IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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WRIT PETITION NO.23775 OF 2016

Dr.S.Shoba Rani .. Petitioner

Vs.

The State Reorganization Department rep by its Secretary, General Administration (SR) Department, A.P. Secretariat, Hyderabad and others .. Respondents

DATE OF JUDGMENT PRONOUNCED: 27.02.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

N.BALAYOGI, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR**
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

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% DATED 27th FEBRUARY, 2017

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<Gist:

>Head Note:

! Counsel for petitioner : Sri Kasa Jaganmohan Reddy

^Counsel for respondents 1 to 3 : Government Pleader for Services-I (Andhra Pradesh)

^Counsel for respondents 4 & 5 : --

^Counsel for respondent 6 : Assistant Solicitor General for India

? CASES REFERRED:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

WRIT PETITION NO.23775 OF 2016

O R D E R

(*Per Hon'ble Sri Justice Sanjay Kumar*)

The petitioner is the applicant in O.A.No.2358 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity, 'the Tribunal'). By order dated 24.06.2016, the Tribunal admitted the O.A. and while ordering notice to the respondents, directed that the final allocation of the petitioner to the State of Telangana would be subject to the final result in the O.A. Aggrieved by the denial of interim relief, the petitioner is before this Court.

The petitioner was appointed as a Lecturer at Kurnool in Zone IV on 20.07.1992 and was thereafter transferred to Visakhapatnam in Zone I on her own request, as her husband was working at BHEL, Visakhapatnam. She thereupon took the last rank in terms of seniority in the cadre of Lecturers at Visakhapatnam. She was promoted as a Principal in September, 2012, basing upon her reduced seniority. After bifurcation of the erstwhile State of Andhra Pradesh, the authorities sought her option for allocation to one of the newly formed States. Guidelines in this regard were communicated *vide* G.O.Ms.No.312 dated 30.10.2014. The total number of posts of Principals were 256, of which 140 were allotted to the new State of Andhra Pradesh and 116 to the State of Telangana. Admittedly, 23 vacancies in the said post fell to the lot of the State of Andhra Pradesh, while 9 vacancies were in the State of Telangana.

The petitioner opted for the State of Andhra Pradesh, as she had herself sought transfer to Zone I on spousal grounds and was still continuing in service there. Despite her option and the

availability of vacancies, the Committee constituted by the Government of India tentatively allotted her to the State of Telangana in the list dated 02.06.2015. Aggrieved by this allotment, she filed O.A.No.5088 of 2015 before the Tribunal, wherein interim orders were passed directing the authorities to maintain *status quo*. Pursuant thereto, she continued to work at Visakhapatnam in Zone I in the new State of Andhra Pradesh. However, during the pendency of this O.A., final allocation orders were passed on 10.11.2015, whereby she was again allocated to the State of Telangana. The pending O.A. was closed in the light of this development. However, aggrieved by her final allocation, she filed O.A.No.2358 of 2016. As the Tribunal did not grant her interim relief and made her allocation subject to the result of the O.A., she filed the present writ petition.

The Assistant Secretary to the Government, General Administration Department, Andhra Pradesh, filed a counter-affidavit stating as follows: The Government of India approved the guidelines for allocation of the State employees between the successor States of Telangana and Andhra Pradesh *vide* G.O.Ms.No.312 dated 30.10.2014. In terms of Para 19 of the said guidelines, employees were to be allocated only after taking options from them. The petitioner, a local of the State of Telangana, exercised her option to be allocated to the new State of Andhra Pradesh. She was however tentatively allocated to the State of Telangana. She put in a representation stating that her studies were in Telangana but she was appointed as a Lecturer in Kurnool in the erstwhile State of Andhra Pradesh, in September, 1992, wherefrom she sought transfer on spousal grounds to Visakhapatnam in Zone I. She further stated that her husband belonged to Andhra Pradesh and was working in a non-transferable post in BHEL at Visakhapatnam where her sons

were also undergoing their education. She pointed out that vacancies were available at Visakhapatnam and sought accommodation there. The Assistant Secretary admitted that 23 vacancies in the posts of Principal were allotted to the State of Andhra Pradesh along with 117 filled posts.

The Under Secretary, Department of Personnel and Training, Government of India, filed a counter wherein he stated thus: Though the petitioner was appointed in Zone IV in 1992 and was transferred to Zone I at her request, she thereafter came to be promoted and as on 02.06.2014, the appointed day under the Andhra Pradesh Reorganization Act, 2014, she was holding a State cadre post. She was therefore allocated to the State of Telangana considering her local candidature as per Para 18(f) of the guidelines. He further stated that her request for retention in Zone I under spouse category could not be considered as her husband was employed in BHEL, a Central Government Public Sector Undertaking. As regards the petitioner's objection to her tentative allocation to the State of Telangana, he stated that the Committee, in its meeting held on 07.08.2015, held that as there was no vacancy to adjust her against the filled posts in Andhra Pradesh, her representation could not be considered. In terms thereof, she was finally allocated to the State of Telangana. He however admitted that out of the total sanctioned strength of 256 posts in the cadre of Principal, 140 posts (filled 117 + vacant 23) were allotted to the State of Andhra Pradesh and 116 posts (filled 90 + vacant 26) were allocated to the State of Telangana. He therefore sought to justify the final allocation of the petitioner to the State of Telangana.

Heard Sri Kasa Jaganmohan Reddy, learned counsel for the petitioner, Sri B.Narayana Reddy, learned Assistant Solicitor General

appearing for the Government of India, and the learned Government Pleader for Services appearing for the State of Andhra Pradesh and its officials.

The guidelines for final allocation of State cadre employees under the Andhra Pradesh Reorganization Act, 2014, approved by the Government of India, were communicated under G.O.Ms.No.312 dated 30.10.2014 for information and further action. In terms of Para 7 of the said guidelines falling under the title 'Allocation of Posts', the Government of India made it clear that 'allocable posts' included vacant posts. Para 18 enumerates the principles guiding the allocation of employees. Clause (f) thereof is relevant and reads as under:

> 'f) The allocation shall be done in order of seniority as available on June 01, 2014. Those who have opted, who are 'local candidates' relatable to the State to which they have opted, shall, in order of their seniority, be considered for allocation first. If allocable posts in that category remain, then, others who have opted to the State may be allocated in order of seniority. If still posts remain allocation will be made in reverse order of seniority.'

Clause (l) thereof is also of relevance and reads as under:

> 'l) Spouses in State cadre in Government or in State Government institutions, local bodies and those who are deemed allocated as per the Act, shall as far as practicable, be allotted to the same State, after considering options made by them and their local candidature. Spouses who are local candidates of a State shall be allocated to that State. Spouses who belong to different States may be allocated after considering their options.'

It may also be noted that in the case of a spouse of an All India Service officer who belongs to a State cadre or is an employee of a State Government institution, such a spouse is to be allocated as

desired to that State where the All India Service officer is allocated [Clause (k)].

The basic principle underlying these guidelines is therefore to protect and keep together employed spouses who would otherwise be separated owing to the allocation undertaken pursuant to the bifurcation of the erstwhile State of Andhra Pradesh. Keeping the spirit and intent underlying this principle, the guidelines should be implemented. Merely because Clause (l) does not speak of employees working in Central Government Public Sector Undertakings, it does not mean that spouses of such employees, who are working in the State cadre, are not to be accommodated where they are working. Clause (l) states in no uncertain terms that allocation shall, as far as practicable, be made so as to keep the spouses together. The import and intent of bifurcation of the erstwhile State of Andhra Pradesh is not to break up marriages. The authorities therefore have to conceive, formulate and implement the guidelines keeping this in mind. Any shortfall in the guidelines in this regard cannot be taken literally to mean that spouses, whose cases do not fall within the four corners of the instructions as set out therein, are to be left out in the cold and must suffer marital separation.

In the present case, the husband of the petitioner is working in a non-transferable post in BHEL, a Central Government Public Sector Undertaking, at Visakhapatnam. Her children are also studying there. Significantly, she already suffered loss of seniority earlier to keep her family together.

This being the factual situation, the action of the authorities in turning a blind eye to her plight and her fervent request for allocation to Visakhapatnam cannot be countenanced. It is not in dispute that vacancies in the posts of Principal are available in the State of

Andhra Pradesh and more particularly, at Visakhapatnam. In terms of the definition of 'allocable posts', vacancies are included therein as already stated *supra*. Clause (f) of Para 18 specifically states that if 'allocable posts' in the category remain after local candidates relatable to that State have been considered, then others who opt for that State may be allocated in order of seniority. This part of clause (f) of Para 18 seems to have been completely overlooked by the authorities. Thus, when there are vacancies available at Visakhapatnam in the cadre of Principal, the rejection of the petitioner's request for allocation to the State of Andhra Pradesh and for her retention at Visakhapatnam is wholly unsustainable.

The writ petition is accordingly allowed. There shall be a direction to the respondents to reconsider the final allocation of the petitioner by giving effect to Para 18(f) of the guidelines in true letter and spirit keeping in mind the principle underlying such allocation on spousal grounds. This exercise shall be completed expeditiously and, in any event, not later than four weeks from the date of receipt of a copy of this order. Pending this exercise, the petitioner shall be retained at Visakhapatnam. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

N.BALAYOGI, J

27th FEBRUARY, 2017

Note: L.R.Copy to be marked.
(B/O) Svv