

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.20475 OF 2018

Between:

Vanapalli Vijayalakshmi, W/o. Panchakshari,
Aged 43 years, occu: Principal, Kakatiya Govt.College,
Hanmakonda, Warangal (Urban) District, T.S.

....Petitioner

And

State of Telangana, rep.by its Special Chief
Secretary to Government, Higher Education Dept.,
Secretariat Buildings, Hyderabad and others.

....Respondents

DATE OF JUDGMENT PRONOUNCED : 21.06.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

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!Counsel for the petitioner : Sri P.V.Krishnaiah

Counsel for the Respondents: Govt.Pleader for Services-I(TG) for
respondents

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>Head Note:

? Cases referred:

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HONOURABLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.20475 of 2018****ORAL ORDER:**

Petitioner is appointed as Lecturer in the year 1998 and posted to Pingle Government Degree College for Women, Hanmakonda. She was later promoted as Principal and posted to Kakatiya Degree College, Hanmakonda on 14.9.2016 in which capacity she is presently working. Consequent to relaxing the ban on transfers, the respective departments of the State Government have taken up exercise to consider the requests for transfers. Higher Education Department vide G.O.Rt.No.115 Higher Education (TE) Department, dated 6.6.2018 notified transfer guidelines. Annexure appended to the Government Order provides the guidelines to affect transfers. In the transfer exercise now undertaken by the Higher Education Department, petitioner is identified as a person to be compulsorily transferred from Hanmakonda. This writ petition is filed by the petitioner challenging paragraph 4 (c) and paragraph 7 of the transfer guidelines. By orders in G.O.Rt.No.117 Higher Education (TE) Department, dated 7.6.2018, the cut off date to determine two years of service in a particular station is extended from 31.5.2018 to 31.8.2018. In the present writ petition, petitioner is also challenging the extension of cut off date.

2. Heard learned counsel for petitioner Sri P V Krishnaiah and learned Assistant Government Pleader for respondents and with their consent the writ petition is taken up for final disposal at the stage of admission.

3. Learned counsel for petitioner would contend that petitioner was promoted on 4.9.2016 and is working in the promoted post which is a State Cadre post, therefore while computing the standing for the purpose of consideration for transfer, the service rendered as Principal

only to be counted and previous service as Lecturer cannot be counted. The clause incorporated in paragraph 4 (c) is illegal and arbitrary. He would further submit that clause in paragraph 7 determining the focal points based on House Rent Allowance (HRA) in an area is illegal. According to learned counsel, HRA is determined based on the consumer index, rental value of the area and other parameters. In urban areas, HRA is higher as compared to semi urban areas and rural areas, therefore in urban areas, higher HRA is paid. All the places where HRA is higher cannot be classified as focal point posts and on that criteria to deny the opportunity to choose a place as per transfer guidelines to any other place, amounts to discrimination and is without any rationale and against object sought to be achieved. He would further submit that fixing cut off date as 31.5.2018 to decide eligibility is directly attributable to decision taken by the Government lifting ban on transfers. Thus, enlarging the cut-off date to a later date by the Higher Education Department is per-se illegal. By relaxing the date and extending the date to 31.8.2018 grave injustice is caused to this petitioner. Cut-off date is extended only to accommodate certain persons affecting the others, therefore extension of cut-off date is arbitrarily made. He would further submit that as per the policy of the Government, in colleges exclusively meant for women only women teaching staff should be posted, whereas, various attempts are being made to post men in the colleges meant for women and that would be offending the policy of the Government not to post men in women's colleges.

4. *Per contra*, learned Assistant Government Pleader would submit that station seniority is taken as basis, since even on promotion many employees are found to be working in same station and in the said manner many others are made to work in the stations of less significance or hardship places. Thus, while determining the service rendered by an employee, service rendered in a **station** including service rendered on

promotion is also taken into consideration only to ensure that the claims of all employees can be affectively considered. He would further submit that in order to identify the categories of places where request transfers can be considered, criteria of HRA is taken as basis. Based on HRA towns/semi urban areas/villages are categorized. Urban areas such as Hanmakonda are classified as Category I, as such employees are entitled to 30% of HRA. Like petitioner many Lecturers/Principals are found to be working in major towns like Hanmakonda for long time, whereas many other Lecturers/Principals are made to work in other places. He would further submit that cut off date is extended based on the representation made by the Telangana Government College Gazetted Teachers Association and Telangana Gazetted Polytechnic All Lecturers' Association and as individual Lecturer petitioner cannot object to extension of the cut-off date, more particularly when such request was made by her Association. Further, the request to extend cut-off date was on the ground that promotions to Lecturer cadre were made after August, 2016 and on promotion, they were adjusted in less significant places. If they are not given opportunity to seek transfer, taken up after four years, it would cause great hardship to them. He would further submit that as per Clause 6 of the Transfer guidelines criteria is laid down to post women Lecturers in women polytechnics and degree colleges and same would be followed in true letter and spirit.

5. In W.P.No.19215 of 2018 on review of precedent decisions on various aspects of transfers of employees, this Court held as under:

“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. Perforce, an employee can be transferred at any time and to any office or place. As such transfers require huge financial commitment by Government and frequent transfers hampers Government functioning in addition to allegations of vindictive, politically motivated transfers, Government imposed general ban on transfers. This ban on transfers is normally lifted and transfers are permitted during a limited period in a year, mostly during summer vacation or immediately thereafter.

7. 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 G.OMs.No.61 Finance (HRM.I) Department, dated 24.05.2018. Government notified guidelines for transfers.

8. 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 prioritization of requests. There must be some criteria to identify employees who can be disturbed. Further, in mammoth Government organization 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. It is intend to ensure transparency in the exercise to effect transfers. In does not, perforce, vest right to an employee to contend that he/she should not be disturbed and to elevate transfer guidelines to a level of statutory prescription.

9. As noted above, vide G.O.Ms.No.61, Government notified guidelines. In furtherance to above orders, the Higher Education Department notified separate guidelines vide G.O.Rt.No.115, dated 06.06.2018 with amendments notified in G.O.Rt.No.117 dated 7.6.2018. To accommodate the respective claims of employees seeking transfer for various reasons, certain yardsticks are fixed by the Government.

10. Salient features of these guidelines are:

- (i) A person can be transferred only if he has completed 2 years of service in a **station** as on 31.8.2018.
- (ii) Employee who has completed 5 years of service in a **station** as on 31.5.2018 shall be compulsorily transferred. However, employee retiring from service on/before 31.5.2020 is exempted from transfer even if he has completed 5 years of service in a **station**.
- (iii) **Station** means place of actual working i.e., city/ town/ village. Service in all cadres at a station will be counted.
- (iv) Based on stay in a place entitlement points are fixed. There entitlement points shall be the basis to consider request for transfer.

- (v) Guidelines prescribe priority in consideration of request for transfer, such as spouse working in a station, date of retirement, health of self or dependent, etc. Performance parameters are also prescribed.
- (vi) Transfers are to be made from focal to non-focal, non-focal to focal. Focal and non-focal places are decided based on HRA.

11. Guidelines are made to regulate transfers. It intends to introduce transparency in the exercise and eliminate personal prejudices and preferences of competent authority. It shows the employee where he/she stands in seeking transfer. What is pertinent to note is employee is liable for transfer and cannot object to his movement from place to place. He/she has no indefeasible right to continue at a place for indefinite period. Transfer guidelines and transfers *per se* may cause some inconvenience to an employee, but having accepted public employment employee cannot complain of his inconvenience. Further, his continuation at one place for long time may be causing hardship to other employees. Considering competing claims of employees is paramount for any employer. While analyzing transfer guidelines there cannot be a microscopic analysis of various clauses by applying yardsticks of judicial review of administrative decisions/orders, juxtaposing with right to life, liberty and freedom of expression.

12. 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 notified vide G.O.Ms.No.61, 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. The same is also echoed in G.O.Rt.No.115. 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 Hanmakonda 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.

13. 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**'. According to paragraph-4(a), if an employee completed five years of service as on 31.05.2018 in a **station**, such employee is liable for compulsory transfer. As per paragraph-IV (b) of guidelines notified in G.O.Ms.No.61, '**Station**' means place of actual working at city/town/ village. Fixing station as basis has clear nexus for the object sought to be achieved and cannot be said as arbitrary and discriminatory.

14. Petitioner was working as Lecturer in Hanmakonda from the year 1998 and on promotion as Principal, petitioner was retained in Hanmkonda. Thus, as per paragraph-IV(b) of G.O.No.61, read with paragraph 4(a) & (c) of G.O.Rt.No.115, she has been in the same station since 1998. By counting this service, petitioner cannot be retained in the present place of posting. It appears, by applying these parameters, the petitioner is liable for compulsory transfer as she has been in Hanmakonda for about 20 years. I see no illegality in counting the service as Lecturer also prior to promotion as Principal to determine station seniority.

15. To accommodate request of individual employees, it is necessary to identify the availability of vacancies and to assess the tenure of employee working in a particular place and if it is found that employee is working for long time in a particular place, more so when such place has more facilities as compared to other places, it is desirable to shift him/ her from that present place to accommodate claims of other employees. There is more demand for postings to Urban areas, more particularly places like Hyderabad, Warangal, Hanmakonda. If particularly employees continuation is allowed in such stations for long time, aspirations of other employees would be adversely affected. There is a need to balance competing claims of employees. Thus, fixing five years tenure has clear objective underlying the very transfer policy. While identifying an employee for transfer to accommodate request of another employee what is required to be seen is whether that employee has worked for considerable period in a station. It is immaterial, for a limited purpose of transfer, to see in what capacity he worked in a station.

16. Further, to identify/specify places for prioritizing transfers some yardstick is required. Stations like Hyderabad, Warangal, Hanmakonda, Karimnagar are in higher HRA bracket as compared to other places. Urban areas carrying higher HRA, also have better civic amenities, medical facilities and educational institutions compared to other places. These are all the parameters for employees to seek transfer and posting. Further, while requesting for transfer employees also take into consideration HRA applicable to a place. There is more demand to a place which carries higher HRA. Thus, HRA is also one of the important factors in choosing a place for posting. Focal posts are identified in revenue departments and in Police Department, based on their location. In Higher Education Department that parameter is not attracted. Therefore, focal points can be referable to place with better civic amenities, other facilities and higher HRA. Therefore, while grouping

places taking the HRA as criteria to enable employees to opt a place cannot be faulted.

17. While lifting ban on transfers, Government notified that unless a person completes two years of service as on 31.5.2018, he should not be subjected to transfer. 31.5.2018 is also taken as cut-off date to identify persons who should be liable for compulsory transfer. The orders issued in G.O.Ms.No.61 dated 24.5.2018 are general in nature and applicable to all departments. However, in the very same Government Order, Government also authorized individual departments to formulate their own guidelines. Higher Education Department formulated their own guidelines and notified vide G.O.Rt No.115 dated 6.6.2018. Initially Higher Education Department also fixed 31.5.2018 as cut-off date to determine two years of service and with reference to other parameters to identify persons who are liable for transfer. It appears, the Associations representing Principals/Lecturers in Government Colleges and Polytechnics have requested to enlarge the cut-off date from 31.5.2018 to 31.8.2018. Orders issued in G.O.Rt.No.117 dated 7.6.2018 are made on the request of the Associations. It appears, as stated by the learned Assistant Government Pleader, on instructions, some Lecturers were promoted in August, 2016 and were posted in hardship places and that they have limited options as they were adjusted against available vacancies and if the cut-off date of 31.5.2018 is applied, those persons are completely eliminated from consideration. As noted above, the transfer exercise as undertaken is on the request made by the employees, as it appears, employees were made to stay put at a particular place for long time causing hardship to them and their family members on account of long stay at same place or for some health grounds or for education of children, they require to be posted at some other place. Cut-off date of 31.5.2018 has to be seen with reference to date of initial decision by the Government to relax ban on transfers

which is generally applicable. If this cut-off date is relaxed and extended in a particular department based on the representations of the Associations, such extension, having regard to the parameters of judicial review on transfers, cannot be said as amounting to arbitrary and whimsical decision, warranting interference by this Court. Moreover, apparent reason is valid to relax the cut-off date.

18. With reference to contention of the learned counsel for petitioner that women Principals/Lecturers alone are to be posted in women polytechnics and women colleges, as can be seen from paragraph 6 of the transfer guidelines, it prescribes the order of preference for posting and transfer. First preference goes to women; thereafter to male above 50 years of age; thereafter male between 45 to 50 years and then to others. In other words, as long as women are available, subject to other parameters of transfer guidelines, women are to be posted in women polytechnics and women degree colleges. Thus, enough safeguards are provided in paragraph 6 of the transfer guidelines. It cannot be expected that Government would violate its guidelines and general policy in posting women in women polytechnics and women degree colleges. Petitioner may have a grievance only if woman is ignored and male is posted in a women polytechnic or women degree college ignoring parameters set out in paragraph-6 of transfer guidelines.

19. From the proposition of law as laid down in several precedent decisions, it is manifest that the Court cannot go into intricacies of the cadre management and posting of the employees; there can be several imponderables requiring formation of a subjective opinion and Court cannot go into those administrative issues in exercise of power of judicial review. In any service, there can be competing claims/aspirations and the cadre controlling authority is the best judge to accommodate competing claims and organize his cadres. It is appropriate to note that no *mala fides* are attributed against any officer. By

identifying petitioner as long standing employee, her service conditions are not affected.

20. Having regard to the parameters laid down by the Supreme Court, considered by this Court in W.P.No.19215 of 2018, and in the facts of this case, I do not see any illegality in the transfer guidelines warranting interference by this Court. However, it is made clear that respondents shall strictly follow paragraph-6 of the guidelines notified vide G.O.Rt.No.115, dated 06.06.2018. Writ Petition is accordingly disposed of. Pending miscellaneous petitions shall stand closed. No costs.

Date: 21.06.2018

Note: Issue CC by tomorrow.
(b/o.)
tvk

JUSTICE P.NAVEEN RAO



HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No.20475 of 2018

Date : 21.06.2018

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