

(2003) 04 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3762 of 2003 and Batch

T. Satyanarayana

APPELLANT

Vs

A.P. Residential Educational Institutions Society and Others

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Citation : (2004) 1 ALD 19 : (2003) 5 ALD 137 : (2003) 4 ALD 52 : (2003) 5 ALT 47

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Kasa Tagan Mohan Reddy, G. Dasaratha Rami Reddy, D.V. Sitharam Murthy, Nooty Rama Mohana Rao, B. Nageswara Rao, K. Sarvabhooma Rao, V.V. Narasimha Rao, Vijaya Bhaskar Moola and G. Chandraiah and Government Pleader for Education, SC for APR EIS, for the Appellant;

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—In this batch of writ petitions, the transfer of the respective petitioners to the A.P. Tribal Welfare Residential Education Institution Society is challenged. The factual and legal aspects involved in this batch of writ petitions are one and the same. Hence, they are disposed of through a common judgment.

Briefly stated, the relevant facts are as under:--

2. In the year 1975, the Government of Andhra Pradesh constituted the A.P. Residential Educational Institutions Society, under the A.P. Public Societies Registration Act, with an object of establishing residential educational institutions in various parts of the State, with special emphasis on rural and tribal areas. By the year 1998, it has established 147 residential educational institutions, including 13 Junior Colleges.

3. With a view to concentrate on quality education among the tribal people, the Government had decided to form a separate society to establish and manage

residential educational institutions, exclusively in tribal areas and for the welfare of the tribal people. It is in this context that the A.P. Tribal Welfare Residential Educational Institutional Society came to be formed and started functioning with effect from 1-6-1999. For the sake of convenience, A.P. Residential Educational Institutions Society shall be referred to as the 2nd respondent and A.P. Tribal Welfare Residential Educational Institutional Society, as the 3rd respondent.

4. Out of the institutions that were established by the 2nd respondent, about 60 institutions were brought under the hold and control of the 3rd respondent. The 3rd respondent has also framed Rules for its employees. Since the formation of the 3rd respondent resulted in bifurcation of educational institutions, transfer of corresponding number of teachers had to be undertaken.

5. At a meeting held on 10-4-2001 by the concerned authorities, it was decided to invite options from the employees working in all the 147 institutions, particularly, from the teaching staff, to be transferred to the 3rd respondent. It was also decided that if adequate number of teachers as are needed to handle the institutions under the control of the 3rd respondent do not opt, transfers be effected of the junior most employees in the respective cadres..

6. On the basis of the options exercised by the employees as well as by picking up the junior most teachers in the respective cadres, as many as 1402 staff members were allotted to the 3rd respondent. Out of the teachers so transferred, 31 teachers of the cadre of Trained Graduate Teachers (TGTs), submitted representations stating that since there are several vacancies in the posts of Post-Graduate Teachers (PGTs) in the 2nd respondent, they may be continued against such vacancies. Their request was acceded to. Through the proceedings dated 9-5-2001 of the Secretary of the 2nd respondent, the said 31 teachers were allotted to work against the vacancies of the PGTs in the institutions, which continued to be with the 2nd respondent.

7. The 3rd respondent felt shortage of the teaching staff. Therefore, correspondence ensued, to get such of the teachers, who were allotted/ transferred to it, but are still working in the institutions of the 2nd respondent, relieved and be made available to it. It was in this context that the Secretary of the 2nd respondent issued proceedings dated 25-2-2003 relieving the said teachers, so that they can report to duty to the 3rd respondent: The petitioners are some of the TGTs so allotted and transferred to the 3rd respondent. They challenge the proceedings dated 25-2-2003 in this batch of writ petitions.

8. The contention of the petitioners as advanced by Sri Nuty Ram Mohan Rao, Sri D.V. Seetharam Murthy, Sri G. Dasaratharami Reddy and Sri Kasa Jaganmohan Reddy, learned Counsel for the petitioners, is that the petitioners are employed by the 2nd respondent and their services cannot be transferred or allotted to the 3rd respondent, without their consent. They also submit that though the societies invited options from the employees for the purpose of transferring them to the 3rd respondent, they did not pursue the same with proper vigour and

seriousness and this has resulted in even withdrawal of the options by those who gave it earlier. It is argued that the petitioners were posted against the vacancies of the PGTs and the only condition imposed at the time of such posting was that they will be shifted as and when the regular incumbents are appointed. Inasmuch as the regular incumbents are yet to be appointed, the petitioners cannot be shifted from their respective posts. They have also made certain subsidiary submissions.

9. Sri Moola Vijay Bhaskar, learned Standing Counsel for 2nd respondent and Sri G. Chandraiah, learned Standing Counsel for 3rd respondent, submit that there is no transfer of employees in strict sense, involved in the entire exercise. According to them, the 3rd respondent was brought into existence, for the purpose of managing the institutions exclusively meant for tribal students and the allocation of the teachers from the 2nd respondent to the 3rd respondent is based on options or seniority, as the case may be. They contend that the posting of the petitioners against the vacancies of the PGTs in the institutions of the 2nd respondent was only a temporary measure.

10. Till the year 1999, the 2nd respondent alone was entrusted with the power and obligation to establish the residential educational institutions in the State of Andhra Pradesh, for the benefit of the BC, SC, ST as well as general categories, particularly, in rural areas. With a view to provide an exclusive agency to manage the institutions for the benefit of tribal students, the 3rd respondent was constituted, with effect from 1-6-1999. As observed earlier, some of the institutions, which were established by the 2nd respondent, were brought under the control of the 3rd respondent. Once the institutions were transferred, corresponding number of employees were also required to be transferred or allotted, as is generally resorted to. In the circumstances, the two Societies have invited options from the teachers, who hitherto worked under the 2nd respondent, for the purpose of bringing them under the control of the 3rd respondent. It was further decided that in case the required number of teachers vis-a-vis the vacancies in the institutions, brought under the control of the 3rd respondent do not opt, candidates would be chosen from the bottom of the seniority list, in the respective categories of teachers. The allotments were made through proceedings dated 21-4-2001. It does not appear that the allotments so made were challenged in any Court of Law. Almost all the employees so allotted, including some of the petitioners have reported to their duties in the institutions under the control of the 3rd respondent.

11. This Court is compelled to observe that if at all there is any one who can be held responsible for this litigation and uncertainty in the matter of allotment, it is none other than the 2nd respondent. At a time when the allotment was about to be crystallised and the respective employees were to settle down in the places of posting, proceedings dated 9-5-2001 were issued, posting as many as 31 TGTs - 15 in the subject of Mathematics, 12 in Science and 4 in Hindi (all of whom were allotted to the 3rd respondent) against the vacancies of PGTs in the institutions

of the 2nd respondent. While issuing these proceedings, they did not state as to what should happen to the allotment made through proceedings dated 21-4-2001 or as to what the basis is for such retention. Their postings were not even treated as on deputation. Once the said teachers stood allotted to the 3rd respondent, it was just understandable as to what competence did the Vice-Chairman of the 2nd respondent had to deal with the teachers so allotted. It is rather curious that the only condition that they imposed was that such teachers would be shifted to their original TGT posts at the time of regular employment, obviously meaning, of the incumbents against the PGTs vacancies. Applications were invited for transfer, for the purpose of counselling to be sent by fax by next day. The whole exercise indicates either lack of transparency or lack of concern for the effective functioning of the institutions.

12. Such a step taken by the 2nd respondent, however, does not confer any right on the petitioners. A situation nearer to the present one was dealt with in W.P. No. 12517 of 1991. There, it was a case of posting of PGTs and TGTs against the vacancies of Junior Lecturers. After discussing the matter at length, this Court observed as under:

"The illegal/unwarranted action must be corrected, if it can be done according to law -Indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law."

The decision in that Writ Petition was rendered on 11-11-1999. The 2nd respondent does not appear to have become cautious, despite the observation of the Court. So far as the rights of the persons so posted are concerned, this Court observed that such illegal and unwarranted posting do not confer any rights on the persons so posted, nor does it enable the Court to compel the respondents to commit such mistakes.

13. The order dated 25-2-2003 impugned, in this batch of writ petitions is nothing but the consequence of the initial order of allotment/transfer dated 21-4-2001. The impugned order does not by itself bring about allotment of the teachers. After referring to the steps preceding the allotment, the impugned order reads as under:

".....Accordingly, Sri/Smt..... was allotted to 3rd respondent for want of vacancy in 2nd respondent. On the request of the individual, it was considered to continue in the society against the post of PG Teachers as per the orders of the Vice-Chairman.

.....The matter was also discussed in the meeting held on 14-2-2003 in the chambers of the Chief Secretary with the officials of both the Societies and it was resolved to relieve the staff who were retained in 2nd respondent, either against the post of P.G.Teacher or continuing on exercising re-option to 2nd respondent."

It is, thus, evident that the petitioners stood transferred or allotted to the 3rd respondent through proceedings dated 21-4-2001. Their posting against PGT

vacancies in the 2nd respondent was not in supercession of the allotment in the said proceedings. Therefore, no exception can be taken to the impugned order, which did nothing more than giving effect to the original order of allotment/transfer. Therefore, this Court does not find any illegality or infirmity in the said proceedings.

14. The contentions raised by the petitioners touching on the principles relating to transfer of employees from one organisation to another could have become relevant had the petitioners chosen to challenge the order of transfer. Their retention in the 2nd respondent was at their request. The order dated 9-5-2001, as observed earlier, does not indicate that the earlier allotments or transfers were superseded or cancelled. In fact, by the time the proceedings dated 9-5-2001 came to be issued, some of the petitioners have joined the 3rd respondent also. The judgments relied upon by the learned Counsel for the petitioners, do not apply to the facts of these cases.

15. Inasmuch the proceedings dated 9-5-2001 are totally unwarranted and were issued at the instance of the Vice-Chairman, without there being any basis, the same cannot confer any rights on the petitioners. The record before this Court does not disclose the basis on which the Vice-Chairman had directed retention of the petitioners and the other teachers, against the vacancies of PGTs. Posting against a vacancy, that too, of a higher cadre, does not confer any right on the petitioners.

16. This Court, at one stage, felt that the respondents should be required to follow certain norms as regards allotments of the teachers of various categories and subjects to the 3rd respondent. Such aspects were to include the number of teachers to be allotted to the 3rd respondent, taking into account the total number of vacancies in both the respective institutions and the number of persons working as on the date of allotment, subject-wise seniority, finality of options, etc. However, since it has emerged that the allotment were made much before the order of posting of the petitioners against the vacancies of PGTs, this Court does not intend to undertake such an exercise. If any of the petitioners feel aggrieved by the allotment or transfer, it shall always be open to them to canvass the correctness or otherwise of such transfer in appropriate proceedings. As of now, the impugned proceedings cannot be found fault with. Once the petitioners were allotted, they are under obligation to join the 3rd respondent. Any challenge, should be only after joining the new places of posting. Otherwise, the institutions would suffer.

17. Under these circumstances, this Court does not find any merit in the writ petitions and the same are accordingly dismissed. Dismissal of the writ petitions shall, however, be without prejudice to the rights of the petitioners to work out their remedies, in case their allotment or transfer is contrary to the principles of law.

18. This Court directed maintenance of status quo when the writ petitions were

taken up for admission. It is complained that despite the same, they were not permitted to work in their earlier places of posting. Having regard to the facts and circumstances of the cases, it is directed that the petitioners shall be deemed to have been in service and on duty till today. No costs.