

THE HON'BLE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

W.P.Nos. 19059, 19319 and 19333 of 2018

COMMON ORDER:

(Per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

In these three writ petitions the validity of Rule 6 (II) (c) of the Telangana Teachers (Regulation of Transfers) Rules, 2018 (hereinafter called "the 2018 Rules"), notified in G.O.Ms.No. 16, School Education (Ser.II) Department, dated 6.6.2018, is under challenge as being arbitrary and illegal.

The 2018 Rules were made, by the Government of Telangana, in the exercise of the powers conferred by Sections 78 and 99 of the Telangana Education Act, 1982 and Article 309 of the Constitution of India, and in supersession of all other earlier Rules and Guidelines. Rule 2 of the 2018 Rules stipulates that all transfers shall be made by way of online/web counseling for each erstwhile district/existing zone. Rule 6 relates to entitlement of points, and Rule 6 (II) to Special Points (Extra Points). Rule 6 (II) (c) of the 2018 Rules stipulates that Ten (10) points shall be given for Head Master/Head Mistress Gr.II (Gazetted)/Teacher, whose spouse is working in the State Government or the Central Government or a Public Sector Undertaking or a Local Body or an Aided Institution in the same District, and has opted for transfer nearer to and towards the place of working of his/her spouse. The benefit of spouse points is made applicable to Head Master/Head

Mistress Gr.II (Gazetted) once in (5) years, and Teachers once in (8) years. An entry is required to be made in this regard in the Service Book. A copy of the Certificate, issued by the competent authority, is required to be enclosed to the application to consider cases under this category.

The petitioners' complaint in these writ petitions is that the benefit, of being given 10 points, is confined only to cases where the spouse is working, in different institutions, within the same district, and has not been extended to cases where the spouse is working in another district. Sri Sudhender Kulkarni and Sri N. Ramu, learned counsel for the petitioners, would submit that the aforesaid restriction, placed by Rule 6 (II) (c) of the 2018 Rules, is discriminatory; all employees, working in schools managed by local bodies, constitute a homogeneous class; conferring the benefit of 10 points only to employees whose spouses are working within the same district, and denying the said benefit to cases where the spouses of such employees are working in another district albeit within the State of Telangana, is discriminatory and in violation of Article 14 of the Constitution of India; in any event, in terms of Rule 31 of the Telangana State and Subordinate Service Rules, 1996, power is conferred on the Governor to relax these Rules; and, consequently, the respondents should be directed to consider the cases of the petitioners sympathetically and to extend them the benefit of relaxation of the rigor of the 2018 Rules

which would enable them to live in close proximity to their respective spouses.

On the other hand, learned Special Government Pleader, appearing on behalf of the learned Additional-Advocate General for the State of Telangana, would submit that, admittedly, a district is a unit of appointment; a teacher, working either in a Government school or in a school managed by a local body, can only be transferred within the district, and not beyond; since a “district” is a unit of appointment, the benefit of 10 points, under Rule 6 (II) (c) of the 2018 Rules, has been extended only to cases where the spouses of such employees are also working, under different authorities, within the same district; and since neither the petitioners nor their spouses can be transferred to places beyond the district, the respondents cannot be held to have acted in violation of Article 14 of the Constitution of India in not extending to them the benefit, of extra 10 points, under Rule 6 (II) (c) of the 2018 Rules.

While the burden, to establish that the Rule under challenge is in violation of Article 14 of the Constitution of India, lies heavily on the petitioners, and the basis for classification of employees, for conferment of benefits, can always be justified by the respondents by way of a counter-affidavit, it is wholly unnecessary for us to dwell on the validity of Rule 6 (II) (c) of the 2018 Rules, in these writ petitions, as both Sri Sudhender Kulkarni and Sri N.Ramu, learned counsel, would submit that, instead of examining the validity of this Rule, it

would suffice if the respondents are directed to consider the request of the petitioners for relaxation of the rigor of the rules, and for them to be transferred to a place, within the district, which is in close proximity to the place where their spouses are employed in another district. Learned Counsel would draw our attention to the proceedings of the Chief Secretary to the Government of Telangana, clarifying the applicability of the administrative instructions issued in G.O.Ms.No.61, Finance HRM.I) Department, dated 24.5.2018, whereby a similar benefit was extended to employees whose spouses were working in other districts also.

G.O.Ms.No.61, dated 24.05.2018 are in the nature of administrative instructions, and thereby the Government of Telangana relaxed the ban on transfers imposed by G.O.Ms.No.119, Finance (DCM-III) Department, dated 17.5.2013, and prescribed certain guidelines for effecting transfer of employees. Para-III of these Rules prescribes the priority criteria for consideration of options; and, under clause (a) thereof, prescribes that, when more than one employee opts for a particular place and while effecting the transfers, the competent authority shall give priority in the descending order as given below, subject to satisfaction of the other conditions specified in this G.O., and the employee is not facing charges in departmental/criminal proceedings. The first priority therein is husband and wife cases (only one of the spouse shall be shifted following the prescribed procedure).

On clarifications being sought, regarding implementation of G.O.Ms.No. 61, Finance (HRM.I) Department, dated 24.5.2018, the Chief Secretary to the Government of Telangana issued Circular Memo dated 2.6.2018 clarifying certain points. Point No. 7 relates to spouses working in other district/zonal/multi zonal or state cadre, and the request was for priority in transfer to these employees under spouse grounds. To a query whether such a request could be considered for transfer to nearby places beyond the district/zone/multi zone, under spouse priority, the Chief Secretary answered in the affirmative. A similar benefit is now sought for Teachers working in schools run by the Government or by local bodies.

As noted hereinabove, the 2018 Rules were made in the exercise of the powers conferred by Sections 78 and 79 of the Telangana Education Act, 1982, and Article 309 of the Constitution of India. These Rules are statutory in character and, unlike the administrative guidelines issued in G.O.Ms.No.61 dated 24.5.2018, have the force of law. Further, unlike the 2018 Rules, G.O.Ms.No.61, dated 24.5.2018 does not prescribe preferential points. Rule 6 (II) (c) of the 2018 Rules prescribes extra points as entitlement points in cases where the spouse, of the employee to be transferred, is working within the same district. Reliance placed by the petitioners, on the clarification issued on 2.6.2018 to G.O.Ms.No. 61, dated 24.5.2018, is misplaced.

We are, however, satisfied that the competent authority should be directed to consider the petitioners' applications, for relaxation of the rules, in terms of Rule 31 of the Telangana State and Subordinate Service Rules, 1996 which confers power on the Governor to relax the rules or the special rules in favour of any person or class of persons in such manner as may appear to be just and equitable to him, where such relaxation is considered necessary in the public interest, or where the application of such rule or rules is likely to cause undue hardship to the person or class of persons concerned.

While the learned Special Government Pleader would emphasize on the words "public interest" and "undue hardship" in Rule 31 to submit that it is only in such cases can the rigor of the 2018 Rules be relaxed, the question whether each individual applicant's request, for transfer to a place in close proximity to the other district where his or her spouse is working, is necessary in public interest, and whether failure to accede to such a request would cause him or her undue hardship, are all matters which would differ from one case to another, and are required to be examined by the competent authority on the facts and circumstances of each individual case. It would be wholly inappropriate for us, in the exercise of the extraordinary jurisdiction under Article 226 of Constitution of India, to take upon ourselves the task of examining whether the request of the petitioners for transfer to a place, in close proximity to the district where his or

her spouse is working, is in public interest or whether failure to accede to such a request would cause them undue hardship.

Suffice it, therefore, to dispose of these three writ petitions permitting the petitioners to submit their representations to the competent authority on or before 15th June, 2018. In case such a representation is submitted, the competent authority shall consider such a request in terms of Rule 31 of the Telangana State and Subordinate Service Rules, 1996, pass appropriate orders thereupon, and communicate the same to the petitioners on or before 20th June, 2018.

All these writ petitions are disposed of accordingly. Miscellaneous applications, if any pending, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J

Dt.12.6.2018

NB:
CC of order be furnished by tomorrow.
/BO/
Kr/gsn