

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.2 of 2018 and I.A.No.3 of 2018 in WP.No.20479 of 2018

And

WP.No.20479 of 2018

COMMON ORDER :

Heard Sri P.V. Krishnaiah, counsel for petitioner, the learned Government Pleader for Services-II for respondent nos.1 to 3; and Sri G. Madhusudan Reddy, counsel for respondent nos.4 and 5.

2. The petitioner herein as well as respondent nos.4 and 5 are working as Assistant Directors (Administration).

3. A list of Assistant Directors (Administration) indicating their periods of service at the present working station were prepared by the 2nd respondent. This shows that respondent nos.4 and 5 had been working in Sarojini Devi Eye Hospital, Hyderabad and in the Office of Director of Public Health and Family Welfare, Hyderabad respectively for the last (28) years (10) months (17) days and (25) years (2) months and (17) days, while the petitioner had been working in Government Maternity Hospital, Petlaburj, Hyderabad from 13.08.2012.

4. It is also not in dispute that respondent nos.4 and 5 were elected as Vice-President and Treasurer of the Telangana Gazetted Officers' Association, City Branch, for three year period from 2017 to 2020.

5. When the Director of Public Health and Family Welfare (Telangana) issued proceedings on 15.06.2018 proposing to transfer

only petitioner and others and excluded respondent nos.4 and 5 from transfer counseling, petitioners have filed the present Writ Petition contending that the action of the 1st respondent is in violation of G.O.Ms.No.61 Finance (H.R.M.-I) Department dt.25.04.2018 (**for short, 'G.O.61'**), and the respondent nos.4 and 5 cannot be favoured by being retained in the same place for more than (25) years and persons like the petitioner subjected to transfer because he was working for mere six (06) years at his present place of posting.

The order dt.21.06.2018 passed in I.A.No.1 of 2018 in WP.No.20479 of 2018:

6. While ordering 'Notice Before Admission' on 21.06.2018, this Court passed the following order :

"Petitioner alleges that respondents 4 and 5, who are long standing in Hyderabad, are not subjected to transfer, whereas the petitioner though shown at Serial No.9 is now subjected to transfer, even though he has completed just about six years of service.

According to learned counsel for the petitioner, if respondents 4 and 5 were subjected to transfer counselling, petitioner could not have been disturbed by applying 40% ceiling limit.

Learned Government Pleader for Services, on instructions, submits that respondents 4 and 5 are excluded from transfer counselling on the ground that they are elected as President and Treasurer of the Telangana Gazetted Officers Association and therefore are liable for transfer in view of the Government Circular notified on 26.06.2012.

Prima facie, a reading of the guidelines now notified vide G.O.Ms.No.61, dated 24.05.2018, it does appear that the Officer Bearers of the Service Association are also be subjected to transfer counselling. Whether they are to be transferred or not depends on condition of their claim to represent the employees association. In fact, on a reading of the Government Circular,

dated 26.06.2012, it is permissible to transfer an Office Bearer even if he has not completed the requisite tenure, on administration grounds. It is also noticed from the tabulated statement of the particulars of the Assistant Directors now identified as long standing, the unofficial respondents 4 and 5 have been working in Hyderabad for the last more than 28 and 25 years respectively and by applying the guidelines notified in the Circular dated 26.06.2012, they intend to continue for some more years, causing hardship to other employees.

This issue requires consideration.

Learned Government Pleader is directed to file counter explaining the stand of the Department on the points noted above within two (2) weeks.

In the meantime, places occupied by respondents 4 and 5 also be subjected to transfer counselling. However, for a period of two weeks, no posting orders be issued.”

I.A.Nos.2 and 3 of 2018 :

7. I.A.Nos.2 and 3 of 2018 have been filed to vacate the said order by the State Government (respondent nos.1 to 3) and by respondent nos.4 and 5.

8. The petitioner’s counsel contended that as per Clause (II)(b) of G.O.61 no person shall be retained beyond five years of service in a particular station as on 31.05.2018, other than persons who are retiring before 31.05.2019; as per Clause (IV)(a), qualifying service in all cadres at a station would be counted while calculating the period of stay; and though under Clause (IV)(c), there are instructions to retain Office Bears of Employee’s Unions recognized by the Government which were directed to be followed scrupulously, that does not mean that persons like the respondent nos.4 and 5, who had been working at

the same place for more than (25) years should not be considered for transfer counseling.

9. The counsel for respondents, on the other hand, refuted the said contention while pointing out that respondent nos.4 and 5 had been elected as Vice-President and Treasurer of the Telangana Gazetted Officers' Association, City Branch, in 2017 to 2020 for the first time; that they had not yet completed their tenure of three (03) years term as Office Bearers and so they are exempted from transfers.

10. I have noted the contentions of both sides.

11. G.O.61 lays down guidelines for transfers and postings of State Government employees. A reading of the said G.O. does not indicate that Office Bearers of Service Associations are exempted from transfer counseling. The question whether they are to be transferred or not would depend on the condition of claim to represent the Employees' Association. It does not prohibit transfer of Office Bearers on administrative grounds either.

12. In any event, Clause (II) prohibits transfers before completion of two (02) years of service in a particular station as on 31.05.2018 with certain exceptions, and also prohibits any person to be retained beyond five (05) years of service in a particular station as on 31.05.2018.

13. While there may be standing instructions on transfers of Office Bearers of Employees' Service Associations recognized by the

Government, such instructions ought not to be applied in a situation where persons like respondent nos.4 and 5 had been working in the same place for more than 25 years even if they are Office Bearers of the Service Associations. It would result in grave discrimination and arbitrariness.

14. Though the counsel for respondents stated that respondent nos.4 and 5 were earlier holding positions in cadres which were non-transferable, the said contention has no relevance because as per Clause (IV)(a) of the G.O. service in all cadres at a station has to be counted while calculating period of stay.

15. In the above circumstances, continuing respondent nos.4 and 5 in the same places where they are working on the pretext that they are Office Bearers of the Employees' Service Association would clearly be arbitrary and would cause injustice to persons like the petitioner who have to undergo transfer for serving at a particular place for a far shorter period.

16. It is not in dispute that if respondent nos.4 and 5 are called for counseling, the 40% quota restriction for transfers would operate and the petitioner would not fall within the zone of consideration for counseling for transfers.

17. Therefore, the Writ Petition is allowed. The proceedings dt.15.06.2018, issued by the 1st respondent, excluding the names of respondent nos.4 and 5 from counseling and instead calling the

petitioner for counseling are declared as illegal, arbitrary and discriminatory and violative of Article 14 of the Constitution of India.

18. The respondent nos.1 to 4 are directed to include the names of respondent nos.4 and 5 also in the transfer counseling to be conducted for the post of Assistant Director (Administration), and proceed with the counseling and conclude the same within a period of four (04) weeks from the date of receipt of copy of the order.

19. Consequently, I.A.Nos.2 and 3 of 2018 in WP.No.20479 of 2018 are dismissed.

20. No order as to costs.

21. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 19.11.2018

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