

THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NO.4401 OF 2019

ORDER

(Per Sri Justice Sanjay Kumar)

By Memo dated 17.11.2015, the Government of Telangana, through its Principal Secretary, Revenue (Excise-I) Department, informed the Commissioner of Prohibition and Excise, Telangana, Hyderabad, that the request of the petitioner herein, an Excise Constable, seeking inter-State transfer from Prakasam District to Ranga Reddy District on spousal grounds under para 5(2)(c) of the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (*for brevity*, 'the Presidential Order'), was not feasible for consideration. The petitioner assails the aforesaid Memo dated 17.11.2015 on the ground that it is contrary to the G.O.Rt.No.450, Revenue (Excise-I) Department, dated 17.04.2014 issued by the Government of the erstwhile combined State of Andhra Pradesh. He seeks a consequential direction to the authorities to forthwith transfer him from Prakasam District to Ranga Reddy District pursuant to the said G.O.

The petitioner entered service of the State as a Special Police Constable in the year 1995. He was deputed to work as an Excise Constable in Ranga Reddy District in the year 1996. His wife was working as a teacher in Ranga Reddy District at that point of time. He was absorbed in the Excise Department in 2009, along with nearly 2000 APSP constables who were similarly situated. After his absorption, the petitioner was allotted to Prakasam District, his native District, on the ground that the post of Excise Constable was a District Cadre Post. He was accordingly shifted to Prakasam District and worked there from 2009 onwards. His wife however continued to

work as a teacher in Ranga Reddy District as that post was also a District Cadre Post and was non-transferable to any other District.

As the Government was empowered under para 5(2)(c) of the Presidential Order to effect inter-district transfers on spousal grounds, the petitioner requested for such a transfer. Aggrieved by the inaction of the authorities in that regard, he filed O.A.No.5218 of 2013 before the Andhra Pradesh Administrative Tribunal. The said O.A. was allowed on 09.07.2013. Aggrieved thereby, the Commissioner of Prohibition and Excise of the then State of Andhra Pradesh approached the High Court by way of W.P.No.35132 of 2013 challenging the said order. The writ petition was disposed of, *vide* order dated 22.01.2014, directing the authorities to pass appropriate orders on the petitioner's representation within a time frame. After institution of contempt proceedings in relation to the aforesaid order, the Government of the erstwhile State of Andhra Pradesh issued G.O.Rt.No.450 dated 17.04.2014 according permission to the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, to effect the inter local cadre transfer of the petitioner from Prakasam District to Ranga Reddy District in one of the existing clear vacancies on spousal grounds under para 5(2)(c) of the Presidential Order subject to his taking the last rank, i.e., next to the last regular candidate in the cadre of the Prohibition and Excise Constable and subject to his forgoing his seniority in Prakasam District. The Commissioner of Prohibition and Excise, Andhra Pradesh, was requested to obtain an undertaking from the petitioner and issue proceedings accordingly.

However, no steps were taken to give effect to the above G.O. and in the meanwhile, the erstwhile State of Andhra Pradesh came to be bifurcated under the provisions of the Andhra Pradesh Reorganisation Act, 2014 (*for brevity*, 'the Act of 2014'), with effect from 02.06.2014. In consequence,

Ranga Reddy District now falls in the new State of Telangana while Prakasam District falls within the present State of Andhra Pradesh. By Memo dated 23.06.2015, the Government of the present State of Andhra Pradesh accorded its consent to the transfer of the petitioner from Prakasam District to Ranga Reddy District. Thereupon, the Commissioner of Prohibition and Excise, Telangana, addressed letter dated 25.08.2015 to the Principal Secretary to Government, Revenue (Excise) Department, Government of Telangana, to pass suitable orders *vis-à-vis* the Memo dated 23.06.2015 of the Government of the Andhra Pradesh. The Government of Telangana however rejected the transfer proposal on the ground that it was not feasible for consideration at this stage, *vide* the impugned Memo dated 17.11.2015.

Despite this case undergoing several adjournments, neither the State of Andhra Pradesh nor the State of Telangana has chosen to file counters. It may be noted that on 18.06.2018, this Court observed that as the matter related to transfer of the petitioner on spousal grounds, the respondents could not perennially delay filing of the counter and as a last chance, an opportunity was being given to them to file their counters within two weeks. Thereafter, the matter was listed twice, but the authorities did not choose to make use of the opportunity.

Sri A.Veerawamy, learned Special Government Pleader appearing for the present State of Andhra Pradesh and its Commissioner of Prohibition and Excise, would inform this Court that they have no objection to the transfer being given effect to so that the petitioner could be reunited with his wife in Ranga Reddy District.

The learned Government Pleader for Services-III, State of Telangana, would however assert before this Court that after bifurcation of the erstwhile combined State of Andhra Pradesh, the petitioner is not entitled to seek

implementation of the Government Order passed on 17.04.2014 without the consent of both the successor States and as the State of Telangana was not willing to accept the proposal, the petitioner is not entitled to any relief.

Having given our earnest consideration to this issue, we are not persuaded to agree. It is an admitted fact that G.O.Rt.No.450 dated 17.04.2014 was issued by the Government of the then combined State of Andhra Pradesh in exercise of executive power under Article 162 of the Constitution, according permission to the Commissioner of Prohibition and Excise of the combined State of Andhra Pradesh to effect the inter local cadre transfer of the petitioner on spousal grounds under para 5(2)(c) of the Presidential Order, subject to conditions. All that remained was to give effect to the said order by ministerial action. Unfortunately, before such steps could be taken, bifurcation of the combined State of Andhra Pradesh intervened resulting in formation of the two new States. The issue is whether the successor States are bound by the decision embodied in G.O.Rt.No.450 dated 17.04.2014.

Section 2(f) of the Act of 2014 defines 'law' to include any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of existing State of Andhra Pradesh. The appointed day as per the Act of 2014 is 02.06.2014. Therefore, the executive order in G.O.Rt.No.450 dated 17.04.2014 qualifies as 'law' in terms of the definition in Section 2(f) of the Act of 2014.

Sections 101 and 102 of the Act of 2014 deal with the power of successor States to adapt laws or construe them. Section 101 provides that for the purpose of facilitating the application of any law made before 02.06.2014 in relation to the successor States, the appropriate Government

may make such adaptations and modifications of the law as may be necessary or expedient, within a time frame. The Explanation clarifies that the appropriate Government would be the State Government in relation to any law other than a law pertaining to a matter enumerated in the Union List. Section 102 of the Act of 2014 provides that any Court, Tribunal or Authority, required or empowered to enforce a law made before the appointed day in either of the new States, may construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before such Court, Tribunal or Authority.

Section 101 of the Act of 2014 therefore makes it clear that in the event either of the successor States wanted to modify or cancel the executive decision embodied in G.O.Rt.No.450 dated 17.04.2014, they should have done so within the two-year time frame fixed in the provision. Admittedly, the State of Telangana did not choose to issue any further executive instructions canceling or modifying the decision embodied in G.O.Rt.No.450 dated 17.04.2014. Therefore, any authority before whom the said executive decision came up for enforcement, necessarily had to construe it in terms of Section 102 of the Act of 2014, without affecting the substance thereof. In consequence, it was not open to the Government of Telangana to baldly ignore the substance of the executive decision embodied in G.O.Rt.No.450 dated 17.04.2014 and dismiss the plea of the petitioner to implement the decision in the aforesaid G.O. by claiming that it was not feasible for consideration at this stage. By its very inaction in the context of the statutory scheme of Section 101 of the Act of 2014, the Government of Telangana committed itself to be bound by the executive decision of the Government of the combined State as set out in G.O.Rt.No.450 dated 17.04.2014. Such a decision, having been effected under para 5(2)(c) of the

Presidential order on spousal grounds, the Government of Telangana has no justifiable reason to ignore the same.

The writ petition is accordingly allowed setting aside the impugned Memo dated 17.11.2015 of the Government of Telangana, issued through its Principal Secretary, Revenue (Excise-I) Department, and directing the respondents to give effect to G.O.Rt.No.450 dated 17.04.2014 in true letter and spirit. This exercise shall be completed expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order, be it from whatever source.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

P.KESHAVA RAO, J

11th JULY, 2019

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