



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA
WRIT PETITION NO: 22140 OF 2021

Between:

1. Nelavala John SuKumar S/o. Deva Sahayam,
Indian, Christian, Aged About 48 Years,
Lecturer in Economics,
C/o. SRR and CVR Government Degree College(Autonomous),
Vijayawada, Krishna District,
Andhra Pradesh.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh Represented by it's Principle Secretary,
Higher Education Department, Secretariat Buildings, Velagapudi,
Amaravathi, Guntur District.
2. The Commissioner, O/o. Collegiate Education, ANR Towers 1st Floor,
Prasadampadu,
Vijayawada,
Andhra Pradesh 521108.
3. The Regional Joint Director, O/o.Collegiate Education, Rajhmundry.
4. The Academic Guidance Officer, O/o.Commissioner, Collegiate
Education, ANR Towers 1st Floor,
Prasadampadu,
Vijayawada,
Andhra Pradesh 521108.
5. The Principal, SRR and CVR Government Degree College, (Autonomous)
Vijayawada, Krishna District,
Andhra Pradesh.
6. The Principal, Government Degree College, (Autonomous) Jangareddi
Gudem, West Godavari District, Andhra Pradesh.
7. J. Vijay Babu, Lecturer in Economics,
Government Degree College, (Autonomous)
Jangareddi Gudem,
West Godavari District,
Andhra Pradesh.

...RESPONDENTS

Counsel for the Petitioner(s): DR D VENKATA RAMANA REDDY

Counsel for the Respondents: GP FOR SERVICES III

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

WRIT PETITION No.22140 OF 2021

Between:

Nelavala John Sukumar, S/o.Deva Sahayam,
Indian, Christian, Aged about 48 years,
Lecturer in Economics,
C/o.SRR & CVR Government Degree College(Autonomous),
Vijayawada, Krishna District,
Andhra Pradesh.

.... Petitioner

Versus

The State of Andhra Pradesh,
Represented by it's Principle Secretary,
Higher Education Department, Secretariat Buildings,
Velagapudi, Amaravathi, Guntur District & others.

.... Respondents

DATE OF ORDER PRONOUNCED: 27-12-2021

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. Yes/No
3. Whether Their ladyship/Lordship wish
to see the fair copy of the Judgment? Yes/No

NAINALA JAYASURYA, J



*THE HON'BLE SRI JUSTICE NINALA JAYASURYA

+ WRIT PETITION No.22140 of 2021

%Date : 27.12.2021

Nelavala John Sukumar - - - Petitioner

and

\$ The State of Andhra Pradesh,
Represented by it's Principle Secretary, and others
- - - Respondents

! Counsel for the Petitioner : Dr. D.Venkata Ramana Reddy

^ Counsel for Respondents : Assistant Government Pleader
for Services-III

< **GIST** : --

> **HEAD NOTE** : --

? **Cases referred** : --



HONOURABLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION No. 22140 of 2021

ORDER:-

It is a case of the petitioner, who, under the guise of transfer policy of the Government, is deprived of his choice of place of posting and thereby denied the medical facilities to his mentally retarded child.

2. Heard Dr.D.Venkata Ramana Reddy, learned counsel for the petitioner and learned Assistant Government Pleader for Services-III.

3. The petitioner is a Lecturer in Economics. Initially, he was posted at Government Degree College, Tiruvuru, Krishna District, on 28.06.2008. He was transferred to SRR & CVR Government Degree College (Autonomous), Vijayawada, Krishna District, on 13.06.2011. By virtue of the impugned proceedings dated 22.09.2021, he has been transferred from the said College to the Government Degree College (Autonomous), Jangareddy Gudem, compelling the petitioner to invoke the jurisdiction of this Court, in the facts and circumstances stated hereunder:

The petitioner was blessed with a male child on 20.05.2011 i.e., just one month before his posting at Vijayawada, pursuant to the proceedings dated 13.06.2011. The baby boy was admitted into Care Hospital, Hyderabad and Ballon Coarcto Plasty was done by the Department of Pediatric Cardiology on 15.07.2011. In the



subsequent tests conducted by Sweekaar Multi Speciality Rehabilitation Centre, Secunderabad on 12.12.2012 it was diagnosed that the baby boy was having "Developmental Delay with Sensory, Motor & Speech Problems" and Speech Therapy, Physiotherapy, Sensory Integration Therapy etc., were advised. The assessment by National Institute of Mentally Handicapped, an Institute of Department of Empowerment of Persons with Disabilities and Ministry for Social Justice and Empowerment, of the petitioner's son at the age of four years nine months on 19.02.2016 revealed that he is having 90% intellectual impairment. On 15.05.2017, the Medical Board, Government General Hospital, Vijayawada, issued a Certificate, *inter alia*, certifying that the petitioner's son is suffering from permanent disability in the category of "Mental Retardation-profound". The percentage of disability is assessed at 100% and reassessment of the case is not recommended. Thus, it would be discernible that the petitioner's son is suffering with acute mental disability and requires medical attention apart from regular therapies, though the ailment is not curable.

4. Against the background of the above stated position, the petitioner submitted a representation dated 17.09.2021 to the 2nd respondent seeking exemption from transfer under the parents with mentally challenged children quota. The said representation for ready reference is extracted hereunder:



"Vijayawada,
Dt. 17-09-2021.

From
N.John Sukumar,
Lecturer in Economics,
SRR & CVR Government Degree
College(A),
Vijayawada.

To
The Commissioner,
Collegiate Education,
Government of Andhra Pradesh,
Vijayawada.

Through the Principal, SRR & CVR Govt. Degree College(A), Vijayawada.

Respected Sir,

Sub: Exemption from transfers under the parents of Mentally Challenged Children quota request – Regd.,

Ref: 1. G.O.Rt.No.245 Higher Educational Department (Ce.A1) Department Dated 15-09-2021.

2. G.O.Ms.No.7 Finance (DCM-III) Department, dated 24/01/2011.

I submit that I have been working as a lecturer in the subject of Economics at SRR & CVR Government Degree College (Autonomous) Vijayawada for 10 years.

As per the orders issued in the reference 1st cited, those employees who completed five years of service at one place are likely to be transferred.

But sir, my case may kindly be considered for retention in the same place for the following reasons.

1. My child named **N.Abhisha Raj**, age 10 years is a patient with **Severe Disability** suffering from **Cerebral Palsy** and his condition is **Non-progressive** and has been undergoing **Rehabilitation Therapy** in Vijayawada. And there is no place where such Medical and Rehabilitation centers, facilities available other than Vijayawada in Zone II. (Medical Certificate is enclosed herewith for your reference).

2. He is also a **Cardiac Patient** undergone **COA DILATATION** treatment also needed a periodical checkup as he was treated with **BALLON CAARCTOPLASTY** with abolition of stunt across coarctation segment. (Medical Certificate is enclosed herewith).

3. As per the orders issued in the 2nd cited, Employees of State Government having **Mentally Retorted Children** shall be **Posted/retained at a place where medical facilities are available on par with Central**



Govt., Employees.) also suggest that my case may considered *not to transfer to another place where there are no medical facilities are available.*

4. It is further to inform you that I am an educationally qualified (**MA, M.Phil., UGC NET and APSET**) which are essential for working in the Autonomous colleges as per **G.O.MS.No.42.**

In view of the above, I humbly request that my case may kindly be examined thoroughly on Humanitarian grounds and necessary action may kindly be initiated for not to transfer me from the present place and retain me where I can discharge my duties to the best of my ability and experience.

Thanking you sir

Enclosures

yours sincerely

1. G.O.Ms.No.7
2. Medical Certificates
3. Educational Qualification Certificates
4. Profile"

(N JOHN SUKUMAR)

5. Turning a blind eye, the authorities, without examining the representation in the light of the G.O.Ms.No.7 dated 24.01.2011, let alone from the humanitarian grounds, transferred the petitioner to Jangareddigudem, a remote area of West Godavari District, where hardly, any medical facilities which would meet the requirements of the petitioner's son are available.

6. On 01.10.2021 after hearing the learned counsel for the petitioner and the learned Assistant Government Pleader for Services-I, an interim order was passed in the following terms :

"Considering the arguments advanced by the learned counsel for the petitioner and the documents, including the certificates filed, which show that the petitioner's son is suffering from a debilitating disease and requires constant medical attention.



Therefore, there shall be an interim stay as prayed for, if by this date the 6th respondent has already not joined in the post. Since the petitioner counsel states that the 6th respondent has not joined in the post and he has not relieved, this interim order is granted.

Learned counsel for the petitioner is permitted to take out personal notice on the unofficial respondent by RPAD and file proof of service in the Registry.

List on 08.10.2021 in Motion List."

7. Pursuant to the said order, the learned counsel for the petitioner sent personal notice to the 7th respondent and as per the memo dated 17.11.2020 filed *vide* U.S.R.No.59240 of 2021, the notice was served on the 7th respondent. However, no appearance was entered on his behalf.

8. A counter-affidavit was filed by the 1st and 2nd respondents referring to guidelines in G.O.Rt.No.245 dated 15.09.2021 and sought to justify their action. While highlighting that in terms of the said G.O., "visually challenged employees may be exempted from transfers unless they request for transfer", a stand is taken to the effect that the guidelines issued were only for effecting transfers and there is no exemption for the employees with mentally retarded children from transfers. There is no denial of the representation dated 17.09.2021 submitted by the petitioner. The plea of the respondents which could be gathered from the counter-affidavit is that as the petitioner has been working for the last ten years, as per the policy laid in G.O.Ms.No.245 dated 15.09.2021, he has to be compulsorily transferred and the



petitioner has not availed the options available to him during the web counseling. Further, with reference to G.O.Ms.No.7 dated 24.11.2011 at Page No.6 of the counter-affidavit, it is stated to the effect that the said Government Orders were to be considered when the employees were given posting orders on request, transfers/posting for new recruitment etc., but not for the employees who opts for retention in the same station, even though they have completed more number of years than the stipulated service of five years which is reckoned as long standing in a particular station. While stating that the 7th respondent had already joined by the date of filing of writ petition and without bringing the said aspect to the notice of the Court, interim orders were obtained, it is stated that the writ petition be dismissed.

9. The contentions advanced by both sides are considered with reference to the material on record. G.O.Ms.No.7 which is of immediate relevance to consider the case of the petitioner may be extracted for better appreciation:

**"GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

PUBLIC SERVICES – Posting of State Government Employees having Mentally Retarded Children to a place where medical facilities are available on par with Central Government Employee – Orders – Issued.

FINANCE (DCM-III) DEPARTMENT

G.O.Ms.No.7

Dated: 24/01/2011

Read the following:-

1)G.O.Ms.No.100, Finance (W&M) Department, dt.05.04.1988.



2)Office Memorandum N.A3-14/17141/90/Estt.(PR), dt.15/2/1991, of the Ministry of Personnel, Public Grievances and Pensions, Government of India.

3)Letter No.2/COGA/2010-234, dt.4/12/2010 received from Secretary, Legislature Dept., Committee on Govt. Assurances.

4)U.O.No.909/DW/A/2009, dt.1/7/2009 of W.D.C.W. & D. W. Department.

ORDER

In the G.O. 1st read above orders were issued imposing economy measure orders to curtail the unproductive expenditure to strengthen the finances of the State. Among other things it was ordered that "except where it is considered most inevitable in the interest of the Public, no transfers from one place to another shall be effected during the year 1988-89".

2. Taking into consideration various aspects, separate orders are being issued by Finance (W&M) Department every year lifting the ban for a period of one month, empowering the concerned departments to make transfers. But, the ban has not been lifted during the year 2010-11.

3. In the reference 2nd read above, the Government of India have issued Office Memorandum on posting of Government Employees who have Mentally Retarded Children as follows:-

"The matter has been examined considering that the facilities for medical help and education of Mentally Retarded Children may not be available at all stations, a choice in the place of posting is likely to be of some help to the parent in taking care of such a employee at a place of his/her choice. Ministries/Departments are requested to take a sympathetic view on the merits of each case and accommodate such requests for postings to the extent possible"

4. In the reference 3rd read above, the Committee of Government Assurances of Andhra Pradesh Legislative Council has requested to implement the Assurance No.87 regarding "Giving of preference to the Teachers and Employees of State Government in



Transfers and postings for those who have Mentally Retarded Children.”

5. *In the reference 4th read above, the Women Development, Child Welfare and Disable Welfare Department has stated that the Committee of Government Assurances has advised to issue General Government Order for posting of State Government Employees having Mentally Retarded Children to a place where medical facilities are available on par with Central Government Employees.*

6. *After careful examination of the proposal and Assurance given by the Hon'ble Minister for Women Development, Child Welfare and Disabled Welfare in the Legislative Council, Government have taken a sympathetic view and hereby order to extend the same facility as given by Government of India at para 3 above for postings of State Government of employees who have mentally retarded children. No TTA and other transfer benefits are entitled for the said transfers, as they would come under the category of request transfers.*

7. *These orders would come into force with effect from issue of these orders.*

(BO ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

V ASUDHA MISHRA

SECRETARY TO GOVERNMENT(IF)

To

All Departments of Secretariat.

All Heads of Departments.

All District Collectors.

The Registrar, High Court of Andhra Pradesh, Hyderabad.

The Secretary, A.P.P.S.C., Hyderabad.

The Registrar, A.P. Administrative Tribunal, Hyderabad.

The Accountant General, Andhra Pradesh, Hyderabad.

The Pay and Accounts Officer, Hyderabad.

The Director of Treasuries and Accounts, A.P., Hyderabad.

All District Treasury Officers.

All Officers/Sections in Finance Department.

Copy to SF/SCs

//Forwarded :: By order//



SECTION OFFICER"

10. A reading of the above said G.O., would go to show that it is specifically and specially issued with reference to posting of State Government Employees having Mentally Retarded Children to a place where medical facilities are available on par with the Central Government employees. The said G.O., holds the field with reference to transfer of State Government employees who are having Mentally Retarded Children. No distinction can be drawn nor can it be reasonably presumed that the said G.O., is applicable only in respect of employees who were given posting order on request, transfers/posting for new recruitment, but not to employees who opts for retention in the same station. The stand sought to be projected by the respondents, in the considered opinion of this Court, is nothing but defying the orders in G.O.Ms.No.7 dated 24.11.2011 which were issued with a laudable object and purpose. Therefore, the pleas/contentions raised in this regard by the respondents' merits no acceptance.

11. The other plea throwing blame on the petitioner for not availing the options in web counseling cannot be appreciated for the reason that the petitioner submitted a representation dated 17.09.2021 setting out in detail the ailment of his son and the medical facilities to be availed for his treatment. Instead of examining the same, the respondent-authorities obviously carried



away by the so called policy of transfer as contemplated under G.O.Ms.No.245 dated 15.09.2021, giving a go-bye to the orders of the Government in G.O.Ms.No.7 dated 24.01.2011, issued in particular, taking a sympathetic/humanistic view in respect of employees with Mentally Retarded Children. The petitioner, therefore, cannot be found fault with in the light of the clear and categorical orders in G.O.Ms.No.7 dated 24.01.2011. It may be noted here that it is not the case of the respondents that the said G.O., has been superseded. Though, the policy of the Government in terms of G.O.Ms.No.245 dated 15.09.2021 is appreciable, in the facts and circumstances of a case like the present, the same cannot be applied, as a thumb rule. Any such act on the part of the authorities would amount to infringement of the rights guaranteed under Articles 14 and 21 of the Constitution of India. As noticed earlier, there is no consideration of the representation of the petitioner, either. The orders impugned not only lacks application of mind, but also humane touch.

12. Therefore, this Court has no hesitation to hold that the order impugned is not sustainable for the conclusions arrived at supra. Though, it is submitted that the 7th respondent had assumed charge, the same is of no consequence in view of the conclusions that the transfer order suffers *inter alia*, from non application of mind etc., and unsustainable.



13. Accordingly, the impugned transfer order dated 22.09.2021 is set aside. The respondent-authorities are directed to retain the petitioner as Lecturer in the 5th respondent Degree College or post him in any other Government Degree College, within the city of Vijayawada, by treating his case as a special case, being father of a Mentally Retarded Child. This Court is of the considered view that it is a fit case for awarding costs.

14. Accordingly, the writ petition is allowed with costs quantified at Rs.15,000/- payable to the petitioner within four (4) weeks from the date of receipt of a copy of this order. The costs shall be borne by respondent Nos.1 to 4.

Miscellaneous Petitions, if any, pending in this appeal shall stand dismissed.

NINALA JAYASURYA, J

27.12.2021.
BLV



HON'BLE SRI JUSTICE NINALA JAYASURYA

W.P.No.22140 of 2021

Dated 27.12.2021

BLV

