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

W.P.Nos. 19214, 19223, 19288, 19303, 19307, 19318, 19344, 19425, 19506, 19527, 19611, 19637, 19663, 19672, 19719, 19772, 19802, 19806, 19833, 19909, 20001, 20083, 20115, 20199, 20236 of 2018

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

In this batch of writ petitions the validity of Rule 5 (5) of the Telangana Teachers (Regulation of Transfers) Rules, 2018 (for short "the 2018 Rules") notified in G.O.Ms.No. 16, School Education (Serv. II) Department, dated 6.6.2018, to the extent transfers are sought to be effected for those working within the Agency Area itself; in restricting transfer from plain areas to plain areas; and in prohibiting transfer from Agency Area to plain area, and from plain area to Agency Area; is under challenge in these writ petitions as being arbitrary and illegal.

Rule 5 (5) of the 2018 Rules, notified in G.O.Ms.No. 16, School Education (Serv. II) Department, dated 6.6.2018, stipulates that all transfers shall be effected within the present Management, Agency Area to Agency Area, and plain area to plain area. As a result thereof, Head Masters/Teachers working in Agency Areas, who do not belong to the Scheduled Tribes, are disabled from seeking transfer to plain areas. Likewise, members of the local scheduled Tribes, of an agency area, and other members of the Scheduled Tribes working as Head Masters/Teachers in plain areas, are disabled from seeking transfer to Agency Areas.

The validity of Rule 5 (5) is under challenge on grounds, including that it falls foul of the notification in G.O.Ms.No. 3, Social Welfare (TW.Edn.II) Department, dated 10.1.2000 issued in exercise of the powers

conferred under sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India which stipulates that all posts of Teachers, in schools situated in the Scheduled Areas in the State of Andhra Pradesh, shall be filled by local Scheduled Tribe candidates only, out of whom 33 1/3 % shall be women.

The petitioners' complaint is that, though this notification requires schools in Agency Areas to be filled by local Scheduled Tribes, even Head Masters/Teachers who do not belong to the Scheduled Tribes, who were hitherto posted to work in Agency Areas, are disabled from seeking transfer to plain areas in view of the restriction in G.O.Ms.No. 16, School Education (Serv. II) Department, dated 6.6.2018 whereby Teachers working in Agency areas can be transferred only to another Agency Area; this restriction in the 2018 Rules is in violation of the aforesaid notification in G.O.Ms.No. 3 dated 10.1.2000; though several teachers belonging to the Scheduled Tribes, who were hitherto working in plain areas, now seek transfer to Agency Areas, the impugned Rule does not permit such options being exercised by Teachers, belonging to the Scheduled Tribes, who are working in plain areas; and they are required to exercise options only for their transfer from a plain area to another.

It is wholly unnecessary for us to examine these submissions, in as much as the learned Additional Advocate General for the State of Telangana, on instructions, would submit that, notwithstanding Rule 5 (5) of the 2018 Rules, the Government of Telangana would permit all Head Masters/Teachers, working either in the Agency Areas or in plain areas, to exercise their options as per their choice without confining such options only within the Agency Area or the plain area, subject to the conditions that, after the process of counseling is completed, Head Masters/Teachers

working in Agency Areas would be considered for transfer to Plain Areas only if Head Masters/Teachers, working in plain areas, exercise their option to be posted in the Agency Area schools in which the Head Masters/Teachers, who seek transfer to plain areas, are working. According to the learned Additional Advocate General, permitting enmass migration of Head Masters/Teachers from Agency Areas to Plain Areas would result in acute shortage of Head Masters/Teachers in schools in Agency Areas, thereby depriving children in these Agency Areas of much needed school education.

While this submission of the learned Additional Advocate General has considerable force, it is again unnecessary for us to dwell on this aspect, as all the learned counsel for the petitioners agree that an order, as suggested by the learned Additional Advocate General, be passed for the current academic year, leaving it open to them, if such a need arises, to question the action of the respondents, in placing such restrictions, on exercising options for transfer, in the ensuing academic year 2019-20.

As learned counsel for the petitioners and the learned Additional Advocate General are in agreement, the respondents shall, during the counselling for the current academic year 2018-19, permit all the Head Masters/Teachers, working both in Agency and plain areas, to exercise options of their choice, and extend to them the entitlement points as provided under the 2018 Rules. After the process of counselling is completed, it is only those Head Masters/Teachers working in Agency Area schools, who have exercised their option to serve in plain areas, who shall be transferred to plain areas provided Head Masters/Teachers working either in plain areas or in other Agency Areas have exercised their options

to be posted in schools in which these Head Masters/Teachers, who seek transfer to plain areas, are presently working.

It is made clear that this arrangement shall prevail only for the current academic year 2018-19, and this consent order shall not disable the petitioners, in case a similar Rule is made in the ensuing academic year 2019-2020, to question the same in appropriate legal proceedings.

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

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RAMESH RANGANATHAN, ACJ

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J. UMA DEVI, J

Dt.19.6.2018
NB:
CC of order be furnished by tomorrow.
/BO/kr/gsn

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COMMON ORDER:
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Dt. 19.6.2018