

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 12TH DAY OF JULY, 2024

PRESENT

THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE S.G. PANDIT

WRIT PETITION NO. 102121 OF 2024 (S-KAT)

C/W

WRIT PETITION NO. 102119 OF 2024 (S-KAT)



IN W.P. NO 102121 OF 2024

BETWEEN:

- 1 . THE STATE OF KARNATAKA
REPRESENTED BY THE PRINCIPAL SECRETARY
TO THE GOVERNMENT
DEPARTMENT OF SCHOOL EDUCATION AND
LITERACY
2ND GATE, 6TH FLOOR, M.S. BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU – 560 001.
- 2 . THE COMMISSIONER
DEPARTMENT OF PUBLIC INSTRUCTIONS
NEW PUBLIC OFFICE,
NRUPATUNAGA ROAD
AMBEDKAR VEEDHI, K R CIRCLE
BENGALURU – 560 001.
- 3 . THE JOINT DIRECTOR OF PUBLIC
INSTRUCTIONS (ADMINISTRATION)
OFFICE OF THE COMMISSIONER
DEPARTMENT OF PUBLIC EDUCATION
(PRIMARY AND SECONDARY)
NRUPATUNGA ROAD

AMBEDKAR VEEDHI, K.R. CIRCLE
BENGALURU – 560 001.

- 4 . THE DIRECTOR
DEPARTMENT OF PUBLIC EDUCATION
(PRIMARY AND SECONDARY)
OFFICE OF THE COMMISSIONER
NRUPATUNGA ROAD
AMBEDKAR VEEDHI, K.R. CIRCLE
BENGALURU – 560 001.
- 5 . THE DEPUTY DIRECTOR OF
PUBLIC INSTRUCTIONS
OFFICE OF THE DDPI,
SUB-DIVISION
NAVANAGAR
BAGALKOT – 587 103.
- 6 . THE DEPUTY DIRECTOR OF
PUBLIC INSTRUCTIONS (REGIONAL HEAD)
OFFICE OF THE COMMISSIONER FOR
PUBLIC INSTRUCTIONS
RODDA ROAD
DHARWAD – 580 008.
- 7 . THE DEPUTY DIRECTOR OF PUBLIC
INSTRUCTIONS (DIVISION-3)
CLUB ROAD, BELAGAVI – 590 001.
- 8 . THE BLOCK EDUCATION OFFICER
DEPARTMENT OF SCHOOL EDUCATION AND
LITERACY, BEELAGI
DISTRICT BAGALKOT – 587 116.
- 9 . THE HEAD MASTER
GOVERNMENT HIGH SCHOOL
BUDIHAL S.A., TALUK BILAGI
DISTRICT BAGALKOT – 587 116.

... PETITIONERS

(BY MR. J.M.GANGADHAR, AAG)

AND:

- 1 . SMT. UMADEVI HUNDEKAR
D/O TOTAPPA HUNDEKAR
AGED ABOUT 55 YEARS,
OCC: TEACHER,
RESIDING AT VIVEKANAND BADAVANE, EXTENSION
AREA, H.NO. 193/A
WARD NO.10, BAGALKOT – 587 102,
WORKING AS SPECIAL TEACHER
GOVERNMENT HIGH SCHOOL AT BUDIHAL S.A. TAL:
BILAGI, DISTRICT BAGALKOT – 586 208.

... RESPONDENT

(BY MR. SURAJ S. MUTNAL, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED ORDER PASSED BY THE HON'BLE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BELAGAVI BENCH IN APPLICATION NO. 10511/2023 BY ORDER DATED. 29.09.2023 VIDE ANNEXURE-A & ETC.

IN W.P. NO 102119 OF 2024

BETWEEN:

- 1 . THE STATE OF KARNATAKA
REPRESENTED BY THE PRINCIPAL SECRETARY
TO THE GOVERNMENT
DEPARTMENT OF SCHOOL EDUCATION AND
LITERACY
2ND GATE, 6TH FLOOR, M.S. BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU – 560 001.
- 2 . THE COMMISSIONER
DEPARTMENT OF PUBLIC INSTRUCTIONS
NEW PUBLIC OFFICE,

NRUPATUNAGA ROAD
AMBEDKAR VEEDHI, K R CIRCLE
BENGALURU – 560 001.

- 3 . THE JOINT DIRECTOR OF PUBLIC INSTRUCTIONS (ADMINISTRATION)
OFFICE OF THE COMMISSIONER
DEPARTMENT OF PUBLIC EDUCATION
(PRIMARY AND SECONDARY)
NRUPATUNGA ROAD
AMBEDKAR VEEDHI, K.R. CIRCLE
BENGALURU – 560 001.
- 4 . THE DIRECTOR
DEPARTMENT OF PUBLIC EDUCATION
(PRIMARY AND SECONDARY)
OFFICE OF THE COMMISSIONER
NRUPATUNGA ROAD
AMBEDKAR VEEDHI, K.R. CIRCLE
BENGALURU – 560 001.
- 5 . THE DEPUTY DIRECTOR OF
PUBLIC INSTRUCTIONS
OFFICE OF THE DDPI,
SUB-DIVISION
NAVANAGAR
BAGALKOT – 587 103.
- 6 . THE DEPUTY DIRECTOR OF
PUBLIC INSTRUCTIONS (REGIONAL HEAD)
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DEPARTMENT OF SCHOOL EDUCATION AND
LITERACY, BEELAGI
DISTRICT BAGALKOT – 587 116.

9 . THE HEAD MASTER
GOVERNMENT HIGH SCHOOL
BUDIHAL S.A., TALUK BILAGI
DISTRICT BAGALKOT – 587 116.

... PETITIONERS

(BY SRI J.M.GANGADHAR, AAG)

AND:

1 . SMT. PRABHAVATI RONAD
D/O AYYAPPA RONAD
AGED ABOUT 58 YEARS,
OCC: TEACHER,
RESIDING AT TEGGI VILLAGE
TALUK BILAGI, DISTRICT BAGALKOT - 587 117.
WORKING AS V.M. GOVERNMENT HIGH SCHOOL
TEGGI TALUK, BILAGI – 587 117.

... RESPONDENT

(BY MR. SURAJ S. MUTNAL, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED ORDER PASSED BY THE HON'BLE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BELAGAVI BENCH IN APPLICATION NO. 10512/2023 BY ORDER DATED. 29.09.2023 VIDE ANNEXURE-A & ETC.

THESE WRIT PETITIONS HAVING HEARD AND RESERVED FOR ORDERS ON 07.06.2024, THIS DAY **CHIEF JUSTICE** PRONOUNCED THE FOLLOWING:

CORAM HON'BLE THE CHIEF JUSTICE MR.JUSTICE
: N.V. ANJARIA
and
HON'BLE MR. JUSTICE S.G. PANDIT

C.A.V. JUDGMENT

(PER : HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N.V. ANJARIA)

Both these petitions arise out of the common judgment and order dated 29.09.2023 passed by the Karnataka State Administrative Tribunal at Belagavi in Application Nos.10511 of 2023 and 10512 of 2023 respectively.

2. Heard learned Additional Advocate General Mr. J.M.Gangadhar for the petitioner-State and learned advocate Mr. Suraj Mutnal for the respondent/original applicant before the tribunal, at length.

3. Smt. Umadevi Hundekar and Smt. Prabhavati Ronad, the respondents herein, were the two respective applicants before the Tribunal. The Tribunal allowed both the applications and set aside the office memorandums/orders dated 21.06.2023 and 20.06.2023, whereby the applicants were transferred on the ground that they were surplus teachers. The Tribunal further directed respondent No.5-the Deputy Director

of Public Instructions to continue the services of the applicants as Special Teachers.

3.1 In Application No.10511 of 2023, the case of the applicant-Smt.Umadevi Hundekar was that she was earlier working as “Worker Teacher” at Girls Government Degree College at Bagalkot. Subsequently, the said college was merged with the Karnataka Public Education Department. The applicant came to be appointed as Special Teacher in the Government High School at Boodihal and discharged her duties as Sewing Teacher since 25.02.2013. She was appointed as permanent teacher on 25.02.2023. Thus, she worked in the faculty for about 20 years and had put in total 30 years of service as teacher.

3.2 It was the case of Smt.Prabhavati Ronad, whose application before the Tribunal was Application No.10512 of 2023, *inter alia* that as she had been working as teacher designated in V.M.Government High School, Teggi. She was a faculty member, teaching the subject of craft to the students since 02.11.1998. She was appointed as direct recruitee. She had put in 34 years service in total.

3.3 It was the case of both the applicants that respondent No.2-the Commissioner, Department of Public Instructions, issued Notification dated 26.12.2022 for rationalising the excess faculty working in the Government Primary School as well as High Schools to transfer such excess teachers by identifying them as excess under the provisions of the Karnataka State Civil Services (Regulation of Transfer of Teachers) Act, 2020 (hereinafter referred to as 'the Act of 2020) and the Karnataka State Civil Services (Regulation of Transfer of Teachers) Rules of 2020 (hereinafter referred to as 'the Rules of 2020') in particular, Rules 11 and 12.

3.4 It was stated by the petitioners that they filed objections on 29.12.2022 to the said notification as per Rule 10(vi) of the Rules of 2020 requesting for exemption from transfer on the ground that both the applicants had reached the age beyond 50 years. It was stated that necessary documents were also furnished along with the requisite letter in fortification that they had crossed the age of 50 years.

3.5 It was next stated by the applicants that excess transfer which was supposed to take place immediately upon issuance of the notification dated 26.12.2022 did not happen. Another

order dated 02.06.2023 was passed and it was stated in the said order that excess transfers would be acted upon for the year 2023-24.

3.6 Respondent No.5-the Deputy Director of Public Instructions prepared the provisional list dated 06.06.2023 of excess teachers. In the said list, the names of the applicants figured at Sl.Nos.23 and 29 respectively. Declaring both the applicants surplus, the orders of transfer dated 21.06.2023 and 20.06.2023 came to be passed by the competent authority which were challenged by the applicants by filing the aforesaid two separate applications. Both the applications culminated into the common judgment and order of the Tribunal.

4. The main plank submission by the applicants to question the inclusion of their names in the list of surplus teachers and transfer them on such basis was that they having attained the age of 50 years and above, they were exempted. The applicant in the first case was about 54 years of age whereas the applicant in the second case had also surpassed the 50 years.

5. The relevant provisions of the Act of 2020 and the Rules of 2020 which include Sub-section (1) of Section 4 of the Act of 2020, where under rationalisation is provided for in respect of

sanctioned posts and the students on the basis of Pupil-Teacher ratio, which is fixed by the State Government from time to time under Sub-section (2) of Section 4 of the Act of 2020, the excess posts which may be found in one school will be redeployed to other school where there is a deficit. Section 10 which is applicable to the present controversy, provides for exemptions from rationalisation, zonal transfer and priority for requests transfers.

5.1 Under clause (vi) of Sub-section 1 of Section 10, it is provided that for teachers above the age of 50 years in case of female teachers and 55 years in case of male teachers would be exempted from the process of rationalisation. In other words, the female teachers above 50 years and male teachers above 55 years of age would be spared from classifying them as surplus or excess teachers and would not therefore be subjected to transfers. Consequently, while deciding the strength of the teachers in a particular school on the basis of Pupil-Teacher ratio, the provision of Section 10(1)(vi) of the Act of 2020 giving exemption to the teachers of beyond certain age as above, will have to be accounted for as they stand exempted from declaration as excess or surplus. The tribunal has rightly observed that the rationalisation of posts that Pupil-

Teacher ratio has to go hand in hand with Section 10 of the Act of 2020.

5.2 Referring to Section 10(1)(vi) of the Act of 2020 and the providence thereof, the tribunal was justified in holding that the rationalisation list should have been prepared after taking into account the provision and the exemption contained therein to exclude the teachers beyond the age from considering them as excess.

5.3 It was observed by the tribunal that "... if Teacher-Pupil ratio falls below the standard staffing pattern, then the Respondent-authorities are to prepare excess teachers list. At the same time, Section 10(1)(vi) of Act 2020 exempts certain category of teachers for being included in the excess teachers list. Then the Respondents are duty bound to consider the representation which is in their competency and take remedial measures."

5.3.1 Emphasizing that once the exemption option is exercised by any teacher-the applicants herein, the respondents ought to have considered their objection and representation, then "the applicants who have legitimate expectation to be treated fairly as lady teachers have been

provided expressed exemption under the Act, 2020 and subsequent Rules. Providing age-based exemption is an established practice and decision making authority should have considered their reasonable, legitimate and valid request articulated through representation which was submitted in time by the applicants.”

5.4 The crux of the case is that the provision of Section 10(1)(vi) of the Act of 2020 gives exemption from being considered as excess to the female teachers who have crossed 50 years and the male teachers who are above 55 years. The petitioners had made their representations on basis of the above statutory provision. Admittedly, the petitioners, who are the female teachers had crossed the age of 50 years and are entitled to for the benefit of Section 10(1)(vi) of the Act of 2020. They could not have been declared as excess and the impugned order of transfer could not have been issued.

5.5 The provision of Section 10(1)(vi) of the Act of 2020 is a beneficial provision made applicable to the class of teachers who have crossed particular age. The authorities are duty bound to give effect to and extend benefit thereof to the eligible teachers. The statutory provision in its contemplation cast a

positive duty on the respondents to give the benefit to the eligible teachers and not treat them as excess.

5.6 Whenever a beneficial provision is incorporated in the statute, it has to be given effect to in favour of the beneficiaries by the authorities concerned, irrespective of the aspect whether the beneficiary has made an application in that regard or not. As a statutory provision of the kind and nature as found in Section 10(1)(vi) of the Act of 2020 becomes a right of the employee teacher to be governed and to be benefited thereby .

6. For all the aforesaid discussions and reasons, the order passed by the tribunal is eminently legal and do not require any interference.

7. No case is made out for grant of any relief. The writ petitions are accordingly dismissed.

In view of dismissal of the petitions, the interlocutory applications would not survive and they stand accordingly disposed of.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**