

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
WRIT PETITION No.2126 OF 2015

ORDER:

The petitioner, who is presently employed as a Lecturer in Commerce with V.R.College (Day), Nellore sought for Writ of Mandamus declaring the action of the 1st respondent namely the State of Andhra Pradesh in rejecting the case of the petitioner for transfer from V.R. College, Nellore to Sri Venkateswara Degree College, Parvathipuram, Vizianagaram District, as reflected in the Memo dated 09.12.2014 of the State Government as illegal, arbitrary, discriminative, malafide, opposed to doctrine of legitimate expectation, colourable exercise of powers, non-application of mind, misfeasance, nonfeasance besides violative of Articles 14 and 16 of the Constitution of India. He also sought for consequential direction to 1st respondent to transfer him from V.R. College, Nellore to Sri Venkateswara Degree College, Parvathipuram, Vizianagaram District.

Heard the learned counsel for the petitioner. I am afraid that this writ petition is a hopelessly misconceived one. It is an essential principle of law that a writ of Mandamus can be issued for enforcing a right, both statutory and/or fundamental guaranteed under the Constitution of India. Articles 14 and 16 of Constitution of India deal with public employment and public law concept of discrimination. The writ petitioner is an employee of private society, which established the V.R. College at Nellore. He now seeks transfer to another degree college at Parvathipuram, Vizianagaram District, which is established by yet another society, which is again a private employment. The relationship between the private employer and employee so long as is not regulated by any statutory exercise or legally enforceable rule or regulation, public law concept of discrimination cannot be injected into

it. The conditions of service of private employment are essentially the result of a contract, which can be entered into by two willing parties. Therefore, the question of discrimination between two sets of private employees by the same employer is neither here nor there. Learned counsel for the petitioner would urge that the petitioner is holding the post of Lecturer, which is aided post and he is seeking transfer to another aided post and that request has been rejected on the ground that the transfer is opposed to the principle Zonalization contained in 6-point formula. It is worth noticing that the concept and principles of Zonalisation of public employment emanated pursuant to Clauses 1 and 2 of Article 371-D read with Clause 10 thereof. The concept of Zonalisation or creating preferential treatment to candidates who answer the description of "local candidate" to the exclusion of others in private employment is not regulated by the said Article 371-D or the Presidential Order made thereunder. So far as the Grant-in-Aid accorded by the State Government is concerned, it is a financial assistance, which the State Government accords to an educational institution, so that the substantial portion of the expenditure, which is normally required to be met by it for running of educational institution, is taken care of by the State, thus, relieving the stress of the management to run the educational institution. If a major chunk of the expenditure normally liable to be incurred by a educational institution is taken care of by the State by providing Grants-in-Aid the private management will be less and less inclined to transfer the burden of meeting the expenditure on to the shoulders of parents of the students. The expenditure when curtailed reduces the burden of the parents to send their wards to the educational institutions. This apart, the members of both teaching and non-teaching community of the educational institutions will not be given a raw-deal by some of the

unscrupulous managements. By assuring reasonable remuneration to such employees, the very best out of them can be assuredly extracted. By securing the best services and making them available to the society at large, the States would be rendering services to its citizens as a part of redeeming its obligation towards them. Beyond that the Grant-in-Aid, is not conferring any power of creating new contractual obligations on employee and employer between the State and the employee receiving the Grant-in-Aid. The Master and servant relationship is still regulated only by the terms of the contract entered into by and between the employee and the society, which manages the educational institution. Therefore, in the absence of any enforceable right in the hands of the writ petitioner, the fact that the State Government has exercised its discretion in the past, though very selectively, in favour of several other similarly situated individuals will not enure to the benefit of the petitioner. It would be a different matter for the Court to express its inability to intervene if the Government has used discretionary power and created new obligations by it upon willing private managements. It would be altogether a different thing to solicit or secure one such compulsion by the State Government upon any such management even if such a management is willing to be so, obliged. For sheer want of an enforceable right, the Writ of Mandamus as prayed for cannot be issued and accordingly this writ petition stands dismissed at the admission stage. No order as to costs.

All the miscellaneous petitions pending in this writ petition shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

06.02.2015

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