

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT APPEAL NO.1314 OF 2018

Date: 11.06.2019

Between:

The Secretary, Telangana State Board of Intermediate Education

...Appellant

and

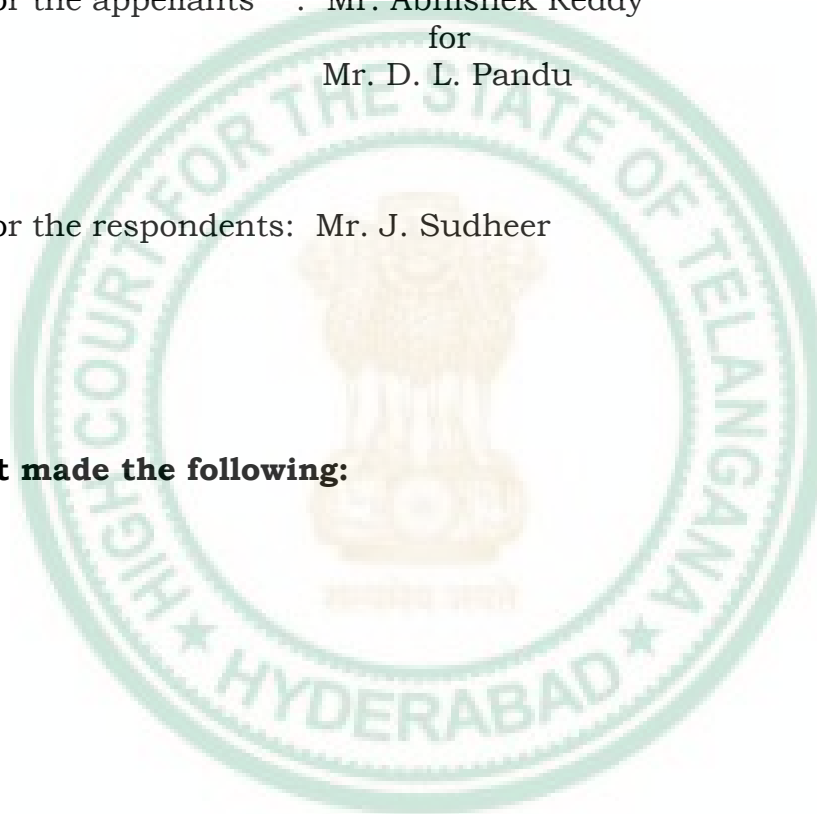
R. Satheesh and another

...Respondents

Counsel for the appellants : Mr. Abhishek Reddy
for
Mr. D. L. Pandu

Counsel for the respondents: Mr. J. Sudheer

The Court made the following:



JUDGMENT: (Per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)

The appellant, namely, the Secretary, Telangana State Board of Intermediate Education, has challenged the legality of the order dated 07.08.2018 passed by a learned Single Judge in W.P.No.22397 of 2018, whereby the learned Single Judge has directed him to transfer the respondent No.1, Mr. R. Satheesh, to the Head Office at Hyderabad against one of the two existing vacancies in the post of Superintendent.

Briefly, the facts of the case are that in the year 2008, the respondent No.1, Mr. R. Satheesh, was appointed as a Junior Assistant with the Telangana State Board of Intermediate Education. In 2011, he was promoted to the post of Senior Assistant. Subsequently, in August, 2016, he was promoted to the post of Superintendent. With the formation of the new State of Telangana and with its re-organisation of the Districts and Revenue Divisions, the officers were re-distributed in October, 2016. At the relevant time, the respondent No.1 was working as a Superintendent in Sangareddy, RIO office. With the formation of Sangareddy as a new District, the respondent No.1 was posted as a Superintendent in the Sangareddy DIO office, on the basis of "*order to serve*". Subsequently, the respondent No.1 was sent on deputation to Janagaon, where he continues to discharge his duties as a Superintendent.

Although prior to the year 2018, there was a ban on transfers in the State, by G.O.Ms.No.61 dated 24.05.2018 the said ban was lifted by the Government. According to the Schedule attached to the said G.O, the concerned authorities were expected to prepare and publish the incumbency particulars, clear vacancies and the list of employees to be compulsorily transferred. The authorities were also expected to entertain the options given by the employees. According to the said G.O, those

employees who had been working beyond a period of five years were to be considered for transfer. And even those employees, who have completed two years of service as on 31.05.2018 were to be considered for transfer, provided they were posted on “*order to serve*” basis. Since the respondent No.1 was interested in being transferred to the Head Office at Hyderabad, he filed an application on 01.06.2018 seeking his transfer from Janagaon to the Head Office at Hyderabad. However, as his application was declined, he filed a writ petition, namely W.P.No.22397 of 2018, before this Court. By the impugned order dated 07.08.2018, the learned Single Judge directed as mentioned hereinabove. Hence, this appeal before this Court.

Mr. Abhishek Reddy, the learned counsel for the appellant, has raised the following contentions before this Court:

Firstly, G.O.Ms.No.61 dated 24.05.2018, which contains a transfer policy, is not mandatory in nature. Therefore, merely because an option is given by the respondent No.1, the appellant is not duty bound to transfer the respondent No.1 to the particular post for which the option was given.

Secondly, the learned Single Judge is unjustified in directing the appellant to post the respondent No.1 to a particular post, in a particular city, and in a particular office. According to the learned counsel, freedom at the joints has to be given to the employer to decide the time and place of posting of an employee.

Thirdly, a large number of complaints have been filed against the respondent No.1. Therefore, the appellant is not inclined to post the respondent No.1 at the Head Office at Hyderabad. Hence, a clear-cut direction could not have been issued by the learned Single Judge. While giving a clear-cut direction, the learned Single Judge has usurped the power vested in the employer to post the employee, in accordance with

the exigencies of the administration. Hence, the impugned order deserves to be set aside by this Court.

On the other hand, Mr J. Sudheer, the learned counsel for the respondent No.1, has raised the following counter-contentions before this Court:

Firstly, according to the G.O.Ms.No.61 dated 24.05.2018, even those employees, who had served less than two years and who were on duty, were granted the right to submit their options to the appellant. Since the respondent No.1 was interested in being transferred to the Head Office at Hyderabad, he had given the said option to the appellant.

Secondly, the reasons given for rejecting the option given by the respondent No.1 are not germane. Therefore, the learned Single Judge is justified in interfering with the rejection of his option.

Thirdly, the learned Single Judge has noticed that there were, indeed, 17 posts of Superintendent prevailing at the Head Office at Hyderabad, out of which only 15 had been filled. Therefore, two vacancies were still existing. Hence, the learned Single Judge is justified in directing the appellant to post the respondent No.1 against one of the two vacancies existing at the Head Office. Therefore, the learned counsel has supported the impugned order.

Heard the learned counsel for the parties and perused the impugned order.

It is, indeed, trite to state that a transfer policy is merely a guideline, which is directory in nature, and not a mandatory one. It is also needless to state it is always the discretion of the employer to post an employee to the post where the services of employee can be used in the best interest of the administration. Therefore, the freedom in the joints has to be given to the employer. The said power cannot be usurped by the judiciary. Hence, in catena of cases, the Hon'ble Supreme

Court has opined that it is not for the writ Court to direct that a person should be posted to a particular post on transfer.

A bare perusal of the G.O.Ms.No.61 dated 24.05.2018 does indicate that options were called for and could be submitted by the employee. However, merely because an option has been called for and has been submitted, it would not tie the hands and feet of the employer. For, there is no legal obligation or duty upon the employer to post the employee strictly in accordance with the option given by the employee. The employer would still be at liberty to decide the place of posting of an employee. Therefore, merely because the respondent No.1 had expressed his option for Head Office at Hyderabad, and merely because two vacancies did exist at the Head Office, even then the learned Single Judge is not justified in directing the appellant to perform post the respondent No.1 at the Head Office.

For the reasons stated above, the order dated 07.08.2018 is set aside and the writ appeal is hereby allowed.

However, considering the fact that the respondent No.1 had given cogent reasons for his transfer to Hyderabad, considering the fact that he has mentioned that his mother, who is an aged person, requires medical treatment, this Court directs the appellant to sympathetically consider the option of the respondent No.1 and to post him, if possible, in Hyderabad or its surrounding areas.

There shall be no order as to costs. The miscellaneous petitions pending, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

High Court for the State of Telangana**THE HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN****AND****THE HON'BLE DR. JUSTICE SHAMEEM AKTHER****WRIT APPEAL NO.1314 OF 2018****(Per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)****Date: 11.06.2019****JSU**