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WA Nos. 1498, 1499, 1500, 1501, 1502 and 1503 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal Nos. 1498, 1499, 1500, 1501, 1502 and 1503 of 2021
and
CMP. Nos.9588, 9591, 9592, 9593, 9594 and 9597 of 2021

WA No. 1498 of 2021

1. The Tamil Nadu Agricultural University
rep. by its Registrar
Maruthamalai Road
Coimbatore - 641 003

2. The Professor and Head
Tamil Nadu Agricultural University
Rice Research Station
Tirur - 602 025
Thiruvallur District

.. Appellants

Versus

Dr. R. Agila

.. Respondent

WA No. 1499 of 2021

1. The Vice Chancellor
Tamil Nadu Agricultural University
Coimbatore - 641 003

2. The Registrar
Tamil Nadu Agricultural University
Coimbatore - 641 003

..

Appellants



WA Nos. 1498, 1499, 1500, 1501, 1502 and 1503 of 2021

Versus

Dr. R. Radhajeyalakshmi

..

Respondent

WA No. 1500 of 2021

1. The Vice Chancellor
Tamil Nadu Agricultural University
Coimbatore - 641 003

2. The Registrar
Tamil Nadu Agricultural University
Coimbatore - 641 003

.. Appellants

Versus

Dr. A. Baskaran

.. Respondent

WA No. 1501 of 2021

1. The Vice Chancellor
Tamil Nadu Agricultural University
Coimbatore - 641 003

2. The Registrar
Tamil Nadu Agricultural University
Coimbatore - 641 003

.. Appellants

Versus

Dr. M. Rajakumar

..

Respondent

WA No. 1502 of 2021

1. The Vice Chancellor
Tamil Nadu Agricultural University
Coimbatore - 641 003

2. The Registrar
Tamil Nadu Agricultural University
Coimbatore - 641 003

.. Appellants



WA Nos. 1498, 1499, 1500, 1501, 1502 and 1503 of 2021

Versus

1. Dr. S. Natarajan
2. State of Tamil Nadu
rep. by its Agricultural Production Commissioner
and Principal Secretary to Government
Department of Agriculture
Fort St. George
Chennai - 600 009

.. Respondents

WA No. 1503 of 2021

1. The Vice Chancellor
Tamil Nadu Agricultural University
Lawley Road
Coimbatore - 641 003
2. The Registrar
Tamil Nadu Agricultural University
Lawley Road
Coimbatore - 641 003
3. The Head of the Department of Pulses
Tamil Nadu Agricultural University
Lawley Road
Coimbatore - 641 003

.. Appellants

Versus

1. Dr. D. Rajabaskar
2. The Government of Tamil Nadu
rep. by its Agricultural Production Commissioner
and Principal Secretary to the Government
Wallajah Road, PWD Eestate
Chepauk, Triplicane
Chennai - 600 005
3. Dr. P.S. Shanmugam
Assistant Professor (Agricultural Entomology)
Department of Pulses



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Tamil Nadu Agricultural University
Lawley Road

Coimbatore - 641 003

.. Respondents

WA No. 1498 of 2021:- Appeal filed under Clause 15 of Letters Patent against the order dated 25.03.2021 passed in WP No. 10411 of 2020 on the file of this Court.

WA No. 1499 of 2021:- Appeal filed under Clause 15 of Letters Patent against the order dated 25.03.2021 passed in WP No. 10753 of 2020 on the file of this Court.

WA No. 1500 of 2021:- Appeal filed under Clause 15 of Letters Patent against the order dated 25.03.2021 passed in WP No. 10757 of 2020 on the file of this Court.

WA No. 1501 of 2021:- Appeal filed under Clause 15 of Letters Patent against the order dated 25.03.2021 passed in WP No. 14200 of 2020 on the file of this Court.

WA No. 1502 of 2021:- Appeal filed under Clause 15 of Letters Patent against the order dated 25.03.2021 passed in WP No. 8650 of 2020 on the file of this Court.

WA No. 1503 of 2021:- Appeal filed under Clause 15 of Letters Patent against the order dated 25.03.2021 passed in WP No. 10081 of 2020 on the file of this Court.

For Appellants : Mr. A.L. Somayaji, Senior Advocate
for Mr. Abdul Saleem
in all the Writ Appeals

For Respondents : Mr. N.G.R. Prasad
for M/s. Row & Reddy for R1 in WA No. 1498/2021

Mr. Sathia Chandran for R1 in WA No.1502/2021

Mr. G. Velu, Additional Government Ple



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for R1 in W.A. No. 1503 of 2021

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COMMON JUDGMENT

R. MAHADEVAN, J.

The first respondent(s) herein, who are working as Assistant Professors, Associate Professors and Professors in the Tamil Nadu Agricultural University, have challenged their respective transfer orders by filing WP Nos. 10411, 10753, 10757, 14200, 8650 and 10081 of 2020, under Article 226 of the Constitution of India. The learned Judge, upon considering the common arguments made both on factual and legal aspects, has allowed the said writ petitions thereby setting aside the transfer orders as illegal and void, by a common order dated 25.03.2021. Aggrieved over the same, the appellants / Tamil Nadu Agricultural University, have preferred these appeals before this court.

2.At the first instance, it is to be pointed out that the learned Judge has allowed the writ petitions only on the basis of common legal grounds urged by the first respondent(s) and has not gone into the merits of the cases individually questioning the respective transfers. Paragraph 2 of the order impugned herein reads as follows:

“2.These writ petitioners belong to the faculty of the University



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working as Assistant Professors, Associate Professors and Professors. Broadly, the challenges in the writ petitions premised on two legal grounds, apart from certain other individual grievances expressed in the respective writ petitions. However, without first delving into the individual grievances of assailment, in the fitness of things, this court felt that the principal contentions need to be dealt with, which are common to all the writ petitions and in the event of this court agreeing with the contentions of the writ petitioners, there may not be any necessity to appreciate the individual pleas. In that view of the matter, these writ petitions are dealt with commonly as under.”

Therefore, this court is required to examine the validity and correctness of the order of the learned Judge, to that extent alone.

3. Though the learned counsel appearing for both sides contested the appeals both legally and factually, this court restricted the same only to the legal points raised by them, as already stated in the earlier paragraph, the learned Judge has decided the issue legally and has not gone into the individual factual matrix projected by the parties. Now, let us see the arguments made by the learned counsel on either side in these writ appeals.

4.1. Mr.A.L.Somayaji, learned senior counsel appearing for the appellants presented a brief background and took this court through important documents based on which the entire case relies. According to him, G.O. Ms. No. 249 Finance (Budget General-I) Department, Dated 21.05.2020 (hereinafter shortly referred to as “G.O.Ms.No.249 dated 21.05.2020”) in short, was notified as an economic measure to tackle the consequences of



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Covid – 19 and it sought to minimize the expenditure of the Government through various measures, one of which is to minimize general transfers. This provision was applicable to all Government Institutions, including the appellant University. Hence, the same cannot be treated as immunity to the first respondent(s) from transfers. Adding further, he submitted that the University after having set out the reasons, sought permission from the Government to transfer the first respondent(s) to various places. In response to the same, the Principal Secretary to Government accorded concurrence and stated that the transfers “may be made” with minimum possible expenditure. As a consequence of the same, the first respondent(s) were ordered to be transferred and therefore, no *mala fides* attributed to the same, as alleged by the first respondent(s).

4.2. The learned senior counsel appearing for the appellant University also submitted that the Vice Chancellor of the University has powers to effect transfers and the transfer orders were issued, only after obtaining the approval from the Government and therefore, the same cannot be subjected to judicial scrutiny. Without considering the same in a proper perspective, the learned Judge erred in observing that the G.O. issued was to minimize the expenditure of the Government and the University cannot take advantage of the same by stating that it did not lay any embargo on transfers, but only sought to



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minimize the expenditure and that, the G.O can be modified, whereas in the present case, it has been diluted through letters and transfers.

4.3. It is also contended by the learned senior counsel for the appellants that the decisions relied on by the learned Judge may not be applicable as the appeals arising out of the same, are pending before the Supreme Court and stay orders have also been granted. In such circumstances, the case of the first respondent(s) will have to be considered independently. For example, in ***K.Sampath v State of Tamil Nadu [MANU/TN/9958/2006]***, this court held that G.O. issued by exercising the executive power of the state in the name of the governor cannot be clarified by a letter of the Secretary to the government and the said order was challenged in W.A. No. 1326 of 2005 and the same was dismissed. Subsequently, an SLP was filed and stay was obtained from the Hon'ble Supreme Court and the main case is pending. Similarly, the judgments of the Patna and Kerala High courts have also been stayed by the Hon'ble Supreme Court and hence, the same are not binding.

4.4. Referring to the decision of the ***Kerala High Court in Haridasan v. State of Kerala [2007 SCC Online Ker 130]***, the learned senior counsel for the appellants submitted that an executive letter cannot dilute Article 166 and it need not be authenticated by the governor. Under Article 166(3), the governor allocates business of the state government for the sake of convenience. Reliance



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was placed on the decision in *A. Sanjeevi Naidu v. State of Madras, [(1970)*

1 SCC 443], which was affirmed by seven judge bench of the Supreme Court in *Samsher Singh v. State of Punjab, [(1974) 2 SCC 83]*. It is submitted that the six judges of the Supreme Court in Sanjeevi Naidu case held that when a civil servant is empowered to take decisions, he/she does not take decisions as a delegate of the minister, rather as a wing of the government. Therefore, according to the learned senior counsel, the Secretary to the government, who is a civil servant can very well issue a clarification and the same can be treated as that issued by the government. Further, relying on the judgment of five judge bench of the Supreme Court in *R. Chitralkha v. State of Mysore, [(1964) 6 SCR 368]*, the learned senior counsel submitted that under Article 166(2), when orders made in the name of the governor are authenticated in the manner as specified in the rules and the same cannot be called into question.

4.5. The learned senior counsel appearing for the appellant University further submitted that in the absence of any *malafide*, the transfer orders cannot be interfered with, whereas the learned Judge has erroneously set aside those transfer orders by the order impugned herein. In support of the same, he placed reliance on the following decisions:

(i) *State of Madhya Pradesh & Anr v. S.S. Kourav & Ors [(1995) 3 SCC 270]*, in which, in paragraph 4, it was held as follows:



“4. It is contended for the respondent that the respondent had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no justification to re-transfer him again to Jagdalpur. We cannot appreciate these grounds. The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation.”

(ii) State of Uttar Pradesh & Ors vs Gobardhan Lal [(2004) 11 SCC

402)] wherein, the Hon'ble Supreme Court at para 7 held as follows:

“7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

It is ultimately submitted that in order to strengthen the research activity at

Krishi Vigyan Kendras (KVK), the transfer of the first respondent(s) has

become necessary and that, they have been working in the appellant University



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for more than 10 years and if they take up extension activity, it would benefit the farming community as a whole. Thus, by virtue of the orders of transfer, the first respondent(s) were given an opportunity to expand their scope of research activity and it would *inter alia* help them to progress in their career. Stating so, the learned senior counsel prayed to allow these appeals by setting aside the order of the learned Judge passed in the writ proceedings.

5.1. Opposing the submissions made on the side of the appellants, Mr.R.Singaravelan, learned senior counsel for the first respondent in WA.No.1503 of 2021 vehemently contended that the issue involved herein is not about the dilution of Article 166. Relying of the decision of five judge bench of the Hon'ble Supreme Court in ***E.P. Royappa v. State of T.N., [(1974) 4 SCC 3]***, the learned senior counsel contended that transfer can be challenged on the ground of *malafide* or violation of rules. Adding further, the learned senior counsel submitted that the G.O. mandates the transfers to be done by the authorities higher than those who are normally empowered to do so. Accordingly, the transfer orders should have been passed by the Vice Chancellor, whereas, in the present case, the same were initially passed by the Registrar and were merely signed by the Vice Chancellor by way of ratification without effectively participating in the whole process, which is in violation of



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the statutory rules. It is also submitted by the learned senior counsel that the transfers have not been authenticated by the Government at all and the letter to the Chief Secretary was to fill up “vacant” posts to reduce the budget burden, that too within the same campus through deployment and mutual transfers. Further, the letter of the government to the appellant University expressly stated that the transfers must be to the minimum extent possible. On the other hand, the present transfers go beyond the concurrence, which was sought from the Government.

5.2. The learned senior counsel further submitted that in the course of the agricultural research, funds amounting to Rs.1 crore have already been sanctioned, and the same was, though brought to the notice of the authorities, stating that the transfer would render the research so far done futile, the same was not considered by the appellant authorities. This aspect is a vital issue, as the purpose for which the Government issued the said G.O. i.e., to save money, will be defeated. It is also submitted that while the University contends that the transfers will ensure public interest, in reality, it is against the same. Thus, according to the learned senior counsel, it is unnecessary to go into, whether a G.O. can be overridden by a letter, because in the present case, the letter itself stands violated as the transfers are beyond the scope from which concurrence was obtained from the government and the transfers do not fall under any of



the categories for which concurrence was sought.

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5.3. That apart, the learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in ***State of U.P. v. Gobardhan Lal, [(2004) 11 SCC 402]***, wherein, it was held as follows:

“7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

Thus, it is submitted that even in the context of transfers necessitated in the light of public interest and administrative exigencies, regard should be given to effect on official status, career prospects etc. Taking note of all these aspects, the learned Judge has rightly set aside the transfer orders by the order



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impugned herein, which does not call for any interference by this court.

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5.4. The learned senior counsel submitted that as per the G.O., representation was preferred by the first respondent. However the same has not been disposed of, till date. Further, even after passing of the order of the learned judge in favour of the first respondent, the TNAU instead of complying with the same, preferred writ appeal and the non-compliance continued, despite the fact that no stay was granted at any stage. Thus, in the light of the statutory representation and non-compliance of the order of the learned judge, the first respondent should be granted with monetary benefits.

6. In addition to the above, Mr. N. G. R. Prasad, learned counsel appearing for the first respondent in WA.No.1498 of 2021 submitted that there was no *bona fide* in passing the transfer order, as the place to which the respondent was transferred has sufficient teaching faculty. This showed that there was no exigency warranting such transfer. The learned counsel further submitted that while it is agreeable that power to transfer is the appellants' prerogative right, such power cannot be exercised arbitrarily. Thus, according to him, transfer was effected with *malafide* intention.

<https://www.mhc.tn.gov.in/judis> 7. Heard Mr. P. Manoj Kumar, learned counsel for the respondents in



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W.A.Nos.1499, 1500 and 1501 of 2021 and Mr.Sathia Chandran, learned counsel for the first respondent in W.A. No. 1502 of 2021, who made submissions supporting the order of the learned Judge in setting aside the orders of transfer, besides prayed for a direction to the appellant University to consider the claim of the first respondent(s) relating to all the benefits.

8.This court has also perused the materials placed before this court, more particularly, the order of the learned Judge, which is impugned herein.

9.As mentioned earlier, in the writ proceedings initiated by the first respondent(s), the action of the University in transferring them to different places, was questioned, as the same is *malafide* and violative of statutory rules. Upon considering the rival submissions and legal provisions, the learned Judge has allowed the writ petitions and set aside the orders of transfer mainly on the ground that the same have been passed in contravention of G.O. Ms. No.249, Finance (Budget General-I) Department, dated 21.05.2020 and the findings of the learned Judge are quoted below, for ready reference:

"40. In the opinion of this Court the orders of transfer must disclose that the competent authority was behind the transfers not only in form but its substance as well. A reference to the approval of the Vice Chancellor in the orders of transfer must be supported by the relevant documents. In the absence of any modicum of participation on the part of Vice Chancellor, the impugned orders are liable to be declared as not having been passed legally, meeting the mandatory procedural



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requirements in terms of the University statute and regulations. This Court is unable to persuade itself to accept the disjunctive tabulated sheets containing the names of the transferees and the signatures of the Vice Chancellor underneath the column "Approved" as valid material for sustaining the orders of transfer. The contention that the transfer orders are not passed in terms of the procedure contemplated in the Statute governing the University administration is to be held as well founded, borne out by the records. Citations relied on by the learned senior Counsel for the petitioners on this legal issue would fully support the present case in terms of factual matrix as revealed and discovered from the files produced by the University.

41. In the absence of any material to show that the proposal of en masse transfer emanated from the desk of the Vice Chancellor, the impugned transfer orders are to be held as having passed in contravention of the statutory regulations. Therefore, no amount of inference in favour of the University stand with reference to the Letter of the Vice Chancellor dated 23.05.2020 seeking concurrence from the Government for the transfers would vouch for the fact of the Vice Chancellor-s participative role in the impugned action of the University, as revealed from the records."

The aforesaid order of the learned Judge in setting aside the transfer orders is questioned by the appellants / University in these writ appeals.

10. At the outset, be it noted, the law is well settled that the Constitutional Courts must exercise restraint and have to be very slow, while interfering with an order of transfer; and the order of transfer shall be interfered only if it is established that the same has been passed malafidely or without jurisdiction. Taking note of the same, the learned Judge has rightly not gone into the merits of the cases, but has only examined the validity of the transfer orders on legal grounds. In this regard, the observation of the learned Judge at paragraph 17 of the impugned herein is usefully quoted hereunder:



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individual grievances of the respective writ petitioners, this court, however, did not wish to get embroiled into any factual controversy by venturing into the area of individual concerns, as scope of interference in transfer orders is very limited and narrow and in that legal context, the validity of the transfer orders can be examined or appreciated only on exceptional legal contentions, as the judicial rule is that no transfer order ought to be subjected to judicial intervention as a matter of routine and any intervention is an exception to the rule.”

This court also need not be gone into the factual issues involved herein and hence, the claim of the first respondent(s) relating to all the benefits pursuant to the order of the learned Judge in setting aside the transfer orders, cannot be taken into consideration in these appeals, leaving the same open for determination by the authority concerned.

11. In the present case, it is the specific stand of the appellants / University that in accordance with G.O. Ms. No.249, dated 21.05.2020, due to administrative exigencies, they sought approval of the State Government to effect transfer and only after obtaining approval from the Government vide letter dated 19.06.2020, the transfer orders were passed against the first respondent(s), which are not in contravention of the G.O. Ms. No.249, dated 21.05.2020 passed by the Government and therefore, the learned Judge ought not to have set aside the transfer orders, while allowing the writ petitions. The appellants further stated that even though an executive decision taken under Article 162 of The Constitution of India cannot be superseded by an administrative decision of the Government or by another executive order, the



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letter dated 19.06.2020 was not passed to supersede G.O. Ms. No.249, dated 21.05.2020, but it was issued only with an intent to achieve the purpose and concept with which the said G.O. came to be issued. Thus, on the basis of the approval accorded by the Government in its letter dated 19.06.2020, the Vice Chancellor of the University, who is the competent authority, issued the orders of transfer and the same was communicated by the Registrar of the University individually to each of the transferees. While so, there is no contravention of the order passed in G.O. Ms. No.249, dated 21.05.2020, while effecting transfer of the first respondent(s), however, which was not properly appreciated by the learned Judge.

12. On the other hand, the orders of transfer were challenged in the writ proceedings by the first respondent(s) herein, who were employed as Assistant Professors, Associate Professors and Professors in the appellant University, on the ground that the same are in contravention of the G.O. Ms. No.249 dated 21.05.2020, by which the Government has restricted the routine or normal transfer; and it was specifically stated that an order of transfer, if required, has to be passed by an authority higher than the authority normally empowered to transfer. Notwithstanding the restrictions imposed in the said G.O. to effect general or routine transfers, the first respondent(s) were issued with orders of



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transfer from the present stations, stating that the same were passed after obtaining approval and concurrence from the Government by letter dated 19.06.2020. According to the first respondent(s), the Government Order issued by the Governor of the State cannot be superseded by an executive order issued by the Secretary to the Government under the guise of clarification and therefore, the Government letter dated 19.06.2020, through which, the so-called approval given to the Vice Chancellor of the appellant University to effect transfer of the employees of University, is contrary to the G.O. Ms. No. 249 dated 21.05.2020. Pointing out the same, the learned Judge has rightly set aside the transfer orders and allowed the writ petitions.

13. Before proceeding further, it would be appropriate to look into the G.O. Ms. No. 249, Finance (Budget General-I) Department dated 21.05.2020, the relevant paragraphs of which may be set out below:

"The Revenue Receipts and the Revenue Expenditure assumed in the Budget Estimates 2020-21 have been drastically affected by the unprecedented COVID-19 outbreak since March 2020. The Government is facing a huge shortfall in the receipts due to the COVID-19 pandemic and the consequent measures to contain the pandemic. There are mounting additional expenditure commitments towards containment, prevention, relief and mitigation activities. The Government have made a detailed study of the current situation and are taking necessary action to minimize fiscal stress so that expenditure on welfare schemes and capital works are ensured to revive the economy.

2. As part of the economic measures and resource mobilization efforts, the Government have decided to curtail certain avoidable items of expenditure during the current financial year. Accordingly, the Government hereby direct that the allocation in the



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Budget Estimates 2020-21, under all the demands for grants shall be reduced as per the cuts imposed against each object head indicated below:

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g) *General transfers shall be kept on hold for 2020-21 to minimise expenditure on transfer travel expenses. Only transfers on administrative grounds by an authority higher than the authority normally empowered to transfer and mutual request transfers will alone be allowed."*

It is evident from the aforesaid G.O., that the Government had ordered to keep the general transfers for the academic year 2020-2021 on hold with a view to minimise expenditure on travel expenses. It was also mentioned in the said G.O. that the transfer order, if warranted, shall be passed by an authority higher than the authority normally empowered to transfer, however, exemption was given to mutual request transfers. Such a direction to freeze the routine transfers, was issued taking note of the prevailing Covid-19 pandemic situation. Despite the same, the orders of transfer were issued by the appellants, against the first respondent(s) citing administrative reasons.

14. This court is of the opinion that the twin requirements imposed in the said G.O.Ms.No.249 dated 21.05.2020 have not been followed while passing the orders of transfer. Firstly, it was merely cited as transfer on administrative exigency, which is akin to a general or routine order of transfer. Secondly, the orders of transfer have not been passed by a higher authority, as enunciated in the G.O. Though it was contended on the side of the appellants that before



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passing the orders of transfer, they obtained approval from the Government vide letter dated 19.06.2020, the same cannot be accepted in view of the fact that such a communication is admittedly a clarificatory in nature and the same will not empower the appellants to issue such transfer orders by overlooking the specific requirements as contained in the said G.O. As such, the learned Judge has rightly observed that when G.O. has been issued and is in force providing prohibition of general transfers, such prohibition is meant to be followed during the pandemic times and there cannot be a deviation from the instructions on the basis of a letter of clarification issued by the Government, overriding the executive order of the Government issued in the name of His Excellency the Governor of the State; and therefore, it cannot be accepted that the letter dated 19.06.2020 issued by the Principal Secretary to Government would have equal force as that of G.O.Ms.No.249 dated 21.05.2020. Accordingly, the learned Judge has held that the orders of transfer have been passed by violating the guidelines given in the said G.O. and hence, they are not legally tenable.

15.It is also seen that while examining the validity of the transfer orders in the face of G.O.Ms.No.249 dated 21.05.2020, leaving the issue as to who is competent to transfer the University officials during the pandemic times, open,



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the learned Judge, in the light of the relevant provisions of the statutes, has found two discrepancies in the approval of the transfer orders by the Vice Chancellor - (i)the Vice Chancellor signed the same much before the letter of permission and concurrence given by the Government on 19.06.2020 viz., in the month of May, 2020 itself, in all the cases except Dr.S.Natarajan, which shows that the decision of transfer was taken before obtaining permission from the Government; and (ii)the signatures of the Vice Chancellor had been obtained under the caption “approved” without any proceedings along with the tabulated sheets containing the names of the transferees, which does not indicate the participation of the Vice Chancellor in the decision making process. Pointing out the same, the learned Judge has correctly opined that when *en masse* transfer is being effected particularly during the turbulent times of Covid crisis, what is expected of the competent authority is his effective participation in the decision making exercise demonstrating his involvement, otherwise, the orders of transfer would not pass the test of judicial scrutiny, as the same would be construed as orders not passed by the competent authority. This court does not find any reason to disagree with the findings so rendered by the learned Judge.



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WEB COPY 16. At this juncture, it is appropriate to refer to the decisions of the Hon'ble Supreme Court in ***Kunwar Pal Singh (dead) by LRs v. State of U.P. and others [2007 (5) Supreme Court Cases 85]*** and (ii) ***Mackinnon Mackenzie & Co. Ltd v. Mackinnon Employees Union [2015 (4) Supreme Court Cases 544]***, wherein it was observed that “*the principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefor in the Act*”. Whereas, in the present case, the appellants contrary to G.O.Ms.No.249 dated 21.05.2020, have transferred the first respondent(s) from the present places to different places, citing administrative reasons, which are not legally sustainable. Therefore, this court is of the opinion that the learned Judge is wholly justified in setting aside the transfer orders, while allowing the writ petitions and the same does not call for interference.

17. Accordingly, all the writ appeals fail and are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D.,J.) (J.S.N.P.,J.)
30.06.2022



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Index : Yes / No
Internet : Yes / No

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R. MAHADEVAN, J.
and
J. SATHYA NARAYANA PRASAD, J.

rsh/rk

To

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3. The Registrar
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