

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO
WRIT PETITION NOS.14006 AND 14062 OF 2018

COMMON ORDER
(*Per Sri Justice Sanjay Kumar*)

The petitioners in these two cases are Assistant Executive Engineers in the Water Resources Department of the State.

The petitioner in W.P.No.14006 of 2018 was appointed as such in Zone-V on 22.10.2007, as a non-local candidate. Upon bifurcation of the erstwhile State of Andhra Pradesh, the State of Telangana relieved him from the post on 27.04.2015 and deputed him to join in the service of the present State of Andhra Pradesh on the ground that his wife was working in the Andhra Pradesh Transmission Corporation (A.P.TRANSCO) in East Godavari District. He was accordingly accommodated in the office of the Research Officer, Water Quality Level-II Lab, Water Resources Department, Dowleshwaram, East Godavari District, on deputation basis on 28.04.2015 and is continuing as such as on date. He made a representation on 26.08.2017 to the Engineer-in-Chief, Irrigation and Command Area Development (I & CAD) Department, State of Telangana, to effect his inter-State transfer to the present State of Andhra Pradesh on the ground that his wife was an Assistant Divisional Engineer in the A.P.TRANSCO at East Godavari District. However, the State of Telangana rejected his request, *vide* Memo dated 19.03.2018, stating that his case could not be considered in terms of the guidelines put in place for inter-State transfers of employees on spousal grounds. Aggrieved by the action of the States of Telangana and Andhra Pradesh in restricting inter-State transfers of Government employees on spousal grounds only to cases where both spouses were working for the State Governments and in

not extending such benefit to employees whose spouses were working under an authority other than the State Government, he filed this case.

In so far as W.P.No.14062 of 2018 is concerned, the petitioner therein was appointed as an Assistant Executive Engineer in Zone-V on 13.11.2008, as a non-local candidate. However, on the date of bifurcation of the erstwhile State of Andhra Pradesh, he was working in Zone-II, which falls in the present State of Andhra Pradesh. As he was a non-local employee of Zone-II, he was asked to report to his unit of appointment, Zone-V, and he did so. He was however sent on deputation to the State of Andhra Pradesh on 27.04.2015 on the ground that his wife was working as an Assistant Professor in Jawaharlal Nehru Technological University, Kakinada, East Godavari District. He also made an application for inter-State transfer on 24.08.2017 to the State of Telangana on spousal grounds. However, by the Memo dated 19.03.2018, the State of Telangana turned down his request on the ground that his wife was not working in a State Government Department and he could not seek the benefit of an inter-State transfer. Aggrieved by this policy of the newly formed States of Telangana and Andhra Pradesh, he filed the writ petition.

Heard Sri P.V.Ramana, learned counsel for the petitioners in these two cases, and the learned Government Pleaders for Services appearing for the States of Telangana and Andhra Pradesh.

The Government of Andhra Pradesh, in consultation with the Government of Telangana, had constituted a Committee for the purpose of formulating guidelines for effecting inter-State transfers of employees. Circular Memo No.9940/SPF&MC/2015 dated 07.08.2017 was thereupon issued setting out the guidelines for inter-State transfers of Government employees between the two newly formed States. Para 4 of the Circular

Memo states that such inter-State transfers can be effected only in respect of the following three categories of cases:

- (1) Inter-State transfer of spouses;
- (2) Mutual transfer of local cadre employees i.e., District/Zonal/ Multi Zonal cadre employees; and
- (3) Mutual transfer of all State Cadre Employees where the final allocation has been notified by the Central Government.

The guidelines also stipulate that transfers can be effected only against clear vacancies, subject to the transferred employees foregoing seniority, and in the case of a Government employee who applied for inter-State transfer on spousal grounds, if the spouse was also a Government employee working in the other State.

Further instructions were issued by both the State Governments, *vide* Circular Memo dated 06.10.2017, providing for deputation of State Government employees to the other State where the spouses of such employees were working on a regular basis in the Central Government/ Central Government Public Sectors/ Universities/ Local Bodies/ Scheduled Banks/ State Government/ State Government Institutions.

Be it noted that both the petitioners are presently working on deputation in the present State of Andhra Pradesh where their wives are employed. However, deputation cannot be continued endlessly and at some point of time in the not too distant future, both the petitioners would have to be sent back to their parent units. That is the reason why they are before this Court assailing the Circular Memo dated 07.08.2017. Both of them also challenged the Memo dated 19.03.2018, whereby they were informed that their cases could not be considered for inter-State transfer as per the guidelines issued under Circular Memo dated

07.08.2017 but they were entitled to deputation in terms of the later guidelines stipulated in the Circular Memo dated 06.10.2017.

Perusal of the Circular Memo dated 07.08.2017 issued by the Governments of Andhra Pradesh and Telangana demonstrates that representations were made by local cadre employees and State cadre employees for transfer from one to the other State, where their spouses were working, or for mutual transfers on grounds of their local candidature, etc. Thereupon, the Government of the Andhra Pradesh, in consultation with the Government of Telangana, constituted a Committee, *vide* G.O.Rt.No.1634, General Administration (SPF & MC) Department, dated 03.08.2016, to evolve a policy on inter-State transfers of State Government employees in respect of the following:

- A. Inter-State transfer of spouses.
- B. Mutual transfer of local cadre Employees i.e., District/Zonal/Multi Zonal cadre employees, and
- C. Mutual transfer of all State Cadre employees where the final allocation has been notified by the Central Government.

Thereupon, Circular Memo dated 07.08.2017 came to be issued. Clause 6(e) thereof stipulates that there should be a clear vacancy to consider the inter-State transfer. Clause 6(g) provides that in the case of a request transfer on spousal grounds, only one spouse shall be transferred to the other State where the spouse is working on regular basis in the State Government, subject to the condition that one of the spouses must be local to the State to which transfer is sought.

Thereafter, the Governments of Andhra Pradesh and Telangana issued the Circular Memo dated 06.10.2017 stipulating guidelines for inter-State deputation of employees between the two newly formed States. Reference was made therein to the Circular Memo dated

07.08.2017 relating to inter-State transfer of State Government employees. However, as several employees, whose spouses were working for the Central Government or other departments and they did not fulfill the conditions for such inter-State transfer, were making representations to consider their cases for inter-State transfer to enable them to join their families, the two Governments took a decision to consider the cases of employees whose spouses were working in the offices of the Central Government/Central Government Undertakings/Banks etc. Clause 5 of the said Circular Memo sets out the guidelines for inter-State deputation of employees working in State Governments (Local cadre and State cadre), State Government Institutions and Local Bodies on spousal grounds. As per Clause 5(c), only one of the spouses shall be deputed to the other State where the other spouse is working on a regular basis in the Central Government/Central Government Public Sectors/Universities/Local Bodies/Scheduled Banks/State Government/State Government Institutions. Clause 5(h) stipulates that the deputation should initially be for a period of three years extendable by another two years. Clause 5(i) states that no application for deputation should be accepted if there is no clear vacancy in the post to which the applicant seeks deputation.

The impugned Memo dated 19.03.2018 was addressed by the Principal Secretary to Government, I & CAD (Services.I) Department, Government of Telangana, to the Engineer-in-Chief (Administrative Wing), I & CAD, Hyderabad. Thereunder, cases of six individuals, including the petitioners in these two cases, were considered for inter-State transfer under the guidelines stipulated in the Circular Memo dated 07.08.2017. The Government however opined that as the spouses of the six employees in question were not State Government employees but were

working in institutions such as Aided Schools, A.P.TRANSCO, A.P.GENCO and A.P.TWRI Society, their cases were not covered by the guidelines for inter-State transfer. The Engineer-in-Chief (Administrative Wing), I & CAD, Hyderabad, was therefore informed that in terms of Circular Memo dated 06.10.2017, deputation of such employees was permitted to the other State where the spouse was working and he was directed to take further action in the matter.

The State of Andhra Pradesh filed a counter-affidavit in W.P.No.14006 of 2018 through its Joint Secretary to Government, General Administration (Services) Department. Therein, the Joint Secretary stated that upon the recommendations of the Advisory Committee of Employees Allocation, the Government of Andhra Pradesh, in consultation with the Government of Telangana, constituted a Committee to evolve a policy for effecting inter-State transfer of Government employees between the two newly formed States, *vide* G.O.Rt.No.1634 dated 30.08.2016. The guidelines formulated by the said Committee were issued *vide* Circular Memo dated 07.08.2017. He admitted that as inter-State transfers thereunder were restricted only to cases where both spouses were State Government employees, the State of Telangana had rightly rejected the applications of the petitioners, *vide* the Memo dated 19.03.2018. He also adverted to the later Circular Memo dated 06.10.2017 which provided for deputation of employees who sought transfers on spousal grounds but were not covered by the Circular Memo dated 07.08.2017. He however offered no justification for the distinction drawn and the discrimination between these two categories of State Government employees.

A separate counter-affidavit was filed by the Deputy Secretary to Government, Water Resources Department, Government of Andhra

Pradesh, the fourth respondent in W.P.No.14006 of 2018. However, no new issue was raised therein and it is just a reiteration of what was stated in the other counter affidavit. Counter-affidavits on the same lines were filed by the Joint Secretary to Government, General Administration Department, State of Andhra Pradesh, and the Deputy Secretary to Government, Water Resources Department, State of Andhra Pradesh, in W.P.No.14062 of 2018. The State of Telangana did not choose to file a counter-affidavit in either of the writ petitions.

This Court had an occasion to consider the issue of allocation of State Government employees on spousal grounds in Dr.S.SHOBA RANI V/ s. STATE REORGANIZATION DEPARTMENT, REP. BY ITS SECRETARY, GENERAL ADMINISTRATION (SR) DEPARTMENT, A.P. SECRETARIAT, HYDERABAD¹. The petitioner therein was a Lecturer in Government service while her husband was an employee of Bharat Heavy Electronics Limited, a Central Government undertaking, at Visakhapatnam in the State of Andhra Pradesh. She was however allocated to the State of Telangana. The stand of the authorities was that her request for retention at Visakhapatnam, where her husband was working, could not be considered as he was an employee of a Central Government undertaking and their case was not covered by the guidelines for final allocation of State cadre employees under the Andhra Pradesh Reorganization Act, 2014, approved by the Government of India, which were communicated under G.O.Ms.No.312 dated 30.10.2014. However, a Division Bench of this Court comprising one of us, SK,J, and another learned Judge, did not accept this rigid implementation of the guidelines.

¹ 2017 (2) ALT 564 (D.B.)

The observations made in para 9 of the judgment are of relevance and are extracted hereunder:

'9. 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 (1) 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 (1) 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 all 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 cases on hand also, there is no justification forthcoming as to why the State Government employees whose spouses are working for the Central Government/Central Government Public Sector Undertakings/Universities/Local Bodies/Scheduled Banks etc. should be discriminated against when compared to State Government employees whose spouses are working for the other State Government.

It may be noted that though the spouse may not be under the control of either of the State Governments, as he/she is an employee of the Central Government/Central Government Public Sector Undertakings/Universities/Local Bodies/Scheduled Banks/State Government Institutions

etc., the employee who seeks transfer on spousal grounds is very much within the administrative control of the State Government concerned. When both the States came together to formulate guidelines to allow working spouses to be together by transferring their employees, notwithstanding the adverse fallout of the modalities of forming two new States and the consequential employee allocation, there is no justification in discriminating against a State Government employee only on the ground that his/her spouse is working elsewhere and not in the service of the other State Government.

Though the State authorities did not even attempt to offer an explanation for the discriminatory standards adopted by them, one difference that could be cited between the two categories of State Government employees is possibly that the spouses of such employees who are working for the other State Government would not be liable to transfer from that State unlike the spouses working for the Central Government or its undertakings and some of the others. Significantly, the spouses working in State Government Institutions, such as the A.P. TRANSCO, and local bodies would stand on par with spouses working for the other State Government in this regard but, surprisingly, they have been clubbed with the other set. Even so, the normal policy framed by most organizations would be sensitized towards working spouses and the endeavour of every such employer would ordinarily tilt towards keeping working spouses together, subject to administrative exigencies. In any event, the possibility of transfer of the spouses of State Government employees beyond the borders of the other State at some future date is hardly reason enough to formulate a policy aimed at separating them far sooner.

As already pointed out *supra*, the State of Andhra Pradesh, which constituted the Committee that put in place the aforestated guidelines, did not even offer an excuse to justify the discrimination. Deputation of such State Government employees for the time being is no remedy at all as the Circular Memo dated 06.10.2017 itself stipulates that such deputation shall be for a maximum of five years. As to what should happen to such married State Government employees after expiration of this deputation period is left unaddressed.

Faced with this situation, this Court called upon the learned Government Pleader for Services, State of Andhra Pradesh, to enquire with the authorities as to whether there were vacancies available where the petitioners are presently working on deputation basis. Thereupon, the Engineer-in-Chief (Administrative Wing), Water Resources Department, State of Andhra Pradesh, addressed letter dated 27.09.2018 to the learned Government Pleader informing her that both the petitioners would be allowed to continue in the same place or posted in and around where their spouses were working, if they get inter-State transfers on spousal grounds. It is therefore clear that vacancies are available in the present State of Andhra Pradesh to accommodate both the petitioners on inter-State transfer basis.

The writ petitions are accordingly allowed. The State of Andhra Pradesh and the State of Telangana shall effect inter-State transfers of the petitioners in these two cases on spousal grounds, notwithstanding the fact that they do not fall within the four corners of the so-called guidelines put in place, *vide* Circular Memo dated 07.08.2017. This exercise shall be completed expeditiously and in any event, not later than six weeks from the date of receipt of a copy of this order. Further, Clause

6(g) of the Circular Memo dated 07.08.2017, in so far as it discriminates against State Government employees on the basis of the status of the employers of their spouses, is held to be arbitrary and illegal. The Circular Memo dated 07.08.2017 shall be given effect to by giving the benefit of inter-State transfers provided thereunder to State Government employees whose spouses are presently in the service of the Central Government/ Central Government Public Sector Undertakings/ Universities/ Local Bodies/ Scheduled Banks/State Government Institutions etc. also.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR,J

M.GANGA RAO,J

12th OCTOBER, 2018
PGS