
(2003) 07 AP CK 0063

In the Andhra Pradesh High Court

Case No : WA No. 897 of 2003 at Batch

T. Satyanarayana and Others

APPELLANT

Vs

A.P. Residential Educational Institutions Society and Others

RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 5 ALD 137 : (2003) 4 ALT 676

Hon'ble Judges : P.S. Narayana, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Kasa Jaganmohan Reddy, D.V. Sitaramamurthy, Nuty Ram Mohan Rao and B. Nageswara Rao, for the Appellant; Mula Vijaya Bhaskar, G. Chandraiah and Government Pleader for Education, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—This batch of writ appeals may be disposed of by a common judgment, since they are directed against the common judgment rendered by a learned Single Judge of this Court in W.P. No. 3762 of 2003 and Batch, dated 29-4-2003. The subject-matter that arises for consideration is one and the same in this batch of writ appeals.

2. That the appellants herein have filed the said writ petitions assailing the orders of their transfer to the Andhra Pradesh Tribal Welfare Residential Educational Institutions Society (APTWREIS) from the Andhra Pradesh Residential Educational Institutions Society (APREIS). The learned Judge, dismissed all the writ petitions and accordingly upheld the orders of transfer. Hence these writ appeals by the writ petitioners.

3. The facts have been succinctly noticed by the learned Single Judge and we do not propose to re-state them once again except the facts which are relevant for the purpose of disposal of these writ appeals.

4. The Government of Andhra Pradesh with a laudable object of imparting quality

education to the students coming from various segments of rural society including the Backward Classes, Scheduled Castes and Scheduled Tribes organised and constituted the A.P. Residential Educational Institutions Society (APREIS). The said Society is registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli. The main object of the Society for which it was organised is for establishing the residential institutions in the State of Andhra Pradesh and to encourage the rural talented and meritorious children. The Society has its own bye-laws and rules. The Society in furtherance of achieving its objectives established the residential schools in various parts of the State of Andhra Pradesh including in tribal areas. By the year 1998, 147 institutions including 13 junior colleges were established by the said Society.

5. That the Government of Andhra Pradesh having reviewed the status of literacy among the Scheduled Tribes in the State found that the literacy rate among the Scheduled Tribes in the State is only 17% as per 1991 census, which is one of the lowest in the country. The literacy rate among the tribals is very poor in comparison to the general literacy rate of about 45% in the State as a whole. It is painful to notice that the female literacy rate among the Scheduled Tribes is less than 5% in more than seven districts of the State. The Government recognised the importance of literacy and education for the tribals to enable them to join the main stream of national life and need for an intensive and appropriate strategy for achieving quick results. The Government felt that there is an urgent need to devise an appropriate strategy for the benefit of the Scheduled Tribes with special emphasis on the education of Scheduled Tribe girl children.

6. Accordingly, the Government decided to establish an exclusive society with the required autonomy and functional flexibility to take care of enrolment and retention of tribal children and improvement in the quality of education imparted to them. All the residential/ashram institutions being managed by the Tribal Welfare, Education (including APREIS) and Labour and Employment Departments for the benefit of tribals stood transferred to the management and control of the newly formed society along with budget allocations made in the capital and revenue heads. The Society is made responsible for the efficient management and running of the educational institutions entrusted to it from time to time. That is how the Andhra Pradesh Tribal Welfare Residential Educational Institutions Society came into existence in accordance with the policy decision taken by the Government in G.O. Ms. No. 51, dated 8-6-1998. APREI Society stood accordingly bifurcated.

7. It may be noted that out of 147 institutions already established by APREIS, 48 schools situated in tribal areas and 4 Junior Colleges were transferred to be under the management of APTWREI Society on 1-6-1999. As on that date 1402 staff members were allotted to the newly formed society from the existing staff of undivided society.

8. There is no dispute whatsoever that both the societies, viz., APREIS and

APTWREIS, were organised, formed and brought into existence by the Government of Andhra Pradesh pursuant to its policy decision to impart quality education to the children coming from rural areas with particular emphasis of providing quality education to the children of deprived sections of the society. It is the State Government, which provides and makes available the requisite funds to both the societies. The societies are completely manned by the personnel of the State Government. They are the extended arms of the State Government. That only with a view to provide functional autonomy, the Government thought it fit to register the bodies under the Societies Registration Act. It is the Government, which exercises complete supervision and control over both the societies. The Minister, in-charge of Education is the Chairman of the Board of Governors; Secretary for Education is the Vice-Chairman; Secretary to Government, Finance Department, Director of Higher Education, Director of School Education, etc., are their members.

9. In a meeting held on 10-4-2001 in the Chambers of the Vice-Chairman of APREIS in which various teachers' associations have also participated, it was resolved to allot the junior employees to the APTWREIS on permanent basis though they have opted to be in APREI Society wherever there are no vacancies to accommodate them in APREIS. It is also resolved to complete the process of bifurcation and transfer of employees between APREIS and APTWREIS by 30-5-2001 so as to facilitate the employees to join in their respective stations by the re-opening day of schools after summer vacation. So far as the Scheduled Castes and Scheduled Tribes backlog vacancies is concerned, it was resolved to share the backlog vacancies cadre-wise on pro-rata basis between APREIS and APTWREIS.

10. The said decision has become final. On the basis of the options exercised by the employees as well as identifying junior most teachers in the respective cadres, as many as 1402 teaching and non-teaching staff were allotted to APTWREIS.

11. It may be noticed that the Trained Graduate Teachers (TGTs) are appointed in the society to teach the Classes V, VI and VII, whereas Post Graduate Teachers (PGTs) are appointed to teach Classes VIII, DC and X. The requirement of staff in APTWREI Society is as follows:

Sl. No	Category	SC/ST backlog	No. of posts allotted	No. of persons allotted
1.	P.G. Teachers	17	456	208
2.	T.G. Teachers	30	721	262
47		1,177	470	

12. The total number of persons working in un-bifurcated society is as follows:

Sl. No	Category	SC/ST backlog	No. of posts allotted	No. of persons allotted
1.	P.G. Teachers	26	1,192	827

2. T.G. Teachers 37 1,449 932

63 2,641 1,759

13. On 14-2-2003, the Chief Secretary to Government has convened a meeting with the Secretary, Tribal Welfare Department, the Member Secretary, APTWREI Society, the Secretary to Government, School Education and the Secretary, APREI Society and others for resolving the issue of bifurcation and allotment of staff between the said two societies. It was decided that the Secretary, APREI Society should relieve the 20 teaching staff immediately if they are not yet relieved so far and see that they must be relieved from their respective institutions immediately for joining in APTWREI Society. It was further decided that out of 64 employees still continuing in the APREI Society, 31 teachers who are working against the posts of PGTs also should be relieved immediately from their respective institutions so as to enable them to report to the Member-Secretary, APTWREI Society. The total teaching staff to be relieved by the APREI Society was fixed at $20 + 31 = 51$.

14. Such a decision has been taken in view of the fact that out of the teachers so transferred to the APTWREI Society, 31 teachers (appellants-writ petitioners) of the cadre of Trained Graduate Teachers (TGTs) were allotted to work against the vacancies of Post Graduate Teachers (PGTs) in the institutions which continued to be with the second respondent-APREI Society vide the proceedings dated 9-5-2001 of the Secretary of the said Society. The third respondent-APTWREI Society felt shortage of teaching staff. That is how after the protracted correspondence between the two societies and the authorities concerned appropriate decision has been taken on 14-2-2003 at the level of the Chief Secretary to Government of Andhra Pradesh.

15. That pursuance of the decisions and directions of the Chief Secretary dated 14-2-2003, the Secretary to Government, Education (Prog.I) Department, issued necessary instructions in Memo No. 28/Prog.I/ A1/2003, dated 18-2-2003 to both the societies to take immediate necessary action in terms of the decision taken on 14-2-2003. The Secretary, APREI Society has been directed to relieve 20 teaching staff immediately if they are not yet relieved so far and see that they must be relieved from their respective institutions immediately. Out of 64 employees still continuing in the APREI Society, 31 teachers who are working against the posts of PGTs also should be relieved immediately from their respective institutions so as to enable them to report to the Member Secretary, APTWREI Society. Correspondingly, the PGTs in Sanskrit who were allotted to APTWREI Society should be relieved by the Member Secretary, APTWREI Society so as to enable them to report before the Secretary, APREI Society as there is no provision for Sanskrit subject in Tribal Welfare Schools. That is how the Secretary, APREI Society (R), Hyderabad issued the impugned proceedings dated 25-2-2003 to each of the appellants-writ petitioners allotting them to APTWREI Society as per the resolutions made in the meeting held on 14-2-2003 in the Chambers of the Chief Secretary. The said orders are impugned in the writ

petitions filed by the appellants herein. The learned Judge found no merit in the writ petitions and accordingly dismissed the said writ petitions.

16. In these writ appeals, Sarvasri Nooty Rama Mohan Rao, D. V. Sitaramamurthy and Kasa Jaganmohan Reddy, learned Counsel for the appellants, contended that the appellants are employed by the second respondent-society and their services cannot be transferred or allotted to the third respondent-society without their consent. The view taken by the learned Judge, according to them, rejecting their contention is erroneous. It was also argued that the appellants were posted against the vacancies of PGTs and the only condition imposed at the time of such posting was that they may be shifted as and when regular incumbents are appointed and inasmuch as the regular incumbents are not yet appointed the appellants cannot be shifted from their respective posts.

17. The learned Standing Counsel appearing on behalf of the respective societies submitted that there is no transfer of the appellants-writ petitioners from one society to the other society in the strict sense. Both the societies function under the direct control and supervision of the State Government. The appellants have no vested right to continue in any particular society. The impugned proceedings are in the nature of posting the teaching staff and utilising their services in accordance with the exigencies of the situation.

18. We have given our careful consideration to the rival submissions made during the course of hearing of this batch of writ appeals.

19. We have already noticed that the decision taken on 10-4-2001, in which the representatives of the appellants herein have also participated, resolving to allot the junior employees to the APTWREI Society on permanent basis in spite of their option to continue in APREI Society has become final. There is no dispute whatsoever with regard to such of those who have opted to be in APTWREI Society, The appellants herein cannot be permitted to turn round and question the very decision inter alia contending as if their service conditions are altered to their disadvantage. The impugned proceeding is only a consequential one. The respondents-societies are entitled to utilise the manpower in an objective manner in order to achieve the object of providing quality education to the children coming from rural areas including the tribal areas and such decisions cannot be challenged by the appellants herein in whatsoever manner. The question as to in which society the appellants may have to be continued has attained finality as early as on 10-4-2001 wherein appropriate decision as regards the modalities for allotment of teaching and non-teaching staff into both the societies has been taken in the presence of the representatives of the appellants who did not raise any objection whatsoever in that regard.

20. But the question that falls for consideration is as to whether the proceedings dated 9-5-2001, whereunder it was decided to accommodate the appellants herein in APREI Society against the vacant posts of PGTs, confer any indefeasible

right for their continuance in APREI Society forever?

21. As has been rightly observed by the learned Single Judge, it is the Secretary of the second respondent society (APREI Society) who is to be held responsible for creating this avoidable situation. In spite of the earlier binding decisions taken at appropriate level, the Secretary of the second respondent-society thought it fit to consider the representations of the appellants herein and decided for himself to accommodate them in Mathematics, Hindi and Science subjects as against the vacant posts of PGTs as per the seniority. There is no dispute whatsoever that all the appellants herein were earlier allotted to APTWREI Society based on their seniority. They may have exercised their option to remain in APREI Society, but the same is of no consequence since an appropriate decision has already been taken to allot them to APTWREI Society, which remained unimpeached. These appellants have no vested right to continue in the vacant posts of PGTs in Mathematics, Hindi and Science subjects. They are the Trained Graduate Teachers (TGTs) in Mathematics, Hindi and Science subjects. The mistake deliberately or otherwise committed by the Secretary of the second respondent-society does not itself confer any right whatsoever upon the appellants herein to continue in APREI Society in the vacant posts of PGTs. The appellants herein were not entitled for such allotment into APREI Society as on the day when they were so "allotted" by the second respondent-society without any authority of law. Their retention, if any, at the most is attributable to ad hoc and thoughtless decision on the part of the second respondent-society. Such actions, in our considered opinion, do not confer any enforceable right upon the appellants herein. The unwarranted action on the part of the second respondent-society cannot form the basis for our interference in the matter. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot give effect to such unwarranted action and issue directions, which may ultimately result in perpetuating the illegality. Such directions result in incalculable mischief to the public interest. At the most, the proceedings dated 9-5-2001 whereunder the appellants herein were retained may be characterised as a stopgap arrangement and purely temporary and the same does not vest in the appellants any enforceable right. The appellants herein cannot have any legitimate grievance inasmuch as by the impugned action none of their legal rights are violated.

22. We are not impressed by the submission made by the learned Counsel for the appellants that the transfer of the appellants herein from one society to another society without their concurrence is bad in law. We have noticed the submission only to reject it. There is nothing on record suggesting that any alteration of conditions of service is detrimental to the interest of the appellants. The conditions of service are not varied to their disadvantage. Some of the teaching and non-teaching staff working in the then existing society i.e., APREI Society opted to join the services of APTWREI Society. In view of the exigencies of the situation, it was resolved to allot the junior employees working in the APREI Society to APTWREI Society on permanent basis though they may be

opted to continue in APREI Society and the said decision remained unimpeached.

23. It is explained in the counter-affidavit that if the appellants are allowed to stay in APREI Society, it would be a burden to the exchequer and a lot of public money has to be paid by way of wages though there is insufficient workload. Even if the needs of 17 schools, which were established subsequent to the bifurcation of the society, are taken into consideration, the appellants herein are excess to the required staff. In such a situation, this Court would not exercise its jurisdiction under Article 226 of the Constitution of India and direct the respondents to retain the appellants-writ petitioners in APREI Society and pay them the wages though there is no sufficient workload for them. That apart, this Court cannot issue directions compelling the respondents to continue the appellants herein who are TGTs in the posts meant for the PGTs. The appellants do not possess the requisite qualification to continue forever in the posts meant for PGTs.

24. The decision in General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, , upon which reliance has been placed by the learned Counsel for the appellants in support of the submission that one autonomous body cannot transfer its employees to another autonomous body even within the same State in no manner supports the case of the appellants. In the said decision, it was noticed that the respondent therein was appointed as a Sub-Charge, Cantonment General Hospital, Lucknow, by the Cantonment Board by the appointment letter dated April 23, 1969. He was confirmed in that post on December 1, 1969 by an order issued by the Cantonment Board. The conditions of service of the employees of the Cantonment Board, which is a statutory body, are governed by the provisions of the Rules. At the relevant time of the appointment of the respondent therein, his services were not transferable as per the provisions of the Rules then prevailing. Thereafter the rules were amended declaring that the service of a servant shall be transferable from one post in one Board to another post in another Board subject to certain conditions. After the rule was so amended the respondent therein under order dated October 27, 1986 has been transferred from Cantonment General Hospital, Lucknow to the Cantonment General Hospital, Varanasi. The constitutional validity of the rule and the transfer order has been challenged.

25. It is under those circumstances, the Supreme Court observed:

".....the transfer of an employee from one Cantonment Board to another would mean the termination of appointment of the employee in the Cantonment Board from which he is transferred and a fresh appointment in the Board where he is so transferredIn any event, one autonomous body cannot transfer its employee to another autonomous body even within the same State, unless the services of the employees of these two bodies are under a centralised or a State level service."

26. We fail to appreciate as to how the said judgment supports the case of the

appellants and is applicable to the facts on hand. There is no transfer of the appellants herein as such from one autonomous body to another autonomous body. All the appellants herein together with the substantial number of teaching and non-teaching staff were appointed into the service of APREI Society. When they were so appointed the APTWREI Society was not in existence. On account of the policy decision of the Government so taken with a laudable object of providing quality education to the children in the tribal areas, the existing APREI Society has been bifurcated into two societies for the sake of functional autonomy. On account of such bifurcation, it has become just and necessary to distribute the available human resources with the APREI Society and its rational utilisation leading to allotment of some employees to the newly carved society. But for such utilisation and allotment, many of the employees would have become surplus and that may have resulted in drastic consequences. The decision to distribute the available manpower and the allotment of some to the newly carved society in no manner affected any of the guaranteed rights of the appellants. The decision is not only rational but also just and equitable and subserves common good.

27. The appellants are resisting to leave their present place of working in the plains without any justification whatsoever. Their attempts not to join the schools in tribal areas cannot be countenanced. It is not as if the undivided APREI Society could not have posted the appellants to work in the schools situated in tribal areas.

28. Suffice it to hold that the impugned order, in no manner, infringed any legal or guaranteed fundamental rights. Their service conditions are not varied in any manner whatsoever to their disadvantage.

29. For the aforesaid reasons, we do not find any merit in this batch of writ appeals. We are in complete agreement with the view taken by the learned Judge. The judgment under appeal does not require any modification or correction in our hands.

30. The writ appeals fail and shall accordingly stand dismissed. No order as to costs.