
(2002) 03 AP CK 0046
In the Andhra Pradesh High Court
Case No : WA No. 20 of 2002

P.S.R. Subrahmanyam

APPELLANT

Vs

Government of A.P. and Another

RESPONDENT

Date of Decision : 06-03-2002

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office
Holders and Servants Conditions of Service Rules, 1983 — Rule 39, 43

Citation : (2002) 5 ALD 341 : (2002) 4 ALT 255

Hon'ble Judges : Ar. Lakshmanan, C.J;I. Venkatanarayana, J

Bench : Division Bench

Advocate : K. Grishna Murthy, for the Appellant; Government Pleader for
Endowments, for the Respondent

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, C.J.—Heard Shri HG.Krishna Murthy, learned Counsel appearing for the appellant and Ms. Nanda Ramachandra Rao, learned Government Pleader for Endowments.

2. This writ appeal is directed against an order dated 28th November, 2001 passed by a learned single judge of this Court in WP No. 24497 of 2001. The said writ petition was filed seeking a writ of certiorari calling for the records relating to Proceedings in Rc.No. A1/68540/97 dated 8-11-1999 and to quash the same as illegal, improper, unjust, arbitrary and contrary to law. The learned single judge, however, dismissed the writ petition by the impugned judgment dated 28-11-2001. Challenging the said judgment, the present writ appeal has been filed by the writ petitioner,

3. This case has a chequered history. The appellant herein, earlier, filed W.P. No. 11835 of 1997 seeking to quash the order passed by the Commissioner of Endowments in his Proceedings R.C.No. A1/ 24393/97-31, dated 7-6-1997 transferring him to Simhachalam. The said writ petition was disposed of along with several other writ petitions. A Division Bench of this Court, by order dated

2nd September, 1997 taking a sympathetic view of the matter, passed the following order:

"He requests to stay at Vijayawada itself where his kith and kin are with him. He even submitted that if he is not retained in, Durgamalleswara Swamyvarla Devasthanam, Vijayawada, he may be posted to any other temple coming within the jurisdiction of the authorities situated in Vijayawada or nearby place by protecting his salary and all other consequential benefits which he is entitled to. In view of the above facts and circumstances, the petitioner deserves to be retained either at Vijayawada or nearby place purely on humanitarian grounds. In the circumstances, we observe that if the petitioner submits a representation to the Commissioner for seeking his retention either at Vijayawada or at nearby place on health grounds, his case be considered sympathetically. It is also made clear that such retention or posting at nearby place shall not be a precedent for other cases."

4. Thereafter, the appellant was transferred by the order of the Commissioner of Endowments on the basis of the permission accorded by the Government from Sree Durga Malleswara Swamyvarla Devasthanam, Vijayawada to C.V.R. Charities, Vijayawada on administrative grounds. The Commissioner of Endowments was informed by the said communication that the appellant has committed several irregularities and since cases are pending regarding the offences committed by him earlier, the same may be examined and a report be sent to the Government. The said transfer order was not challenged by the appellant. Thereupon, the appellant, questioning the correctness of the order dated 5-8-1998 filed another writ petition in W.P.No. 23297 of 1998. The said Writ Petition was disposed of by the Division Bench observing as follows:

"The petitioner has got an effective alternative remedy by way of an appeal before the Government. In the circumstances, the petitioner is directed to prefer an appeal before the Government, if he is aggrieved by the impugned transfer order, within 60 days from this day. If such an appeal is preferred Government shall dispose of the same at an early date. Till the disposal of the appeal, if filed within the time stipulated, the interim order passed in WP MP No. 28095 of 1998 shall continue. The writ petition is accordingly disposed of."

5. Subsequently, the Commissioner of Endowments, by another order dated 8-11-1999, which is the subject-matter of the present writ petition, passed the following order:

Office of the Commissioner, Endowments Department, A.P., Hyderabad.

Rc.No. A 1/68540/97, dated 8-11-1999

Ref:- (1)Govt. Memo No. 87192/Endts.I(1)/ 97-2, dated 9-7-1998

(2) This office RC.No. A1/68540/97, dated 5-8-1998

(3) Orders dated 2-9-1998 in W.P.No. 23297 of 1998 filed by Sri

P.S.R.Subrahmanyam, Superintendent.

(4) Hon"ble High Court Order dated 28-10-98 in W.P.23297/98

(5)Govt.Memo.No. 9908/Endts-V(1)/.99, dated 8-10-1999

"In the feference 1st cited, the Government issued orders permitting the Commissioner, Endowments Department, A. P., Hyderabad to transfer Sri P.S.R. Subramanyam, Superintendent, Sri Durgamalleswara Swamyvarla Devasthanam, Vijayawada to Sri C.V.Reddy Charities, Vijayawada on administrative grounds.

In pursuance to the Government Orders, orders were issued in the reference 2nd cited, transferring Sri P.S.R.Subramanyam, Superintendent, Sri C. V.Reddy Charities, vice Sri P.V.S.Bhanuji Rao, Superintendent transferred.

Sri P.S.R.Subrahmanuyam, Superintendent has approached the Hon"ble High Court by filing W.P.No. 23297 of 1998. The Hon"ble High Court passed interim orders dated 2-9-1998 to continue the petitioner as Superintendent at Sri Durga Malleswara Swamyvari Devasthanam, Vijayawada if some other officer is not yet reported to duty as such in the post which the petitioner is holding. As nobody joined in that post, he was continued at Sri Durga Malleswara Swamyvari Devasthanam, Vijayawada.

In the reference 4 cited, the Honourable High Court in its order dated 28-10-1998 while disposing of the W.P.No. 23297 of 1998, directed the petitioner to prefer an appeal before the Government against his transfer order within 60 days from 28-10-1998.

In the reference 5th cited, the Government: requested the Commissioner, Endowments Department, to implement their earlier orders dated 9-7-1998 since the individual has not preferred any appeal before the Government within the stipulated period of 60 days as ordered by the Honourable High Court.

In view of the above, the Executive Officer, Sri Durga Malleswara Swamyvari Devasthanam, Vijayawada and the Executive officer, Sri C.V. Reddy Charities, Vijayawada are requested to implement the orders issued in the reference 2nd cited forthwith and report compliance."

6. Challenging the said order, the appellant herein preferred W.P.No. 24497 of 2001. A learned single Judge of this Court dismissed the writ petition by observing as follows:-

"Admittedly, while disposing of the writ petition No. 23297 of 1998 this Court directed the petitioner to file an appeal within a period of 60 days, In pursuance of the same, the petitioner has not preferred any appeal within the time stipulated by this Court. In the absence of filing of any appeal, the first respondent directed the second respondent to implement the orders of the second respondent dated 5-8-1998. Accordingly, the second respondent issued,

the impugned order dated 8-11-1999. In view of the fact that Government itself directed the second respondent to implement the order passed by the Commissioner through Memo dated 8-10-1999, it cannot be said that Commissioner has no power to implement the transfer order. This Court cannot go into the validity or otherwise of the transfer order dated 5-8-1998, this Court permitted the petitioner to file an appeal before the Government within 60 days. As the appeal was not preferred, the Government rightly issued orders to the second respondent to issue implementation orders. Accordingly, the second respondent issued the impugned order dated 8-11-1999, which cannot be said to be arbitrary. Moreover, the writ petition is filed after lapse of two years of passing of the impugned order, hence, the same cannot be entertained."

7. Aggrieved by this order, the present Writ Appeal has been filed. Shri K.G. Krishna Murthy, learned Counsel appearing for the appellant submitted that the order passed by the learned single Judge is not correct in that the learned Judge has not appreciated the fact that the first respondent had refused to receive the appeal and ultimately, the appellant was forced to send the appeal papers through registered post and hence the appeal filed by him was within 60 days. Therefore, the dismissal of the writ petition on the ground of not filing the appeal within sixty days is incorrect. It is also further submitted that no transfer can be made beyond the Unit as per rules and that if at all the Commissioner intends to transfer the appellant, he ought to have transferred him to any one of the 8 temples, which forms one Unit, and no transfer can be made beyond the Unit, According to the learned Counsel, this point though raised, was not considered by the learned single Judge. In support of this contention, the learned Counsel for the appellant cited a decision of the learned single Judge of this Court in W.P. 13820 of 1996 dated 16-12-1996. We have perused the rules and also the judgment of the learned single Judge in W.P. 3820 of 1996. Though the learned Counsel says that the question relating to transfer within the Unit has been raised in the writ petition, there is no indication from the order passed by the learned single Judge that such a question was argued at all before the learned single Judge. Therefore, there is no point in blaming the Court for not rendering a finding on the said question which was not even argued before the learned single Judge. Now that the point is raised before us, we answer the said issue in the negative for the following reason. We have perused the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and servants Conditions of Service Rules, 1983 (the Rules" for short) Rules 39 and 43 of the Rules are relevant for the purpose of this case. The said Rules in our opinion, are not mandatory in nature but are only directory. The said rules are only guidelines for the Officers to follow as far as possible., According to the learned Counsel for the appellant, as per Rule 43, eight institutions shall constitute one Unit for the purpose of recruitment, transfer, promotion, seniority and discharge for want of vacancies etc. Rule 39 deals with special provisions or certain Temples. The special provisions will apply to office holders and servants of the Eight institutions mentioned in the said rule. In our considered opinion, the

appellant cannot take shelter under Rules 39 or 43 since the impugned transfer order dated 8-11-1999 was passed pursuant to the directions issued by the Division Bench of this Court in WP No. 11835 of 1997. As a matter of fact, the transfer order was passed at the request made by him earlier before the Division Bench in W.P.No. 11835 of 1997. He requested the Court to stay at Vijayawada itself where his kith and kin are with him. He even submitted that if he is not retained in Durgamalleswara Swamyvarla Devasthanam, Vijayawada, he may be posted to any other temple coming within the Jurisdiction of the authorities situated in Vijayawada or nearby place by protecting his salary and all other consequential benefits which he is entitled to. Thus, it is seen that the appellant was allowed to stay at Vijayawada at his own request and also as per the directions issued by the Honourable Judges of the Division Bench.

8. Hence, the reliance now placed by the learned Counsel on Rule 43 or 39 or on the judgment of the learned single Judge in WP No. 13 820 of 1996 does not come to the aid of the appellant in any manner. It is also not in dispute that the appeal filed by the appellant was beyond the period of 60 days. Under these circumstances, the impugned order dated 8-11-1999 has been passed by the Commissioner since the appellant has not preferred any appeal before the Government within the stipulated period of 60 days as ordered by this Court. Therefore, the learned single Judge, in our opinion, is right in dismissing the writ petition filed by the appellant herein against the order dated 8-11-1999 on the ground of laches. Although, the order was made on 5-8-1998, the writ petition was filed after a lapse of two years of passing of the impugned order.

9. It is a settled law that management has got power to transfer an employee from one place to another and from one unit to another unit. Thus, the transfer of an employee is part of conditions of service and the employees are bound to obey the orders of transfer and work in the place where they have been transferred and posted. Transferability from one establishment to another is an incidence of service and that the employer is the best judge to decide upon the utilisation and distribution of its manpower amongst various units and places. Courts and Tribunals cannot also properly assess or adjudicate effectively the reasons given for transfer of employees. The decision of the employers in such cases is conclusive and that except in the rarest of rare cases, Courts should not interfere with transfer, (vide Education Officer, Kendriya Vidyalaya Sangathan, New Delhi and Another Vs. S. Ammajan and Another,). In our opinion, the present appeal by the appellant is an abuse of process of Court. The appellant has unnecessarily dragged the Department and other respondents of the Government of Andhra Pradesh to Court by arraying them as respondents in the writ petitions and the appeal. Therefore, they are liable to be suitably compensated. However, taking a lenient view of the matter, we dismiss the writ appeal without there being any order as to costs.

10. The appellant shall immediately report for duty to the place to which he is transferred, failing which the Department is at liberty to take departmental

action against the appellant for non-compliance of this order.

11. We also make it clear that the Department is also at liberty to proceed with other disciplinary actions which are pending against the appellant and take appropriate decision in accordance with law. The appeal is dismissed.