

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos. 19298 and 22321 of 2018

Date : .7.2018

WP No. 19298 of 2018:

Between:

V.Krishna s/o.Chander, Aged about 27 years,
Lab Technician Gr.II, PHC Lingala, Mahabubnagar
District, r/o. 1-10-86/3, Shashabgutta,
Mahabubnagar and others.

.... Petitioners

and

The District Medical & Health Officer, Mahabubnagar
and others.

....Respondents



The Court made the following:

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COMMON ORDER:

Petitioners belong to Schedule Tribe community and are working as Lab Technicians Grade II. Pursuant to the orders of the Government in G.O.Ms.No. 247 (Health, Medical and Family Welfare (J2) Department dated 19.7.2007, recruitment process was taken up to fill up posts of Lab Technicians Grade II in agency areas. Petitioners participated in the selections and based on their performance they were selected, appointed and posted to the present places of their working. Consequent to lifting of ban on transfers, petitioners also applied for subjecting them to plain areas. Alleging that they are not considered for transfer by treating them as employees recruited permanently in agency area and not transferring to plain area is arbitrary and discriminatory, these writ petitions are filed.

2. Heard learned counsel for petitioners and learned Government Pleader for Medical and Health Department. Since the issue raised in both writ petitions is similar, with the consent of counsel on either side, the writ petition are being disposed of by this common order at the stage of admission.

3. According to learned counsel for petitioners, petitioners have made individual requests seeking transfer on personal grounds, but those requests are also not considered, merely on the ground that initially they were appointed to the posts located in the agency areas.

4. According to learned counsel, in the special drive undertaken pursuant to G.O.Ms.No.247 dated 19.7.2007, petitioners were appointed to posts in Agency Area. As per G.O.ms.No.247, petitioners should be retained at the same place for a period of five years. The order of appointment also states that petitioners should be retained for five years only. Thus, after five years, they can be transferred to plain areas and not subjecting them to transfer outside the agency area is illegal.

5. Learned Assistant Government Pleader submits that special drive was taken up by the Government to fill up large number of vacancies remained unfilled in agency areas causing lot problems in maintaining health to the people living in agency areas. In G.O.Ms.No.247 dated 19.7.2007 Government accorded sanction to fill up 110 vacancies of Lab Technicians Grade II; constituted District Selection Committee; in paragraph 5 Government imposed restriction that persons recruited in pursuant to the said selection process should work in tribal areas for a minimum period of five years and no relaxation is permissible. The guidelines notified by the Director of Public Health dated 4.6.2018 clearly specified that local scheduled area employees should be posted in the scheduled area only. She would therefore submit that petitioners cannot seek transfer from agency area to plain area. She would further submit that no other Lab Technician Grade II is willing to work in agency area and if petitioners are moved out of agency area, it would hamper various health schemes in agency areas.

6. Learned Assistant Government Pleader clarified that the post of Lab Technicians Grade II is organized as District cadre post and next promotion post is Zonal cadre post and all the Lab Technicians Grade II working in the particular district are pooled together and common seniority list is prepared and based on the common seniority list of the District, an integrated seniority list at Zonal level will be prepared to effect further promotions. Even though, petitioners are working in agency area they are treated as part of the District cadre for the purpose of regulating their further conditions of service.

7. It is clear from this submission of the learned Assistant Government Pleader that Lab Technician Grade II is District cadre post. Reading of G.O.Ms.No.247 dated 19.7.2007 would make it clear that Government was concerned with large number of vacancies in agency areas remained unfilled for long time, therefore took up special drive and in the process of taking up special drive Government also imposed restriction that persons recruited in pursuant to said special drive should not claim transfer out from the agency area for a minimum period of five years. In other words, persons appointed pursuant to G.O.Ms.No.247 dated 19.7.2007 cannot request for transfer from the agency area for a period of five years. However, there is no prohibition on Lab Technician Grade II seeking transfer from the agency area to plain area after completion of their tenure of five years. As can be seen from G.O.Ms.No.247 dated 19.7.2007, no separate cadre is created for agency area and as clarified by learned Assistant Government Pleader post of Lab Technician Grade II is

District cadre post covering the posts located in agency area and plain area.

8. Therefore, the contention of learned Assistant Government Pleader that petitioners are not liable to be transferred out from agency area is stated to be rejected. The claim of the petitioners for transfer could not have been ignored merely on the ground that they were initially posted in agency area in the recruitment conducted pursuant to G.O.Ms.No.247 dated 19.7.2007, more so, when post of Lab Technicians Grade II being a District cadre post with liability for transfer to any where in the District. Further, petitioners form part of District unit and are entitled to promotion to zonal cadre post.

9. The further contention of the learned Assistant Government Pleader that shifting petitioners out of the agency area would have serious impact on the health administration in the agency area is also stated to be rejected. When it is a District cadre post and the agency area is forming part of the District, there can be no objection to undertake transfers and post persons working in plain area to agency area and vise-versa. Thus, the action of the respondents in not subjecting petitioners to transfer counseling to post outside the agency area is not valid in law.

10. By now the transfer counseling exercise is completed and posting orders are issued. At this stage disturbing the exercise undertaken would have more serious consequences. According to learned counsel for petitioners, there are large number of vacancies available in plain area and petitioners would be satisfied if direction is issued to consider them for transfer to any place in

plain area in the existing vacancies. Learned Assistant Government Pleader did not dispute the availability of vacancies in plain areas but is not clear about number of vacancies available.

11. Having regard to these submissions, while holding the action of the respondents in not subjecting petitioners to transfer counseling process merely on the ground that they were initially appointed and posted in agency area, as illegal, respondents are directed to consider the request of the petitioners for posting them in the vacancies available in plain area, to the extent of available vacancies, subject to fulfillment of all other conditions of transfer guidelines notified by the Government in general and modified/ additional guidelines formulated by the Health, Medical and Family Welfare Department. The entire exercise shall be completed as expeditiously as possible, preferably within a period of four weeks from the date of receipt of copy of this order. It is made clear that it is open to the respondents to fill up the existing vacancies in the tribal/ agency area/non-plan area by considering other Lab Technicians Grade II in order to ensure that provision of medical facilities are not affected in the agency area.

12. Accordingly, the writ petitions are disposed of. Pending miscellaneous petitions are closed.

P NAVEEN RAO,J

DATE:06-07-2018
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO



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