

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WP.No.428 of 2020

ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

1. This is an unfortunate case, where the petitioner, who is employed as an Accounts Officer in the Erstwhile Andhra Pradesh State Road Transport Corporation (APSRTC) along with her husband, is allocated, post-bifurcation of the erstwhile composite State of Andhra Pradesh into the new State of Telangana and Residuary State of Andhra Pradesh, to the State of Telangana, and posted in Telangana State Road Transport Corporation(TSRTC), while her husband is allocated to the Residuary State of Andhra Pradesh and posted to the APSRTC.

2. Petitioner got selected and appointed as an Accounts Officer on 27.12.2010 in the erstwhile APSRTC. She got married on 13.02.2013 to one Madhava Trinadh, who was also working in the same Corporation as Depot Manager of Gajuwaka Depot, Visakhapatnam. Thereafter, the petitioner was transferred to Visakhapatnam on 24.02.2013 and she was working there as on the date of promulgation of A.P. Reorganization Act, 2014 (for short 'the Act').

3. Guidelines were framed under Section 77 of the Act on 29.10.2014 for allocation of State Cadre employees under the Act and the same were notified by the 2nd respondent vide G.O.Ms.No.312 dt.30.10.2014.

4. The 4th respondent in exercise of power under Section 82 of the Act framed draft guidelines for provisional allocation of State Cadre employees in respect of Corporations through letter dt.02.01.2015.

5. Clause(l) thereof deals with spouse and states as under:

“Spouses in State cadre in Government or in State Government Institutions, local bodies and those who are deemed allotted as per the Act, shall as far as practicable, be allotted to the same State, after considering options made by them and their local candidature, Spouses who are local candidates of a State shall be allocated to that State. Spouses who belong to different States may be allocated after considering their options.”

6. The respondents 2 and 3 issued a Circular Memo No.19184/SRI/A1/2014-7 dt.25.02.2015 framing the order of priority of allocation of State Cadre employees. Para 3(A)(iv) deals with the spouse category cases falling under paras 18(k) & (l) of the guidelines dt.29.10.2014 framed by the 1st respondent. Para(a) thereof deals with both spouses in the State Cadre which reads as under:

“Both spouses in State Cadre:

- Only such spouse cases where the option of both spouses is for the same state shall be considered.
- Allocation of both spouses to be considered for the opted state only if either or both of them is/are local to the opted state.
- If both of them are non-local to the state to which they have opted, both of them will be allotted to the State to which they are local.”

7. Petitioner gave her option on 22.04.2015 to be allotted to the APSRTC-4th respondent since her husband had opted to be allocated to the 4th respondent, since he was a local candidate of West Godavari District in A.P.

8. The petitioner though a native and local candidate of Telangana, having been educated in Hyderabad, had thus opted to work with her husband, who was working in the APSRTC at that point of time.

9. The 4th respondent-Corporation on 17.04.2015 provisionally allocated petitioner's husband to the 4th respondent-Corporation while allotting the petitioner to the 5th respondent-Corporation i.e., TSRTC.

10. The order of allocation of the petitioner specifically states that the provisional allotment is based on "local status" of the employees(*educational certificates concerned*).

11. The petitioner immediately represented to the 4th respondent on 04.06.2015 stating that she is entitled to be allocated to the 4th respondent-Corporation under spouse category in terms of the existent guidelines, but the 4th respondent did not respond to the same.

12. However, the allocation of the petitioner and her husband was subject to final allocation to be made by the 4th respondent.

13. The 4th respondent passed a Resolution No.2/2017 dt.24.08.2017 framing guidelines for permanent allocation and para (k) thereof deals with spouse category, which states:

“(k) The cases of the State Cadre employees, whose spouses are working in State Cadre in the Government or in the State Government Institutions, local bodies and whose spouses are deemed to be allocated as per the Act, shall as far as possible, be considered for allocation to the opted state. While considering the cases of such employees, the following criteria shall be adopted:

- (i) Allocation of the employee to the opted state has to be considered only if the employee or spouse are local to the opted state.
- (ii) If the employee and his/her spouse are non-local to the state to which he/she has opted, such option cannot be considered.”

14. The 4th respondent issued another Notification PD-10/2017 dt.20.10.2017 issuing final orders for permanent allocation of State Cadre employees, who were divided into certain categories mentioned in appendices A to G of the said orders but the petitioner and her spouse did not fall under those categories.

15. The said notification also dealt with persons like the petitioner who did not fall in those categories and stated *“for all other remaining categories, the provisional allocation orders stand good as final and permanent allocation between both the states”*.

16. Thus, the allocation of the petitioner to the 5th respondent-Corporation became a deemed permanent allocation.

17. Petitioner contends that she has a daughter aged 3 years and it has become difficult for her to raise the child in the absence

of her spouse and that she is entitled to be allocated to the 4th respondent-Corporation and cannot be denied such allocation on the basis of alleged 'local status', when the guidelines issued under Section 82 specifically requires spouses to be posted together. She also places reliance on the orders dt.27.02.2017 in WP.No.23775 of 2016 and order dt.12.10.2018 in WP.No.s 14006 and 14062 of 2018.

18. Counter affidavits have been filed by both the respondents 4 and 5 taking a similar stand i.e., there were 44 sanctioned posts of Accounts Officers; that as part of distribution of sanctioned posts, 27 posts were allotted to APSRTC and 17 posts were allotted to TSRTC; that as on the date of provisional allotment only 30 Accounts Officers were working against the total sanctioned posts, and out of them 22 Accounts Officers were allotted to APSRTC, while 8 Accounts Officers were allotted to TSRTC based on their local status.

19. It is not denied that the petitioner and her husband both gave option seeking allotment to 4th respondent-Corporation on spouse ground, but it is contended that there were subsequent representations made by the petitioner and her spouse seeking change of their option.

20. In our considered opinion, the basis of the requests of both the petitioner and her husband is that they should be posted together and not separated, and the respondents cannot proceed on the basis of the subsequent representations, having ignored

the requests of the petitioner and her spouse to post both of them together in the 4th respondent-Corporation in 2015 itself.

21. No reason is assigned in both the counter affidavits why the respondents chose to ignore the draft guidelines for provisional allocation of State Cadre employees of APSRTC issued on 02.01.2015 which themselves contemplated posting of spouses together in clause (l) thereof or the Circular Memo dt.25.02.2015 issued by both State Governments also dealing with spouse cases requiring spouses to be posted together in the opted state, if one of them is a local to a State and opted to that State.

22. Petitioner's husband was local to the State of Andhra Pradesh and therefore the petitioner was also entitled to be posted in that State as per the guidelines of the State Governments also, which were made applicable to employees of Corporations (*as mentioned in clause 3(A)(iv)(c) of the Circular dt.25.02.2015*).

23. If there is shortage of Accounts Officers in TSRTC post-bifurcation, nothing prevented the TSRTC to make appointments of Accounts Officers in the available vacancies, instead of compelling the petitioner to stay away from her husband and discharge her duties as Accounts Officer in the TSRTC.

24. This Court had occasion to consider similar issue in W.P.No.23775 of 2016 which was decided on 27.02.2017. The husband of the petitioner therein was employed in a Central Government undertaking at Visakhapatnam in BHEL, while the petitioner was working as a Principal in a Government School and

she was allotted to Telangana, while her husband continued to work in Visakhapatnam.

25. A Division Bench of this Court considered the guidelines for final allocation of State Cadre employees under A.P. Re-organization Act, 2014 approved by the Government of India which were communicated under G.O.Ms.No.312 dt.30.10.2014 and opined:

“ The basic principle underlying these guidelines is therefore to protect and keep together employed spouses who would otherwise be separated owing to the allocation undertaken pursuant to the bifurcation of the erstwhile State of Andhra Pradesh. Keeping the spirit and intent underlying this principle, the guidelines should be implemented.

.....

Clause (1) states in no uncertain terms that allocation shall, as far as practicable, be made so as to keep the spouses together. The import and intent of bifurcation of the erstwhile State of Andhra Pradesh is not to break up marriages. The authorities therefore have to conceive, formulate and implement the guidelines keeping this in mind. Any shortfall in the guidelines in this regard cannot be taken literally to mean that spouses, whose cases do not fall within the four corners of the instructions as set out therein, are to be left out in the cold and must suffer marital separation.”

26. It held that when there are vacancies available in Visakhapatnam in the Cadre of Principal, the rejection of the petitioner's request for allocation to the State of A.P. cannot be sustained.

27. This judgment was followed by another Division Bench of this Court on 12.10.2018 in W.P.No.s 14006 and 14062 of 2018.

28. In our considered opinion, separating spouses on the basis of 'local status' contrary to the guidelines framed by the Government of India, the State Governments and the guidelines framed by the erstwhile APSRTC which enabled that they are posted together as far as possible, cannot be countenanced and it causes serious hardship to the petitioner and her family.

29. Accordingly, the Writ Petition is allowed; the action of the 4th respondent in allocating the petitioner to the Telangana State Road Transport Corporation(5th respondent) instead of Andhra Pradesh State Road Transport Corporation(4th respondent) is declared as arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India, and also violative of Guidelines for provisional and final allocation of the State Cadre employees dt.02.01.2015 & 24.08.2015 and Circular Memo dt.25.02.2015. The 4th respondent is directed to allocate the petitioner to the APSRTC with all consequential benefits and the 5th respondent is directed to relieve the petitioner forthwith to enable the petitioner to join the 4th respondent-Organization. No order as to costs.

30. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

28th January, 2020.
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