

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No. 32130 OF 2015

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The petitioner, a Grade-II Head Mistress of a Z.P. High School in Chittoor District, filed this Writ Petition against an interlocutory order passed by the Andhra Pradesh Administrative Tribunal refusing to come to her rescue in the matter of according preferential treatment for the purpose of transferability.

The Andhra Pradesh Teachers (Regulation of Transfers) Rules, 2015-16 have been framed exercising the power available under Sections 78 and 99 of the Andhra Pradesh Education Act, 1982 and the Proviso to Article 309 of the Constitution of India and hence, have enforceability. Rule 11 of these Rules has spelt out that the following categories shall take precedence in the seniority list in the order given in that Rule, irrespective of their entitlement points. The first priority was accorded to the physically challenged category, the second is the category of widows and the third related to legally separated women. It is the claim of the petitioner that her case falls under this priority called 'legally separated women'.

Learned counsel for the petitioner would submit that the husband of the petitioner was treating her with such cruelty. As it became intolerable any further, the petitioner has filed Family Court O.P.No. 13 of 2014 on the file of the Family Court at Tirupati seeking divorce from her husband and the matter is now pending adjudication by the said Court. The learned counsel would submit that the husband has made most uncharitable allegations touching upon the chastity and fidelity of the petitioner in the counter-affidavit filed in the said Family Court O.P. which itself amounts to cruelty. When cruelty being one of the grounds for granting divorce, it is only a matter of time before the Family Court would grant the necessary relief of divorce to the petitioner. Therefore, there is no justification whatsoever for the respondents not to treat the case of the petitioner to fall within the priority reserved for 'legally separated women'. This apart, the learned counsel would also urge that the very philosophy for creating a special preference for the legally separated women is to ensure that no handicap or disadvantage is suffered by them on the

count of lack of family support. When the petitioner's case is in *pari materia* the same, there could not have been any distinguishing feature for not treating her case on the same priority as that of the legally separated women.

We are afraid that the contentions canvassed by the learned counsel for the petitioner do not carry much merit, for, the rule-making authority has chosen to accord some preferential treatment to 'legally separated women' in the matter of transferability. Obviously, by according such a priority, such legally separated women will be able to choose an ideal location that will suit their peculiar requirements, so that before choosing the places by others, such places would be thrown open and made available first to the legally separated women to choose from. When once a policy is framed by the competent authority, it is certainly not open to the Courts to interfere with any such policy decision by an interpretative process to expand the scope and width of the same. It is one thing to say that the policy falls foul of any fundamental rights guaranteed to any citizen or contrary to any statutory provision and then getting it declared as bad in law. It is, however, altogether a different thing to assume that the provision is otherwise justifiable and valid, but its scope must be expanded by the Courts. The presumption that the policy-maker never intended any benefit other than the one, which he has specifically contemplated, inhibits us from indulging in any mode of interpretation to expand its width.

Therefore, we do not find any merit in this Writ Petition and it is accordingly dismissed, notwithstanding our sympathies for women employees in general and in particular, for such of those women employees, who have been subjected to harassment at the domestic front by a heart-less individual. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

01st October 2015

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