

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.44761 OF 2017

ORDER :

Both the learned counsel state that since pleadings are complete, the writ petition itself can be disposed of, as such, the same is being disposed of after hearing both the counsel.

It is the case of the petitioner that he worked as Assistant Professor in Agricultural Economics, Palem from 1989 to 1991; that he was a Researcher at Rajendra Nagar from 1991 to 1995; that he worked as Field Supervisor at Rajendra Nagar between 1995 to 2008; that he worked as Assistant Agricultural Economics/Assistant Director/Deputy Director etc. from 2008 to 2013, that he again worked as Field Officer at Rajendra Nagar from 2013, and that he is working as Principal Scientist (Agricultural Economics) right from 14.03.1983 till date. For all these 34 years he has been involved in research, study, supervision of field staff, technical administration and planning and monitoring. He never involved in teaching; that the 2nd and 3rd respondents are working as Dean and Registrar, respectively on adhoc basis for a very long period with extensions of three months each time contrary to the provisions of the Andhra Pradesh Agriculture University Act, 1963 (*for short 'the Act, 24 of 1963'*). The 2nd and 3rd respondents perceived the petitioner as a professional threat, as he was more eligible and

experienced than them for working in the said posts. This contradiction between the petitioner and respondents 2 and 3 grew worse as the petitioner questioned the laxity on the part of the administration in securing part of the 'Cost of Cultivation Scheme' of the Government of India which after the bifurcation in 2014, has been given wholly to Prof. Jayasankar Telangana State Agricultural University (*for short* 'PJ TSAU'), Rajendra Nagar, Hyderabad. The 'Cost of Cultivation Scheme' is 100% funded by the Government of India and was being administered by the 1st respondent- Acharya N.G.Ranga Agricultural University, till 2014. After bifurcation, the administration of the scheme ought to have been bifurcated between the 1st respondent and PJ TSAU. However, as on the date PJ TSAU is administering the entire scheme and the staff of PJ TSAU implementing the scheme even in Andhra Pradesh. The petitioner as one of the senior most Professors was concerned about this. Rather than trying to correct the said anomaly, the 2nd and 3rd respondents as a measure of punishment and to harass the petitioner transferred the petitioner as Honorary Director, 'Cost of Cultivation Scheme', Guntur on 28.08.2017. That the said scheme is non-existent in Andhra Pradesh, as the entire scheme and the funds remained with PJ TSAU, Hyderabad. Notwithstanding the said malicious act of the respondents 2 and 3, the petitioner all these three months conducted meetings with PJ TSAU persuading them that the

administration of 'Cost of Cultivation Scheme' in Andhra Pradesh should be given to the 1st respondent along with proportionate funds. In order to break down his spirit and remove him away from the focal point, the 2nd and 3rd respondents transferred the petitioner by creating a post in a non-existing scheme. Not satisfied with the harassment inflicted on the petitioner, he was once again transferred on 08.12.2017 as Professor, Department of Agricultural Economics, Agricultural College, Mahanadi, Kurnool District, which imparts undergraduate course in Agriculture, which has a single post in Department of Agricultural Economics and the single sanctioned post is the cadre of Assistant Professor/Associate Professor. Teachers in the cadre of Professors are posted to Agriculture Colleges at Bapatla and Tirupati as they impart Post Graduate and Ph.D courses. As the petitioner has worked all these 34 years as a Researcher and Scientist, he ought to have been posted in any of the research stations at Tirupathi, Nandyala, Lam, Marteru, Anakapalli and Chitapalli. The 2nd and 3rd respondents purposefully posted the petitioner at Agriculture College, Mahanandi, only to wreck vengeance against him. It is stated that when the petitioner was on leave, without even serving the transfer orders, he was relieved on paper. He has not actually handed over charge to anybody and he was not allowed to enter into the office and he was not allowed to sign in the attendance register. The petitioner made several

representations, and none of them were considered and finally on 22.12.2017, the 3rd respondent issued a memo reiterating the earlier transfer decision. It is also the case of the petitioner that a teacher can be transferred from one wing to another only by the Vice-Chancellor. The impugned transfer order is passed wholly without jurisdiction by the 3rd respondent. The petitioner is prepared to work at any place in Andhra Pradesh in any post equivalent to the Professor/Principal Scientist. Aggrieved by the order dated 08.12.2017, passed by the 3rd respondent, present writ petition is filed.

The 1st respondent filed counter stating that the petitioner was appointed in the regular post of Instructor Cadre but not in the regular post of Assistant Professor; that his services were utilized in the University wherever it required in the three wings; that as per the regulations of the University, the person working in any one of the three wings can be transferred to any other wing wherever their services are necessary in the said three wings. It is admitted that the respondents 2 and 3 are working as Dean and Registrar, respectively, with the approval of the Board of Management and as per the ANGRAU Act & Statutes only and that they are seniors to the petitioner and they have established merit and credentials in their respective fields. It is also stated that the Cost of Cultivation Scheme is directly under the control of

Government of India while bifurcating the State, there were specific orders that the Scheme is implemented through the PJTSAU and release of funds in the name of ANGRAU; that accordingly the ANGRAU has been sending funds to PJTSAU for distribution among the centres in both Telangana State and Andhra Pradesh; that the ANGRAU represented to the Government of India that this scheme may be shifted to ANGRAU in place of PJTSAU for smooth functioning of the scheme; and that the ANGRAU has been making efforts and also attended a meeting held under the chairpersonship of Senior Economic and Statistical Adviser (ESA), Directorate of Economic and Statistics, New Delhi on 24.05.2016 to discuss the issues related to the release of funds under the Cost of Cultivation Scheme in Andhra Pradesh and Telangana. It is further stated that the petitioner was transferred as Professor, Department of Agricultural Economics, Agricultural College, Mahanandi, Kurnool District on 08.12.2017, keeping in view of his vast experience and the services of the petitioner is very essential to teach the students in the discipline of Agricultural Economics, Agricultural College, Mahanandi. It is stated that there is no specific order not to post the Professor in a single department and in the single sanctioned post in the colleges and also there is no restriction to post the cadre of Assistant Professor and Associate Professor in the single sanctioned post in different disciplines in the colleges of the University. Since the petitioner has not

joined at new place, the petitioner deemed to have been relieved on 22.12.2017, duly rejecting his request for continuation.

Additional counter is filed stating that there was no upgradation to the post of Professor. It is stated that as per UGC Regulation vide No.F-3-1/2009, dated 28.06.2010, under clause 6.3.8 it is clearly mentioned that "Career Advancement Scheme (CAS) promotion being a personal promotion to the incumbent teacher holding substantive sanctioned post, on superannuation of the individual incumbent, the said post shall revert back to its original cadre. Further, it is submitted that the University advertised for recruitment to sanctioned posts of Associate Professor and Professor respectively, where as the CAS promotees will be in the Assistant Cadre only. As such, the petitioner was posted as Professor, as can be seen from the transfer order. Thus, it can be seen that there is no vacant sanctioned post of Professor, as such, at Agricultural College, Mahanadi. The petitioner was promoted as Professor and also Associate Professor under CAS only, the Associate Professor and Professors who have promoted under CAS come in the cadre of Assistant Professor only as per UGC Regulation vide No.F-3-1/2009, dated 28.06.2010 under clause 6.3.8. There are no proceedings as such creating the Professor Post in Agricultural College, Mahanandi. It is also submitted that

earlier the University has issued orders posting as Associate Professor/Professor who are promoted under Career Advancement Scheme (CAS) against vacant post of Assistant Professor, on promotion under CAS and it is purely personal promotions only, that is equivalent to that of Assistant Professor cadre only. Thus, it is incorrect to state that there is no Professor post as alleged by the petitioner.

Heard learned counsel for the petitioner, who submits that as per actual statutes of ANGRAU, only Vice Chancellor is competent to transfer a teacher from a post in one wing to an equivalent post in any other wing. In the present case admittedly there is no post of Professor in Agricultural College at Mahanandi and the transfer is by the 3rd respondent who is not competent. He also submits since petitioner is competitor to respondents 2 and 3 for the post of Registrar and since respondents 2 and 3 are occupying the post of Dean and Registrar without any regular selections, to harass the petitioner, he was transferred on 28.08.2017 to a non existing post since Cost of Cultivation Scheme is not with the respondent University as on 28.08.2017. Subsequently, the petitioner is transferred by proceedings dated 08.12.2017 to Agricultural College, Mahanandi, though there does not exist post of Professor. Petitioner was promoted as Professor much prior, as such, question of promoting petitioner and posting agricultural college, Mahanandi does not arise which goes to

show that there are malafides on the part of respondents 2 and 3.

On the other hand learned Standing Counsel submits that though there is no post of Professor at Agricultural College, Mahanandi, since petitioner was promoted under Career Advancement Scheme (CAS), he was posted to a non existing post and he was working as Professor in the post of Associate Professor, which cannot be faulted and it is for the University to consider where it's employees should be posted and this Court cannot judicially review the said decision as an appellate authority. He also submits that petitioner never applied for the post of Registrar or Dean, as such, being a competitor to 2nd and 3rd respondents does not arise and no malafides are established, as such, no interference is called for. In support of his contentions, he relied on Judgment of Hon'ble Supreme Court in ***State of M.P. and another v. S.S.Kourav and Others*** ¹ and ***Rajendra Roy v. Union of India and another*** ² .

In this case it is to be seen that Clause-5 of the Act and Statutes of ANGRAU Agricultural University Amended upto December 2003, reads as follows;

“5. Teaching, Research and Extension Wings constitute one unit: The Teaching, Research and Extension Wings of the University constitute one

¹ (1995) 3 Supreme Court Cases 270

² AIR 1993 Supreme Court 1236

unit for purpose of recruitment or promotions and the transfer of a teacher from post in one wing to an equivalent post in other wing shall not be treated as recruitment or promotion. These Statutes shall not be applicable for such transfers. The Vice-Chancellor shall be competent to transfer a teacher from a post in one wing to an equivalent post in any other wing.”

Though it is alleged in the writ affidavit and argued by the learned counsel for petitioner that Vice Chancellor alone is competent to transfer a teacher from a post in one wing to other equivalent wing, the same is not answered in the counter affidavit or by the standing counsel. On the sole ground itself transfer is liable to be set aside.

This Court is not reviewing the decision of the competent authority in transferring the petitioner on merits. But, according to statutes Registrar is not competent to transfer, as such, the decisions cited by the learned Standing Counsel in ***State of M.P. and another v. S.S.Kourav and Others*** and ***Rajendra Roy v. Union of India and another*** are not applicable to the facts and circumstances of the case. Another aspect which is admitted in the counter that there is no post of Professor in Agricultural College, Mahanandi and though the petitioner is promoted long back as Professor, it is not known as to how, how he can be directed to work as Professor in the post of Assistant Professor. The said aspect is also not properly explained in the counter affidavit. That

apart, in the first instance petitioner was transferred on 28.08.2017 as Honorary Director in the Cost of Cultivation Scheme at Guntur, though the said scheme is not with the respondent University and when a specific question is put to Standing Counsel, he submits that the scheme is attached with PJTSAU which goes to show that the respondent without any application of mind transferred the petitioner vide proceedings dated 28.08.2017. The attitude of the respondents goes to show that in order to justify the transfer order of the petitioner, they have taken irrelevant pleas. It is well settled law that ordinarily this Court will not interfere with the order of transfer of an employee by exercising power of judicial review under Article 226 of the Constitution of India, unless it is without jurisdiction or arbitrary. But, in the present case, the petitioner is transferred to non-existing post and also 3rd respondent is not competent to transfer the petitioner, as such, impugned order of transfer is set aside.

In view of the facts and circumstances, the writ petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

19.03.2018
tk/kvs.

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.44761 OF 2017



Date: 19.03.2018

tk/kvs