

**HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
HON'BLE DR. JUSTICE SHAMEEM AKTHER**

WRIT APPEAL No. 274 of 2019

JUDGMENT: *(per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)*

The appellant, Mr. V.V.Ravindranath Reddy, has challenged the legality of the order dated 13.03.2019, passed by the learned Single Judge in writ petition No.33798 of 2018, whereby the learned Single Judge has dismissed the writ petition filed by the appellant, and upheld the transfer order dated 15.09.2018 passed by the respondent No.1.

Briefly, the facts of the case are that since 2012, the petitioner has been working as a Mandal Agriculture Officer at Hayathnagar. In 2016, he was elected as Office Bearer of an Association, namely, Telangana Agricultural Officers' Association.

By Circular Memos dated 26.06.2012 and 30.06.2012, the State Government had issued a transfer policy with regard to the transfers of the Office Bearers of the Recognized Associations. According to the Circulars, the Office Bearers of Recognized Service Associations shall not be transferred from Districts/Divisional/Taluk Headquarters before completion of 3 terms or 2 terms, as the case may be, i.e., 6 years of their tenure in such office(s) i.e., 3 terms for those having 2 years as the term of office or 2 terms for those having 3 years as term of office.

However, according to the petitioner, by the transfer order, dated 15.09.2018, he has been transferred from Hayatnagar to Jinnaram. Hence, the petitioner was constrained to file the writ petition before this Court. However, by the impugned order dated 13.03.2019, the learned Single Judge, as mentioned hereinabove, has dismissed the writ petition. Hence, the present appeal before this Court.

The learned counsel for the petitioner, Mr. M. Vidya Sagar, has raised the following:

Firstly, according to the Circular dated 26.06.2012, there is an embargo that has been imposed on the transfer of Office Bearers. Since the petitioner was, indeed, an Office Bearer, he could not have been transferred till he completes a period of six years. However, as the petitioner had not completed the tenure of six years, his transfer is in violation of the Circular dated 26.06.2012.

Secondly, according to the transfer order dated 15.09.2018, the petitioner has been transferred on “administrative ground”. However, no reasons have been assigned clearly bringing out the administrative ground, for which, the petitioner is being transferred to Jinnaram. Therefore, the transfer order suffers from non-application of mind.

Thirdly, in the counter filed by the State before the learned Single Judge, the State has referred to certain vigilance report, and Government Memo, which are post-transfer orders. Therefore, the vigilance report and the Government Memo could not form the basis for transferring the petitioner from Hayatnagar, on the administrative ground.

Lastly, the learned Single Judge has failed to appreciate these facets of the case. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, Ms. B. Vijayalaxmi, the learned counsel for the respondent Nos.1 and 2, submits that the Circular dated 26.06.2012, is merely directory in nature. Moreover, it clearly stipulates that the competent authority can effect such transfers on administrative grounds, even before the expiry of six (6) years period, after recording the reasons. Therefore, the transfer can be made even during the tenure of six (6) years.

Secondly, since the transfer is an incidence of service, and since the transfer has been made on the administrative ground, the petitioner cannot claim that his civil rights, or fundamental rights have been violated.

Thirdly, even prior to the passing of the impugned order, because of the alleged misconduct committed by the petitioner, a departmental enquiry had been initiated by the respondent No.1.

Since the petitioner's presence, at the place of posting, where the departmental enquiry is carried out, would create certain obstacles, in the fairness of the things, it was imperative to transfer the petitioner to another place.

Fourthly, even if no reasons have been stated in the transfer order, and even as required by the Circular dated 26.06.2012, even then, it is a mere illegality, which would not be fatal to the transfer order.

Lastly, even if other Government Memos and vigilance report have been referred to in the counter, it is only to bring to the notice of the learned Single Judge that ample reasons existed for the respondents to transfer the petitioner from the place of his posting. According to the learned counsel, the learned Single Judge has noticed all these relevant points. Hence, the impugned order is a legal one, which need not be interfered with by this Court.

Heard the learned counsel for the parties, and perused the impugned order, and examined the record submitted along with the writ appeal.

It is, indeed, trite to state that transfer is an exigency of service. Once an employee has joined the services, he is well aware of the fact that he can be transferred by the employer as and when required by the employer. Thus, an employee is not

justified in claiming that he cannot be transferred from the place of posting.

The abstract of the Circular dated 26.06.2012 is quoted hereinbelow:

“3. In view of the above, instructions issued in Government Circulars 1st to 3rd cited are reiterated once again by making applicable to the Office Bearers, as stated below:

(i) Office Bearers of Recognized Service Associations shall not be transferred from Districts/Divisional/Taluk Headquarters before completion of three terms or two terms as the case may be viz., six years of their tenure in such Office(s) i.e., three terms for those having two years as the term of office or two terms for those having three years as term of office. However, the Competent Authorities can effect such transfers on administrative grounds even before the expiry of the six years period after recording the reasons.”

In a catena of cases, the Hon’ble Supreme Court has clearly opined that transfer policy is merely directory, and not mandatory in nature. For, sufficient freedom at the joints needs to be given to the employer to decide the posting of an employee. Therefore, even the Circular dated 26.06.2012, is only directory, and not mandatory in nature.

A perusal of the relevant portion of the Circular quoted hereinabove clearly reveals that while the first part states that the

Office Bearer of Recognized Service Association shall not be transferred for a period of six years, the second part unequivocally contains an exception. The exception is that “on administrative grounds”, an Office Bearer can be transferred. Although the exception requires that reasons be stated, even if a reason is not recorded, the absence of the reasons is not fatal to the transfer order. For, the non-recording of reason is a mere irregularity, and not an illegality committed by the employer.

According to the petitioner, even before the transfer order was passed on 15.09.2018, he was furnished with a charge-sheet, an enquiry officer was appointed on 09.07.2018, and thereafter, he was suspended by the respondent No.1. Aggrieved by the suspension order, he had filed a writ petition before this Court; the suspension order was stayed by this Court. Thus, on the date of passing of the transfer order, undoubtedly, the petitioner was facing a departmental enquiry. Therefore, the respondents are justified in claiming that mere presence of the petitioner at the present place of posting may create certain road blocks in the completion of the departmental enquiry. Thus, the respondent had ample administrative reasons for transferring the petitioner to Jinnaram.

Merely because the respondents have mentioned about the vigilance report and the Government Memo, which are

post-transfer orders, even then, the impugned order cannot be faulted with. For, the respondents have given sufficient reasons before the learned Single Judge that due to the pendency of the enquiry, it was essential to transfer the petitioner from his present place of posting to Jinnaram. This fact has been duly noticed by the learned Single Judge.

Hence, the learned Single Judge was certainly justified in upholding the transfer order dated 15.09.2018, and in dismissing the writ petition.

For the reasons stated above, this Court does not find any merit in the present writ appeal; it is, hereby, dismissed.

Pending miscellaneous petitions, if any, shall stand dismissed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

Date: 17.06.2019

DR. SHAMEEM AKTHER, J

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