

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.1511, 1512, 1513 & 1514 OF 2017

Dated:16.02.2017

W.P.No.1511 of 2017

Between:

Sd. K. Saheb, S/o. Sd. M. Saheb,
Aged about 40 years, Driver (E-214666),
Andhra Pradesh State Road Transport
Corporation, Guntur-1, Bus Depot,
Guntur District, Andhra Pradesh

.. Petitioner

And

The Andhra Pradesh State Road Transport
Corporation, rep., by its Managing Director,
Pandit Jawaharlal Nehru Bus Station,
Vijayawada, Andhra Pradesh and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION Nos.1511, 1512, 1513 & 1514 OF 2017****COMMON ORDER:**

Heard. With the consent of learned counsel for the parties, these Writ Petitions are being disposed of at the stage of admission.

2. The petitioners are recruited as Drivers in the Greater Hyderabad Zone of Andhra Pradesh State Road Transport Corporation (for short 'APSRTC'), when it was a common Corporation in the combined State of Andhra Pradesh. Before the bifurcation of the State of Andhra Pradesh, the petitioners made a request for transfer to Guntur and Kurnool regions, respectively, which are presently falling in the residuary State of Andhra Pradesh. The request of the petitioners was favourably accepted and the Managing Director of the combined Corporation passed orders deputing them to Guntur/Kurnool regions, respectively. The deputation was initially for a period of one year and was extended from time to time. While so, by the order impugned in the Writ Petitions, the Depot Managers of the respective Depots where the petitioners are working passed orders repatriating them to parent region/zone.

3. This order of repatriation is challenged on the following two grounds. Firstly, the Depot Manager is not competent to transfer/repatriate outside the jurisdiction of the Depot, whereas the impugned orders transfers the petitioners out of the Depot of the concerned Depot Manager as the transfer is

from Guntur/Kurnool regions to Greater Hyderabad Zone, State of Telangana, and in fact outside the State and therefore, the order is *ex facie* illegal and liable to be set aside. Secondly, APSRTC has taken a decision to continue the deputation of the petitioners for a further period till 30.06.2017. Therefore, before the expiry of the time granted for continuation of deputations, the petitioners cannot be repatriated and hence the repatriation is illegal.

4. Sri P. Venkateshwar Rao, learned counsel for the petitioners, in support of his contention, relied upon the notifications issued by APSRTC, dated 18.05.2016, 22.08.2014, 27.05.2015 and 22.08.2015. By placing reliance on the said notifications, he submits that the petitioners are entitled to continue until the guidelines are notified or till 30.06.2017 and repatriating them prior to the notification of guidelines or 30.06.2017 is not valid. He submits that a reading of these notifications would clearly point out that no distinction is made between a person working on deputation from one region to another region within the State of Andhra Pradesh or from a region belonging to the present State of Telangana and in fact the intention of APSRTC is clear. From a reading of all these notifications, it is clear that they intend to protect the interests of the people, whose parent unit is presently located in the State of Telangana and are working on deputation in State of Andhra Pradesh till bifurcation issue between the Corporations of both the States, is finalised.

5. Learned Standing Counsel, Sri Rama Rao, vehemently opposes the contention of the petitioners. He submits that it is

clear from a reading of paragraph No.2 of the notification, dated 18.05.2016, that the continuation of staff till 30.06.2017 is applicable only to persons belonging to a region located within the residuary State of Andhra Pradesh, but not applicable to persons belonging to Road Transport Corporation of State of Telangana. Therefore, the petitioners are not entitled to continue by relying on the said notification. He further submits that in Guntur region, there is excess staff than required and APSRTC is burdened with payment of pay and allowances even though there is no requirement on account of continuation of the petitioners.

6. By referring to various terms used in the relevant notifications, referred to above, and relied upon by the learned counsel for the petitioners, learned Standing Counsel would submit that these notifications are not applicable to the petitioners. At any rate, the petitioners being on deputation and as their parent unit is now located in the State of Telangana, they have no manner of right to continue in the borrowing unit and it is always open to the borrowing unit to repatriate them. He would further submit that initially, the deputation was only for a period of one year and the same was extended on the request of the petitioners from time to time and since there is no requirement of staff, APSRTC cannot be burdened to continue them on deputation causing financial hardship to it.

7. Ordinarily, a person on deputation cannot insist to be continued on deputation and cannot force upon the borrowing employer to bear him even though the employer has no

requirement of his services. The rights and responsibilities of an employee flow out of his appointment and *vis-a-vis* his employer.

8. There is no dispute on the basic fact that the petitioners were originally appointed in the present Greater Hyderabad Zone, which now forms part of the State of Telangana. It is not in dispute that the petitioners are natives of residuary State of Andhra Pradesh. It is also not in dispute that the issue of bifurcation between residuary APSRTC and newly formed Telangana State Road Transport Corporation is not resolved so far. Process of calling for options is also not yet initiated. Having regard to these peculiar facts only, though APSRTC is aware that persons whose original appointment is in a particular region/zone forms part of the State of Telangana, they were continued. This is clear from the reading of the notifications, dated 27.05.2015 and 22.08.2015.

9. The relevant portion of the notification, dated 27.05.2015, reads as under:

“... As guidelines on apportionment of staff were not received till 31.08.2014, again a Notification dated 22.08.2014 was released vide reference 4th cited, extending the temporary transfers until 31.05.2015 or further instructions on this subject were issued from this Office based on the guidelines on appointment of staff from Government which were yet to be issued, whichever was earlier.

As the guidelines on apportionment of staff are still awaited from the Government, it is therefore decided to further extend the deputation period in respect of temporarily transferred deputations upto 31.05.2016 or further guidelines are issued, whichever is earlier”

10. The relevant portion of the notification, dated 22.08.2015 reads as under:

“... The notification dated 27.05.2015 has been issued keeping in view the deputations who originally belong to the Regions (Districts) falling in the state of Telangana and working on deputation in the Regions falling in the state of Andhra Pradesh and vice-versa. The said notification is not applicable to the cases, where deputations are falling within the same State.”

11. A combined reading of these two extracted portions makes it clear that a conscious decision is taken by APSRTC to extend the period of deputation of the persons earlier brought on deputation even though they belong to a different State, having regard to the fact that the issue of bifurcation is not finalised and guidelines are not issued with reference to organization of cadres in two Corporations as a consequence to establishment of two separate Corporations carved out of the original Corporation.

12. Great emphasis is laid on second paragraph of the notification, dated 18.05.2016. The relevant portion reads as under:

“... Consequent to the functioning of APSRTC as two separate entities w.e.f. 03.06.2015 and in view of the pendency of final apportionment of staff between the two residual entities of the corporation, it is hereby ordered that the staff of four zones of APSRTC temporarily transferred and working on deputation basis in other units falling within four zones of APSRTC (VZM, VJA, NLR and KDP) shall be allowed to continue at their respective current places of work without repatriating them till 30.06.2017 on the pretext that the permitted period of deputation is completed.”

13. The said paragraph has to be understood in the context of the earlier notifications of APSRTC, dated 27.05.2015 and 22.08.2015. It has to be understood that the intention of the Corporation is to continue deputations till 30.06.2017, obviously with the hope that by that time at least the issues between the two Corporations would be resolved.

14. A combined reading of these three notifications, it cannot be inferred that the intention of APSRTC has changed from its earlier decision and it now intends to confine the continuation of deputation only to persons appointed in Andhra Pradesh State, but are working on deputation in a zone other than their parent zone. If that is the intention, the Corporate office would have made it clear. More particularly, the issue with regard to who belongs to which State Corporation is yet to be finalised as the cadre bifurcation between the two Corporations is not even initiated. *Per se*, merely because a person is recruited in a particular zone, when it was a combined Corporation for the entire State of Andhra Pradesh before its bifurcation cannot be the basis to determine that person's unit of appointment for the purpose of continuation on deputation unless the guidelines are formulated finally and the issue of bifurcation of two Corporations is resolved finally and two separate cadres for two Corporations come into existence. Thus, merely because originally the petitioners were appointed in Greater Hyderabad Zone, which is now forming part of the State of Telangana, cannot be a ground to treat them differently than the persons working in different zones other than the zones of their unit of appointment forming part of residuary State of Andhra Pradesh, at this stage.

15. Even otherwise, the first objection of the learned counsel for the petitioners is formidable and on that ground alone the orders impugned in these Writ Petitions are liable to be dismissed.

16. Admittedly, the orders of repatriation are passed by the Depot Manager. It is not in dispute that the Depot Manager is the cadre controlling authority of the employees working in the concerned Depot. He may have the power to transfer the employees, but only within the jurisdictional limits of his Depot but beyond that he cannot transfer any employee, even of such employee is on deputation. It is also appropriate to note that the orders of deputation and subsequent orders were passed by the Managing Director and even assuming that what is contended by APSRTC is true and the petitioners cannot be continued in Guntur/Kurnool regions as their parent unit is now forming part of the State of Telangana, at the most the Managing Director alone can take a decision to cancel their deputation and repatriate them.

17. For the foregoing discussion, the impugned orders in the Writ Petitions are liable to be set aside. They are accordingly set aside.

18. These Writ Petitions are accordingly allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand closed.

P. NAVEEN RAO, J

Date:16.02.2017

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