

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.32513 OF 2018

Dated:17.09.2018

Between:

N. Yadagiri, S/o. Papaiah,
Aged about 42 years, School Assistant
(Social Studies), now working at M.P.U.P.
School, Medaram, Tadwai Mandal,
Jayashankar Bhoopalapally District
(Old Warangal District) and others

.. Petitioners

And

The Regional Joint Director of School
Education, Warangal, Warangal
District and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.32513 OF 2018

ORDER:

Heard learned counsel for the petitioners and learned Assistant Government Pleader for School Education. With the consent of both the learned counsel, the Writ Petition is disposed of at the stage of admission.

2. Petitioners are working as School Assistants in Social Studies, Physical Science, English, Mathematics, Telugu and Hindi disciplines. They were earlier working in plain area. In the transfer counselling exercise undertaken in the year 2009, they were transferred to places which fall within the agency area. Consequent to lifting of ban on transfers and as petitioners completed eight years of service, they were hoping that they would be compulsorily transferred from the agency area to plain area.

3. In Rule 5 (5) of the Telangana Teachers (Regulation of Transfers) Rules, 2018 (for short, 'the Rules, 2018'), a restriction is imposed on transfer from agency area to plain area. This Rule was under challenge in W.P.No.19214 of 2018 and batch. When the batch of cases were heard by the Division Bench of this Court, on behalf of the State, a representation was made by the learned Advocate General that they would consider the request of Teachers working in agency area for transfer to plain area notwithstanding the provision contained in Rule 5 (5) of the Rules, 2018 subject of course to others opting to agency area and not causing inconvenience to the students studying in agency area. In view of the said submission, the Division Bench did not enter into the

validity of Rule 5(5) of the Rules, 2018 and disposed of the batch of Writ Petitions granting liberty to undertake the exercise.

4. Grievance of the petitioners necessitating institution of this Writ Petition is in spite of giving undertaking before the Division Bench and the directions in the batch of Writ Petitions, petitioners were not brought to plain area, though, as per the Rules, 2018 formulated for transfers, they are entitled to go to the place of their choice. However, petitioners were transferred within the agency area and to a far of place. On the appeals preferred by the petitioners, the Director of School Education without considering the grounds urged in the appeals, by order dated 14.08.2018 simply forwarded to the Regional Joint Director directing him to pass orders. He has also indicated in a tabulated statement as to what decision has to be communicated to the concerned employees. Against petitioners, it was written that their appeals should be rejected.

5. Learned counsel for the petitioners submits that the decision of the Director of School Education is *ex facie* illegal and he should not have relegated to take a decision at the level of Regional Joint Director indicating what decision should be taken. The decision to transfer the petitioners within the agency area and not to bring them to plain area is *ex facie* illegal and contrary to the undertaking given before the Division Bench. He would submit that there are still vacancies in the plain area and without affecting anybody, the petitioners can be brought to plain area. He also pointed out that there are instances of people working in plain area being brought from agency area.

6. Learned Assistant Government Pleader for School Education sought to justify the order impugned by contending that the main portion of the order clearly stipulates as to what decision was made by the Director of School Education and after making a decision he only communicated to Regional Joint Director and therefore it is not illegal. He would submit that as Teachers working in agency area cannot be transferred to plain area, the request of petitioners was not considered.

7. In terms of the undertaking given before the Division Bench, petitioners are entitled to be considered for posting them in plain area. Such consideration has to be in accordance with the Rules, 2018. Petitioners are entitled to weightage and priority of posting as per the norms prescribed in the Rules, 2018. Admittedly, all petitioners have opted to be transferred to plain area. The only reason for not considering the petitioners to plain area, even though they are otherwise entitled, is on the ground that they were working in agency area. Further, the places where petitioners were working were filled up and they were moved to some other schools within the agency area. Thus, the primary apprehension expressed by the learned Additional Advocate General that there may not be replacement was also stood answered in this case and there is no justification made in not acceding to the request of the petitioners to bring them to plain areas, but to transfer them within the agency area.

8. Furthermore, the Director of School Education, being the appellate authority, is required to consider the appeals filed by the petitioners and take a decision by assigning due reasons in

support of the said decision. The Rules, 2018 do not envisage consideration of appeal by any subordinate authority. When the power to consider appeals is vested in the Director of School Education, he has to take a decision by assigning due reasons but cannot delegate power to take a decision to the Regional Joint Director and direct him to take a decision in a particular manner and the same is *ex facie* illegal. Further, rejection of the appeals of the petitioners by the Director of School Education in a tablated statement speaks of illegal exercise of power. Thus, the order *per se* is not valid and is liable to be set aside.

9. At this stage, the Court desired to know whether vacancies are available in plain area to accommodate the petitioners in those vacancies.

10. Learned counsel for the petitioners produced a list of places where vacancies are available in the plain area in all the disciplines to which petitioners belong. A copy of list is also forwarded to learned Assistant Government Pleader.

11. Having regard to the same, while setting aside the order of the Director of School Education, the Director of School Education is directed to examine the claims of the petitioners strictly in accordance with the principles laid down in the Rules, 2018 and consider their posting in the available vacancies without disturbing any other person.

12. Having regard to the peculiar facts of this case, the Court directs the respondents to consider the case of the petitioners to transfer them to plain area in the existing vacancies. It is open to

the respondents to post any other Teacher to the needy schools in the agency area. The entire exercise shall be completed within a period of four weeks from the date of receipt of a copy of the order.

13. Learned Assistant Government Pleader sought to contend that the vacancy position shown is with reference to the vacancies which arose after 31.05.2018, whereas as per the Rules, 2018 only the vacancies available as on 31.05.2018 were required to be considered.

14. This may be true in the normal circumstance. However, the present consequence is invited by the respondents by not complying with the undertaking given before the Division Bench and not considering the claims of the petitioners to post them to the plain area as per their entitlement when the transfer counselling exercise was undertaken by the Department. In the peculiar facts of this case, the Court directs the respondents to consider the petitioners to the vacancies which arose in the plain area after 31.05.2018.

15. The Writ Petition is accordingly allowed. Pending Miscellaneous Petitions shall stand closed.

P. NAVEEN RAO, J

Date:17.09.2018

Note:- Issue C.C. in one week.

(B/o)
KH