

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1156 OF 2020

DATED : 22.01.2020

Between :

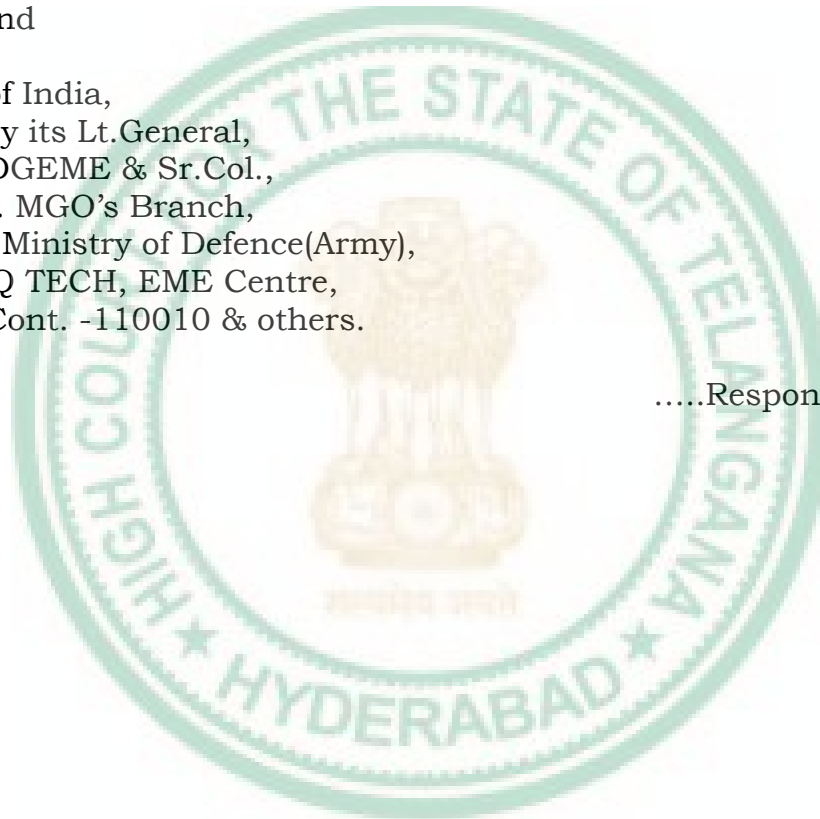
Sub.Ramniwas Gurjar,
JC772533L, SUB(TECHSA)
S/o.Banai Singh, Aged about 46 yrs,
MCEME, Tirumalgiry, Near Lal Bazar,
Secunderabad 500 015,
Telangana State

.....Petitioner

And

Govt. of India,
Rep., by its Lt.General,
VSM, DGEME & Sr.Col.,
Comdt. MGO's Branch,
IHQ of Ministry of Defence(Army),
O/o.HQ TECH, EME Centre,
Delhi Cont. -110010 & others.

.....Respondents



The Court made the following:

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ORDER:

Heard learned counsel for the petitioner, and Ms.B.Niveditha, learned counsel representing Sri N.Rajeshwar Rao, learned Assistant Solicitor General for the respondents.

2. Petitioner, while working in Udampur, was transferred and posted to EME Center, Secunderabad, by order dated 24.10.2017. This posting was for 36 months. Petitioner claims to have joined in EME Center, Secunderabad, on 10.11.2017, and therefore, he is entitled to continue in Secunderabad area for 36 months from November, 2017. While so, by proceedings dated 03.01.2020, impugned herein, petitioner is now transferred to Nagaland, directing him to report duty by 25.01.2020.

3. The said transfer is challenged on two grounds. Firstly, as per the order of transfer dated 24.10.2017, the tenure of petitioner would expire only on 10.11.2020 and before the expiry of tenure, petitioner could not have been transferred again. Secondly, petitioner is blessed with three children. The second son is prosecuting his Xth Class and the third son is in Vth class and both of them are in the midst of the academic year. If petitioner is now transferred, grave prejudice would be caused disturbing their academic schedule and the same would be irreparable. It is further contended that the third son is undergoing treatment in the Army Hospital and he was discharged only recently. Therefore, he has to take treatment

continuously in the Army Hospital and if petitioner is now transferred, the treatment to be administered to the third son would adversely affect leading to health complications.

4. Learned counsel for the petitioner submits that the wife of petitioner died in the year 2016 and he has to take care of his children. Therefore, transfer at this stage, would cause grave prejudice to the petitioner.

5. It is not in dispute that petitioner is working in Indian Army and is liable for transfer to various parts of the country in the exigency of service. Therefore, even if tenure is prescribed while transferring the petitioner in the year 2017 as 36 months, it does not preclude the competent authority from reducing the tenure and transferring the petitioner, wherever his services are required. In this context it is also appropriate to note that the order of transfer dated 24.10.2017, prescribes the tenure as 36 months. It also mentions that the tenure can be decreased or increased in the interest of Army. Therefore, petitioner cannot harp on the first limb of the order fixing 36 months and tenure can not be reduced.

6. Learned counsel for the petitioner also sought to place reliance on the order passed on 24.01.2019, wherein, petitioner was again posted to an adjacent unit and there also the tenure is mentioned as 21 months. The original transfer to Secunderabad prescribes 36 months tenure and therefore, when an internal arrangement is made shifting the petitioner to another unit within the Secunderabad area, the remaining tenure available to him was mentioned as 21 months. Merely

because 21 months tenure is mentioned in the order dated 24.01.2019, would not mean that the competent authority cannot transfer the petitioner before completion of 36 months tenure. Therefore, the contention on this aspect is not valid and is liable to be rejected.

7. However, there is merit in the contention of learned counsel for the petitioner that his two children are prosecuting Xth and Vth classes respectively and they are in middle of the academic year 2019-2020. Disturbing the petitioner's sons just before completion of academic session, would definitely cause hardship and disturb the academic career of those two children, more particularly, the 2nd son who has to appear in Xth class Public Examination. Therefore, while upholding the decision of the respondents transferring the petitioner, they are directed to retain the petitioner till the completion of academic session and to relieve him immediately thereafter, without further notice.

8. Accordingly, the Writ Petition is disposed of. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

22nd January, 2020

Note :

Issue c.c. by 24.01.2020

B/o.
Rds