

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

FRIDAY, THE TENTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HON'BLE SRI JUSTICE G.NARENDAR
AND
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**



WRIT APPEAL NO: 750 OF 2023

Writ Appeal under clause 15 of the Letters Patent Appeal preferred against the order dated 14-06-2023 in WP 12465 of 2021 on the file of the High Court.

Between:

1. The Special Chief Secretary, Animal Husbandry, Dairy Development and Fisheries Department At Velagapudi, 522237.
2. The Director, Department of Animal Husbandry, NTR Veterinary Super Speciality Hospital Premises, Labbipet, Vijayawada, Andhra Pradesh - 520010.

...APPELLANTS

AND

1. Dr Anapalli Appa Rao, S/o. Late Sri Laxmaiah Hindu, Aged 57 years, Assistant Director (AH) Flat No. 31 Door No. SF1 Sri Shiridi Sai Veterinary Colony, Near Hnumanthawaka Junction, Visakhapatnam – 530040.

...(WRIT PETITIONER)

2. Dr. S. Chalcravarthy, Assistant Director (AH) SMILE (Old Dairy Farm Campus) Near Hanurnanthavaka Junction, Visakhapatnam 530040.

(R3 in WP. No.12465 of 2021)

...RESPONDENTS

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the order dated.14.06.2023 in WP.No.12465/2021 pending disposal of the above writ petition.

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dismissed in limine.

IA NO: 3 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to prayed direct the Appellants to pay the Medical Bills and salary to the Respondent.

**Counsel for the Appellants : SRI G.V.S. KISHORE KUMAR,
GP FOR SERVICES I**

Counsel for the Respondent No.1 : SRI M.KANTHA RAO

Counsel for the Respondent No.2 :-----

The Court made the following: ORDER

**THE HONOURABLE SRI JUSTICE G. NARENDAR
AND
THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

W.A.No.750 of 2023

JUDGMENT: *(Per Hon'ble Sri Justice G.Narendar)*

Heard Sri G.V.S. Kishore Kumar, Learned G P (S-I) for the appellants and Sri M.Kantha Rao, Learned Counsel for the 1st respondent/writ petitioner.

2. The appellants are the Department of Animal Husbandry, Dairy Development and Fisheries, Government of Andhra Pradesh and the Director of the said department. The 1st Respondent is the Petitioner and the 2nd Respondent is the Assistant Director of Animal Husbandry, SMILE, Visakhapatnam Campus.

3. The parties are referred to by their nomenclature before the learned Single Judge for the sake of brevity and convenience.

4. It is the case of the Petitioner that the transfer proceedings bearing Roc.No.2633/BI/2020, dated 16.06.2021, is contrary to G.O.Rt.No.151, AH, DD & F (AH.I) Dept., dated 17.06.2021, issued by the 1st respondent.

5. The facts in a nutshell are that the Petitioner while discharging duties as Assistant Director (Animal Husbandry) was deputed to SVVU Super Speciality Veterinary Hospital, Visakhapatnam, which centre is under the control of Sri Venkateswara Veterinary University, Tirupati, with effect from 25.02.2016 vide proceedings dated 24.12.2015. On completion of his foreign service in the deputed department, he was repatriated to

parent department on 24.02.2021 and he was directed to appear before the Director, Animal Husbandry Development Department. That on 24.02.2021, the petitioner made a request to the 2nd respondent to post him as Assistant Director at SMILE (State Management Institute of Livestock Entrepreneurship) in place of Dr. M.Chandra Sekhar, who had been promoted as Deputy Director (AH) from the post of the Assistant Director. That the request for transfer was made on the ground that the son of the petitioner was availing treatment for Multiple Sclerosis at KGH Hospital, Visakhapatnam. The 2nd respondent, on receipt of the representation, addressed a letter to the Government on 15.06.2021 and the Government vide Memo dated 10.06.2021 sent a proposal for approval to the 2nd respondent to post the petitioner as Assistant Director, SMILE and issued appropriate instructions to the 2nd respondent for examination. That, thereafter, the Government issued G.O.Rt.No.151, AH, DD & F (AH.I) Dept., dated 16.06.2021 posting the petitioner as Assistant Director (AH), SMILE, Visakhapatnam in the existing vacancy, which has arisen out of the promotion to one Dr. M.Chandra Sekhar. That, while things stood thus, the 2nd respondent issued an order posting the 3rd respondent as an Assistant Director (AH), SMILE, Visakhapatnam vide proceedings dated 16.06.2021. That the 3rd respondent took charge of the same. Aggrieved by the proceedings posting the 3rd respondent as Assistant Director (AH), SMILE, the writ petition came to be filed.

6. The writ petition was canvassed on the ground that the order posting the 3rd respondent is vitiated by *mala fides* and is a clear case of misfeasance. That the 2nd respondent has exercised power

not vested in him and that the 2nd respondent having recommended the case to the Government and the Government having approved directed the posting of the petitioner to the said office and the action of the 2nd respondent in the interregnum was a colourable exercise of power. That the petitioner is a senior to the 3rd respondent and despite the said fact, the impugned order of posting came to be passed and it is a clear case of scepticism/favouritism. That the order is also bad for want of authority as the power to transfer is vested in the Government alone.

7. The said writ petition came to be vehemently resisted by the appellants/respondents on multiple grounds before the learned Single Judge. It was contended that the eligibility criteria stipulated for the post of Additional Director (AH), SMILE stipulates that the aspirant must possess a P.G. degree in Veterinary Science and the Officers ought to have undergone TOT training. That stipulation came about on account of the Government Memo No.3728/AH.III/1/2005-2, dated 22.09.2005. It was contended that despite specific instruction given to the petitioner to report before the Director of Animal Husbandry, the petitioner did not come up for reporting to duty. That the promotion file was processed by the competent authority and after evaluating the suitability and eligibility of candidates, the 3rd respondent was placed in the said post as the 3rd respondent alone satisfied the requirement of possessing Post Graduation degree.

8. It is contended by the learned G.P. that the learned Single Judge erred in holding that as the posting was by way of transfer and not by way of appointment, question of insisting upon a

candidate to possess a P.G. degree was unsustainable on the fact that both are in same cadre and being transferred from one post to another in the same cadre. The insistence of pre-requisite of P.G. degree was unsustainable and that the learned Single Judge further erred in holding that the Government Memo., dated 22.09.2005, was inapplicable to the case of posting by way of transfer. That the learned Single Judge further erred in holding that in the absence of any rules or statue, the order of the State Government posting the petitioner was unquestionable. That the further reliance on F.R.15(a) to hold that the same empower the Government to transfer a Government servant from one post to another, the original order placing the petitioner in the post of Assistant Director (AH), SMILE was well within the authority of the Government. That the further reliance on the ruling in **B.Varadha Rao v. State of Karnataka**¹ is inapplicable to the facts of the case. That the learned Single Judge seriously erred in holding that the amendment to the Rules is by way of executive instructions and that the learned Single Judge failed to see that the amending act was passed in the year 1999 and thereby amending the Andhra Pradesh State Animal Husbandry Service Rules, 1996. That the petitioner has deliberately omitted to place on record the Rules stipulating the additional qualification of P.G. degree for occupying the post of Assistant Director (AH), SMILE. That the act of the 2nd respondent in posting the 3rd respondent is an act vitiated by legal malice and that the 3rd respondent being a junior, the 2nd respondent's act tantamount to colourable exercise of power.

¹ AIR 1987 SC 287

9. *Per contra*, the learned counsel for the respondent/writ petitioner, while reiterating the findings rendered by the learned Single Judge, would submit that the writ appeal be rejected and the order of the learned Single Judge be upheld.

10. We have given our anxious consideration to the various submissions canvassed before us by both the learned counsels. We have also perused the Rules in question, that, more particularly, the Andhra Pradesh State Animal Husbandry Service Rules, 1996, which came to be issued through G.O.Ms.No.54 dated 06.06.1996 and published in the A.P. Gazette on 12.06.1996.

11. Rule 2 relates to constitution of the cadre. The posts were classified into four classes and several categories under each class. In the case on hand, this Court is required to look into Class A and Category 2 which pertains to the post of Additional Director (AH). Rule 3 relates to mode of appointment and the authority competent to do so. The original Rules in respect of Class A post, the Rules upto Category 5 post, the Government was designated as the competent authority or the appointing authority and in respect of Category 6 post, the Director (AH) was designated as the competent authority.

12. The learned Government Pleader has placed before this Court the copy of the extract issued by the Government of Andhra Pradesh vide G.O.Ms.No.102 dated 11.10.1999, which came to be published in the Andhra Pradesh Gazette on the said date, and deemed to have come into force with effect from 22nd May, 1999.

13. Rule 3 of the aforesaid Rules came to be amended with Class A. It is seen that by the amendment the word 'Government' in Column No.3 has been amended to read as 'Director of Animal Husbandry' and the amendment is by way of substitution implying thereby that from the effective date, it is to be presumed that as the provision was legislated that the Director as the competent/appointing authority or in other words they are the competent authority to exercise the power under Rule 3. It is seen that Rule 3, the contention that it is by way of an executive order requires to be rejected as the same is pursuant to and in exercise of the power vested in the State under Article 309 of the Constitution and in the name of the Governor of Andhra Pradesh. In that view of the matter and in the absence of any challenge to the *vires* or the legality of the amendment, the contention that the order suffers from want of competency requires to be rejected.

14. That apart, the very date i.e., 1999 would indicate that the question of the amendment being effected despite the individual or defeat the rights of the individual is also his case that cannot be canvassed. In that view of the matter, we are of the considered opinion that the opinion drawn by the learned Single Judge that the act of transfer or the order of the 2nd respondent effecting and posting the 3rd respondent to the said post contrary to the Government recommendation, would not constitute an act vitiated by malice.

15. Even assuming for argument sake, the Government Order was a recommendation, it is not demonstrated to this Court as to how the same is binding on the Director. Be that as it may, the

transfer is an incidence of service and it is not open to any Government servant to demand that he may be appointed in a particular post or any particular place. It is apparent that the learned Single Judge might have got carried away by sympathy in view of the petitioner's pleadings that his son is ailing and diagnosed with Multiple Sclerosis.

16. The next important aspect of the matter is the eligibility factor. The fact remains that the eligibility factor was stipulated in 2005 and the transfer of the petitioner is effected in 2021. In that view also it cannot by any stretch of imagination be said to be a stipulation brought about only to deny the petitioner to discharge duties in the said post. Hence, the question of orders of the 2nd respondent being *mala fide* or a colourable exercise of power is far-fetched and wholly unsustainable in the facts and circumstances of the case.

17. That apart, we are of the considered opinion that the learned Single Judge erred in holding that the post being in the same cadre, it is open cadre and being interchangeable, it is open for persons in the same cadre to be posted in any of the posts. We disagree with the said reasoning.

18. It is settled position in law that eligibility to occupy a post is something which is in the exclusively domain of the appointing authority of the employer. It is not for the Courts to equate or to hold as to who is eligible or not eligible or what should be the eligibility to hold or occupy a post. The eligibility criteria is something which is fixed by the Government on the aid and advice of experts and it is not open for this Court to substitute the opinion of the expert with its own.

19. We, the Judges, are not good enough to do the job of experts and that apart the expertise in any field is not the domain of the judiciary. The employer having determined the Institution i.e., SMILE as a premier institution, then it was always open to the Institution to fill the post in order to achieve the targets set for the Institution.

20. In view of the above discussion, we are of the considered opinion that the order of the learned Single Judge suffers from serious infirmities as set out supra.

21. In that view of the matter, the order impugned warrants interference at the hands of this Court and accordingly, the order is set aside. The order of transferring the 3rd respondent and impugned before the learned Single Judge is restored.

22. Be that as it may, in view of the plea of medical emergency set out/placed before the Court, we are of the considered opinion that it is always open for the petitioner to approach the 1st and 2nd respondents with a plea to place him in any post in and around Visakhapatnam in order to continue the medical treatment of his son, who is said to be ailing from medical complications. If such a request is received from the petitioner within 15 days from the date of receipt of a copy of this order, the respondent Nos.1 and 2 are hereby directed to consider the same and accommodate the petitioner in any post to which he is qualified to hold and which post is available in and around Visakhapatnam City. In the event, the representation is not made within 15 days from the date of receipt of a certified copy of this order, the petitioner shall not be entitled for the relief granted hereinabove.

23. The Writ Appeal stands ordered accordingly. No order as to costs.

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

Sd/- P.VENKATA RAMANA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. Two CCs to GP for Services I, High Court of Andhra Pradesh at Amaravati [OUT]
2. One CC to Sri M.Kantha Rao, Advocate [OPUC]
3. Three C.D. Copies.

Cnr

HIGH COURT

DATED:10/05/2024

ORDER

WA.No.750 of 2023



**WRIT APPEAL STANDS ORDERED
WITHOUT COSTS**