

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.22622 OF 2018

Date: 14.09.2018

Between:

M.Koteswara Rao, s/o.late M.Balaiah, Aged about 44 years,
Working as Senior Assistant, O/o Engineer-in-Chief
(Irrigation Wing), Jala Soudha, Errummanzil, Hyderabad,
Telangana State.

.....Petitioner

and

The State of Telangana, rep.by its Prl.Secretary to
Government, Irrigation & Command Area Development
Department, Secretariat, Hyderabad, T.S., and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioner is working as Senior Assistant in the Office of Engineer-in-Chief (Irrigation Wing). Petitioner claims to be the elected office bearer of Telangana Employees Association (Central Association). Petitioner is aggrieved by order dated 14.06.2018 where under he was transferred from the Office of Superintending Engineer, PMU and posted to Engineer-in-Chief (1)/Medium Unit, Hyderabad and in his place, 4th respondent was transferred and posted.

2. Heard learned counsel for petitioner Sri V.Ravichandran and learned Assistant Government Pleader for respondents 1 to 3.

3. According to learned counsel for petitioner, as petitioner is office bearer of Telangana Employees' Association, he cannot be transferred. As per the Government policy on retention of office bearers of Employees Association/Union, the Association vide their letter dated 14.06.2018 requested for retention of petitioner in the office of 2nd respondent. Contrary to the intimation given by the Association, impugned order was passed. He would further submit that there are several long standing Senior Assistants in the cadre, but they are not disturbed while disturbing the petitioner and the same amounts to arbitrary exercise of power and authority. He would further submit that total cadre strength of Senior Assistants is 40, whereas only 12 Senior Assistants are identified for transfer and there is no justification for adopting such procedure. It is also contrary to the policy notified by the Government vide G.O.Ms.No.61 Finance (HRM.I) Department, dated 24.05.2018. He

has also cited the names of persons, who were illegally retained though they have been working for a long time in the same seats.

4. According to learned Assistant Government Pleader, the Association, which petitioner claims to represent, is not recognized by the State Government. She would further submit that letter of intimation from the Association is received by the office of Engineer-in-Chief after the orders of transfers were made. Therefore, even assuming that the Association is recognized, by the time transfers were taken up, the information was not available requesting retention of petitioner. She would further submit that petitioner is moved only from one floor to another floor and therefore the Government order on retention of office bearers is not attracted. She would further submit that each office is taken as Unit for the purpose of 40% transfer ceiling limit vide G.O.Ms.No.61 and in the said manner, the transfers were taken up. As stated in paragraphs - 4 and 5 of counter-affidavit, there are several reasons for retention of some employees and, therefore, retention of some employees while transferring petitioner does not amount to arbitrary exercise of power and authority.

5. Consequent to lifting of ban on transfers, Government issued orders authorizing the competent authority to undertake transfer of employees. Government has laid down broad guidelines for effecting transfers notified vide G.O.Ms.No.61, dated 24.05.2018 while leaving it to the individual Departments to formulate specific guidelines/rules to undertake transfer exercise.

6. As per the respective contentions, relevant clause of G.O.Ms.No.61 is clause-II. Clause-II talks about the employees

who should be transferred. According to sub-clause (b) of Clause-II, no employee should be retained if he has already completed five years of service by 31.05.2018. One exception carved out in applying that condition is to an employee retiring within one year. Second and most important condition on which respective submissions are made is incorporated in clause II(c). While ordering compulsory transfer of employees, who have completed five years of service, this clause imposes restriction of effecting transfers to 40% in the cadre.

7. On bare reading of clause-II(c), the ceiling imposed is in the cadre. It is not in dispute that there are several offices in which posts of Senior Assistants are created which all form part of one cadre. Therefore, there is no justification to segregate the cadre into the respective offices where posts are located and not applying the ceiling limit of 40% in the cadre. Furthermore, in the facts of this case, ceiling limit of 40% has no serious impact as many offices are located within same complex and it is only moving from one desk to another desk and one floor to another floor. In the facts of this case, I see no justification in not effecting the transfers of Senior Assistants by taking the entire cadre as one and isolating each office as separate unit. From the narration of averments in the counter-affidavit also, it appears some excuses are invented not to disturb some persons. The basic idea of transferring employees is that no person should be allowed to work at a particular place for a long time as it would result in developing vested interests and employee must be exposed to various aspects of office work. It cannot be said that only one person is competent to work in a particular section and others are not competent.

Therefore, reasons assigned are not valid for retention of some employees while disturbing others.

8. Though Court notices above glaring irregularities in effecting transfers, fact to be noted is petitioner is moved from one floor to another floor. Therefore, he is not subjected to inconvenience and hardship. Further, after completion of transfer counselling exercise by fixing a time frame Government has now re-imposed ban on transfers and therefore, transfers cannot be effected now. Further, though petitioner made extensive allegations on the manner of undertaking exercise and he has also referred to some names by contending that they are not disturbed, the acceptance of submissions of learned counsel for petitioner would amount to directing the respondents to redo the entire exercise by taking the Engineer-in-Chief office as one unit and in that case, several other employees will have to be disturbed, whereas none of them are parties to the writ petition.

9. However, respondents are cautioned to be very careful in future while undertaking such exercise and also to ensure that no employee is retained for long time in a particular section or office. In the facts of this case, though Court is not inclined to grant relief as sought for, having regard to the irregularities noticed above, the Court imposes costs of 2000/- (Rupees two thousand only) on respondents 1 to 3 to be payable to Kerala Chief Minister's Distress Relief Fund. Writ Petition is accordingly disposed of. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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