

THE GOVERNMENT OF A. P.
v.
G. VENKATA RATNAM
(Civil Appeal No. 4582 of 2008)

JULY 21, 2008

[TARUN CHATTERJEE AND AFTAB ALAM, JJ]

Service Law:

Transfer – Order set aside by High Court – HELD: Order of transfer neither suffers from violation of any statutory rules nor can it be described as mala fide – High Court's finding regarding lack of bona fide on the part of State Government is completely unfounded and untenable – Legal position regarding interference by courts in matters of transfer is well established – Order of High Court set aside.

Judicial restraint:

High Court – While setting aside an employee's transfer order commenting about Government Officers – HELD: Highly caustic comments about Government Officers made in the judgment by High Court appear to be completely uncalled for.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4582 of 2008

From the final Judgment dated 23.2.2007 of the High Court of Judicature, Andhra Pradesh at Hyderabad in W.P. No. 2886/2006

A. Fatima (for Mrs. D. Bharthi Reddy) for the Appellant.

G. Ramakrishna Prasad, Suyodhan Byrapaneni and Siddharth Patnaik for the Respondent.

The following Order of the Court was delivered

Leave granted.

A. Heard learned counsel for the parties.

The respondent is a Technical Assistant in the Department of Archaeology and Museums, Government of Andhra Pradesh. He was posted in the Office of Director, Archaeology and Museums, Hyderabad, where he was able to stay, since his appointment in the year 1985, uninterruptedly for a period of 20 years. He was transferred from Hyderabad and posted in the Office of the Assistant Director (Technical), Archaeology and Museums, Kakinada by an order issued by the Director on 29 June, 2005. He challenged his transfer order before the Andhra Pradesh Administrative Tribunal in O. A. No. 3050 of 2005. At that time his appeal filed before the departmental authorities was pending. Hence, the Tribunal disposed of the application by order dated 4 July, 2005 with a direction to the concerned departmental authority to dispose of the appeal within four weeks. The departmental appeal was finally dismissed by order dated 3 August, 2005. The respondent once again approached the Tribunal in O. A. No. 4048 of 2005 but the Tribunal declined to interfere in the matter and dismissed the O.A. by order dated 27 December, 2005.

The respondent took the challenge to his transfer order to the Andhra Pradesh High Court in Writ Petition No.2886 of 2006. The High Court allowed the writ petition and set aside the order of the respondent's transfer by judgment and order dated 23 February, 2007. The State has come in appeal against the judgment and order passed by the High Court.

The High Court judgment is wholly untenable and, we regret to say, it is rather unusual and strange. The judgment was apparently delivered in anger. The anger might have been caused by the Government Pleader or the Director (the second respondent before the High Court) but as a result the Court not only lost the judicial poise and restraint but also arrived at completely unfounded conclusions. The judgment quotes a passage from William Dalrymple's book, 'The Last Mughal' about how the Red Fort at Delhi was vandalized by the British and how the

damages of the colonial times are perpetuated by the Archaeological Survey Of India . One fails to see how the Red Fort, the maintenance of which the Government of Andhra Pradesh is not even remotely connected with, comes into all this. The reference to the plight of the Red Fort is followed by the observation that the ancient monuments and archaeological sites in Andhra Pradesh too are in no better state. In this way the Court declares that the agencies and the people entrusted with the responsibility to preserve and maintain the country's historical heritage are quite incapable and inefficient in the discharge of the responsibility. But once again we fail to see the relevance of all this to the simple issue before the Court. Unfortunately this is not the only incongruity. The judgment makes, at more than one place, highly caustic comments about Government Officers, especially the members of the Central Civil Service, which in the facts and circumstances of the case appear to us to be completely uncalled for.

The Court seems to have been completely taken in by the ipse dixit of the respondent and his tall claims about his own ability and virtually allowed him to choose his own place of posting. The judgment at its beginning recounts the respondent's qualifications that include two Master's degrees, one in Sanskrit and the other in Archaeology, a B. Ed. degree in Sanskrit and the degree of Sahitya Shiromani from Sri Venkateswara University. The judgment then proceeds to observe as follows:

“The petitioner as it appears from the pleadings is a highly qualified man. The confidence with which he made assertion in the affidavit dated 13.3.2006 to the effect that *‘if any other employee has my skill, knowledge, expertise and experience I forego my job’* makes this Court examine this matter in depth and not treat the impugned order as a mere order of transfer in the course of administration.”

It further observes as follows:-

“The petitioner asserted in his affidavit dated 13.3.2006 that he has expertise in deciphering early Rock and Stone

A and Copper Plates inscriptions in Brahmi, early Telugu
and Kannada, Nagari, Tamil and Tamil Grandha. *He further
asserted that other than the petitioner that no other
employee in the entire Archaeology Department with the
expertise, knowledge or experience in these matter and
B that his services are required more at the head office."*

The Court then purports to remind itself that transfer is an
incidence of service and is not to be lightly interfered with. It
proceeds to elaborate that this judicial policy is based on two
C reasons, one the continuance of an employee of the State Gov-
ernment at one particular place for a long time is likely to create
undesirable consequences like creation of vested interests and
misuse of the power that comes with the employment under the
State and the other being the exigencies of the administration
requiring the service of a particular person at a particular place.
D It then proceeds to explain away that the first reason, that is, the
undesirability of stay at anyone place for a long time should not
apply to the case of the respondent because in Archaeology, in
any event one worked in ancient times and dealt with 'the dry
bones of history'.

E The Court then went on to hold that the respondent's trans-
fer was also not made in administrative exigencies. For arriv-
ing at this finding the Court refers to the catalogues of manu-
scripts, in different languages that are kept in Hyderabad and
F in Kakinada and accepts the petitioner's assertion that with his
knowledge and ability he is most suited to work at the head
office in Hyderabad than in any other place in the State. The
Court refers to the respondent's assertion in his affidavit that in
the entire Archaeology Department there is no other employee
G equaling him in expertise, knowledge and experience in these
matters and that his services are required more at the head
office and points out that in the counter affidavit filed by the Di-
rector there was no express contradiction of the assertion. It is
observed as follows:-

H "She is conspicuously silent about the nature of the work

that is required to be carried at the State Museum at Hyderabad and also whether there is any other person who is qualified to carry on the said work.”

Lastly, the Court finds that in the original proposal for transfer made by the Director the respondent's place of posting was shown as Kurnool. The Court observes that there was no explanation why the respondent was finally transferred to Kakinada in place of Kurnool. On these materials, the Court came to the conclusion that the transfer of the respondent was clearly not bona fide, to say the least.

We are surprised to see the High Court castigating the respondent's transfer order as lacking in bona fide on such flimsy and fanciful pleas advanced by the respondent. We are more than satisfied that the High Court's finding regarding lack of bona fide in the matter on the part of the State Government is completely unfounded and untenable. The legal position regarding interference by Courts in the matter of transfer is too well established to be repeated here. The respondent's transfer neither suffers from violation of any statutory rules nor can it be described as mala fide by any stretch of imagination. We are, accordingly, unable to sustain the High Court's order. In the result this appeal is allowed, the order coming under challenge is set aside and the writ petition filed by the respondent in the High Court is dismissed.

At the conclusion of the hearing of the case, counsel for the respondent stated that the Government had reconsidered the matter. It was willing to bring back the respondent to Hyderabad and an order to that effect was likely to be issued. We have got nothing to say in the matter.

R.P.

Appeal allowed.