

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 19574 of 2018

Date : 15.6.2018

Between:

K Suryakanth S/o Ashanna
44 years
SA (Maths) ZPSS, Kowtha, Jainath mandal
Adilabad district

Petitioner

And

State of Telangana
Rep by its Special Chief Secretary to Govt
School Education Department,
Secretariat, Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner was posted as School Assistant (Mathematics) in Zilla Parishad Secondary School, Kowta, Jainath mandal, Adilabad district with effect from 6.8.2009. While he was working in the said post, he was sent on deputation to Rajiv Vidya Mission as Assistant Sectoral Officer. Pursuant to the proceedings of deputation dated 16.1.2013 he claims to have joined and worked till 20.6.2016. In the mean time, the vacancy occupied by the petitioner in Kowta was filled up. On repatriation, as there was no vacancy in the post of School Assistant (Mathematics) in the district, he was adjusted against School Assistant (Physical Sciences) in Upper Primary School, Belluri, Jainath mandal with effect from 1.7.2016. In the transfer exercise undertaken by the School Education Department, petitioner is eager to be transferred out of the present place of posting and to a place of his choice.

2. On 5.6.2018 the School Education Department issued memo to the Commissioner. In paragraph 1 of this memo the proposal submitted by the Commissioner and Director of School Education, Government authorized adjustment of 103 teachers working against vacancies or having lien, in the existing vacancies based on their willingness. It further says, if such teachers are not willing they may be permitted to participate in the general transfer counseling. This memo is under challenge in this writ petition. Petitioner seeks further direction to continue him in the same place and post till completing minimum service of five years or reckon the date of posting as School Assistant in Kowta.

3. According to learned counsel for petitioner, the substantive posting of petitioner is in Kowta, while working in Kowta he was sent on

deputation. An employee going on deputation would retain his lien in the post where he was working before sending him on deputation. Therefore after completion of deputation period, he ought to have been reverted back to Kowta. In the absence of petitioner filling up the post earlier occupied by him and posting him elsewhere is not valid in law. Further more, he was adjusted against vacancy of School Assistant (Physical Sciences) though he is School Assistant (Mathematics) and the same is illegal. Therefore, the subsequent posting has to be ignored and petitioner has to be treated as person belonging to ZPSS, Kowta for the purpose of consideration of petitioner's request for transfer counseling. Not granting the same and counting the service for the purpose of transfer counseling only from 1.7.2016 is illegal. It amounts to arbitrary exercise of power. He would submit that memo impugned in the writ petition is also not sustainable. The question of adjustment of the petitioner in the existing vacancies is not valid. Petitioner is entitled to participate in transfer counseling treating him as teacher working in Kowta from the year 2009.

4. Per contra, learned Assistant Government Pleader would submit that when petitioner was sent on deputation he vacated the post in Kowta and on completion of tenure he need not be posted back to the same place. More over, the said vacancy was filled up while he was sent on deputation and on completion of deputation tenure, he is liable to be posted wherever a vacancy is available. Further, by the time petitioner came back to the department, as there was no vacancy of School Assistant (Mathematics), he was temporarily adjusted against the post of School Assistant (Physical Sciences). Thus, Government identified available vacancies of School Assistants (Mathematics) and gave an option to the petitioner to choose any of the vacancies available. According to learned Assistant Government Pleader, there are six

vacancies available in Nirmal, Mancherial and Asifabad mandals, petitioner can choose any one of the vacancies without participating in the transfer counseling. Only to accommodate the claims of petitioner and persons similarly situated to petitioner, impugned memo was issued by the Government. As stated in the first paragraph of the memo itself, if the petitioner is not willing he can participate in the transfer counseling. Further, he would submit that while considering the claim of the petitioner in the transfer counseling the service rendered by him from 1.7.2016 alone would be counted and not the previous service.

5. In W P No. 19215 of 2018 this Court reviewed precedent decisions and transfer guidelines. This Court observed:

“11. It is clearly discernible from the precedent decisions that in matters of transfer, scope of judicial review is limited, and High Court should not interfere with an order of transfer lightly, unless the transfer is vitiated either by *mala fides* or on the ground of infraction of any professed norm or principle; only limited judicial scrutiny can be undertaken either at the interim stage or final stage; transfer is an incidence of service, implicit as an essential condition of service; no employee has vested right to remain posted at a place of his/her choice; at times, several imponderables requiring formation of subjective opinion may be involved; realistic approach is to leave to the wisdom of hierarchical superiors; the wheels of administration should be allowed to run smoothly; Courts do not substitute their own decision in the matters of transfer; there are no judicially manageable standards for scrutinizing the transfers; Courts lack necessary expertise for personnel management; in public interest, transfers involving public services have to be best left to the concerned authorities; writ Court cannot sit as appellate forum to consider transfer matters; guidelines do not have statutory force; guidelines do not confer legally enforceable right; even if an order of transfer is passed in violation of executive instructions or orders, Court should not interfere; affected party should approach higher authorities; Court should not interfere if transfer is made to equivalent post without any adverse consequence on the service prospects.”

6. Employees working in the government seek transfer from the place of work on completion of certain period of service. Such request for transfer can be for variety reasons, such as children's education, health, parental care, working spouse, attraction towards a post, etc. For

reasons best known to Government, transfers were not made in the last 4 years. Thus, demand for transfers is more vocal. Yielding to the pressure of employees, government agreed to undertake the exercise of transfers. The process was set in motion by issuing GO Ms. No. 61 finance department dated 25. 4. 2018. Government notified guidelines for transfers.

7. Transfer exercise involves posting in existing vacancies or replacing existing incumbent. It requires identification of vacancies and /or identification of employees who can be disturbed to accommodate request transfers. It is not uncommon that request for transfers to few places can be more than the vacancies available /vacancies that can be made available. Request for transfers cannot be effectively processed unless incumbents are disturbed. It therefore requires prioritisation of requests. There must be some criteria to identify employees who can be disturbed. Further, in mammoth government organisation leaving it to individual competent authorities to process transfer claims may have its own drawbacks. Thus, transfer exercise per force requires formulation of guidelines /framing of rules dealing with all categories and all claims to the extent possible.

8. Consequent to the lifting of ban on transfers, to regulate transfers in Education Department, Government notified Rules known as The Telangana Teachers (Regulation of Transfers) Rules, 2018 vide G.O.Ms.No. 16 dated 6.6.2018 and is taking up transfer exercise of teachers working in various categories. Rule 5 of the Rules prescribe criteria for transfers. Rule 6 prescribes entitlement points. Entitlement points are divided into two parts, first part deals with common points and second part deals with special points. The schools are divided into 4 categories depending on the location of the school. Entitlement points

are earmarked ranging from 1 to 5 depending on the categorization of the concerned school. For every year of service rendered in a particular school certain points are earmarked. As per Rule 6, awarding of points is based on the service rendered in the **present school**. A plain reading of this Rule makes it clear that only the service rendered in the **present school** prior to transfer counseling alone would be taken into consideration to allot appropriate points determined as per Rule 6.

9. Scheme of Rules is clearly discernable on reading of Rules 5 and 6. Transfer Rules intend to disturb employees working for long standing in a particular station and are to be compulsorily transferred. While effecting transfers the claims of the teachers who are liable for transfer are required to be considered based on the tenure of the employee to a particular place, location of the place where he was working as per the categorization in Rule 6. If an employee is working in a hardship place, he gets higher priority in considering his choice of posting. There are special points for various sub categories such as President and General Secretary of the Association, un-married Head Mistress/ Grade II Female Teacher, Head Master/Head Mistress Grade II (Gazetted)/ Teacher whose spouse is working in the same district etc. Cumulatively, the points secured by the teacher will ultimately decide the place of posting as per the request of the teacher.

10. In the case on hand as noted above, petitioner is working in UPS, Belluri from 1.7.2016, albeit against School Assistant (Physical Sciences) post. Prior to this he was on deputation and earlier to deputation he was in ZPSS, Kowta. The Rule makes it very clear that only **present school** is criteria to determine the entitlement points. The petitioner is working in different school after his deputation as against his posting prior to deputation. Thus, the total service is not in same

school. Thus, the claim of the petitioner that the service rendered in Kowta prior to his deputation should be counted, has no merit.

11. By the impugned memo Government intend to accommodate all teachers who were earlier made to work in a different post in the subject belonging to them and were given exclusive option to choose any of the available vacancies. There is no mandate on petitioner to choose a vacancy. It also leaves the teacher to participate in counseling. Thus, this memo, per-se, is not affecting in any manner claim of petitioner. As noted from contentions urged by learned counsel for petitioner, petitioner is not willing to take any one of the six vacancies now available and intend to participate in the transfer counseling. While doing so, petitioner wants to compute entire service from 2009 towards weightage points. This issue is not covered by impugned memo. As discussed above the claim has to be tested vis a vis the statutory Rules. Rule 6 do not allow computation of past tenure in a different school. **Present School**' as used in Rule 6 cannot be stretched to mean school in Kowta. At any rate, this Rule is not under challenge. Further, per force, transfer of an employee does not result in affecting his conditions of service. No malafides are alleged. The conditions of service of petitioner are not affected in any manner.

12. On cumulative analysis of relevant Rules, precedents on the subject of transfer and in the facts of this case, I see no merit in the writ petition and it is accordingly dismissed. No costs. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:15-06-2018
TVK



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