

HIGH COURT FOR THE STATE OF TELANGANA

**WEDNESDAY, THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY**

PRESENT

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY**

WRIT APPEAL NO: 371 OF 2020

Writ Appeal Under Clause 15 of the Letters Patent Appeal preferred Against the Order Dated: 04-09-2020 in WP. No. 10463 of 2020 on the file of the High Court.

Between:

Y. Devadas, S/o. Y. Stephen, Lecturer in Physics, (Under orders of transfer)
Government Degree College, Godavarikhani, Dist. Peddapally.

...APPELLANT

AND

1. State of Telangana, represented by the Special Chief Secretary, Higher Education Department, Government of Telangana.
2. Commissioner of Collegiate Education, Telangana State, Nampally, Hyderabad.

...RESPONDENTS

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased that the act of not submitting the Certified copy of the Judgment may be condoned.

IA NO: 2 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to issue necessary directions for a fair enquiry by a neutral Enquiry Officer and to ensure that the Enquiry Report be submitted this Hon'ble Court.

IA NO: 3 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the 2nd respondent to produce the entire file pertaining to this case along with note file, for verification by the Hon'ble Court.

IA NO: 4 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to i. direct the 2nd respondent to allow the petitioner to continue at Government Degree College, Godavarikhani or in a college in and around Warangal (since my wife is working in a Government School, in Hanamkonda, Warangal) on spousal grounds, till final orders are passed in this Writ Appeal, in the interest of justice.

Counsel for the Appellant: SRI GADDAM SETHU MADHAVA RAO

Counsel for the Respondents: GP FOR HIGHER EDUCATION

The Court made the following: ORDER

JUDGMENT: (Per Hon'ble Sri Justice B. Vijaysen Reddy)

Aggrieved by the order, dated 04.09.2020, passed by a learned Single Judge in WP.No.10463 of 2020, whereby the learned Single Judge has dismissed the writ petition challenging the order of transfer of the petitioner, the appellant has approached this Court.

2. The parties are hereinafter referred to as they were arrayed before the learned Single Judge.

3. The petitioner was working as a Lecturer in Physics in the Government Degree College, Godavarikhani. While so, under proceedings dated 12.05.2020, he was placed in Full Additional Charge (FAC) in the post of Principal to the vacancy to be caused on 31.05.2020 due to the retirement of the incumbent. On 15.05.2020, the petitioner addressed an email to the Commissioner of Collegiate Education – respondent No.2, to reconsider the decision to place him as Principal (FAC), stating that he is not interested in the post, and he is not qualified to be promoted as Principal. No reply was furnished to the petitioner either from the Commissioner of Collegiate Education or from the Principal of the College. On 12.06.2020, the petitioner was transferred to Government Degree College, Luxettipet. On the same day, a charge memo was drawn and communicated to the petitioner; according to the charge memo the petitioner had disobeyed the orders of the Commissioner by not taking charge of the post of Principal even twelve days after the retirement of the incumbent; the same is dereliction of duties, and indiscipline, causing inconvenience to the College, and amounts to unbecoming of a Government employee. The petitioner was relieved from the Government Degree College, Godavarikhani on 24.06.2020.

4. The writ petition was filed before the learned Single Judge challenging the order of transfer dated 12.06.2020, with a consequential prayer to retain the petitioner at Godavarikhani, or to transfer him to Kakatiya Government College, on spouse ground.

5. During the pendency of the writ petition, the petitioner was placed under suspension alleging that he did not join in the Government Degree College, Luxettipet, and the same would amount to disobeying the order of the Commissioner.

6. It is the case of the petitioner that he cannot be compelled to assume the charge of Principal, when he is not interested, and when he is not eligible and qualified to hold the post of Principal. No employee can be compelled to take up higher post against his consent and without his consent. A detailed representation was made by the petitioner to the Commissioner not to grant him in-charge arrangement much before the retirement of the incumbent. His representation was not acted upon. On the contrary, the impugned transfer orders were passed. There is no disobedience on his part since he has pleaded before the Commissioner not to assign him in-charge arrangement, but the same was not considered. Further, transfer on disciplinary ground is not permissible in law. Thus, the impugned order is liable to be set aside.

7. While considering the two issues i.e. suspension and transfer, the learned Single Judge, dismissed the writ petition. The learned Single Judge gave liberty to the petitioner to seek revocation of suspension by making an application to the Commissioner, or to the Government, as advised. On revocation of suspension, the petitioner was further given liberty to pursue the representation stated to have been made by him to transfer him to any other place.

8. Mr. G. Sethu Madhava Rao, the learned counsel for the appellant, vehemently submitted that as per G.O.Ms.No.81 Finance (HRM-I) Department dated 18.06.2018 transfer on administrative grounds is banned, and transfer on disciplinary ground should be done only in clear vacancies without shifting other employee. The learned Single Judge erred in interpreting order of transfer on disciplinary ground as order of transfer on administrative grounds. The petitioner is not eligible to be promoted as Principal as per G.O.Ms.No.47 Higher Education (CE.I) Department dated 14.05.2007, due to not possessing Ph.D. qualification. The transfer is contrary to the regulations approved by the University Grants Commission, The impugned orders are passed on account of vindictiveness against the petitioner; the proceedings suffer from legal malice.

9. Under proceedings dated 25.07.2020, the petitioner was placed under suspension with immediate effect by the respondent No.2 in exercise of power conferred under Sub-Rule 1(i)(a) of Rule 8 of the Telangana State Civil Services (CCA) Rules, 1991. It was mentioned in the suspension order that the petitioner was transferred on disciplinary grounds, and posted at Government Degree College, Luxettipet, for not taking charge even after twelve days of retirement of the incumbent causing inconvenience to the college. He was given instructions to report at new Station with immediate effect. Under proceedings dated 24.06.2020, the petitioner was relieved from the Government Degree College, Godavarikhani. However, the petitioner has not reported at new place of posting till today. Simultaneously, the petitioner was served with charge memo. The articles of charge are as under:

CHARGE-1:-

"That Sri.Y.Devadas, Lecturer in Physics, Government Degree College, Godavarikhani has disobeyed the Orders of the Commissioner of Collegiate Education giving him Full Additional Charge for the post of Principal, Government Degree College, Godavarikhani and he has not taken charge even 12 days after retirement of the incumbent which amounts to dereliction of duties and indiscipline causing inconvenience to the college and doing an act unbecoming of a Government employee in violation of Rule 3 of T.S.C.S (Conduct) Rules, 1964."

10. It is not in dispute that vide proceedings dated 12.05.2020 the petitioner was placed as Full Additional Charge to the post of Principal with immediate effect in addition to his normal duties until further orders under Rule 49 of the Fundamental Rules by the Commissioner of Collegiate Education, Telangana State, Hyderabad. On 15.05.2020, the petitioner submitted a representation stating that he does not possess the Ph.D. qualification; he is not eligible for the post of Principal as per the Rule in vogue. The duties of Principal (FAC) are identical with the regular duties of a Principal such as administrative control, academic control, financial control. But the petitioner is not eligible for holding the post of FAC also. It is further not in dispute that the petitioner did not report to duty even twelve days after the retirement of the incumbent. Hence, *prima facie*, the same caused inconvenience to the college. Thus, vide proceedings dated 25.07.2020, ultimately, the petitioner was placed under suspension.

11. The sequence of events can be summarized as under:

1. Under proceedings dated 12.05.2020, the petitioner was placed as Full Additional Charge to the post Principal in Government Degree College, Godavarikhani.
2. Petitioner submitted representation dated 15.05.2020 requesting to reconsider the decision to place him as Principal (FAC).

3. The petitioner was transferred vide proceedings dated 12.06.2020 issued by the respondent No.2 and posted as Lecturer in Government Degree College, Luxettipet in the existing vacancy on disciplinary grounds.
4. On 24.06.2020, the petitioner was relieved from the Government Degree College, Godavarikhani.
5. Under proceedings dated 25.07.2020, the petitioner was placed under suspension with immediate effect since the petitioner did not take charge as principal (FAC) even after twelve days after retirement of the incumbent.

12. It is the consistent stand of the petitioner that he is not eligible to hold the post of Principal (FAC). According to the petitioner, a person who is eligible to hold the post of Principal only is eligible to hold the post of Principal (FAC). The petitioner refers to UGC guidelines and states that as per such guidelines, the petitioner is not eligible to hold the post of Principal (FAC), which has administrative duties. The petitioner cannot be forced to accept the post of Principal (FAC) against his will. Moreover, immediately after the petitioner was informed about the proposal to post him as Principal (FAC), he submitted representation dated 15.05.2020 stating that he is not eligible to the post of Principal (FAC) and requested that he should not be given such posting.

13. It is relevant to point out that even prior to the posting order dated 12.05.2020, the petitioner submitted representation on 11.05.2020 requesting that he should not be posted as Principal (FAC) for personal reasons. Such request was rejected and proceedings dated 12.05.2020 was issued by the respondent No.2. Subsequently, another representation dated 15.05.2020 was submitted on the ground that the petitioner does not possess Ph.D degree and he is not eligible to hold the post of principal (FAC). In para 4 of the writ affidavit, though the petitioner has vaguely stated that he requested

the respondent No.2 not to post him as Principal (FAC) on personal grounds and the same was rejected, the petitioner did not state that written representation was made seeking to exempt him from being posted as principal (FAC) on personal grounds. Thus, it is clear that, as an afterthought, the petitioner made a second representation on 15.05.2020 on additional grounds, which did not find place in the representation dated 11.05.2020. It appears the petitioner has not placed the representation dated 11.05.2020 on record. However, there is a reference to the representation dated 11.05.2020 in the proceedings dated 12.05.2020 issued by the respondent No.2 whereunder the petitioner was posted as Principal (FAC), Government Degree College, Godavarikhani.

14. When the charge memo dated 12.06.2020 was issued and simultaneous transfer order was passed on even date, the petitioner filed WP.No.10463 of 2020 challenging the transfer order issued in File No.CCE-SER3/GEN/55/2020-GEN dated 12.06.2020. The petitioner also sought for a direction to the respondent No.2 either to cancel the transfer order dated 12.06.2020 or to transfer him to the Kakatiya Government College, Hanmakonda, Warangal, on spousal grounds, in case, if it is felt that his presence in the college is hindrance to the proposed enquiry.

15. During the pendency of the writ petition, the suspension order dated 25.07.2020 came to be passed. The petitioner filed an additional affidavit challenging the charge memo dated 12.06.2020, transfer order dated 12.06.2020, relieving order dated 24.06.2020 and suspension order dated 25.07.2020 as being vindictive, punitive, illegal, malafide, arbitrary, perverse, mockery etc. It is not evident from the record whether the petitioner has filed a separate application for amendment of pleadings and prayer. However, from the order of

the learned Single Judge, it is evident that all the grievances raised in the additional affidavit have been considered. Hence, this Court deems it appropriate to deal with all the four impugned proceedings in the writ petition.

16. No rule has been brought to the attention of this Court stating that a person holding the post of principal (FAC) should be eligible to hold the post of Principal. Assuming that there is some merit in such contention of the petitioner, the same cannot be a ground to refuse to take charge as Principal (FAC). Mere representation dated 15.05.2020 does vest any legal right with the petitioner to disobey the orders of the respondent No.2 in joining as Principal (FAC). It is not in dispute, since the petitioner did not take charge as Principal (FAC), the post remained vacant for about twelve days, as borne out from the record. Even before posting orders were issued on 12.05.2020, the petitioner submitted representation on 11.05.2020, which was rejected. Thus, the petitioner was well aware from the inception that the post of Principal would be falling vacant on 31.05.2020 and he was made aware in advance that he has to take over as Principal (FAC). The petitioner, for reasons best known to him, disobeyed the posting order dated 12.05.2020. *Prima facie*, such conduct of the petitioner not only amounts to insubordination but also dereliction of duties and as such, there is nothing unusual on the part of the respondent No.2 in issuing the charge memo dated 12.06.2020 and also transfer order of even date. Since the petitioner did not report to the Government Degree College, Luxettipet, the petitioner was placed under suspension vide proceedings dated 27.05.2020.

17. The contention of the learned counsel for the appellant is that the transfer is not permissible on disciplinary grounds unless there is clear vacancy. The transfer order dated 12.06.2020 states that the

petitioner is posted as Lecturer, Government Degree College, Luxettipet, in the existing vacancy. Though the transfer of the petitioner was on disciplinary grounds, the learned counsel for the appellant has drawn the attention of this Court to the finding of the learned Single Judge, which, according to the learned counsel, is wrongly interpreted by the learned Single Judge treating the transfer as transfer on administrative grounds. The observations of the learned Single Judge in paras 19 and 20 of the impugned order are being read out of context. There is a clear finding of the learned Single Judge that the transfer is on disciplinary grounds. However, the learned Single Judge further observed that it may also amount to transfer on administrative grounds. There is no dispute whatsoever that the transfer order dated 12.06.2020 clearly states that the appellant is transferred on disciplinary grounds. Thus, there is no merit in the contention of the learned counsel for the appellant that the learned Single Judge has wrongly interpreted the transfer as transfer on administrative grounds. Thus, it cannot be said that the transfer of petitioner is contrary to G.O.Ms.No.81 dated 18.06.2018.

18. Interestingly, the petitioner did not choose to challenge the initial proceedings dated 12.05.2020 whereunder he was posted as Principal (FAC). The competency of the respondent No.2 in issuing the proceedings impugned is not questioned in this writ petition. So far as malafides, vindictiveness, punitive, perversity etc., are concerned, it is not averred in the writ petition that the respondent No.2 has got personal grudge or animosity towards petitioner. There is no material placed on record to show that the petitioner was subjected to unfair treatment or that petitioner was discriminated for any reason. The allegations of malafides, vindictiveness etc., are vague and do not deserve any consideration.

19. Learned counsel for the appellant relied upon the decision of the Supreme Court in **B.N. RAILWAY CO. v. MOOLJI SICKA CO.**¹; decision of the learned Single Judge of this Court in WP.No.33798 of 2018 dated 13.03.2019; **STATE OF BIHAR v. P.P. SHARMA**² and **STATE OF A.P. v. GOVERDHANLAL PITTI**³.

20. While relying on the decision in **B.N. RAILWAY CO.**'s case (1 supra), the learned counsel for the appellant contends that 'misconduct' arises if a person does what he should not have done or does not do what he should have done. According to the appellant, the respondent No.2 did not do what he should have done and thus, the action of the respondent No.2 attracts misconduct. It is unfortunate that the appellant – petitioner, who is facing charges of misconduct and dereliction of duty, is making unwarranted allegations against the respondent No.2 without any basis. This Court is not adjudicating any issue relating to the misconduct of respondent No.2. As such, the decision in **B.N. RAILWAY CO.**'s case (1 supra) does not in any way come to the aid of the appellant.

21. The decision in WP.No.33798 of 2018 dated 13.03.2019 also does not help the appellant since the order is passed upholding transfer in disciplinary proceedings so as to ensure that the petitioner therein would not tinker or tamper the evidence and would not influence the witnesses, if any, in departmental proceedings. The decisions in **P.P. SHARMA**'s case (3 supra) and **GOVERDHANLAL PITTI**'s case (3 case) also do not help the appellant since there is no foundation whatsoever laid by the appellant to attack the order impugned on the ground of malafides, as discussed in para 18 supra.

¹ AIR 1930 CAL. 815

² 1992 SUPP (1) SCC 222

³ (2003) 4 SCC 739

22. The learned Single Judge, while placing reliance on the decisions of the Supreme Court in **RAJENDRA SINGH v. STATE OF UTTAR PRADESH** [(2009) 15 SCC 178] and **K. VIJAYLAL (DR.) v. GOVERNMENT OF ANDHRA PRADESH** [2011 SCC Online AP 492] and a decision of this Court in **GOVERNMENT OF ANDHRA PRADESH v. K. RAMA RAO** [(2012) 6 ALD 8 (DB)], came to the conclusion that transfer is an incidence of service and the High Court in exercise of jurisdiction under Article 226 of the Constitution of India has got very limited power in interfering with transfer order of an employee. The learned Single Judge having considered the factual situation gave liberty to the petitioner to pursue representation made by him seeking transfer to any other place if the suspension orders are revoked. Further, the petitioner was also given liberty to seek revocation of suspension by making an application to the Commissioner for Collegiate Education or the Government as advised. Thus, this Court finds that there is no infirmity in the order of the learned Single Judge.

In the light of the above, this Court does not find any merit in the writ appeal and the same is liable to be dismissed. It is, hereby, dismissed.

As a sequel, the miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

SD/-C.V.MALLIKARJUNA VARMA
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to Sri. Gaddam Sethu Madhava Rao. Advocate [OPUC]
2. Two CCs to GP for Higher Education, High Court for the State of Telangana. [OUT]
3. Two CD Copies

Prk



HIGH COURT

DATED:07/10/2020

ORDER

WA.No.371 of 2020



Dismissing the WA.
without costs.

SSV
5 copies
Dt 15/12/2020