

**HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

MAIN CASE No.

Writ Petition No.3692 of 2023

PROCEEDING SHEET

Sl. No.	DATE	ORDER	OFFICE NOTE
01.	14.02.2023	<u>HCJ & NTRJ</u> Heard Mr.P.V.Krishnaiah, learned counsel for the petitioners. Challenge made in this petition, filed under Article 226 of the Constitution of India, is constitutionality of Telangana Teachers (Regulation of Transfers) Rules, 2023. The said Rules are made applicable to Head Masters / Head Mistresses – Gr.II (Gazetted), School Assistants / SGTs and other equivalent categories working in Government / Zilla Parishad / MPP Schools in the State of Telangana. Objective of the aforesaid Rules is to regulate the transfer of above categories of Teachers working in Government Schools, ZPP and MPP schools in the State of Telangana. Learned counsel for the petitioner has drawn the attention of the Court to the Notification issued vide G.O.Ms.No.05, School Education (Ser.II) Department, dated	

		25.01.2023 and submits that there is inherent jurisdictional error in issuance of the above Rules. While on the one hand, the Rules have been framed in exercise of the powers conferred by Sections 78 and 99 of Telangana Education Act, 1982 but on the other hand the source of power is shown as under <i>proviso</i> to Article 309 of the Constitution of India, though the <i>proviso</i> is not mentioned. It is submitted that the power to frame Rules under <i>proviso</i> to Article 309 of the Constitution is exercised when there is a statutory vacuum. When a statute is in place and provides for a rule making provision, recourse to the <i>proviso</i> to Article 309 is not necessary. That apart, the fundamental challenge is that Section 99 of the Telangana Education Act, 1982 makes it a mandatory requirement that every rule made under the aforesaid Act shall immediately, after it is issued or made, be laid before each House of the State Legislature if it is in session and if it is not in session in the session immediately following. It is contended that the above Rules have not been placed before each House of the State Legislature. Mr.A.Sanjeev Kumar, learned Special Government Pleader, however, submits that it is not necessary for the Rules to have been placed before either House of the Legislature.	
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		<i>Prima facie</i>, we find substance in the arguments advanced by learned counsel for the petitioners. Issue notice. Mr.A.Sanjeev Kumar, learned Special Government Pleader waives notice for respondent Nos.1 to 4. Petitioners to serve respondent Nos.5 and 6 personally and thereafter file proof of service. When this Court indicated its inclination to restrain the respondents from taking further steps on the basis of the Telangana Teachers (Regulation of Transfers) Rules, 2023, Mr.A.Sanjeev Kumar, learned Special Government Pleader submits, on instructions, that State will not take any steps on the basis of the aforesaid Rules till 20.02.2023. Be that as it may, list on 14.03.2023. Till then, respondents are restrained from taking further steps on the basis of the aforesaid Rules. H CJ NTRJ mrn	
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