

APHC010416842024



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3331]

THURSDAY, THE THIRTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

**W.P.Nos.21204, 21206, 21210, 21535, 21865, 22098, 22151, 22395,
22399, 22644 and 22647 of 2024**

WRIT PETITION NO: 21204/2024

Between:

S V K Kumar

...PETITIONER

AND

The State Of Ap and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.G V S KISHORE KUMAR

Counsel for the Respondent(S):

1.GP FOR SERVICES I

WRIT PETITION NO: 21206/2024

Between:

N Lakshmipathi

...PETITIONER

AND

The State Of Ap and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.G V S KISHORE KUMAR

Counsel for the Respondent(S):

- 1.GP FOR SERVICES I
- 2.UMESH CHANDRA P V G

WRIT PETITION NO: 21210/2024

Between:

P. Maruthi Prasada Rao,

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

- 1.A RAJENDRA BABU

Counsel for the Respondent(S):

- 1.GP FOR SERVICES I
- 2.BHARGAVA RAJU MANTHINA

WRIT PETITION NO: 21535/2024

Between:

K Sasi Bhushan Rao Yadav

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

- 1.G V S KISHORE KUMAR

Counsel for the Respondent(S):

- 1.GP FOR SERVICES I

WRIT PETITION NO: 21865/2024

Between:

P. Md. Areef Khan,

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.SODUM ANVESHA

Counsel for the Respondent(S):

1.GP FOR SERVICES I

WRIT PETITION NO: 22098/2024

Between:

Yedlapalli Johnson, and Others

...PETITIONER(S)

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.SRINIVASA RAO NARRA

Counsel for the Respondent(S):

1.GP FOR SERVICES I

WRIT PETITION NO: 22151/2024

Between:

S Hari

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.MANOJ KUMAR BETHAPUDI

Counsel for the Respondent(S):

1.GP FOR SERVICES I

WRIT PETITION NO: 22395/2024

Between:

Tirri Sripriya,

...PETITIONER

AND

The State Of Ap and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.SRINIVASA RAO NARRA

Counsel for the Respondent(S):

1.GP FOR SERVICES I

WRIT PETITION NO: 22399/2024

Between:

Thumbeti Velugondaiah

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.SRINIVASA RAO NARRA

Counsel for the Respondent(S):

1.GP FOR SERVICES I

WRIT PETITION NO: 22644/2024

Between:

N Balakrishna Reddy

...PETITIONER

AND

The State Of Ap and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.G V S KISHORE KUMAR

Counsel for the Respondent(S):

1.GP FOR SERVICES I

2.UMESH CHANDRA P V G

WRIT PETITION NO: 22647/2024

Between:

A Padmaja

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.G V S KISHORE KUMAR

Counsel for the Respondent(S):

1.GP FOR SERVICES I

The Court made the following:

:: COMMON ORDER ::

Since the issue involved in all the writ petitions is the same, all the writ petitions are disposed of by way of this common order.

2. Heard Sri G.V.S.Kishore Kumar, Sri A.Rajendra Babu, Ms.Sodum Anvesha, Sri Narra Srinivasa Rao and Sri Bethapudi Manoj Kumar, learned counsel for petitioners and Sri R.S.Manidhar Pingali, learned Assistant Government Pleader for Services for respondents.

3. Impugning the proceedings whereby the petitioners' were transferred to different stations, the above writ petitions are filed.

4. Learned counsel for petitioners would submit that the petitioners are office bearers of registered association and hence, the transfer of petitioners without assigning reasons is contrary to G.O.Ms.No.75

Finance (HR.I-PLG. & POLICY) Department, dated 17.08.2024. The transfers of the petitioners since made were contrary to the guidelines/instructions issued in G.O.Ms.No.75 dated 17.08.2024, the said action is arbitrary and hence, the said transfers are vitiated and are liable to be set aside. They would also contend that, in the absence of, any other statutory rules, the government's guidelines have statutory force. No reasons were assigned in the transfer orders.

5. Sri Narra Srinivasa Rao and Ms.Sodum Anvesha, the learned counsel would submit that the transfers of the petitioners are made in violation of Clause IV (11 & 12) of G.O.Ms.No.75 dated 17.08.2024.

6. In oppugnation, learned Assistant Government Pleader for Services would submit that the petitioners neither averred arbitrariness nor demonstrated violation/infringement of any right. The office bearers are bound to serve all the employees and mere transfer will not take away their right or duty cast upon them. The respective office bearers failed to furnish relevant material papers to the authorities in support of their claim. The authorities adhered to the guidelines issued in G.O.Ms.No.75 dated 17.08.2024.

7. Sri Umesh Chandra, learned counsel for intervener adopted the arguments of learned Assistant Government Pleader for Services.

8. In reply, learned counsel for the petitioners would contend that once the State issued guidelines, the Head of the Department shall necessarily follow the guidelines without any deviation. The election of office bearers was intimated to the Principal Secretary to the Government, General Administration on 28.08.2024 and the same was

acknowledged. Thus, the office bearers even complied with Clause V (5) (b & c) of G.O.Ms.No.75 dated 17.08.2024.

9. In support of contentions the learned counsel for petitioners, relied upon the following citations.

- (i) Mr.Chandru H.N. Vs. State of Karnataka and others¹.
- (ii) Commissioner of Central Excise, Bangalore Vs. Srikumar Agencies and others².
- (iii) Abani Kanta Ray Vs. State of Orissa and others³.
- (iv) Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam and others⁴.
- (v) Mohd. Masood Ahmad Vs. State of U.P.⁵
- (vi) A.L.Kalra Vs. Project and Equipment Corporation of India Ltd.⁶
- (vii) Sk.Nausad Rahaman and others Vs. Union of India and others⁷.
- (viii) Manoj Kumar Vs. Union of India and others⁸.
- (ix) Ajay Hasia and others Vs. Khalid Mujib Shrevardi and others⁹.

10. In support of the contentions the learned Assistant Government Pleader for Services, relied upon the following citations.

¹ ILR 2011 KAR 1585

² (2009) 1 SCC 469

³ 1995 Supp (4) SCC 169

⁴ (2003) 11 SCC 740

⁵ (2007) 8 SCC 150

⁶ (1984) 3 SCC 316

⁷ (2022) 12 SCC 1

⁸ (2024) 3 SCC 563

⁹ (1981) 1 SCC 722

- (i) Rasamsetti Hemaprakash Vs. State of Andhra Pradesh and others¹⁰.
 - (ii) B.Varadha Rao Vs. State of Karnataka and others¹¹.
 - (iii) Shilpi Bose (Mrs) and others Vs. State of Bihar and others¹².
 - (iv) Union of India and others Vs. S.L. Abbas¹³.
 - (v) S.C.Saxena Vs. Union of India and others¹⁴.
 - (vi) Sanjay Kumar Sharma Vs. State of U.P. and others¹⁵.
 - (vii) Order of Division Bench of High Court of Andhra Pradesh in W.A.No.325 of 2019 dated 15.10.2019.
 - (viii) Central PWD Engineers Association and Ors. Vs. Union of India and Anr¹⁶.
11. Now, the points for consideration are:
- (i) **Whether the transfer proceedings issued by the respondent authorities in respect of each of the petitioners', suffer from arbitrariness?**
 - (ii) **Whether the respondent authorities failed to adhere to the guidelines/instructions issued in G.O.Ms.No.75 dated 17.08.2024.?**
 - (iii) **Whether the guidelines/instructions issued in G.O.Ms.No.75 dated 17.08.2024 have any statutory force?**

¹⁰ 2024 SCC OnLine AP 4489

¹¹ (1986) 4 SCC 131

¹² 1991 Supp (2) SCC 659

¹³ (1993) 4 SCC 357

¹⁴ (2006) 9 SCC 583

¹⁵ 2017 SCC OnLine All 4281

¹⁶ W.P. (C) No.11733 of 2019 dated 25.04.2023 of High Court of Delhi.

12. Before delving into the merits of the matter let this Court examine the scope of Article 226 of the Constitution of India *qua* the transfers from various judgments cited by the learned counsel. The expressions of the Hon'ble Apex Court in some of the judgments are extracted here for a better conceptualization of the issue.

13. In **N.K.Singh Vs. Union of India and others**¹⁷, the Hon'ble Apex Court held that transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be arbitrary or vitiated by malafides or infraction of any professed norms or principles governing the transfer.

14. The above principle was reiterated in **Abani Kanta Ray Vs. State of Orissa and others** (*supra*-3) and **Mohd. Masood Ahmad Vs. State of U.P.** (*supra*-5).

15. The transfer of officers is required to be effected based on set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against an efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration, the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.

Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam (*supra*-4)

16. An administrative authority, who purports to act by its regulation must be bound by the regulations. Even the regulations have no force of law, the employee under the corporation is a public employee and,

¹⁷ (1994) 6 SCC 98

therefore, the employee would get a statutory status, which would enable him to get declaration for continuation in service, if he was dismissed or discharge contrary to regulations.

Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi¹⁸.

17. Thus, a conspectus of the pronouncements of the Hon'ble Apex Court, an employee holding a transferable post cannot claim any vested right to work at a particular place as the transfer order normally does not affect legal rights. The transfer of an employee is a prerogative of the employer and normally Courts will not interfere with transfers. A transfer is not only an incidence of service but also an essential condition of the service. Normally the Courts will not interfere with an order of transfer unless it is found to be an outcome of arbitrary or *mala fide* exercise of power. If a transfer is affected, without following guidelines and is tainted with *malafides*, it can be interfered.

18. Usually, the employer has absolute power to transfer his employee, whenever he wants because the transfer is ordered looking into the character and quality of work, the employee does. However, this power of the employers is neither absolute nor exercised capriciously. An order of transfer of an employee should be passed in the public interest or in the interest of the institution where the employee serves. Exigencies of administrative purpose also sometimes persuade the employer to transfer the employee from one place to another.

19. The object of framing a transfer policy is to increase transparency and to provide better opportunities to officers for excellence and also a more planned approach. The object of framing transfer policy in a welfare State is to eliminate the possibility of any arbitrary or discriminatory

¹⁸ (1975) 1 SCC 421

approach by the authorities in effecting such transfer. The underlying idea in laying down an exhaustive and detailed policy is to exclude not only arbitrariness but also bias or malafides in any manner whatsoever. The scope of judicial review *qua* transfers is circumscribed as to the fair exercise of power, absence of malafides and violation of statutory provisions as well as deviation from the professed norms or guidelines.

20. Coming to the facts of the case, the petitioners in W.P.Nos.21204, 21206, 21210, 22151, 22644, 22647 and 21535 of 2024 are the officer bearers of registered associations. The Government issued G.O.Ms.No.75 dated 17.08.2024 framing guidelines/instructions in respect of transfers and postings of employees. The said G.O., was issued by the Government, under Article 162 of the Constitution of India. There are no separate set of rules or regulations, regulating the transfer of employees, except the guidelines being issued by the Government from time to time. In the preamble of the G.O., it was mentioned that –

The Government is committed to the welfare of its employees and seeks to promote work-life balance, while ensuring efficient and effective service delivery to the citizens. In move forward in this direction, it is required that the employees are posted at places where they can contribute to the best of their abilities for improved governance and efficient delivery of public services.

21. Para No.IV of the G.O., deals with Principles for Transfers and Postings. Para No.V deals with Procedures for Transfers and Postings.

22. In the principles for transfers and postings, it was adumbrated that employees who have completed a period of continuous stay of 5 years at a station as of 31st July, 2024, shall invariably be transferred. Employees, other than those who completed 5 years of stay at a station,

shall also be eligible for transfer on administrative exigencies or a personal request. Such employees too shall exercise preference for stations. Sub Clause No.4 of para IV deals with preferences to certain categories. Sub Clauses 11 & 12 of para IV deals with employees working ITDA areas for more than two years and the criteria to be followed for postings in ITDA areas.

23. Sub Clause No.5 of para No.V prescribes the procedure for the transfer of officer bearers of recognized employee associations. Sub Clause No.5 (a) of para V prescribes that the office bearers of recognized employee associations, shall not be transferred at the State level, District level and Division/Mandal level until they complete 3 terms or 9 years of stay in a particular station. Sub Clause No.5 (b, c & d) of para V mandates to forward the list of office bearers at the taluk and district levels of recognized associations to the Heads of Departments at the district level through the respective Collector and to the HODs at the state level through the General Administration Department. Sub Clause No.5 (d) of para V which is relevant is extracted below:

- (d) However, the competent authorities can affect transfer on administrative grounds even before expiry of the present nine years period after recording the reasons.

24. While Sub Clause No.1 of para IV speaks about the transfer of an employee invariable on completion of a continuous stay of 5 years at a station, sub Clause No.5 (a) of para No.V exempts the office bearers from transfers until they complete 3 terms or 9 years of stay in a particular station. The transferring authority should have considered these clauses cautiously and carefully.

25. Sub Clause No.5 (a) of para No.V, a latter clause, shall be treated as an exception to Sub Clause No.1 of para IV. It is pertinent to mention here that sub Clause No.5 (d) of para V makes a further exception to sub Clause No.5 (a) of para V that transfers can be effected by recording reasons before the expiry of such period. However, in none of the orders of transfers, impugned, hardly reasons are assigned.

26. Whether failure to act upon the guidelines would amount to arbitrariness and the guidelines have any statutory force?

27. Whether the guidelines have statutory force was dealt with by this Court in W.P.No.20524 of 2024 dated 24.12.2024. This Court by placing reliance upon the judgments of the Hon'ble Apex Court in **Paluru Ramakrishnaiah Vs. Union of India**¹⁹; **Nagpur Improvement Trust Vs. Yadaorao Jagannath Kumbhare**²⁰; **North West Railway Vs. Chanda Devi**²¹ and **Mahanadi Coalfields Ltd. Vs. Rabindranath Choubey**²² and eventually concluded that guidelines in G.O.Ms.No.75 dated 17.08.2024 issued in exercise of the executive Power of State under Article 162 of the Constitution of India, and thus have statutory force.

28. The Full Bench of the Karnataka High Court in **Mr.Chandru H.N. Vs. State of Karnataka and others** (*supra*-1), while dealing with a reference where the guidelines of the Government Order No.DPAR 4 STR 2001, Bangalore, dated 22.11.2001 relating to the transfer of Government servants, which has come into force from 22.11.2001 have any statutory force or not, answered the reference in affirmative. The Full Bench held that in the absence of any rules providing for regulating the

¹⁹ AIR 1990 SC 166

²⁰ (1999) 8 SCC 99

²¹ (2008) 2 SCC 108

²² (2020) 18 SCC 71

transfer and providing guidelines therein, the executive order issued in the exercise of power under Article 162 of the Constitution of India will have statutory force and can be enforced, as the extent of executive power of the State to make laws is subject to the provisions of the Constitution and the executive power of the State shall extend to the matters in respect to which legislature has power to make laws.

29. In the light of the above pronouncements, this Court is of the considered opinion that G.O.Ms.No.75 dated 17.08.2024 framing guidelines for transfers and postings of employees have statutory force.

30. As discussed *supra*, sub Clause 5 (a) of para V is an exception to sub Clause No.1 of para IV, *qua* the transfers of office bearers of recognized associations. It is not out of place to mention here that further exception is carved out by way of sub Clause 5(d) of para V i.e. recording reasons.

31. The administrative authority while exercising jurisdiction and effect transfers in pursuance of G.O.Ms.No.75 dated 17.08.2024, shall adhere to the guidelines/instructions prescribed therein. In fact, the authority is bound by the regulations. Of course, while exercising jurisdiction under Article 226 of the Constitution of India, the Court cannot substitute its opinion. It is entrusted with the responsibility of ensuring the lawfulness of the executive decisions. One should not be oblivious that the executive instructions or administrative directions concerning transfers and postings do not confer any indefeasible right to claim transfer or posting in favour of an employee. At the same time, the employer shall be bound by the guidelines/instructions. The failure of the employer to adhere to the guidelines, which prescribe the procedure, in the opinion of this

Court, amounts to arbitrariness and thus, violative of Article 14 of the Constitution of India.

32. Equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. **E.P. Royappa v. State of T.N.**²³

33. Within the realm of judicial review in common law jurisdictions, it is established that constitutional courts are entrusted with the responsibility of ensuring the lawfulness of executive decisions, rather than substituting their own judgment to decide the rights of the parties, which they would exercise in civil jurisdiction. It has been held that the primary purpose of quashing any action is to preserve order in the legal system by preventing excess and abuse of power or to set aside arbitrary actions. *Wade on Administrative Law* states that the purpose of quashing is not the final determination of private rights, for a private party must separately contest his own rights before the administrative authority. Such private party is also not entitled to compensation merely because the administrative action is illegal.

... .. It is equally incumbent upon the courts, as a secondary measure, to address the injurious consequences arising from arbitrary and illegal actions. This concomitant duty to take reasonable measures

²³ (1974) 4 SCC 3

to restitute the injured is our overarching constitutional purpose. **Manoj Kumar Vs. Union of India**²⁴.

34. Thus, in this case at hand, despite the guidelines issued by the State the transferring authority failed to adhere to the said guidelines and affected transfers and such an act is arbitrary and amenable to the jurisdiction of this Court. As noted *supra*, this Court is not substituting its opinion for the opinion of the transferring authority, however, the process adopted by the authority does not align with the transfer guidelines which have statutory force.

35. It is also not out of place to mention here that in **Rasamsetti Hemaprakash's** case (*supra*-10), this Court by placing reliance upon **Shilpi Bose's** case (*supra*-12), concerning the transfer of office bearers, since reasons were assigned, dismissed the writ petition. However, in the case at hand, no reasons were assigned except for mentioning administrative grounds/requests. Such a course adopted by the authority shocks the consciousness of a prudent man and it is not only arbitrary but also violative of both Articles 14 and 16 of the Constitution of India.

36. Of course, as pointed out by the learned Assistant Government pleader the Hon'ble Apex Court in **S.L.Abbas's** case (*supra*-13) observed that non-following of the executive instructions by itself cannot be termed as *malafide*, however, one should consider the facts of each case in applying the ratio. One should understand the facts of the case and the circumstances, in which, the observations were made.

37. In **Abdul Kayoom Vs. CIT**²⁵, the Hon'ble Apex Court observed thus:

²⁴ (2024) 3 SCC 563 : 2024 SCC OnLine SC 163

“ Each case depends on its own facts, and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by *Cordozo*) [(1960) 3 SCR N 681] by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, its broad resemblance to another case is not at all decisive ...”

* * *

“Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it”.

38. Thus, the observations of the Hon’ble Apex Court in Abba’s case do not apply to the facts of the cases at hand. In the cases at hand, there are flagrant violations and the authority affecting transfers violated the guidelines issued by the State. In this background, the expressions of the Apex Court in **S.L.Abbas**’ case have no relevance.

39. In the counter affidavits, the respective deponents made a futile effort to improve the case. It is a well-settled principle of law that pleading cannot substitute a reason in an administrative order. This view is fortified by the judgment of the Constitution Bench in **Mohinder Singh Gill Vs. the Chief Election Commissioner**²⁶ wherein it was held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned therein and cannot be supplemented by fresh reasons in the share of an affidavit or otherwise; otherwise, an order bad in the beginning may, by the time it comes to the Court on account of a challenge, get validated by additional

²⁵ AIR 1962 SC 680 : 1961 SCC OnLine SC 244

²⁶ (1978) 1 SCC 405

reasons or grounds later brought in. The Apex Court referred to an earlier judgment in **Commissioner of Police, Bombay Vs Gordhandas Bhanji**²⁷.

40. Insofar as, transfers relating to the petitioners in W.P.No.21865, 22098, 22395 and 22399 of 2024 are concerned, the petitioners are challenging the transfers to ITDA or consider their request to transfer from ITDA area to plain areas. As discussed *supra*, para IV prescribes principles for transfers and postings. Sub Clause No.11 & 12 of para IV, which is relevant is extracted herebelow:

11. The employees (Local Cadres, Zonal Cadres) working in ITDA areas for more than two (2) years may be transferred to the stations of their choice, subject to fulfillment of conditions stipulated in these orders, giving the due preference to the interse seniority among the employees working in these areas.
12. For the purpose of postings in ITDA Areas, the following criteria shall be followed.
 - i. The employees shall preferably be below 50 years of age.
 - ii. The employees who have not worked earlier in the ITDA areas so far shall be considered for transfers considering the length of their service in plain areas in the descending order of preference.

41. A perusal of the above sub-clauses 11 & 12, in the considered opinion of this Court, they cannot be treated as an exception to sub-clause No.4 of para IV. It only prescribes a procedure and the preference. The employer is the best person to place an employee at a particular place. The order of transfer of an employee will not visit the employee of grave consequence as he would be required to function from a different place or unit, subject to such transfer. The rest of the conditions remain intact. As pointed out by the Apex Court in **Noushad**

²⁷ AIR 1952 SC 16

Rahaman's case, the executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer and posting. The individual convenience of persons who are employed in the service is subject to the overarching needs of the administration.

42. In the absence of any infringement of any fundamental or statutory rights apparent, this Court is loath to interfere with those matters. No malice is attributed. Even if it is attributed, the person against whom malice is attributed is not made a party to the writ petition to rebut the malice. Whenever the allegations of mala fides are made, the persons against whom the same are leveled need to be impleaded as parties to the proceedings to enable them to answer the charge. **Ratnagiri Gas and Power (P) Ltd. Vs. RDS Projects Ltd.**,²⁸

43. Given the discussion *supra*, the W.P.Nos.21204, 21206, 21210, 22151, 22644, 22647 and 21535 of 2024 are **Allowed**. The W.P.No.21865, 22098, 22395 and 22399 of 2024 are **Dismissed**. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI

PVD

²⁸ (2013) 1 SCC 524 : 2012 SCC OnLine SC 886