

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN  
AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.39171 of 2017

ORDER: (per MGR,J)

The present Writ Petition, under Article 226 of the Constitution of India, is filed to issue a Writ of Mandamus, call for the records relating to and connected with the order dated 17.10.2017 in O.A.No.021/00745/2016 of the Central Administrative Tribunal (for brevity 'CAT'), set aside the same by holding it as illegal, contrary to law and the transfer policy and to direct the official respondents to continue the petitioner in her present place of working i.e. Jawahar Navodaya Vidyalaya Samithi (JNV), Medak-Vargal, Telangana State, and with all consequential benefits.

2. The brief facts of the case are that the 5<sup>th</sup> respondent was appointed as TGT (Social Sciences) on 30.10.1982. On 05.07.2002 he was transferred to Karimnagar. His wife is working as School Assistant (Mathematics) at Zilla Parishad High School, Medipally, Chinnakoduru Mandal, Medak District. He submitted an application to transfer him to JNV, Medak-Vargal, as per the transfer policy-2015, on spouse ground as his wife is working as a Teacher and they have been living separately for the last 15 years. The transfer policy contemplates that an employee, who has completed 10 years of stay at a place, has to be compulsorily transferred. The vacancies available were displayed in the website of respondent-Samithi and the employees were asked to submit their request for transfer of

their choice. Pursuant to the same, a data sheet was prepared on 14.03.2016 and on 02.06.2016 the final list of the employees transferred to their respective places was published. As per the said list, the 5<sup>th</sup> respondent was shown at Sl.No.29 and was to be transferred to JNV, Medak-Vargal, as per his entitlement on spouse grounds. The writ petitioner was shown at Sl.No.100 and was to be transferred to deemed vacancy at JNV, East Godavari District. While so, the 2<sup>nd</sup> respondent issued transfer orders dated 15.07.2016 transferring the 5<sup>th</sup> respondent to JNV, Warangal, and the vacancy at JNV, Medak-Vargal, was sought to be given to the petitioner. The transfer order states that "this modification has been done to benefit another officials unification of spouse". It was inadvertently and by oversight the petitioner was considered against a deemed vacancy instead of spouse quota and her place of transfer was shown as East Godavari-II.

3. The benefit of spouse ground basing on which the case of the petitioner was considered for transfer was not available to the petitioner since her husband was retired from service on 31.03.2016 much before the petitioner's representation dated 03.06.2016.

4. The 5<sup>th</sup> respondent filed O.A.No.021/00745/2016 before the CAT to declare the transfer order (modified proceedings) dated 15.07.2016 issued by the 2<sup>nd</sup> respondent and consequential proceedings dated 19.07.2016 issued by the 3<sup>rd</sup> respondent transferring the 5<sup>th</sup> respondent to JNV, Warangal and quash the same as illegal and without jurisdiction and

consequential direction to respondents 1 to 3 to transfer 5<sup>th</sup> respondent to JNV, Medak-Vargal as per the final transfer list dated 02.06.2016 with all consequential benefits.

5. The Tribunal set aside the transfer order holding that transferring the petitioner to JNV, Medak-Vargal, on spouse ground, is clearly erroneous, since the husband of the petitioner had retired from service on 31.03.2016 i.e. much prior to issuance of transfer order, dated 15.07.2016. The CAT had set aside the transfer order transferring the 5<sup>th</sup> respondent herein to JNV, Warangal, and directed the 2<sup>nd</sup> respondent to transfer the 5<sup>th</sup> respondent to JNV, Medak-Vargal, within a period of two months therefrom, against which the present writ petition is came to be filed.

6. Heard Sri P.Suresh Reddy, learned Senior Counsel appearing for Sri C.Sai Reddy, learned counsel for the petitioner, Sri N.Srinath Rao, learned Standing Counsel for respondent Nos.1 to 4, and Sri T.P.Acharya, learned counsel for the 5<sup>th</sup> respondent.

7. The learned senior counsel appearing for the petitioner would contend that the petitioner was given benefit of unifying the spouse in terms of Clause 2(1)(d) of the transfer policy. He further contended that as part of redressal of grievance in respect of petitioner's representation dated 03-06-2016, the petitioner's place of transfer was modified to JNV, Medak-Vargal as the petitioner's husband was very much in service in JNV as on the cut off date of 01-01-2016, on which day the data was

sought for, and the petitioner's case was processed and considered under 'spouse' ground. Hence the order of the CAT is contrary to Clause 2 (1) (d) of transfer policy and liable to be set aside.

8. On the other hand, the learned Standing counsel for respondents 1 to 4 would contend that at the time the petitioner made her request for transfer on spouse ground and at the time when the entire data of the employees was collected for effecting transfers, the husband of the petitioner was in service and in view of the Transfer Policy, her case needs to be considered. However, due to inadvertence, her case was not considered in the final list released on 02.06.2016. As such, the petitioner made a representation on 03.06.2016 seeking consideration of her case for transfer, pursuant to which, the 1<sup>st</sup> respondent-Samithi having realized the mistake crept in, rectified the same by issuing transfer orders to the place of her second choice, JNV, Medak-Vargal.

9. The counsel for the 5<sup>th</sup> respondent would contend that the petitioner's transfer to JNV, Medak-Vargal is contrary to Clause 2 (1)(d) of transfer policy as the petitioner's husband was retired from service on 30.03.2016. There is no infirmity in the order of the CAT to call for interference of this Court.

10. The policy of transferring husband/wife to one station or a nearby station is in terms of DOPT O.M. dated 30.09.2009 which states as follows:

“(vii) Where one spouse is employed under the Central Govt. and the other spouse is employed under the State Govt.: -

The spouse employed under the Central Govt. may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted.

(viii) The husband & wife, if working in the same Department and if the required level of post is available, should invariably be posted together in order to enable them to lead a normal family life and look after the welfare of their children especially till the children attain 18 years of age. This will not apply on appointment under the Central Staffing Scheme. Where only wife is a Govt. servant, the above concessions would be applicable to the Govt. servant.”

11. A plain reading of the aforesaid makes it clear that it is when husband and wife are working in the same department or where one spouse is employed in the Central Government and the other spouse is employed in State Government, there will arise an entitlement for transfer on spouse ground for posting of husband and wife at the same station. In the instant case the petitioner's husband had retired from service on 31.03.2016 and was not employed under Government by the time of transfer order dated 15.07.2016. Hence, the petitioner's transfer to JNV, Medak-Vargal on spouse ground is clearly erroneous.

12. Having considered the rival contentions of the counsel and circumstances stated supra, we came to a conclusion that, initially the petitioner's case, as per the transfer policy, was considered only against the deemed vacancy instead of spouse quota and her place of transfer was shown as East Godavari-II, whereas 5<sup>th</sup> respondent's transfer was shown at JNV, Medak-Vargal, in the official website vide final list dated 02.06.2016. Later, on modification of the transfer order, the 5<sup>th</sup> respondent was transferred to JNV, Warangal, and the same was said to be on the petitioner's representation dated 03.06.2016, on spouse ground, which is contrary to Clause 2(1)(d) of the transfer policy since the husband of the petitioner was retired from service on 30.03.2016. Hence the CAT has rightly set aside the transfer order dated 15.07.2016. We find no illegality or irregularity in the order passed in O.A.No.021/00745/2016 by the CAT and the writ petition deserves to be dismissed.

13. Accordingly, the writ petition is dismissed. No order as to costs. Miscellaneous Petitions pending, if any, in this writ petition shall stand closed.

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V. RAMASUBRAMANIAN, J

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M.GANGA RAO, J

8<sup>th</sup> December, 2017  
TSNR