

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI**

WRIT PETITION NO.20759 OF 2018

ORDER: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Among the preferential categories, who would take precedence in the seniority list prepared for effecting transfers, in terms of the 2018 Rules notified in G.O.Ms. No.16 dated 06.06.2018, are teachers whose children are suffering with a hole in their heart by birth, and are undertaking medical treatment available only at specified places to which they are seeking transfer; and teachers or their spouses who are suffering from diseases and are undertaking treatment including open heart surgery. While the preferential treatment under Rule 8 is given to children of teachers with a hole in their heart, one of the petitioner's complaint is that she had a hole in her heart which had been filled up recently in April, 2018. The other petitioner's complaint is that, though he has three stents in his heart, he has not been given preferential treatment.

While a Rule, made under the proviso to Article 309 of the Constitution of India, can be struck down if it is ultravires Part III of the Constitution, it would be wholly inappropriate for this Court to issue a mandamus directing the respondents to include certain categories, for grant of preferential treatment, as that would amount to judicial legislation which is, ordinarily, impermissible. We see no reason, therefore, to accede to the request of the Learned Counsel for the petitioners for a mandamus to be issued

to the respondents for these categories to be included among the preferential categories in effecting transfers.

The fact, however, remains that, in terms of Rule 31 of the Telangana State and Subordinate Service Rules, the power to grant relaxation of the Rules is conferred on the Government. As the last date for counseling has been extended till 30.06.2018, we consider it appropriate to direct that, in case the petitioner submits a representation to the Government by 27.06.2018, the respondents shall consider the same and pass appropriate orders thereupon in accordance with law on or before 30.06.2018. The Writ Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

Date: 26.06.2018

Note: Issue copy by 27.06.2018
B/o
MRKR

