

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.19362 OF 2018

Date: 14.06.2018

Between:

T. Radha, D/o. T. Janakiramaiah, Aged about 55 years,
Assistant Director, O/o. Director, SIET, Ramanthapur,
Hyderabad, Telangana State, R/o.H.No.101, Road No.2,
Alkapuri Colony, Kothapet, Hyderabad and another.

.... Petitioners

And

The Commissioner and Director of School Education,
State of Telangana, Hyderabad, Telangana State and
another.

.... Respondents



The Court made the following:

HON'BLE SRI JUSTICE P. NAVEEN RAO

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ORDER:

Heard learned counsel for petitioners and learned Government Pleader for respondents.

2. While working as Office Superintendents in the Directorate of School Education, petitioners were promoted as Assistant Directors in the years 2016 and 2017 respectively. On promotion, vide proceedings dated 11.05.2016 and 04.10.2017, they were sent on deputation to the State Institute of Educational Technology (SIET)/Rastriya Madhyamik Shiksha Abhiyan (RMSA).

3. Consequent to the lifting of ban on transfers, the Government notified guidelines to consider transfer of employees vide G.O.Ms.No.61, Finance (HRM.I) Department, dated 24.05.2018. Proceedings dated 04.06.2018 were issued by the Commissioner and Director of School Education directing the petitioners to submit their option forms. The said proceedings are challenged in this Writ Petition.

4. Learned counsel for the petitioners contends that as the petitioners are on deputation to SIET/RMSA, they cannot be subjected to transfer unless their deputation is withdrawn and they are brought back to the parent department. He would further submit that the 1st petitioner has just completed two years of service and the 2nd petitioner has not even completed one year and both of them are on deputation.

5. As per paragraph-II of G.O.Ms.No.61, an employee who has completed five years of service in a particular station as on 31.05.2018 should not be retained. In paragraph-IV (b), 'station' is defined as place of actual working, but not office or institution. Paragraph-IV(a) also states that service in all cadres at a station would be counted while calculating the period of stay. It is not in dispute that petitioners have completed more than five years of service in Hyderabad and in terms of paragraph-II of G.O.Ms.No.61, they are liable for transfer. Confronted with this mandate of G.O.Ms.No.61, learned counsel for petitioners sought to contend that they are now on deputation and unless they are recalled to the parent department, they cannot be transferred.

6. It is not in dispute that School Education Department is the parent department of petitioners. Merely because petitioners are on deputation, they cannot contend that the parent department has no competence to transfer them elsewhere. Per force, it would result in withdrawing from deputation and posting elsewhere. Parent Department is competent to withdraw an employee from deputation at any time.

7. Some of the competent authorities expressed doubts on various parameters to undertake the exercise of transfers consequent to the G.O.Ms.No.61 dated 24.05.2018. Vide Circular Memo No.2934-A/223/A1/HRM.I/2018, dated 02.06.2018, the Finance Department clarified the doubts expressed regarding various clauses of guidelines. Paragraph-5 of this Circular Memo deals with the issue of deputation. Paragraph-5 of Circular Memo reads as under:

S.No.	Point	Clarification
5.	Whether the period of deputation of an employee (if it is in the same station) is to be counted for qualifying service at the station?	Yes. As per para-3 (IV) (b) of G.O. cited, Station means place (City, Town, Village) of actual working for the purpose of transfers and not office or institution. Hence, the service rendered on deputation where the posts are under the control of HoD shall be counted for the purpose of qualifying service at the station.

8. As clarified by the Finance Department, the deputation services can also be counted towards qualifying service. This would also show that competent authorities are aware that certain employees are on deputation.

9. As fairly submitted by the learned counsel for petitioners, officers working in the cadre of Assistant Directors are liable to be transferred anywhere in the State. As petitioners are working as Assistant Directors, they can be transferred anywhere in the State. Since petitioners are working in transferable post, they cannot claim to be retained at the present place of posting on the mere ground that they are on deputation and while on deputation they should not be disturbed. Admittedly, petitioners have been working in Hyderabad for a long time. There may be requests of Assistant Directors working in other places to transfer them to Hyderabad for various reasons, health of self, health of dependants, children education, spouse working etc. Such requests, within the parameters laid down in the guidelines, required to be considered. If sufficient number of vacancies are not available to accommodate such requests, it is necessary to disturb long standing persons to accommodate such requests. No exception can be made to such exercise.

10. In W.P.No.19215 of 2018, the principles of law governing transfers and the scope of transfer guidelines now formulated by the State are considered elaborately. In the said case, petitioner therein earlier worked in Dr. MCH HRD Institute as Training Programme Coordinator from 26.3.2012. Later, he was withdrawn from deputation and was posted as Health Educator in the State Health Education Bureau from 18.11.2016. It was contended that as he has not completed two years of service as Health Educator, he is not liable for transfer. It was contended that previous service rendered by him on deputation cannot be computed towards determining the service at a station. It is held as under:

“16. While assessing the guidelines formulated for transfers, keeping in mind the scope of judicial review on transfer guidelines, the object it seeks to achieve must be seen. Twin objectives discernible from transfer guidelines are, to accommodate the request for transfer of employees to the extent possible and not to retain an employee in a station for longer period. It also takes care of smooth transition by fixing cap on maximum number of employees who can be disturbed. It is also significant to note from para-VII (e) of guidelines, the objective of transfer policy is to act as a catalyst in capacity building by ensuring departmental employees in getting variety of experience and becoming more fit to hold higher responsibilities. Therefore, the tenure of an employee in a place must be viewed not only with reference to the claim of employee for retention, but also with reference to the claim of other employees for posting at prime location, like Hyderabad and over all objective of Government. Thus, while identifying the tenure in a station liberal construction to relevant clauses of guidelines is necessary. More so, when transfer is made to equal post and if service conditions are not affected. So long as a person was working in a station for more than five years, in what capacity and in what manner he

was working is immaterial and the total amount of service rendered in that station can be computed. What is important is tenure in a 'Station'.

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18. It appears from the reading of Circular Memo, dated 02.06.2018, competent authority has sought certain clarifications. One of the clarifications sought was, 'whether the period of deputation of an employee (if it is in the same station) is to be counted for qualifying service at the station'. In response to this doubt expressed by the competent authorities, reply given was **'yes'**. It was further stated that the service rendered on deputation where the posts are under the control of Head of Department shall be counted as qualifying service at the station. Though the doubt expressed appears to be in broad terms while saying 'yes' to such clarification, further clarification was referring to a person working on deputation under the control of Head of Department. Furthermore, on a plain reading of guidelines in G.O.Ms.No.61, guidelines do not make any distinction as to in what capacity an employee was working in a station. Petitioner cannot seek to fall back on the further clarification to say that he is not liable for compulsory transfer and that he has rendered less than 2 years of service by treating his posting in State Health Education Bureau as independent posting. Even otherwise, petitioner cannot seek enforcement of clarification to claim retention."

11. No *mala fides* are attributed against identifying the petitioners to be compulsorily transferred. Service conditions of petitioners are not affected by proposing to transfer them as they are liable to be transferred anywhere in the State.

12. Having regard to the parameters laid down by the Supreme Court in the long line of precedents, the decision of this Court in W.P. No. 19215 of 2018 and in the facts of this case, I do not see any illegality in identifying the petitioners as persons to be

compulsorily transferred from the present place of posting warranting interference by this Court. Writ petition is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 14.06.2018
Kh/kkm



HONOURABLE SRI JUSTICE P.NAVEEN RAO



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