
(2010) 03 AP CK 0028
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5222 of 2010

B. Suresh

APPELLANT

Vs

The Deputy Commissioner of Prohibition and Excise, B.
Polaiah and Excise and The A.P Administrative Tribunal

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Citation : (2010) 03 AP CK 0028

Hon'ble Judges : Ghulam Mohammed, J;G. Bhavani Prasad, J

Bench : Division Bench

Advocate : M. Surender Rao, for the Appellant; GP for Services I for Respondent No. 1 and K. Rathangapani Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—The writ petitioner, who is the unsuccessful applicant before the Andhra Pradesh Administrative Tribunal (for short "the Tribunal"), filed the present writ petition assailing the correctness of the order dated 02-03-2010 in O.A. No. 185 of 2010, whereby and whereunder the Tribunal dismissed the O.A.

2. The factual background for the writ petition is that the petitioner joined the service in 1978 as Typist-cum-Clerk and was promoted as Senior Assistant in the year 1991. By virtue of his seniority and merit, he was promoted and transferred to Nellore as Office Superintendent and has been working as such from 20-12-2007. While so, one T. Jayakar Prasad, Office Superintendent at Ongole, retired from service on attaining the age of superannuation on 31-12-2009. The 2nd respondent herein was promoted as Office Superintendent and posted at Nellore in the place of the petitioner who was transferred to Ongole, even though there was resultant clear vacancy on account of retirement of Jayakar Prasad, which is in violation of G.O.Ms. No. 143, dated 21-06-2007 under which ban was re-imposed on transfers. Challenging the said impugned transfer, the petitioner filed O.A. No. 185 of 2010 before the Tribunal and the Tribunal, after relying on

and extracting various precedents placed by both parties, dismissed the said O.A. holding that the transfer is an incidence of service and the employee has no legal right to be posted at particular place and that the Courts cannot interfere with the transfer of an employee unless it is vindictive in nature. Assailing the correctness of the order of the Tribunal, the present writ petition has been filed.

3. Heard the Learned Counsel for the writ petitioner, learned Government Pleader for Services and the Learned Counsel for the 2nd respondent.

4. Learned Counsel for the writ petitioner vehemently contended that the impugned transfer has been effected only in order to accommodate the 2nd respondent due to political pressure even though he opted for Nellore and contrary to G.O.Ms. No. 143, dated 21-06-2007 under which guidelines have been issued for transfers, which were not followed by the 1st respondent. He further contended that the Tribunal also without looking into these aspects erroneously dismissed O.A., and hence, the impugned order needs interference of this Court.

5. On the other hand, the learned Government Pleader for Services vehemently contended that as the transfer is an incidence of service, an employee cannot have any legal right to be posted at a particular place. He further contended that G.O.Ms. No. 143, dated 21-06-2007 exempted certain departments including the 1st respondent, from imposition of ban having been authorized to exercise powers to effect transfers strictly based on performance and the guidelines laid down in the said G.O. As the transfer of the petitioner is in tune with the said guidelines, the impugned order needs no interference.

6. Basing on the rival contentions, the point that arises for consideration is as to whether the Tribunal committed any jurisdictional error or exceeded its jurisdiction?

7. G.O.Ms. No. 143, dated 21-06-2007, on which the petitioner strongly relied on, exempted certain revenue earning departments i.e. Commercial Taxes Department, Prohibition and Excise Department, the 1st respondent herein, and Registration and Stamps Department from the ban on transfers superseding the earlier G.O.Ms. No. 100, dated 01-05-2007 and issuing certain guidelines for effecting transfers in the said departments. The G.O. further authorized the said departments to exercise the powers to effect transfers of Government employees in the said departments on completion of two years strictly based on the performance and duly following the guidelines for transfers as laid down in the annexure of the said G.O.

8. The perusal of the said guidelines makes it clear that the transfers will be effected purely based on the evaluation of performance of employees according to certain objective criteria. Further, no person will be given posting in his native place and any deviations from the guidelines can be made for administrative exigencies to be recorded in writing for various reasons.

9. Having regard to G.O.Ms. No. 143, dated 21-06-2007 and having heard the Learned Counsel for both parties, it appears that the transfer of the 2nd respondent was made by the 1st respondent as per the exempting clause under G.O.Ms. No. 143, dated 21-06-2007. The 1st respondent had clearly stated in the counter affidavit that the transfer of the petitioner was effected only on humanitarian grounds keeping in view the health condition of the 2nd respondent, who was suffering from cardiac problem, more so, the petitioner had completed two years of service at the present station and hence, the transfer of the petitioner is in accordance with the guidelines issued in G.O.Ms. No. 143.

10. In this context, learned Government Pleader for Services placed strong reliance on State of U.P. and Others Vs. Gobardhan Lal, wherein the Apex Court held that 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.

11. Here, in this case, no ground is made out by the petitioner regarding any mala fides or irregularities by the 1st respondent in transferring the petitioner to another place, more so, in the absence of any legal infirmity in the order of the Tribunal, the order of the Tribunal cannot be said to be perverse or unreasonable or exceeded its jurisdiction so as to call for any interference by this Court in exercise of restricted judicial review, and hence, the writ petition is liable to be dismissed.

12. Accordingly, the writ petition is dismissed.