

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 20029 of 2018

Date : 15.6.2018

Between:

U Appi Reddy S/o Ranga Reddy
48 years
SA (Maths)
ZPHS Pambanda, Shivampet mandal
Medak district

Petitioner

And

The District Educational Officer,
Medak, Medak district 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, Shivampet, Adilabad district with effect from 18.7.2009. 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 9.10.2013 he claims to have joined on 18.11.2013 and worked till 8.3.2017. In the mean time, the vacancy occupied by the petitioner in Shivampet was filled up. On repatriation, he was posted to ZPHS, Pambanda with effect from 9.3.2017. 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. According to learned counsel for petitioner, the substantive posting of petitioner is in Shivampet while working in Shivampet 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 Shivampet. In the absence of petitioner filling up the post earlier occupied by him and posting him elsewhere is not valid in law. Therefore, the subsequent posting has to be ignored and petitioner has to be treated as person belonging to ZPSS, Shivampet for the purpose of consideration of petitioner's request for transfer. Not granting the same and counting the service for the purpose of transfer counseling only from 9.3.2017 is illegal. It amounts to arbitrary exercise of power. Petitioner is entitled to participate in transfer counseling treating him as teacher working in Shivampet from the year 2009.

3. Per contra, learned Assistant Government Pleader would submit that when petitioner was sent on deputation he vacated the post in Shivampet 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. He would submit that options were called. Examination was held. On passing the examination, petitioner was selected and sent on deputation. As per transfer Rules, he would submit, as petitioner is working only from 9.3.2017 in Pambanda, he is not entitled to seek transfer.

4. 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.”

5. 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.

6. 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.

7. 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.

8. 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.

9. In the case on hand as noted above, petitioner is working in ZPHS, Pambada from 9.3.2017. Prior to this he was on deputation and earlier to deputation he was in ZPSS, Shivampet. 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

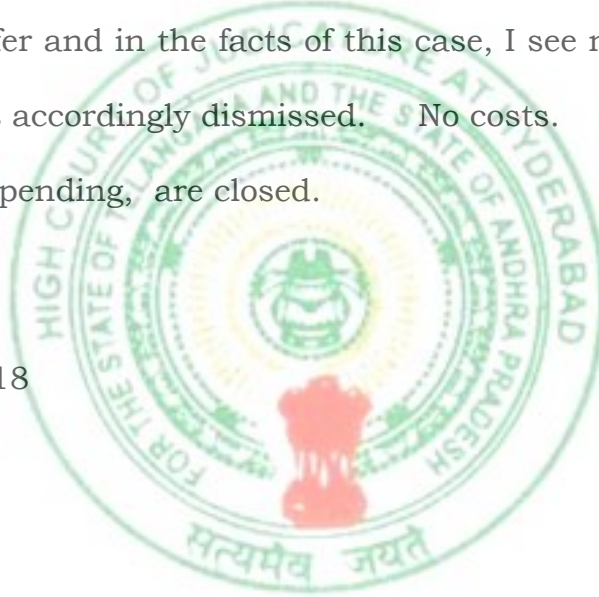
service is not in same school. Thus, the claim of the petitioner that the service rendered in Shivampet prior to his deputation should be counted, has no merit.

10. 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 Shivampet. 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.

11. 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.

DATE:15-06-2018
TVK

P NAVEEN RAO,J





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