
(2020) 09 TEL CK 0002
In the Telangana High Court
Case No : Writ Petition No. 10463 Of 2020

Y. Devadas

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 04-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 309

Citation : (2020) 09 TEL CK 0002

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : G Sethu Madhava Rao

Final Decision : Dismissed

Judgement

1. Petitioner was working as lecturer in Physics in Government Degree College, Godavarikhani. By proceedings dated 12.05.2020, he was placed on Full additional Charge (FAC) of the post of Principal of the College in the vacancy to be caused on 31.05.2020 due to retirement of the incumbent. On 15.05.2020, he addressed an e-mail to the Commissioner of Collegiate Education-2nd respondent requesting to reconsider the decision to place him as Principal on FAC basis, stating that he is not interested in administrative post and that he is not qualified to be promoted as Principal. No reply was furnished to the petitioner. Petitioner did not assume the charge of Principal. On 12.06.2020, petitioner was transferred to Government Degree College, Luxettipet. On the same day, Charge Memo was drawn and communicated to the petitioner alleging that he disobeyed the orders of Commissioner and has not taken charge of the post of Principal even twelve days after retirement of the incumbent, and the same amounts to dereliction of duties, indiscipline, caused inconvenience to the College and amounts to unbecoming of a Government employee.

2. On 24.06.2020, petitioner was relieved from the Government Degree College, Godavarikhani. This writ petition is filed challenging the order of transfer and consequential prayer to retain him in Godavarikhani or to transfer him to

Kakatiya Government College, Hanamkonda, on spouse grounds. During the pendency of this writ petition, alleging that not joining in Government Degree College, Luxettipet would amount to disobedience of the orders of the Commissioner, he was placed under suspension, by order dated 25.07.2020.

3. Heard learned counsel for the petitioner and learned Government Pleader for Services-I.

4. Learned counsel for the petitioner submitted that petitioner could not have been compelled to assume the charge of Principal, when he is not interested and when he is not eligible and qualified to hold the post of Principal. No employee can be compelled to take up higher post against his conscience and without his consent. According to learned counsel, petitioner has specifically requested the Commissioner not to grant him in-charge arrangements, much before the retirement of incumbent and a day after the order granting FAC arrangements also detailed representation was made. Not acting upon the said representation and on the contrary alleging that petitioner disobeyed the orders to assume the post of Principal on FAC basis, amounts to arbitrary exercise of power. He further submitted that the order of transfer is vindictive; it was not made on administrative grounds; there was no disobedience as immediately after granting in-charge arrangements, he has pleaded before the Commissioner not to assign him the in-charge arrangements, but the same was not considered. At any rate, transfer on disciplinary grounds is not permissible in law and therefore, liable to be set aside. In support of his contention learned counsel placed reliance on the decision of Hon'ble Supreme Court in Somesh Tiwari Vs Union of India and Others in Civil Appeal No.7308 of 2008.

5. Petitioner filed I.A.No.2 of 2020 praying to permit him to amend the prayer in the writ petition. By this I.A., petitioner seeks to declare the charges framed on 12.06.2020; order of transfer dated 12.06.2020; order of reliving him on 24.06.2020; and the order of suspension dated 25.07.2020 as vindictive, punitive, illegal, mala fide, arbitrary, unreasonable, unfair, unjust, unlawful, perverse, mockery and against the principles of natural justice.

6. Having regard to the prayer sought in I.A.No.2 of 2020, learned counsel for the petitioner submits that charges are framed on vague allegations and there cannot be disciplinary action on the allegation of not taking the assignment as Principal. He would submit that even when a regular promotion is granted, an employee can reject the promotion offered to him and therefore, an employee cannot be treated differently, when FAC arrangements are granted. The Commissioner grossly erred in not accepting the request of petitioner not to assign FAC arrangements to him, sitting over the said representation and later making allegation of disobedience of the orders. All this amounts to vindictiveness and harassment due to personal prejudices and preferences of the Commissioner. He would further submit that on the trivial allegation, there is no justification to suspend the petitioner. This also amounts to harassment and vindictiveness by the Commissioner.

7. Per contra, learned Government Pleader, submitted that as petitioner disobeyed the orders of Commissioner in assuming the charge of Principal, he was transferred. He would submit that petitioner cannot refuse to assume the charge as ordered by the Commissioner. Even if petitioner is not inclined to work as Principal, he could have joined and then pursued his representation, but merely on the ground that representation was made, he can not refuse to assume the charge after the retirement of incumbent. Because of his conduct, there was no Principal of the College for a long time. The conduct of petitioner in not complying with the directions of the Commissioner is viewed as serious and therefore, Commissioner transferred the petitioner and also initiated disciplinary action. Petitioner being a senior most lecturer having sufficient experience can not disobey the directions of superior authority. He further submits that after 35 days of the order of transfer, this writ petition is filed. For all these days, he refused to report in the place of posting. Again this amounts to deliberate disobedience of the directions and having viewed even this conduct of the petitioner as grave mis-conduct, Commissioner placed him under suspension. Merely because representation is made or writ petition is filed, is no ground for an employee to disobey the orders of superiors and not to report in the place of posting. He would submit that Luxettipet is not very far from Godavarikhani.

8. The learned Government Pleader contended that in a writ petition filed challenging the transfer order, petitioner cannot seek to challenge suspension and charge memo. Decision to transfer is entirely different from suspension from service and drawing up charge memo. Therefore, in one writ petition, both aspects cannot be agitated.

9. To test the above contention of the learned Government Pleader for Services-I, before appreciating the contentions with reference to transfer order, validity of the charge memo and the suspension is considered, assuming that the application to amend the prayer is granted.

10. It is not in dispute that the transfer of petitioner, drawing up of charges and suspension, all relate to issue of not complying the directions of Commissioner to assume the post of Principal on FAC basis. Therefore, all are interrelated. Thus, the objection of learned Government on this ground is rejected.

ON DISCIPLINARY PROCEEDINGS:

11. The Commissioner of Collegiate Education is the administrative head of Collegiate Education and all administrative powers including power to transfer the lecturers of Degree College vests in him. In the said capacity, he is also the disciplinary authority against lecturers of Degree colleges. Thus, the competence of the Commissioner of Collegiate Education to transfer, to suspend and to take disciplinary action against petitioner is not in dispute.

12. Though a feeble attempt was made to contend that drawing up of charge memo and suspension are made vindictively and amounts to malafide exercise of power, no specific allegation of malafide is made against the Commissioner nor

the Commissioner is arrayed as respondent in his personal capacity.

13. In paragraph No.9 of the affidavit filed in support of the writ petition, petitioner sought to contend that on the one hand he is transferred and on the other hand charges are framed proposing to conduct oral inquiry and transfer order is issued without considering his representation and therefore would amount to mala fide intention of the Commissioner.

14. It is appropriate to note that except making a feeble attempt in paragraph-9, it is not the case of the petitioner that there were incidents in the past where the incumbent Commissioner was inimical to him; was harassing him and was ill-disposed and with pre-determined notion against petitioner, he has resorted to issue the present orders. It is not in dispute that as Head of the Department, Commissioner is competent to regulate the conditions of service of employees and if Commissioner notices that his directions are disobeyed, he is competent to take action against his subordinates. Merely because as administrative head, if an adverse decision is taken i.e., transferring / suspension/ initiating disciplinary action, it cannot per se be viewed as amounting to mala fide exercise of power. If this contention is accepted to hold that the action of Commissioner amounts to mala fide exercise of power, as administrative head he cannot take any action against his subordinates. This would result in more disastrous consequences. Allegations of mala fides have to be very specific and cannot be vague. Thus, the test of challenge on mala fide ground fails.

15. Once this objection is cleared, it is settled principle of law that the Court should not interfere at the threshold of the disciplinary action. Drawing up of charge memo per se does not lead to any adverse consequences against an employee. He has right to submit his explanation denying the allegations and if oral inquiry is held, he has right to participate in the oral inquiry and to seek affording of reasonable opportunity to defend himself. Thus, at the threshold, in exercise of power of judicial review the Writ Court ought not to interfere and set aside the charge memo. There is only a narrow window within which scope of judicial review is available against charge memo i.e., when proceedings are initiated by incompetent authority or action was tainted with mala fide exercise of power. Both the contingencies are not attracted. Further more, it can not be said that petitioner is remediless, even if he has grievance against the Commissioner in initiating the disciplinary proceedings.

ON SUSPENSION:

16. Petitioner was transferred on 12.06.2020. He was relieved on 24.06.2020 and this writ petition is instituted on 14.07.2020. Even though he was relieved on 24.06.2020, he has not reported to duty till date. Viewed by this conduct of petitioner in not reporting to duties, he is placed under suspension.

17. Petitioner does not dispute the competency of Commissioner to place him under suspension. Prima-facie, it can not be said that the reason assigned for suspending the petitioner is ex facie illegal to entertain the writ petition against

the order of suspension and to grant the relief. Against the order of suspension, petitioner has remedy of appeal. Petitioner ought to have availed the said remedy. No reasons are assigned why petitioner has not availed the said remedy. Merely because writ petition is filed challenging the transfer proceedings and order of suspension is made while the writ petition is pending, can not be a ground to also challenge the order of suspension without availing the remedy of appeal.

ON TRANSFER:

18. Thus, the prayer to set aside the charge memo and suspension from service is rejected.

19. Transfer is necessary concomitant of public employment. A public servant is required to work wherever he is posted. Wherever, he is transferred he has to join in the place of posting. The scope of judicial review in matters of transfer is very limited. The only issue requires consideration is whether the transfer of petitioner on disciplinary grounds amounts to exceeding the jurisdiction by the Commissioner vitiating the order of transfer.

20. It is not in dispute that petitioner refused to take the assignment of the post of Principal on FAC basis and because of not assuming the charge of Principal there was no Principal working in the Government Degree College at Godavarikhani for a long time. Principal is the administrative head of the College and it can not be kept vacant. In the absence of working Principal entire administrative set up of the College comes to a stand still. In the meantime if anything happens, there would be no person to deal with such contingency. Therefore, viewing the action of petitioner as serious, in exercise of power of superintendence and control over the Lecturers of Government Degree Colleges, while initiating the disciplinary proceedings, transferred the petitioner to another Degree College on disciplinary grounds. It can not be said that transfer of petitioner is not on administrative grounds. Administrative ground can be anything which concerns administration and refusal of lecturer to take the in-charge arrangements of the post of Principal, can not be said as falling within the administrative aspects of governance. When an employee refuses to take assignment of post of Principal his transfer also can be described as on administrative grounds. It is appropriate to note that the petitioner was the senior most Lecturer in the college.

21. Scope of judicial review against the decision to transfer on disciplinary grounds was considered by the Hon'ble Supreme Court in "Registrar General of High Court of Judicature of Madras Vs R.Perachi & Others (2011) 12 SCC 137". The Hon'ble Supreme Court held as under :

"31. As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against the first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the unit concerned. That is desirable from the

point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the decision of the then Chief Justice to transfer him outside that district could not be faulted.

xxxxxx

36. As can be seen from these judgments, they were all rendered in altogether different context. In the present case we are concerned with a Sheristadar who has been transferred on receiving a complaint, although an anonymous one, but against whom a departmental enquiry is pending. He has been transferred to another district though retaining him in the same cadre with the same pay as well as his seniority. Such an action was fully justified and within the authority of the High Court. No observations were made against him, nor was any stigma attached. The reliance on the above three judgments to interfere in such an order clearly shows a non-application of mind by the Division Bench to the problem which the High Court Administration was faced with, and which was being attended in accordance with the relevant rules."

(emphasis supplied)

22. Similar issue was considered by the Hon'ble Supreme Court in "Rajendra Singh & Others Vs State of Uttar Pradesh & Others (2009) 15 SCC 178," wherein, within a short period the appellants therein were transferred and the Supreme Court dealt with the scope of judicial review in transfer matters. The Supreme Court in Paragraph Nos.13 to 16 held as under :

"13. It is difficult to fathom why the High Court went into the comparative conduct and integrity of the petitioner and Respondent 5 while dealing with a transfer matter. The High Court should have appreciated the true extent of scrutiny into a matter of transfer and the limited scope of judicial review. Respondent 5 being a Sub-Registrar, it is for the State Government or for that matter the Inspector General of Registration to decide about his place of posting. As to at what place Respondent 5 should be posted is an exclusive prerogative of the State Government and in exercise of that prerogative, Respondent 5 was transferred from Hapur II to Ghaziabad IV keeping in view administrative exigencies.

14. We are pained to observe that the High Court seriously erred in deciding as to whether Respondent 5 was a competent person to be posted at Ghaziabad IV as Sub-Registrar. The exercise undertaken by the High Court did not fall within its domain and was rather uncalled for. We are unable to approve the direction issued to the State Government and the Inspector General of Registration to transfer a competent officer at Ghaziabad IV as Sub-Registrar after holding that Respondent 5 cannot be said to be an officer having a better conduct and

integrity in comparison to the petitioner justifying his posting at Ghaziabad IV. The High Court entered into an arena which did not belong to it and thereby committed serious error of law.

15. The only question required to be seen was whether transfer of Respondent 5 was actuated with mala fides or otherwise in violation of statutory rules. The transfer of Respondent 5 was not found to suffer from any of these vices. The High Court went into the competence and suitability of Respondent 5 for such posting. It is here that the High Court fell into a grave error. As a matter of fact, the impugned order of the High Court casts stigma on the service of Respondent 5 which may also act prejudicial to his interest in the pending appeal against the adverse remarks.

16. We may also observe that transfer of the writ petitioner from Ghaziabad IV to Hapur II cannot be said to be stigmatic and any observation made in the impugned order about the work and conduct of the writ petitioner shall not be read adversely by the authorities against the writ petitioner."

(emphasis supplied)

- In K.Vijayal (Dr.) Vs Government of Andhra Pradesh and Others 2011 SCC Online AP 492 in Paragraph Nos.9 and 10, the Supreme Court held as under :

"9. In Service Law, the following assumptions and principles are well settled. The transfer of an employee is an incidence of service. It is either explicit or implied term of contract of service, and can be enforced by the competent authority for administrative reasons keeping in view the exigencies of administration. An administrative order of transfer is not immune from judicial review. Like any administrative decision, an order of transfer is subject to Court scrutiny; but the scrutiny is always deferential or intermediate review. On limited grounds, such decisions can be scrutinized by the Court. A strict scrutiny either with reference to a statute, or the Rules made under proviso to Article 309 of the Constitution of India, or the administrative/executive policy guidelines is not called for, because a Government servant has no right nor earns any stigma. A Government servant cannot insist that he/she would work only at one particular place.

10. An order of transfer by way of penalty or made by mala fide exercise of power, ordinarily cannot be justified unless it is made in the interest of employee himself. An order of transfer made in violation of administrative instructions cannot be interfered with. Even in such a case, the Court has to relegate the employee to the transferring authority or higher authority for necessary redressal. It is also well settled that the Court would not interfere when the transfer does not affect the service conditions, pay and other benefits attached to the post held by an aggrieved employee (Shanti Kumari v. Regional Deputy Director, Health Services, (1981) 2 SCC 72 : AIR 1981 SC 1577, Shilpi Bose, Rajendra Roy v. Union of India, (1993) 1 SCC 148 : AIR 1993 SC 1236, Union of India v. N.P. Thomas, 1993 Supp (1) SCC 704, Union of India v. S.L. Abbas, (1993) 4 SCC 357 : AIR 1993 SC 2444, Abani Kanta Ray v. State of Orissa, 1995

Supp (4) SCC 169, and Rajendra Singh v. State of UP, (2009) 15 SCC 178.)"

(24) In "Government of Andhra Pradesh and Others Vs K. Rama Rao and Others (2012) 6 ALD 8 (DB)", it was held as under :

"36. In Gobardhan Lal's case (supra), the respondent therein who was working as District Supply Officer, Meerut came to be transferred by an order dated 8.12.1999 by the Secretary, Food and Civil Supplies Department in the State of U.P. which order involved in posting of not only a substitute to the respondent at Meerut, but also transfer of another officer as well. A grievance was raised with reference to the said transfer order before the High Court of Allahabad that though by order dated 10.4.1999, the respondent, who was serving at Unnao, was transferred to Meerut and joined as such, he came to be transferred again by the impugned order due to political pressure and influence to the Head Office at Lucknow in order to help another to be posted in his place and it was also claimed that the transfer order was made for extraneous purposes. The Supreme Court while rejecting the said plea held as under:

"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.

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the

Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer".

37. In Muralidhara Menon's case (supra), it is held similarly by the Supreme Court while considering transfer of certain employees from Gujarat to Kerala that transfer as is well known is an incident of service, that an employee has no right to be posted at a particular place and that he, in law, cannot exercise his option to be posted in his home State unless there exists any statute or statutory rule governing the field. It is further held by the Supreme Court that a writ of mandamus can be issued, provided there exists a legal right in the applicant and a corresponding legal duty in the respondent and that even otherwise a superior Court having a limited jurisdiction in that behalf would not interfere with the discretionary jurisdiction exercised by the statutory authorities unless a clear case for interference is made out subject of course to just exceptions. Similar observation is made under similar circumstances in Rajendra Singh v. State of Uttar Pradesh (supra).

38. Consequently, it is clear that the 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 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. However, aggrieved by the orders of transfer, the employees concerned may approach the higher authorities concerned to make necessary modifications. When clause (6) of the transfer guidelines dated 19.5.2011 issued by the respondents with regards to the ensuing counselling for the applicants without notifying the vacancies held by the juniors to the applicants who got promotions and postings during September 2009 to April 2011 are found to be legal, the impugned orders passed by the Tribunal are without merit. Ultimately, the impugned orders are liable to be set aside and are accordingly set aside holding that the respondents are at liberty to proceed with the forthcoming counselling subject to the said clause."

25 Therefore, I do not see any error in the decision to transfer the petitioner. Even assuming that petitioner had grievance regarding transfer, he cannot refuse to join in the place of posting. Only after reporting to duty, an employee should make a representation to redress his grievance regarding his transfer or to request to transfer to any other place, but without reporting to duty, an employee can not sit at home and contest. Mere pendency of writ petition is no ground to refuse to join in the place of posting.

26 Writ Petition is accordingly dismissed. However, on revocation of his suspension, it is open to the petitioner to pursue the representation stated to

have been made by him to transfer him to any other place. It is also open to him to seek revocation of suspension by making an application to the Commissioner for Collegiate Education or to the Government as advised.

27. Having regard to the fact that the allegation is only with reference to not taking up the assignment of the post of Principal on FAC basis, the matter does not require elaborate consideration and long time to conclude. Therefore, the Commissioner-2nd respondent is directed to conclude the disciplinary proceedings, as expeditiously as possible, preferably within a period of four weeks from the date of receipt of copy of this order. The petitioner shall cooperate for early conclusion of disciplinary proceedings. Pending miscellaneous petitions, if any, shall stand closed.