

***THE HON'BLE SRI JUSTICE SUJOY PAUL**
AND
***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+ WRIT PETITION No.6055 OF 2024

% 12-08-2024

M.A. Khader Mohiuddin

...Petitioner

vs.

\$ The Hon'ble High Court for the State of Telangana,
Hyderabad, rep. by its Registrar (Admn.),
High Court Buildings, Hyderabad and Others

... Respondents

!Counsel for the Petitioners

: Ms. Ch.Sujatha

^Counsel for Respondents

: Sri Harender Pershad, Senior
Counsel representing
Sri A.Naren Rudra

<Gist :

>Head Note :

? Cases referred

1. (1999) 4 SCC 293
2. (2009) 1 SCC 297
3. (2013) 10 SCC 253
4. (1977) 4 SCC 441
5. (1978) 2 SCC 202
6. 1995 Supp (1) SCC 76
7. MANU/TL/1207/2023
8. (2009) 2 SCC 592
9. AIR 1966 SC 1283
10. 2009 LawSuit (Mad) 1429
11. 2006 LawSuit (Mad) 152
12. 1996 (9) SCC 471
13. 2000 (5) SCC 65
14. 2011 (5) SCC 142
15. (2020) 3 SCC 86
16. 2024 SCC Online SC 279
17. (2004) 4 SCC 245
18. 2003 (1) MPHT (FB) 226

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD

* * * *

WRIT PETITION No.6055 OF 2024
(Per Hon'ble Sri Justice Sujoy Paul)

Between:

M.A. Khader Mohiuddin

...Petitioner

vs.

The Hon'ble High Court for the State of Telangana,
Hyderabad, rep. by its Registrar (Admn.),
High Court Buildings, Hyderabad and Others

... Respondents

JUDGMENT PRONOUNCED ON: 12.08.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

**THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU
RAJESHWAR RAO**

WRIT PETITION No.6055 of 2024

ORDER: *(Per Hon'ble Justice Sujoy Paul)*

This petition filed under Article 226 of the Constitution seeks a declaration that petitioner's application seeking voluntary retirement dated 28.01.2023 must be treated as deemed to have been accepted as per Rules. The petitioner has also called in question the transfer orders dated 24.01.2023 and 23.01.2024 whereby he was transferred from Secunderabad to Adilabad.

2. Briefly stated, the relevant facts for adjudication of this matter are that the petitioner on 28.01.2023 submitted an application/notice before the Chief Judge, City Civil Court, Hyderabad, through proper channel seeking permission to voluntarily retire after three months. The specific stand of the petitioner is that no express decision was ever taken on this notice of the petitioner regarding voluntary retirement. The petitioner preferred appeal dated 08.09.2023 for taking decision on the said application for voluntary retirement, but to no avail.

3. The second limb of attack is to the transfer order issued *vide* ROC.No.90/2023-C-3, dated 24.01.2023, whereby the petitioner was transferred from the I Additional Family Court, City Civil Court, Secunderabad, to the unit of District Judge, Adilabad, on administrative grounds. The petitioner filed additional material papers to submit that he made unsuccessful efforts to join at Adilabad. The petitioner along with memo dated 18.03.2024 filed applications submitting his joining before the Adilabad Court pursuant to transfer order dated 23.01.2024.

4. By placing reliance on Clause (2) of Rule 48-A of the Telangana Revised Pension Rules, 1980, it is submitted that if no decision is taken by the department on his application for voluntary retirement, pursuant to the deeming clause, the petitioner will be deemed to have been retired on completion of stipulated period of three months. In support of these submissions, learned counsel for the petitioner placed reliance on judgments of Apex Court in the cases of **State of Haryana vs. S.K.Singhal¹**, **Virender Chaudhary vs. Bharat Petroleum Corpn.²**, **Vijay S. Sathaye vs. Indian Airlines Ltd.³**, **Dinesh**

¹ (1999) 4 SCC 293

² (2009) 1 SCC 297

³ (2013) 10 SCC 253

Chandra Sangma vs. State of Assam⁴, B.J. Shelat vs. State of Gujarat⁵ and Union of India vs. Sayed Muzaffar MR⁶ and also the judgment of this Court in V. Radhika vs. The State of Telangana⁷.

5. The transfer order (Annexure P-2) is assailed by contending that the same is punitive and *mala fide* in nature. The transfer order is not passed on administrative grounds, although it cites such administrative reason. By placing reliance on the reference letters mentioned in the impugned transfer orders dated 24.01.2023 and 23.01.2024, learned counsel for the petitioners submits that the operative reason for transfer relates to alleged conduct of the petitioner and if, for said reason the petitioner is transferred, the orders are certainly punitive in nature. In support of this contention, she placed reliance on the judgments of Supreme Court in the cases of **Somesh Tiwari vs. Union of India⁸** and **The Management of the Syndicate bank Ltd. vs. The Workmen⁹** and judgments of Madras High Court in the cases of **K M Elumalai vs. Additional Director General of Police,**

⁴ (1977) 4 SCC 441

⁵ (1978) 2 SCC 202

⁶ 1995 Supp (1) SCC 76

⁷ MANU/TL/1207/2023

⁸ (2009) 2 SCC 592

⁹ AIR 1966 SC 1283

**Director General of Prisons; Superintendent of Prisons¹⁰ and
S. Sevugan vs. Chief Educational Officer¹¹.**

6. *Per contra*, Sri Harender Pershad, learned Senior counsel for the respondents submitted that the petitioner preferred application for voluntary retirement on 28.01.2023. The said application was preferred before the Chief Judge, City Civil Court, Hyderabad, whereas, the petitioner was already transferred by order dated 24.01.2023. The petitioner was relieved on 28.01.2023 and since, he did not accept the relieving order and left no stone unturned to avoid service of transfer/relieving order, the said orders were sent to him through registered post, which was returned with caption 'un-claimed'. The respondents, then got the transfer/relieving order affixed on the house of the petitioner. A photograph showing the same is placed on record, in which the son of the petitioner was standing in front of affixed notice. There is no pleading in the petition and rejoinder that the petitioner submitted his joining at Adilabad and his joining was not accepted. The documents filed with memo dated 18.03.2024 are not supported by any affidavit. The High Court by order dated 23.01.2024 directed the petitioner to comply with the transfer

¹⁰ 2009 LawSuit (Mad) 1429

¹¹ 2006 LawSuit (Mad) 152

order dated 24.01.2023 (Annexure P-2). The transfer order is passed in administrative exigency and in absence of any specific pleadings of malice, no interference is warranted. The necessary parameters for interference in transfer order are not satisfied.

7. So far, the application for voluntary retirement dated 28.01.2023 is concerned, the learned Senior counsel for respondents submitted that since the petitioner stood relieved from the City Civil Court, Hyderabad, the said application was returned to the petitioner to enable him to submit the said application/notice at Adilabad. The attempt of the department to return the application to the petitioner physically could not fetch any result because the petitioner successfully avoided receiving it. Therefore, left with no other option, the said letter was sent through registered post, which came back 'un-claimed'. If such, notice is refused by the petitioner, it must be treated as 'served'. Since the application of voluntary retirement was returned in January, 2023 itself, the deeming clause of statute is of no benefit to the petitioner.

8. In the rejoinder submission, learned counsel for the petitioner submits that it is doubtful whether the registered

envelope, which allegedly came back 'un-claimed' was containing the notice/application of the petitioner for voluntary retirement.

9. The parties confined their arguments to the extent indicated above.

10. At the outset, we may observe that law is well settled that if notice for voluntary retirement is preferred and relevant Rule prescribes that the decision on it must be taken within a stipulated time and also contains a deeming clause, in absence of taking any decision on the notice/application within time, the permission to voluntary retirement shall be deemed to have been granted. The Rule in hand also prescribes the same and there is no difficulty in accepting the contention of learned counsel for the petitioner about the interpretation and impact of such deeming clause. What is important to note is that if application for voluntary retirement remained pending for a stipulated period, then only deeming clause comes into operation.

11. In the instant case, the parties are at loggerheads whether the said application for voluntary retirement was actually pending. As noticed above, the petitioner's stand is that till date no decision was taken on the said application and even his

appeal/representation could not fetch any result. The respondents, on the other hand, urged that the application for voluntary retirement was returned to the petitioner.

12. In order to separate the wheat from chaff, we have perused the original record produced before us by the respondents. It contains a sealed registered envelope sent to the declared residential address of the petitioner, which came back 'un-claimed'. We have opened the sealed registered envelope and found that it contains the notice/application of petitioner seeking voluntary retirement. The Apex Court in the cases of **M/s. Attabira Regulated Market Committee v. M/s. Ganesh Rice Mills**¹², **Syndicate Bank v. General Secretary, Syndicate Bank Staff Association**¹³ and **Chairman-cum-M.D., Coal India Ltd. v. Ananta Saha**¹⁴ opined that if a registered letter comes back with note 'un claimed/refused', it shall be treated to be served. Thus, in our opinion, the petitioner's application for compulsory retirement was returned to him by registered letter dated 30.01.2023. Thus, his application/notice was not pending beyond 30.01.2023 with the department and therefore, the question of giving benefit of deeming clause does not arise. For this reason,

¹² 1996 (9) SCC 471

¹³ 2000 (5) SCC 65

¹⁴ 2011 (5) SCC 142

the judgments on this point relied by the petitioner are of no assistance.

13. So far, transfer order is concerned, it is trite that transfer is incidence of service. The transfer order can be interfered if it runs contrary to any statutory provision (not policy guidelines), proved to be (not alleged to be) *mala fide*, changes service condition of the employee to his detriment, passed by incompetent authority. The personal inconvenience cannot be a ground to interfere with the transfer order. The employer is the best judge to decide about the existence of administrative exigency and this Court cannot sit in appeal and conduct roving enquiry. On these principles, the impugned transfer order is required to be tested.

14. Learned counsel for the petitioner placed heavy reliance on the judgment of **Somesh Tiwari** (supra) and other judgments of High Courts, to submit that the transfer order is in fact passed as a punitive measure and not arising out of any administrative exigency.

15. In the instant case, whether the transfer order is *mala fide* or not can be examined if there exists sufficient pleadings in support thereof. We have perused the pleadings carefully. In para

No.20 of this petition, bald pleadings exists that “the transfer order dated 23.01.2024 which I have not yet been served on me, is deemed *mala fide*...”

16. In cases where the petitioner alleges *mala fide*, the elementary requirement is to allege *mala fide* with accuracy and precision. Bald allegation that the order is *mala fide* cannot be entertained. In addition, if malice/*mala fide* is alleged against the persons, such persons against whom the allegations are leveled needs to be impleaded as parties ‘*eo nomine*’. The Apex Court in the case of **Rajneesh Khajuria vs. Wockhardt Limited**¹⁵ held as under:

“20. In another judgment reported as Ratnagiri Gas and Power Private Limited v. RDS Projects Limited & Ors.¹¹, this Court held that when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. A judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. The Court held as under:

“27. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned. It is important to remember that a judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. Courts have, therefore, to be slow in drawing conclusions when it comes to holding allegations of mala fides to be proved and only in

¹⁵ (2020) 3 SCC 86

cases 11 (2013) 1 SCC 524 where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of mala fides that the Court should record a finding in the process ensuring that while it does so, it also hears the person who was likely to be affected by such a finding.”

(Emphasis Supplied)

17. It is further held in **Rajneesh Khajuria** (supra) in para No.23 that since appellant has not laid any foundation to alleged malice in law, in view of various judgments, interference cannot be made. ‘Malice in law’ would be something which is done without lawful excuses or an act done wrongfully and willfully without reasonable and probable cause.

18. In a recent judgment in the case of **Pubi Lombi vs. State of Arunachal Pradesh**¹⁶, the Apex Court held as under:

“15. In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of **(i) pleadings regarding malafide, (ii) non-joining the person against whom allegation are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding a transferrable post, judicial interference is not warranted.** In the sequel of the said settled norms, the scope of judicial review is not permissible by the Courts in exercising the jurisdiction under Article 226 of the Constitution of India.”

(Emphasis Supplied)

19. In the instant case, in absence of any specific pleadings alleging *mala fide* and impleading the person concerned ‘*eo nomine*’, allegations of *mala fide* cannot be entertained. The

¹⁶ 2024 SCC Online SC 279

transfer order is passed by competent authority. It does not change service condition of the petitioner to his detriment. Transfer is his incidence of service.

20. The documents filed with the memo dated 18.03.2024 are not supported by any affidavit. Therefore, we are unable to take note of the same. Thus, it is not established that the petitioner was not permitted to join at Adilabad. Even assuming that petitioner's joining was not accepted at Adilabad and he preferred such representations, which are filed with memo (although no receiving of the department is there), nothing prevented the petitioner to send the said letters through registered post from Adilabad itself.

21. In **Union of India vs. Janardhan Debanath**¹⁷, the Apex Court opined as under:

“12. ... The manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions — status, service prospects financially — and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and

¹⁷ (2004) 4 SCC 245

utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.”

(Emphasis Supplied)

22. It was further held that:

“**14.** The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated...”

(Emphasis Supplied)

23. In the subsequent judgment in **Somesh Tiwari** (supra), it was held as under:

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is

passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

21... No vigilance enquiry was initiated against appellant. Transfer order was passed on material which was non-existent. The order suffers not only from non-application of mind but also suffers from malice in law.”

24. The Division Bench of Apex Court in **Janardhan Debanath** (supra) poignantly held that for effecting a transfer, question of holding enquiry and recording finding about employee’s conduct is not necessary. However, another Division Bench in **Somesh Tiwari** (supra), interfered with the order of transfer on the ground that no vigilance enquiry was initiated against the employee. The previous judgment of **Janardhan Debanath** (supra) was not cited before the subsequent bench in **Somesh Tiwari** (supra). Pertinently, in **Somesh Tiwari** (supra), a peculiar fact available in the said case about anonymous complaint which was held to be a non-existent material also became reason for interference.

25. In view of Five Judges Bench judgment of Madhya Pradesh High Court in **Jabalpur Bus Operators Association vs. State of M.P.**¹⁸, wherein it was held that if previous judgment of a coordinating Bench is not considered by subsequent Bench, the

¹⁸ 2003 (1) MPHT (FB) 226

previous judgment will prevail. The relevant portion reads as under:

“9... With regard to the High Court, a Single Bench is bound by the decision of another Single Bench. In case, he does not agree with the view of the other Single Bench, he should refer the matter to the Larger Bench. Similarly, Division Bench is bound by the judgment of earlier Division Bench. In case, it does not agree with the view of the earlier Division Bench, it should refer the matter to Larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of later Division Bench shall be binding. The decision of Larger Bench is binding on Smaller Benches.

(Emphasis Supplied)

26. In this view of the matter and legal position, we deem it proper to follow the ratio laid down in **Janardhan Debanath** (supra). Thus, the judgment in **Somesh Tiwari** (supra) and other High Court judgments based on it are of no assistance to the petitioner.

27. In the instant case, the transfer order was necessitated in administrative exigency to ensure discipline, decency and decorum of Court services. In order to meet administrative exigency, an administrative decision was taken. No stigma is attached to the petitioner. The transfer order does not have any penal consequences. The transfer order will not be to the detriment to the petitioner in any manner. In other words, the order will have no adverse consequences on his seniority,

promotion, status, pay scale, etc. In the light of the principles laid down in **Janardhan Debanath** (supra), no fault can be found in the impugned order.

28. In nutshell, in our judgment, the High Court on the basis of report of City Civil Court and on its *prima facie* satisfaction, passed the administrative order of transfer.

29. In the light of principle laid down in para 14 of the judgment in **Janardhan Debanath** (supra), this course is permissible and this Court cannot sit in an appeal for taking a different view.

30. We do not find any ingredients on which interference can be made in this Writ Petition. The Writ Petition sans substance and is hereby **dismissed**. The petitioner is at liberty to join at Adilabad upon which intervening period may be regularized as per Rules. There shall be no order as to costs. Miscellaneous applications, if any pending shall stand closed.

JUSTICE SUJOY PAUL

JUSTICE NAMAVARAPU RAJESHWAR RAO

Date:12.08.2024

Note: L.R. copy be marked.

FM/GVR/TJMR