
(2021) 08 TEL CK 0028
In the Telangana High Court
Case No : Writ Petition No. 9425 Of 2019

Ch.Ramani

APPELLANT

Vs

Government Of India

RESPONDENT

Date of Decision : 12-08-2021

Acts Referred:

Citation : (2021) 08 TEL CK 0028

Hon'ble Judges : M.S.Ramachandra Rao, J;T. Vinod Kumar, J

Bench : Division Bench

Advocate : M V Pratap Reddy

Final Decision : Allowed

Judgement

1. Heard Sri V. Srinivas, learned Senior Counsel appearing for Sri M.V. Pratap, counsel for petitioner, Sri G. Praveen Kumar, additional counsel for

1st respondent, Sri P. Govind Reddy, learned Special Government Pleader for respondent nos.2, 4 and 5, and the learned Government Pleader for

Services-III for respondent nos.3 and 6.

2. The petitioner was appointed as Court Master in the composite State of Andhra Pradesh by way of Direct Recruitment on 17.07.2012 and was

working as Court Master in the Office of the then Andhra Pradesh Administrative Tribunal, at Hyderabad.

3. Under the Andhra Pradesh Re-organization Act, 2014, the composite State of Andhra Pradesh was bifurcated into the new State of Telangana and

the residuary State of Andhra Pradesh w.e.f. 2. 6.2014.

4. The then Andhra Pradesh Administrative Tribunal at Hyderabad was mentioned at Item No.149 of the X Schedule to the said Act.

5. Subsequent to the formation of the State of Telangana, the State of Telangana

had requested the Government of India to discontinue the functioning of the Andhra Pradesh Administrative Tribunal in regard to its jurisdiction relating to the said State and so the Government issued a notification on 15.09.2016 vide G.S.R.No.888E notifying that the Andhra Pradesh Administrative Tribunal shall cease to have jurisdiction over the State of Telangana. Consequently, the said Andhra Pradesh Administrative Tribunal became functional only with regard to the residuary State of Andhra Pradesh.

6. Later, options were called from all the employees to opt to either the new State of Telangana or the residuary State of Andhra Pradesh.

7. The petitioner herein opted to the State of Telangana contending that she is a native of the said State, and that her husband was working as Software Professional in Bank of America, at Hyderabad.

8. However, she was allocated tentatively to the State of Andhra Pradesh vide Notification No.19326-A/SR/2016 dt.06.09.2017.

9. The petitioner gave a representation against the said tentative allocation under para no.20 of the Guidelines framed for such allocation.

10. An Order No.(1)/2017 dt.04.10.2017 was passed permanently allocating the petitioner to the State of Andhra Pradesh.

11. Assailing the same, the present Writ Petition is filed.

The stand of the respondents

12. The respondent nos.2, 4 and 5 filed a counter-affidavit stating that in the cadre of Court Master, the Cadre strength is 20 out of which 12 posts

were allotted to Andhra Pradesh and 8 posts were allotted to Telangana; that petitioner opted for Telangana on the ground that she belongs to the

local cadre of Telangana and she stood at Serial No.19 in the Seniority List; that out of 20 employees in the Cadre, 8 of her seniors opted for

Telangana against the 8 posts allotted to Telangana; there were no posts in Telangana for her allocation; and so she was allotted to Andhra Pradesh

as per Clause 18(f) of the Guidelines.

13. The said Clause states:

“The allocation shall be done in the order of Seniority as on 01.06.2014. Those who have opted, who are local candidates relatable to the State to

which they have opted, shall, in order of their seniority, be considered for

allocation first provided allocable posts in that cadre remain, then others who have opted to the State may be allocated in order of seniority. If still posts remain allocation will be made in the reverse order of seniority.â??

14. It is stated that allocation of petitioner to the State of Andhra Pradesh was done strictly in accordance with the Guidelines framed under the Act and the Circulars issued thereunder.

15. Similar view is expressed by respondent nos.3 and 6 as well.

16. Even the Union of India has filed a counter-affidavit contending that petitionerâ??s request for allocation to the State of Telangana was rejected

since she was Junior in the Cadre and excess people had opted for the State of Telangana. It is also stated that the Andhra Pradesh Administrative

Tribunal was listed in the X Schedule to the Act and the modalities of distributing the personnel between the two States was determined by the

Tribunal itself, and that the Central Government has no role in the matter.

The Consideration by the Court

17. We have noted the contentions of all the parties.

18. Guidelines had been framed by the Union of India which are contained in G.O.Ms.No.312 General Administration (S.R.) Department

dt.30.10.2014 issued by the Government of Andhra Pradesh for the purpose of allocation of employees between both States.

19. Guideline No.18(I) states:

â??Spouses in State Cadre in Government or any State Government Institutions, Local Bodies and those who are deemed allocated 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 consideration their options.â??

20. We have already noticed Clause (f) of the Guidelines.

21. We may point out that at Serial No.18 of the Seniority List in the cadre of Court Masters of the Andhra Pradesh Administrative Tribunal, there is

a person by name Poranki Rajyalakshmi at Serial No.18 mentioned in Order No. (1)/2017 dt.04.10.2017. The husband of the said individual was

employed in a A.P. Model School and had been allotted to the State of Telangana after bifurcation.

When she filed the Writ Petition in this Court, a Division Bench of this Court vide Order dt.06.02.2019 passed in Writ Petition No.42628 of 2017 held

that respondents cannot take a hyper-technical view of the matter while considering Guidelines for preferential allocation in cases of spouses since the

object is to ensure that spouses should be together. The Division Bench further held that the plea of the respondents that the husband of petitioner

therein was not a Government servant and so she cannot be granted allocation to the State where her husband is employed, cannot be countenanced

since the Model Schools were also run and funded by the State Government. The said order had been implemented and Smt. Poranki Rajyalakshmi

was allocated to the State of Telangana in view of the order passed in the said Writ Petition.

22. This is not disputed by any of the respondents.

23. In Dr. S. Shobha Rani vs. State Reorganization Department 2017 (3) A.L.D. 207 (D.B.), the petitioner filed O.A. on the file of the Andhra

Pradesh Administrative Tribunal, at Hyderabad. While admitting the said O.A. an interim order was granted on 24.06.2016 directing that her final

allocation to the State of Telangana would be subject to final result in the O.A. This was challenged before the High Court for the State of Telangana

and the State of Andhra Pradesh.

The petitioner therein contended that she was appointed as a Lecturer at Kurnool Zone "IV" on 20.07.1992 and was thereafter transferred to

Visakhapatnam in Zone "I" on her request as her husband was working at BHEL, Visakhapatnam, and though she opted for the State of Andhra

Pradesh she was allocated to the State of Telangana.

A Division Bench of this Court considered the guidelines for allocation including Clauses 18(f) and 18(l) and observed that the basic principle

underlying the guidelines was 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; that keeping the spirit and intent underlying this principle, Guidelines should be

implemented; merely because Clause (l) does not speak of employees working in Central Public Sector undertakings, it does not mean that spouses of

such employees who are working in the State Cadre are not to be accommodated where they are working; and that Clause (l) states in no uncertain

terms allocation shall as far as practicable be made so as to keep the spouses together. It declared that the import and intent of bifurcation of the

erstwhile State of Andhra Pradesh is not to break up marriages; that authorities have to conceive, formulate and implement the guidelines keeping this

in mind; and 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.

24. Thus, the rigid interpretation of Clause 18(l) that it will apply only with regard to spouses in State Cadre in Government or any State Government

institutions or local bodies has been done away with and a more liberal interpretation has been adopted by the above decisions extending the benefit of

preferential allocation to employees whose spouses do not fall in the said categories with a view to keep the spouses together irrespective of the place

where the spouses are employed.

In this view of the matter, the facts that the spouse of the petitioner is in private employment in Bank of America at Hyderabad cannot be a ground to

deny to the petitioner the benefit of allocation on spouse grounds since the import and intent of bifurcation of the erstwhile State of Andhra Pradesh is

not to break up marriages; and 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.

25. The issue again came up for consideration in Writ Petition No.37396 of 2017 and 18559 of 2020 before a Bench of which one of us (MSRJ) was a

Member, which were decided on 22.01.2021.

The Division Bench held that Clause 18(l) is in the nature of an exception to Clause 18(f), and Clause 18(f) cannot be given overriding effect on the

other clauses containing in the guidelines.

It held that if Clause 18(l) is given such overriding effect, allocation would only be made according to the options of the seniors in a particular category

if they are local candidates relatable to the State to which they have opted; such seniors in a particular category would get the State of their choice if

they are local candidates relatable to the said State, and would fill up all allocable posts available in that particular State; and consequently, the juniors

in that category will not be allotted to the State of their choice even if they are local candidates relatable to the said State and even if they claim

preferential allotment invoking Clauses 18 (j), (k), (l) and (m) because in every case the "principle of seniority" would override these clauses.

The Bench further pointed out that even in Clause 18(k) (which provides that spouse of an All India Service Officer who belongs to a State Cadre or

is an employee of the State Government Institutions shall be allocated, where so desired by the spouse, to the State to which the All India Service

Officer is allocated) and clause 18(m) (which deals with cases of widowed female employees, handicapped persons with more than 60% disability,

and employees / their spouses or children facing serious medical hardship, to be allocated on priority on the basis of option) would fall in the same

category as Clauses 18(j) (which states that Last grade and Light vehicle drivers shall be allocated on the basis of option or local candidature, as far

as possible) and Clause 18(l).

The Bench declared that Clause 18(f) cannot be given overriding effect over Clauses 18(j), (k), (l) and (m) of the guidelines, and declared that the said

clauses of the guidelines are to be treated as exceptions to clause 18(f) because otherwise they would be practically rendered otiose and defeat the

very purpose for which they were included in the guidelines, i.e., to allow vulnerable sections of employees such as spouses of Government

employees, last Grade employees, widowed female employees, handicapped persons and persons facing serious medical hardship to be given priority

in allocation to the State of their choice. It was also explained that the term "as far as practicable" should be interpreted as "as far as

possible" meaning that unless impossible, the benefit of the said provision of Law cannot be denied.

It was also held that lack of vacant allocable posts cannot be a reason to deny the benefit of Clauses 18(j) and 18(l) when such allocable posts are all

filled up applying Clause 18(f), and that benefit under Clauses 18(j) and 18(l) cannot be routinely denied quoting Clause 18(f) when it is possible and

not impossible / impracticable to give benefit of the said Clauses to junior employees by treating Clauses 18(j) and 18(l) as exceptions to Clause 18(f).

The Bench also quoted the decision in P. Damodar vs. T.S. Industrial Development Corporation 2020 (4) A.L.D. 388 (D.B.) reiterating the principle

that guidelines framed by the Government of India are intended 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.

26. Thus lack of vacancies in the cadre of Court master in the State of Telangana cannot be a ground to deny allocation to petitioner by blindly relying

on Clause 18(f) and ignoring the principle that the State bifurcation is not intended to result in marital separation of spouses.

27. We may also point out that the employees who were allocated to the State of Telangana based on Seniority were initially deputed to work in the

High Court for the combined State of Andhra Pradesh and the State of Telangana and subsequently their services were placed at the disposal of the

General Administration Department (SPF) of the State of Telangana issued vide G.O.Rt.No.664 GA (SPF.MC) Department dt.02.03.2019 declaring

the services of 71 employees so allotted from Andhra Pradesh Administrative Tribunal as surplus staff for the purpose of re-deploying them into

various departments as per Rules and Guidelines. We are given to understand that these persons were redeployed in other State Government

Departments.

28. Therefore, the logic that there are no vacant posts of Court Masters (from the A.P. Administrative Tribunal) allotted to the State of Telangana no

longer survives, because it is not the case of State of Telangana that posts such as Stenographer, which are akin to a Court Master, are not at all

vacant in any Government Department in the State of Telangana.

29. For the above said reasons the Writ Petition is allowed. The Order No. (1)/2017 dt.04.10.2017 issued by the 1st respondent is set aside as regards

the petitioner; the petitioner is allocated to the State of Telangana and respondent nos.2, 4 and 5 are directed to relieve the petitioner within four (04)

weeks from the date of receipt of copy of this order.

30. The petitioner shall report to the 6th respondent within one (01) week of relieve by 5th respondent; and the respondent nos.3 and 6 shall then

deploy petitioner's services in any of the Government Department as was done in the case of the other employees of the erstwhile Andhra

Pradesh Administrative Tribunal who were allocated to the State of Telangana, within four (04) weeks of petitioner reporting to the 6th respondent.

31. Accordingly, the Writ Petition is allowed as above. No order as to costs.

32. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.