

(2001) 10 AP CK 0131
In the Andhra Pradesh High Court
Case No : Writ Petition No. 13344 of 2001

A. Venugopal Rao

APPELLANT

Vs

The Executive Engineer, Panchayat Raj

RESPONDENT

Date of Decision : 10-10-2001

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2001) 10 AP CK 0131

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : M. Surendar Rao, for the Appellant; P.V. Ramana, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—This writ petition is directed against a judgment dated 29.6.2001 passed by the A.P. Administrative Tribunal in Original Application No.4070 of 2001 whereby and where under the application filed by the 5th respondent herein was allowed.

2. The factual matrix of the case in brief is thus:

The petitioner herein who was working as Deputy Executive Engineer was transferred to Movva by reason of proceedings in G.O.Rt.No.871, dated 22.6.2001 wherefrom the 5th respondent herein was transferred.

3. The sole question which arises for consideration is as to whether the order of transfer passed against the 5th respondent herein was valid.

4. By a letter dated 9.10.2000 the Executive Engineer requested the 5th respondent to proceed on leave. The said letter reads thus:

It is regretted to inform you that Special Officer, Zilla Parishad/District Collector, Krishna has totally dissatisfied regarding your discharging official duties in commitment of development activities. He has directed me to surrender you to higher authorities, a note to this effect has been served.

Hence, as I am not empowered to do so, you are requested to proceed on leave immediately without giving much scope for further complications. Immediate action is requested in this regard.

5. It is not in dispute that pursuant to or in furtherance thereof the 5th respondent filed O.A. No. 3612 of 2001 before the Tribunal wherein the following order was passed:

It is rather unfortunate that in the instant case, the 1st respondent, i.e., the Executive Engineer, according to his whims and fancies, of course, on the alleged directions said to have been issued by the District Collector, asked the applicant not to join duty and directed him to go on leave. If the authorities feel that the Government servant has committed any irregularity/illegality or misconduct in discharging his duties, it is open to them to initiate disciplinary proceedings in accordance with the rules. But, to our dismay, the applicant in the instant case was asked to go on leave and such arrogance cannot have the sanction of any rule or law. This attitude of the respondents is highly deprecated. For the above reasons, the respondents are directed to arrange payment of salary to the applicant with effect from 14.11.2000 to 26.12.2000 and treat the said period as duty period spent by the applicant.

6. Pursuant to or in furtherance of the aforementioned order, the said order dated 9.10.2000 was recalled. The matter was then referred to the Government for approval and order of transfer In G.O.Rt. No. 871 was passed on 22.6.2001 in the following terms:

In the circumstances reported by the Engineer-in-Chief (Panchayat Raj) Hyderabad in his letter 3rd read above, the Government after careful examination, hereby accord permission to the Engineer-in-Chief (Panchayat Raj) Hyderabad to transfer Sri P.Harinatha Babu, Deputy Executive Engineer from Panchayat Raj Sub-Division, Movva and to post him at Rural Water Supply Sub-Division, Kanchikacherla, in place of Sri A. Venugopala Rao, Deputy Executive Engineer (Panchayat Raj) and vice versa, on administrative grounds, with immediate effect, in relaxation of ban orders issued in the reference 1st read above.

The Engineer-in-Chief (Panchayat Raj) Hyderabad shall take necessary action accordingly.

7. The Engineer-in-Chief, Hyderabad thereafter passed the following order:

In pursuance of orders issued in the G.O. cited, the following Deputy Executive Engineers transfer and posting are as follows with immediate effect:

1. Sri P.Harinatha Babu, Dy EE, PR Sub-division, Movva is hereby transferred and posted to R&B sub-division, Kanchikacherla in place of Sri A. Venugopala Rao, Dy EE vice versa on administrative grounds.

2.

The Superintending Engineer, R&B Circle, Vijayawada is requested to make local arrangements to relieve Sri A.Venugopala Rao, Dy EE, R&B, Kanchikacherla at the 1st instance.

8. A bare perusal of the said order would show that the impugned order of transfer has been passed on administrative grounds. The said order of transfer was challenged before the Tribunal principally on two grounds viz., the transfer was made basing on the report of the Collector and that notification for holding elections to the Mandal Parishad and Zilla Parishad was issued. The learned Tribunal, by reason of the impugned order dated 29.6.2001 allowed the application holding in favour of the 5th respondent on both the grounds.

9. Mr. M. Surendar Rao, the learned counsel appearing on behalf of the petitioner, would contend that an order of transfer on administrative ground is permissible. The learned counsel would contend that having regard to the fact that the 5th respondent had merely been transferred to a place at a distance of 40 to 50 kms the impugned order should not have been passed by the Tribunal and in any event, as the election has already been held, the order of transfer can now be given effect to. It was further contended that the learned Tribunal failed to take into consideration the fact that the order of transfer does not cast any stigma.

10. In a case of this nature, the Court will not exercise its power of judicial review at the instance of a person who in the event of the order of transfer as against the 5th respondent being upheld would be entitled to come to his place at Movva. The State does not question the order of the Tribunal. In all probability it has accepted the order of the Tribunal. For the purpose of finding out as to whether an order of transfer has been passed by way of or in lieu of punishment or otherwise depends on facts and circumstances of each case. It is well settled principle of law that an order of transfer on administrative ground is permissible but an order of transfer by way of or in lieu of punishment is not. Only because the order impugned before the learned Tribunal did not cast any stigma the same cannot by itself be conclusive on the point that the allegations against the 5th respondent by the Collector had not been acted upon. The sequence of events as noticed hereinbefore clearly go to show that the report of the Collector had been acted upon at all levels. The 5th respondent being Deputy Executive Engineer (Panchayat Raj) could have been transferred only by the State Government and an order of transfer could not have been passed by any person at the instance of the Collector.

11. Furthermore, in a case of this nature the Court is entitled to pierce the veil for the purpose of arriving at a finding as to whether the apparent state of affairs is the real state of affairs. In *Anoop Jaiswal Vs. Government of India and Another*, it has been held:

....Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director

which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in art 311 (2) of the Constitution.

12. The Court is, therefore, entitled to see as to whether the impugned order of transfer was by way of or in lieu of punishment. in the circumstances referred to hereinbefore.

13. In State of U.P. and Others Vs. Jagdeo Singh, the apex court clearly held that an order of transfer in lieu of punishment is not permissible.

14. For the reasons aforementioned, we do not find any merit in this petition which is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.