

(1996) 12 AP CK 0091

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1198 of 1996

Smt. A. Bharathi (Teacher)

APPELLANT

Vs

Smt. A. Rama Rani (Teacher) and Another

RESPONDENT

Date of Decision : 06-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 ALT 12

Hon'ble Judges : P.S. Mishra, C.J.;V. Rajagopala Reddy, J

Bench : Division Bench

Advocate : M. Kesava Rao, for the Appellant; P. Gangaiah Naidu and Government Pleader for Education, for the Respondent

Judgement

V. Rajagopala Reddy, J.—An order of transfer dt.27-5-1995, transferring 1st respondent-writ petitioner to APR School, Vahgara, Karimnagar District, vice Smt. A. Bharati the appellant herein (2nd respondent in the writ petition), who was transferred ? and posted at APR School (Girls), Hasanparthy, Warangal District, was quashed, by the learned single Judge, by the Judgment in W.P.No. 11227 of 1995, which is under appeal in this writ appeal, filed under Clause 15 of Letters Patent.

2. The parties are mentioned herein as they are arrayed in the writ petition.

3. The petitioner Smt. A. Rama Rani was working as Trained Graduate Teacher in Telugu in APR School for Girls, Hasanparthy, Warangal District. Her husband is working as Secondary Grade Teacher at an aided High School at Hanumakonda, Warangal District, which is not a transferable post. She was appointed and posted at Hasanparthy in 1987. Except for a few days, she has been working for over a period of 7 years at Hasanparthy. She was continued at Hasanparthy for such a long time, presumably on the ground that her husband was working near Hasanparthy. The 2nd respondent was working as Trained Graduate Teacher at Vangara since 1992. She requested for transfer to Hasanparthy, as she was suffering from Asthma, since it was closely to the Head Quarters Hospital,

Warangal. Her children are studying at Hanumakonda, which was only 5 Km., from Hasanparthy and her husband, who was an officer in State Bank of Hyderabad, was also posted recently at Ghanapur, Warangal District. Considering these facts, 1st respondent transferred her to Hasanparthy and the petitioner was transferred to Vangara, in her place. This order of transfer was challenged by the petitioner by filing the writ petition under Article 226 of the Constitution of India.

4. The contention raised by the Counsel for the petitioner in the writ petition was that the impugned order of transfer was vitiated since it was passed at the request of the 2nd respondent and to accommodate her, the petitioner has been denied a similar opportunity to place before the authorities the circumstances requiring the retention of the petitioner in the same place and that the transfer was violative of the guidelines to be followed that husband and wife should, normally, be posted in the same place.

5. The said contentions were rebutted by the Government Pleader appearing for 1st respondent, placing reliance upon various decisions of the Apex Court to show that the transfer is an incident of service and is at the discretion of the employer, in the exigency of service and in the public interest and unless the order is contrary to the statutory rules and mala fide, the Court will not, normally, interfere with it. An order of transfer on request will not cease to be in the exigency of service or in public interest.

6. The contention of the learned counsel for 2nd respondent, was that as the 2nd respondent was suffering from severe Asthma and Vangara being a place without any medical facilities and working at Hasanparthy, the medical facilities of the Government Hospital at Hanumakonda could be availed, and further her children were studying at Hanumakonda, her son in Intermediate II year, and as she has been away from her husband and children for the last 5 years, she was entitled for a transfer to Hasanparthy. It is also stated that as the petitioner has been working in Hasanparthy ever since 1987, except for Maternity Leave and short transfer of two weeks, there was nothing wrong in transferring her to Vangara, which was the nearest place available to her and her transfer was already over due as she was staying there for about eight years.

7. On these contentions, the learned single Judge held as follows:

"It is no doubt true that the transfer has been regarded as an incident of service and that the appointing authority has a discretion in the matter and he is the best judge to decide how to distribute and utilise the services of the employee. At the same time, it must be remembered that particularly in public service, Human Resource Development is a clear objective of the service and in order to conserve and develop the resources, the service conditions have to be modulated to remove the obstacles to such development, even if it is not immediately possible to encourage such development. It is because of this objective, that one of the guidelines is to see that the family life of the employee is not disrupted

and where the husband and wife both are working, efforts are made to see that they are both posted at the same place. It would follow that where the couple is already working in a particular place, any order disturbing them must take into account the possibility of keeping them together in the new place. The existence of the guidelines that the husband and wife will be permitted to work in the same place itself gives rise to a ! legitimate expectation that they will not be disturbed without notice and that their situation will be taken into account and in the new place also it may be made possible for them to stay together. The legitimate expectation is in a sense, fair play in administrative action which affects the lives of those in respect of whom adverse orders are made..... Though the transfer order is called a routine transfer, it is seen that the proceedings of the Secretary Rc.No. 212/6-1/95/6, dt.27-5-1995 refers to the applications from the individuals and orders the transfers. The body of the order also states since the transfers are made at the request of the individuals, they are not eligible for TTA and joining time. Clearly, therefore, the impugned order cannot be termed as an order passed in public interest but only to favour those who made a request for transfer and this is acknowledged by the fact that they are denied the TTA and joining time. This being the position, the necessary implication is that the person, who is dislodged for accommodating the request of the person who is transferred to any particular place, can certainly complain that it is arbitrary and without notice, as he has no opportunity of placing before the authority concerned his personal situation. Though, generally there is wide discretion for effecting transfers and the person affected may not have a right to be heard, I am of the opinion that in a case of transfer at the request of one person which results in shifting of another person, the person so shifted does have a legitimate expectation that he will not be disturbed unfairly. It cannot be said that the decision in this case was taken fairly and objectively when the petitioner had no notice and no opportunity to place her situation vis-a-vis the situation in which the 2nd petitioner (sic. respondent) sought a transfer.....As long as the guidelines relating to posting of husband and wife remain in force, good administration required that it should act to implement that promise and such implementation necessarily requires the 1st respondent to give an opportunity to the petitioner to state her case and consider the same before passing an order which goes against that guidelines in respect of the petitioner while favouring the 2nd respondent, particularly when that order is not an order, prima facie, in public interest. I am, therefore, convinced that the impugned order was untenable and as it is violative of the doctrine of Legitimate Expectation of the sense of affording a fair hearing before taking an adverse decision. I have, therefore, no hesitation in quashing the impugned order

Accordingly, the writ petition is allowed. No costs."

8. The above order of the learned Judge is in serious challenge in the Writ Appeal filed by 2nd respondent, Smt. Bharathi.

9. It may be stated, at the outset, that we do not approve of the reasoning of the

learned Judge to hold that the order of transfer was a violative of the Doctrine of Legitimate Expectation.

10. Let us notice the undisputed facts of the case to appreciate the short and novel question, whether they give rise to a legitimate expectation to the petitioner, to require a notice of being heard before the order was passed. The petitioner has been working at Hasanparthy since 1987. She has been retained there presumably for the reason that her husband was working near Hasanparthy in an aided High School, which is a non-transferrable post and she has small children. The transfer policy of 1st respondent-Society is to the effect that all request transfers of teaching and non-teaching staff shall be considered in the months of May and June of every year and that transfers of request would be considered only after the employees had worked for three years. 2nd respondent had worked at Vangara since 1992 and as per the counter-affidavit filed by the 1st respondent, she had requested for transfer to Hasanparthy on health grounds as there was no full fledged hospital at Vangara and as she was suffering from frequent bouts of Asthma. Her husband, a bank officer, got himself transferred to a place near Hanumakonda. One of her sons was studying Intermediate II year, which is a crucial year for the boy's future. Taking all these factors into consideration, she was transferred to Hasanparthy in the place of the petitioner. Vangara is only 25 Km., from Hasanparthy.

11. The learned single Judge held that it was necessary to see that a transfer order should not occasion the disruption of the family life of an employee and it therefore follows that in all such cases it gives rise to the legitimate expectation of being heard, particularly, as in the instant case, when the order was passed to accommodate another employee (being 2nd respondent (sic. appellant) herein). In the context it becomes imperative to comment upon the justification of the plea of the petitioner. She has been with her children and husband for about 9 years, right from the date of her appointment, without being transferred from Hasanparthy, whereas, the 2nd respondent was away from her husband and children for more than four years. She is now transferred to Vangara which is only 25 Kms. The petitioner cannot be expected to be retained at the same place in the same school throughout her service. Transfer is an incident of service and the employer has got very wide discretion in the matter. We agree with the view of the learned single Judge that if both husband and wife are in service, efforts should be made to see that both of them are placed at the same place. It may be relevant to bear in mind that the petitioner's husband is not working in any of the institutions of 1st respondent-Society, but in a private-Aided High School, in which 1st respondent may not be empowered to effect transfer and the guidelines apply only if both husband and wife are working in the same Institution, or Department. Hence, the question of transferring them to the same place may not strictly arise and the guidelines are not applicable. We do not, therefore, find any justification for the petitioner to raise a hue and cry over her transfer and to have any expectation, much less legitimate expectation to require a fair hearing.

12. We may usefully restate that employees holding transferable posts are liable to be transferred at the discretion of the employer. If an employee is aggrieved by the transfer, his only right is to make a representation to the authorities. The wide administrative power of transfer cannot be curtailed by the Courts in exercising its judicial review jurisdiction. To strike down an administrative act purporting to protect, some thing less than a legal right, would be truncating the powers of the authorities.

13. It is well to remember that guidelines of posting husband and wife together, are not statutory and enforceable by an employee. In *B. Varadha Rao Vs. State of Karnataka and Others*, , the Apex Court held that,

"It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. As the learned Judges rightly observe:

"The norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants."

It is, therefore, clear that this Court's jurisdiction cannot be invoked under Article 226 of the Constitution, to interdict an order of transfer on the basis of the violation of the guidelines, since they do not confer any right on him. It follows that the employer in such cases is not liable to give a notice of hearing at all.

14. Learned Counsel for the appellant-2nd respondent, placed reliance upon the Apex Court's decision in *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, , wherein it was held that there would be chaos in the administration if Courts interfere with the day-to-day transfer orders and it would not be conducive to public interest. In the said case the High Court held that the transfer orders were without jurisdiction as they were made on the appellants' request with a view to accommodate them. The Apex Court, setting aside the order of the High Court, held-

"We fail to appreciate the reasoning recorded by the High Court. If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the Court merely because the transfer orders were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain

posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer orders had been issued by the competent authority which did not violate any mandatory rule, therefore, the High Court had no jurisdiction to interfere with the transfer orders.

4. In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere, with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest."

The above decision squarely applies to the facts of the instant case. The learned single Judge distinguished the case saying that the transfer in that case was made in public interest whereas in the present case it was not, as it was made on request. But as stated supra, the transfer in that case also was made on request.

15. Likewise the decision in *Rajendra Roy Vs. Union of India (UOI) and Another*, , relied upon by the learned counsel was held by the learned single Judge as not applicable to the facts of the case. In the said case, a close look into facts reveal that the impugned order of transfer was occasioned due to retransfer of one S.N. Patra, on request, on the ground of hardship. One of the grounds of attack was that the impugned order was passed only to accommodate S.N. Patra. But it was repelled by the Supreme Court and order of transfer was not interfered with.

16. These decisions illustrate that an order of transfer, even to accommodate another, being an administrative order exercised in the discretion of the authorities, due to the exigencies of service, the Court would not interfere with the same, unless it was shown that such discretion was abused for extraneous reasons.

17. In *Varadharao's case* (1 supra), a passage from *Seshrao Nagorao Umap Vs. State of Maharashtra and others*, was quoted, which is as under:

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons

to justify such transfers, can not but be held as mala fide. A transfer is mala fide when. it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose than is to accommodate another person for undisclosed reasons."

As seen above, a transfer to accommodate another person for undisclosed reasons is objectionable. In the instant case, though the transfer order was made to accommodate the 2nd respondent, but it is for valid reasons, stated in her representation. Such an order cannot be found fault with.

18. The view of the learned single Judge that the impugned order does not give rise to legitimate expectation, is, therefore, unacceptable. Since the learned Judge has founded his decision on the Doctrine of Legitimate Expectation, it is necessary to emphasise the true scope and meaning of Doctrine of Legitimate Expectation. The Apex Court in Union of India and others Vs. Hindustan Development Corpn. and others, , explained the meaning and scope of the Doctrine of Legitimate Expectation, and in doing so, has considered several decisions on this aspect. We can do no better than to extract some of the portions of the Judgment, to understand in what circumstances Legitimate Expectation arises and the scope of the judicial review in order to curtail the administrative powers, on the basis of the Doctrine:

"28. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.....the doctrine of legitimate expectation has to be confined mostly to a right of fair hearing before a decision, which results in negating a promise or withdrawing and undertaking is taken.....A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be with thin its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits.....if the Court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what would be the relief is again a matter which depends on several factors".

The scope of judicial review where an order was challenged on the basis of Doctrine of Legitimate Expectation, was well illustrated by quoting the observations made in the decision in Attorney General for New South Wales case, 1990 (64) Aus. LJR 327. which is as follows:

"Some advocates of judicial intervention would encourage the Courts to expand the scope and purpose of judicial review, especially to provide some check on the Executive Government which nowadays exercises enormous powers beyond the capacity of the Parliament to supervise effectively. Such advocacy is misplaced. If the Courts were to assume a jurisdiction to review administrative acts or decisions which are "unfair" in the opinion of the Court - not the product of procedural fairness, but unfair on the merits - the Courts would be assuming a jurisdiction to do the very thing which is to be done by the repository of an administrative power, namely, choosing among the courses of action upon which reasonable minds might differ. xxxx xxxx xxxx xxxx xxxx If judicial review were to trespass on the merits of the exercise of administrative power, it would put its own legitimacy at risk. The risk must be acknowledged for a reason which Frankfurter J. stated in *Trop v. Dulles* (1958) 356 US 86:

"All power is, in Madison's phrase, of an encroaching nature".....Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint".

If the Courts were to postulate rules ostensibly related to limitations on administrative power but in reality calculated to open to the gate into the forbidden field of the merits of its exercise, the function of the Courts would be exceeded: of *R v. Nat Bell Liquors Ltd.* (1922) 2 AC 128. If the Courts were to define the content of legitimate expectations as something less than a legal right and were to protect what would be thus defined by striking down administrative acts or decisions which failed to fulfil the expectations, the Courts would be truncating the powers which are naturally apt to affect those expectations. To strike down the exercise of administrative powers solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the Courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law. The authority of the Courts and their salutary capacity judicially to review the exercise of administrative power depend in the last analysis on their fidelity to the rule of law, exhibited by the articulation of general principles".

19. In the light of the above pronouncement on the scope of the Doctrine of Legitimate Expectation, the view of the learned single Judge appears to be not sound. Though the transfer order might have caused disruption of the family life of the petitioner, it cannot be said to have violated any sort of a right attracting legal consequences. All expectations are not legitimate expectations and cannot be enforced. An expectation, which is collateral to a right or an established

procedure can only be said a legitimate expectation. Even if the Court is satisfied that a case of legitimate expectation was made out, the Court should then see whether there is any failure of justice and whether on that ground a decision could be quashed. As held above, the notion of Legitimate Expectation is "too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law."

20. We, therefore, hold that the facts in the case did not give rise to Legitimate Expectation and it follows that the order under appeal is liable to be set aside.

21. As already stated above, no fault can be found with the transfer of 2nd respondent to Hasanparthy in the place of the petitioner. The 2nd respondent has been away from her family for a long time. Her children are studying at Hanumakonda, particularly, her son being in the Intermediate II year, the presence of 2nd respondent is useful for the boy. Besides that, her husband has also been transferred to a place near Hanumakonda. The petitioner has no serious objection for the transfer of 2nd respondent to Hasanparthy. Her only grievance was that her posting to Vangara would disrupt her family life and Vangara is not a convenient place for her and she is having little children.

22. Her representation in this regard was not, admittedly, considered by the 1st respondent. It was held in Union of India and another Vs. N.P. Thomas, , that-

"Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead, affected party should approach the higher authorities in the department."

The 1st respondent ought to have considered her representation. The order of transfer should not be taken as denying her such right.

23. For the above reasons we set aside judgment and dismiss the writ petition. We, however direct the 1st respondent, to consider the representation of the petitioner, in the light of what is stated above and further consider whether there is any other place that can be shown to the petitioner, either in the same school or in any other school near Hanumakonda, where her husband is working and consider to post the petitioner to such a place, to work at least for another three years.

24. The order under appeal is set aside and the writ appeal is accordingly allowed with the above direction. No costs.