

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE Mr.JUSTICE M.SUNDAR

W.P.No.26917 of 2017

and

WMP.Nos.28691 & 28692 of 2017

S.Ramalingam

... Petitioner

Vs.

1. The State Government of Puducherry,
rep. by its Chief Secretary,
Puducherry - 605 001.
2. The Secretary to Government (Education),
Chief Secretariat,
Government of Puducherry,
Puducherry - 605 001.
3. The State Commissioner for Person with
Disabilities cum Secretary
to the Govt. (Welfare),
Chief Secretariat,
Government of Puducherry,
Puducherry - 605 001.
4. The Director,
Directorate of Higher and
Technical Education,
PIPMATE Complex, Lawspet,
Puducherry - 605 008.
5. The Under Secretary to
Government (Education),
(Higher and Technical Education),
Chief Secretariat,
Government of Puducherry,
Puducherry - 605 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the fifth respondent leading to the passing of the impugned Clause viz., Clause (iii) (a) under category "Others" in Government Order dated 04.9.2017 bearing G.O.Ms.No.26, passed by the fifth respondent and quash the same and direct the respondents not to discriminate between the disabled persons in matters of transfer or otherwise with

reference to their dependency on family members in their normal performance of duty/daily activities.

For Petitioner : Ms.Rajeni Ramadass

For Respondents : Mr.C.T.Ramesh
Additional Government Pleader
(Puducherry)

O R D E R

(Order of the Court was made by M.M.SUNDRESH, J.)

This public interest litigation has been filed by the petitioner, who is a retired Government employee, challenging the Government Order dated 04.09.2017 in G.O.Ms.No.26, Chief Secretariat (Higher and Technical Education).

2. Before advertng to the contentions raised, let us see the relevant guidelines. In G.O.Ms. No.23/97-Wel. (SW.II) dated 04.03.1997, certain guidelines have been formulated with respect to posting and transfer of disabled/physically handicapped employees. The relevant portion of the aforesaid Government Order (G.O.Ms.No.23, dated 04.03.1997) is extracted hereunder:

"15.The disabled/physically handicapped employees shall be posted in /transferred to a office nearer to his/her residence or in a place of his/her choice, even by transferring the normal persons, if vacancy is not available."

3. In the Official Memorandum of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, dated 31.03.2014, the Government of Puducherry has issued certain guidelines, the relevant portion of which reads as follows:

"As for as possible, the person with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the person with disability subject to the administrative constraints."

4. The Government Order under challenge specifically deals with transfer policy for Group A teaching staff in Government Arts & Science Colleges in the Administration and Kanchi Mamunivar Centre for Post Graduate Studies, Puducherry.

5. Insofar as transfer pertaining to the employees involving medical cases is concerned, it was decided that they should be considered for posting in the region of their residence in the normal circumstance, subject to the production of medical certificate to be issued by the competent authority. The following is the relevant part of transfer policy:

"iii. The following medical cases will be considered for posting in the region of their residence normally, subject to production of Medical Certificate issued by the Competent Authority:

- a. Physically handicapped faculty members who require assistance of other family members in normal performance of duty / daily activities.
- b. Cases of disabled dependent children.
- c. Cases having old age parents who require physical support and care."

6. The aforesaid decision/guideline is sought to be challenged before us on the premise that it is contrary to the Government Order issued in G.O.Ms.No.23, dated 08.04.1997 and the Official Memorandum dated 31.03.2014.

7. In fact, the petitioner has made a compliant to respondent No.5, who has replied in and by letter dated 20.10.2017 stating that all the policies referred to above are to be read in consonance with each other. Appropriate action would be taken to make suitable amendment to the condition in the transfer policy of the Directorate of Higher and Technical Education. Notwithstanding the same, the present writ petition has been filed.

8. Learned counsel for the petitioner would submit that there cannot be any classification between the physically handicapped persons. Therefore, there is a discrimination among same group of persons and such discrimination is sought to be applied with reference to one department.

9. Learned Additional Government Pleader (Puducherry) would submit that the impugned Government Order deals with teaching staff alone who come under Group A, but even then, the same will be considered in the light of the other Government Orders and, therefore, there is no discrimination as alleged.

10. We do not find any discrimination involved in the case on hand. Classification is sought to be made with respect to the physically handicapped members, who require assistance of others. This classification has to be read in consonance with the other two classifications with respect to the case of disabled dependent children and cases having old age parents, who require physical support and care.

11. Though Clauses (b) and (c) are not under challenge, as clarified by the counsel for the petitioner, we are of the view that Clause (a) has to be seen in conjuncture with Clauses (b) and (c). This is to understand the object and rationale behind Clause (a). In such view of the matter, we do not find any discrimination involved. It is not as if every discrimination is bad. Discrimination would become bad only when all the disabled cannot be in the same bracket, the question of discrimination would not arise.

12. Coming to the other contentions raised, we find that even as per the communication sent by the Government of Puducherry, nowhere it is stated that the Government Order passed in G.O.Ms.No.23, dated 08.4.1997 and the Official Memorandum dated 31.3.2014 would not be given effect to. These two proceedings clearly take care of the other categories of the disabled persons. In other words, as against a normal employee, a disabled person would be given certain benefits, as indicated above. We do not find any repugnancy between the Government Order and the Official Memorandum on one hand and the impugned Government Order on the other hand. Therefore, we do not find any violation of Article 14 of the Constitution of India involved in this case. We also note that this writ petition has been filed by a person, who is not aggrieved. We find that the classification made has got nexus and rationale to the object to be achieved, which is to help the medical cases.

13. Accordingly, the writ petition is disposed of with a clarification that while dealing with the transfer involved in the Government employee working in Group A teaching staff of Government Colleges in the Administration and Kanchi Mamunivar Centre for Post Graduate Studies, Puducherry in so far as disabled

persons are concerned, who otherwise would not come under clause (a)* which is under challenge, the provisions of the Government Order passed in G.O.Ms.No.23, dated 08.4.1997 and the Official Memorandum dated 31.3.2014 would apply. No costs. Consequently, WMP.Nos.28691 & 28692 of 2017 are closed.

Sd/-
Assistant Registrar(CS V)
dt. 07/11/2017

Corrected as per order of this
Court dated 13.11.2017 and made in WP.26917/17

Sd/-
Assistant Registrar(CS-V)
dt. 14.11.17

//True Copy//

Sub Assistant Registrar

To

- 1.The Chief Secretary to Government,
Government of Puducherry,
Puducherry - 605 001.
- 2.The Secretary to Government (Education),
Chief Secretariat,
Government of Puducherry,
Puducherry - 605 001.
- 3.The State Commissioner for Person with
Disabilities cum Secretary
to the Govt. (Welfare),
Chief Secretariat,
Government of Puducherry,
Puducherry - 605 001.
- 4.The Director,
Directorate of Higher and
Technical Education,
PIPMATE Complex, Lawspet,
Puducherry - 605 008.
- 5.The Under Secretary to Government
(Education),
(Higher and Technical Education),
Chief Secretariat,
Government of Puducherry,
Puducherry - 605 001.

Corrected order to
be substituted for
the order already
despatched on
10.11.2017 in
WP.26917/17

+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.77000
+1cc to the Government Pleader(Pondy), S.R.No.77062

W.P.No.26917 of 2017

AR V
CA(08/11/2017)
Eu 15.11.2017

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