

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.22397 OF 2018

DATED :07.08.2018

Between :

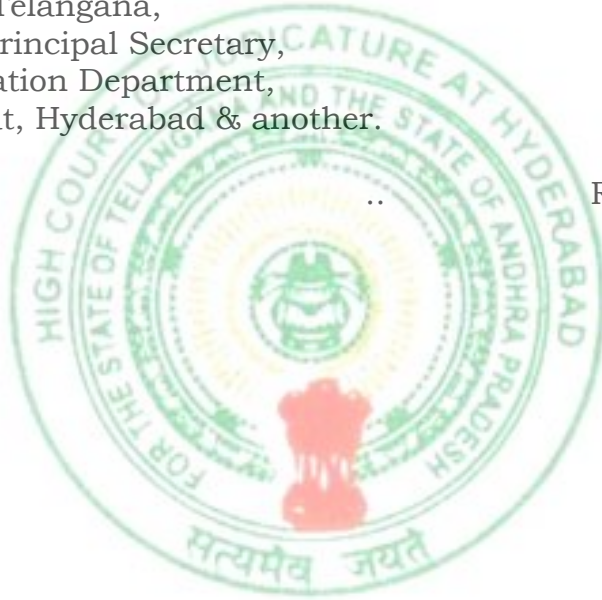
R.Satheesh S/o.Rachoori Narsaiah,
Aged about 36 yrs, Occu : Superintendent,
O/o.DIEO, Sanga Reddy,
(who is on "on duty" at O/o.DIEO, Jangaon,
Jangaon District, Erstwhile Warangal District),
R/o.Jangaon, Telangana State.

.. Petitioner

And

The State of Telangana,
Rep., by its Principal Secretary,
Higher Education Department,
TS Secretariat, Hyderabad & another.

.. Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.22397 OF 2018

ORDER :

Petitioner is working in the cadre of Office Superintendent in the office of District Intermediate Educational Office, Sanga Reddy. Though he was working in the same post earlier, he was retained in the same place on order to serve basis after the formation of new districts in October 2016. Consequent to lifting of ban on transfers notified vide G.O.Ms.No.61 dated 24.05.2018, petitioner applied for transfer to the head office at Hyderabad. By proceedings dated 23.06.2018 transfers are affected in the cadre of Office Superintendents. The request of petitioner is not considered, and he is retained in the same place. Hence, this writ petition.

2. Petitioner challenges the said proceedings and seeking direction to consider the request of petitioner for transfer as per G.O.Ms.No.61 or in the alternative direct the respondents to post the petitioner in any one of the existing vacancies in the head office in the cadre of Office Superintendent.

3. Heard learned counsel for the petitioner Sri J. Sudheer and Sri D.L.Pandu, learned Standing counsel for the 2nd respondent-Intermediate Board.

4. According to learned counsel for the petitioner there are 17 posts of Office Superintendents in the head office. Out of 17 posts 15 are filled up. All the 15 Office Superintendents are long standing and liable to be transferred. Except one, all others are retained in the same place and in the place of person who moved

out of the head office, another person from Siddipet is brought in. He would further submit that retention of long standing person in the head of the department is *ex-facie* illegal, contrary to the guidelines and not considering the request of the petitioner is arbitrary. He would further submit that though remaining 14 office superintendents are liable be disturbed, since there are two clear vacancies, atleast petitioner ought to have been considered in one of those two vacancies and not considering the petitioner is illegal and amounts to arbitrary exercise of power. According to learned counsel as per the orders in G.O.Ms.No.61 an employee who has completed five years of service is liable for compulsory transfer. However, the G.O., also enables an employee who has completed two years of service to request for transfer. As petitioner has completed two years of service including the period covered by order to serve basis, he has applied for transfer and therefore, he is entitled to consider his request for transfer.

5. In the counter affidavit filed on behalf of the Board of Intermediate Education, two reasons are assigned for not accepting the request of the petitioner for transfer.

6. Firstly, it was contended in paragraph No.3 of the counter that the transfer exercise was confined only to priority basis transfers i.e., transfer on medical and spousal grounds. As petitioner is not fitting into these two categories, his request is not considered; secondly it is averred that a charge memo was served on the petitioner on 07.04.2017 and further allegations are also received against petitioner and therefore, he cannot be transferred. In view of his conduct, his request for transfer is kept in abeyance.

7. According to learned counsel for the petitioner both these grounds are not valid and no such restriction is imposed in G.O.Ms.No.61 and the transfer exercise is undertaken only in terms of the guidelines formulated in G.O.Ms.No.61, therefore, the reasons assigned are not valid. He further submits that the charge memo dated 07.04.2017 was challenged in W.P.No.22045 of 2017 and this Court granted interim suspension of the said charge memo. Therefore, that charge memo cannot be the basis to deny transfer. He further submits that the District Intermediate Education Officer, Jangaon vide her letter dated 28.07.2017 addressed to the Commissioner, Intermediate Education, requested the Commissioner that the petitioner should not be continued in his office and that even without his presence in the office, the work can go on as there is sufficient strength available in the office. According to learned counsel even in the subsequent complaints, the complainants were requesting to shift the petitioner out of the present place of working. He would therefore, submit that this ground is also not valid for rejecting his request for transfer.

8. To test the stand of the respondents, vis-à-vis the transfer counseling exercise undertaken by the respondent-Board, the original record produced by learned Standing Counsel is seen. As seen from the original record, the transfer counseling exercise was undertaken by the Committee of three officers. The Committee has tabulated particulars of the Office Superintendents who have requested for transfer and who are liable for transfer. In the tabulated statement, against the petitioner, it is written that petitioner is working on order to serve basis. Except this

statement, there is nothing on record to show that denial of request of petitioner for transfer for the reasons mentioned in the counter affidavit. In other words, in the counter, the respondents are trying to justify their action of not accepting the request of petitioner for transfer which is not borne out of record. As held by the Hon'ble Supreme Court in ***"Mohinder Singh Gill & another Vs The Chief Election Commissioner, New Delhi and others"***¹, the decision of the authority must be supported by the reasons duly assigned in the decision itself, but cannot be supplemented in the form of an affidavit filed before the Court. As noted above in the deliberations of the Committee nothing is recorded except saying that petitioner is working on order to serve basis in a clear vacancy.

9. As clarified by the Government in G.O.Ms.No.61 even a person working on order to serve basis is entitled to request for transfer or computation of period towards total service rendered for the purpose of compulsory transfer. The Government order does not envisage retention of person working on order to serve basis. Thus, merely because petitioner is working on order to serve basis is not a ground for the Committee to ignore the request of the petitioner.

10. There is no explanation forthcoming in the counter affidavit the reasons for retention of several other office Superintendents working for long time and not accepting the request of the petitioner to post in the Head office.

11. It is also seen from the record that what is contended in the counter was not placed before the Committee and this issue was

¹ AIR 1978 SC 851

not even deliberated by the Committee. Even assuming that what is averred by the respondent-Board in the counter is true and that those are the reasons which persuaded the Committee not to accept the request of the petitioner, I am of the considered opinion that the two reasons are not valid to deny the request of petitioner for transfer. Restricting consideration of transfers only on medical and spousal grounds is contrary to the guidelines notified in G.O.Ms.No.61. Not considering the request on the ground of pending disciplinary proceedings is also not valid. Denial of transfer on this ground would be punitive in nature. More so, when the District Intermediate Educational Officer, Sanga Reddy and other employees were requesting for shifting the petitioner from the present place of work, I see no justification to retain petitioner in the same office.

12. As the two reasons were also not discussed by the Committee, it is apparent that the reasons now stated in the counter affidavit are invented to justify their decision of not accepting the request of petitioner, post facto in the form of an affidavit filed before this Court.

13. For all the aforesaid reasons the decision of the respondent-Board in not accepting the request of the petitioner for transfer is not made in bonafide exercise of power and amounts to arbitrary exercise of power and authority and therefore the same is declared as illegal.

14. However, as it is now stated that against the cadre strength of 17, there are two clear vacancies, without disturbing the incumbents, the Secretary, Board of Intermediate Education is

directed to transfer the petitioner to the Head office in the existing vacancies. The entire exercise shall be completed within a period of two (2) weeks from the date of receipt of copy of this order.

15. With the above direction, the Writ Petition is disposed of. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

7th August, 2018
Rds

