondent-writ petitioner in the context of her representation dated 14.06.2018 and stated that the whole issue of transfers effected by the appellant-University was under examination of the Government and the Registrar was requested to retain the first respondent-writ petitioner in the same post where she was working before issuance of the transfer orders.

It is clear from the aforestated letter that the general instructions to keep the transfer orders in abeyance given under the letter dated 29.05.2018 stood narrowed down to the case of the first respondent-writ petitioner alone. It appears that the Government again addressed a letter on 02.08.2018 to the University but the said letter is not placed on record. After receipt of the aforestated letter, the Registrar of the University addressed letter dated 16.08.2018 to the Government referring to the case of the first respondent-writ petitioner and stating that as per the transfer orders, Dr.M.Pratap Singh Tomer, Assistant Professor, was relieved at the College of Veterinary Science, Proddatur, on 26.05.2018 and reported at NTR College of Veterinary Science, Gannavaram, on the forenoon of 28.05.2018. Consequent upon his joining, the first respondent-writ petitioner stood

relieved on the said day. He therefore stated that as the abeyance order dated 29.05.2018 was passed after the aforesaid developments, the request of the Government to retain the first respondent-writ petitioner in the same post could not be considered by the University. He again requested the Government to revoke the order keeping the transfer orders in abeyance.

By letter dated 29.08.2018, the Principal Secretary, Animal Husbandry, Dairy Development & Fisheries (AH-II) Department, Government of Andhra Pradesh, having referred to the earlier correspondence, again requested the Registrar of the appellant-University to retain the first respondent-writ petitioner and one Dr.N.Dhanalakshmi, Professor, in the same posts where they were working before issuance of the transfer orders, until final orders were issued by the Government. The Registrar replied, *vide* letter dated 26.09.2018, informing the Government that in the circumstances, the request of the Government to retain the first respondent-writ petitioner and Dr.N.Dhanalakshmi, Professor, in the same posts where they were working prior to their transfer could not be considered. He further stated that three and a half months had elapsed since the transfer orders were kept in abeyance and requested that the abeyance orders may be revoked immediately in the larger interest of the University.

At this stage, it may be noted that Sri Venkateswara Veterinary University Teachers (Manner of Appointment) Statutes, 2007 were framed by the appellant-University under Proceedings No.286/SC/2007 dated 30.07.2007. Statute 6 in these Statutes, dealing with 'Transfer Policy', weighed with the learned Judge while granting the interim order. This Statute states that transfers shall be as per the policy decided by the University based on the orders of the State Government. Be it noted that this Statute does not prescribe that every order passed by the State Government

would *per se* be applicable to the University. However, the learned Judge brought in the State Government's policy contained in G.O.Ms.No.54 dated 02.05.2018 on the strength of this Statute. Perusal of the said G.O. reflects that it was issued by the Government to ensure right placement of employees to secure optimum productivity and commitment to furtherance of the Government's development objectives. Significantly, the exceptions clause in the said G.O. categorically stated that the guidelines prescribed thereunder would not apply to teaching staff of School Education, Higher (Intermediate and Collegiate) Education, Technical Education and Residential Institutions etc. It is therefore clear that this G.O. had no applicability to the appellant-University's teaching staff as none of them would be involved in furtherance of the Government's development objectives and that apart, teaching staff was specifically excluded under the exceptions clause. The learned Judge therefore erred in construing Statute 6 to mean that every Government order would be automatically binding on the appellant-University and in applying the provisions of G.O.Ms.No.54 dated 02.05.2018 to the case on hand on the strength thereof.

Be it noted that transfer is an incidence of service (*See TUSHAR D BHATT V/ s. STATE OF GUJARAT*¹). It is not open to an employee to seek posting or retention at a particular place when his transfer is effected by the employer on administrative grounds or exigencies. In *PUBLIC SERVICES TRIBUNAL BAR ASSOCIATION V/ s. STATE OF U.P.*², the Supreme Court observed that transfer orders should normally not be interfered with by the Courts. In *KENDRIYA VIDYALAYA SANGATHAN V/ s. DAMODAR PRASAD PANDEY*³, the Supreme Court cautioned that unless a transfer

¹ (2009) 11 SCC 678

² (2003) 4 SCC 104

³ (2004) 12 SCC 299

order was found to be arbitrary or vitiated by *malafides* or was in violation of the operative guidelines, interference would not be warranted.

Learned Government Pleader for Animal Husbandry, State of Andhra Pradesh, would rely upon Section 8 of Sri Venkateswara Veterinary University Act, 2005 (*for brevity*, 'the Act of 2005') to justify the interference of the Government in these transfers. However, Section 8(1) of the Act of 2005 deals with 'Visitation' and states that the Government shall have the right to cause an inspection to be made of the affairs and properties of the University or any College or Institution maintained by it and to cause an enquiry to be made in respect of any matter connected therewith. Section 8(2) states that before causing such an inspection or enquiry, intimation should be given to the University, which would be entitled to have its nominee or nominees at such inspection or enquiry and to make representations in regard thereto. Section 8(3) provides that the Government should forward to the Board of Management of the University a copy of the report of inspection or enquiry for expressing its views and on receipt thereof, the Government may tender such advice or give such direction as it considers necessary, and fix a time limit for action to be taken by the Board of Management in that regard.

The procedure to be followed as set out in Section 8 clearly shows that the abeyance orders passed by the Government on 29.05.2018 cannot be traced to this statutory provision. It appears that the Government blindly issued the abeyance orders in the first instance on a general note but its later correspondence clearly shows that the abeyance orders were aimed at protecting particular individuals, including the first respondent-writ petitioner. When the Government did not follow the due procedure as set out in Section 8 of the Act of 2005, its interference in the transfers effected by the appellant-University cannot be countenanced.

Though Sri P.V.S.S.S.Rama Rao, learned counsel for the first respondent-writ petitioner, would state that some of the transferred employees are still being retained at their original locations, Sri Y.V.Ravi Prasad, learned senior counsel appearing for Sri Y.V.Anil Kumar, learned counsel for the appellant-University, would inform this Court that only due to deference to the State Government, the appellant-University did not give effect to those transfers which had not been implemented by the date of the abeyance orders. In any event, we are of the opinion that the Government had no right or power to interfere in the transfers effected by the appellant-University in the manner that it did. The same was obviously motivated by extraneous considerations.

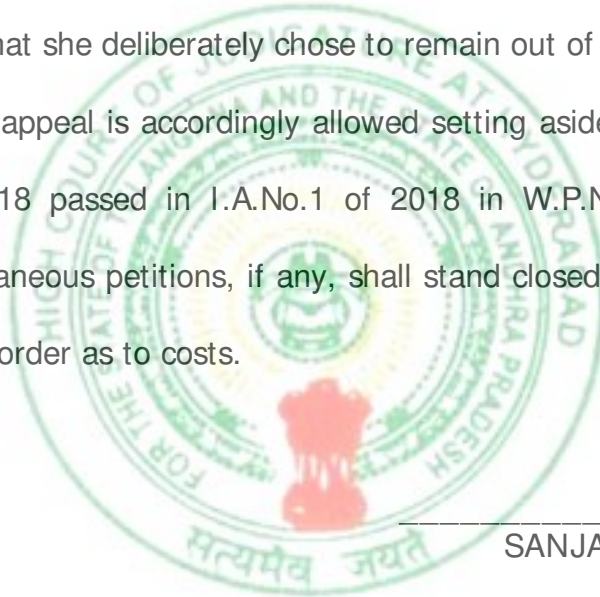
The reasons cited by the first respondent-writ petitioner for retention at Gannavaram were that her husband was working in a private agency at Hyderabad, which would be closer to Gannavaram than Proddatur; that she was suffering from rudimentary bilateral cervical ribs, whereby long distance travel would create complications; that her daughter was staying with her and studying B.D.S. final year; and that a Research Scholar under her guidance was in the process of submitting her thesis. None of these reasons were justifiable ones, warranting interference by the Government at her behest.

In that view of the matter, the learned Judge was not justified in granting an interim direction requiring the appellant-University to implement and abide by the wholly unwarranted communications of the Government, bereft of jurisdiction, and to pay salaries to the first respondent-writ petitioner from June, 2018.

It may be noted that the first respondent-writ petitioner claims that she was on leave on 28.05.2018 and therefore, she could not have been

relieved from the post at Gannavaram. However, once the transfer order was issued on 23.05.2018, it was not open to any employee to cling on to the post by claiming that she went on leave and was not relieved therefrom. It is not in dispute that the substitute Assistant Professor who was transferred from Proddatur submitted his joining report to the college at Gannavaram on 28.05.2018 and therefore, the question of the first respondent-writ petitioner remaining at the said college thereafter did not arise. As she herself chose not to abide by the transfer order and join at Proddatur, having sought political intervention in the matter, the first respondent-writ petitioner cannot be allowed to take advantage of her own actions and seek payment of salary for the period that she deliberately chose to remain out of service.

The writ appeal is accordingly allowed setting aside the interim order dated 14.11.2018 passed in I.A.No.1 of 2018 in W.P.No.35579 of 2018. 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

26th DECEMBER, 2018

PGS