



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3331]

FRIDAY ,THE SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 7291/2024

Between:

Katikala Indira Priyadarsini and Others

...PETITIONER(S)

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.POPURI LAKSHMI PRIYANVITA

Counsel for the Respondent(S):

1.GP FOR SERVICES IV

The Court made the following:

:: ORDER ::

The petitioners, Doctors, working in different Medical Colleges across the State of Andhra Pradesh, under the control of the Directorate of Medical Education, Government of Andhra Pradesh, filed the above writ petition, to declare condition No.4(2)(i) i.e. spouses working in Government, in G.O.Ms.No.273, Health, Medical and Family Welfare Department, dated 21.05.1999, as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

2. The averments in the writ affidavit, in brief, are that petitioners 1 to 16 are working as Assistant Professors and petitioners 17 to 25 are working as Associate Professors. The next promotion from Assistant Professor is Associate Professor and from Associate Professor to Professor. The promotion is based on seniority. Respondent No.2 prepared a seniority list of the candidates, eligible for promotion to the next higher post, for the panel year, 2023-2024. All the petitioners were called for counselling. Respondent No.2 informed that priority, to choose places, at the time of the promotion would be given to four categories mentioned in para 4(2) of G.O.Ms.No.273 dated 21.05.1999. The priority is given to the personnel covered under 4(2)(i) of G.O.Ms.No.273 dated 21.05.1999 and the other persons in seniority were not given an option for selecting places. Adopting such a procedure is illegal and arbitrary.

b) The petitioners were informed that priority will be given to the candidates where both the spouses are working in Government, given G.O.Ms.No.273 dated 21.05.1999. Giving priority to the spouses working in the Government for selecting the place is irrational and arbitrary. Such a clause itself is arbitrary and is liable to be struck down.

3. A counter affidavit, deposed by respondent No.2, was filed on its behalf as well as on behalf of respondent No.1. In the counter affidavit, it was not disputed about the promotions affected in the cadre of Associate Professors and Assistant Professors and selected candidates opting the places as per para 4.2.i of G.O.Ms.No.273 dated 21.05.1999. It was specifically contended that petitioner No.1 (Anesthesia), petitioner No.2 (Microbiology), the petitioner No.9 (pharmacology) standing at serial Nos.25, 13 and 6 respectively, in the seniority list, of the respective branches, did not opt for any place. Petitioners, 3 to 8 and 10 to 16, working as Assistant Professors in various Specializations are not included in the list of promotion for the post of Associate Professors for the panel year, 2023-24. Petitioners 17, 18 and 24 were promoted as

Associate Professors in their respective specializations in the panel year, 2021-22. Petitioner No.23 was promoted to Associate Professor in the panel year, 2022-23. Petitioners 19 to 22 and 25 were promoted as Associate Professors in their respective specializations in the panel year, 2023-24. Petitioners 17 to 25 were called for counselling in the normal seniority after calling all the priorities as per G.O.Ms.No.273 dated 21.05.1999.

b) During the general transfers, wherever the transfer was affected on priority, on the spouse's ground, the next request can be made only after eight years. However, in the promotions, there is no such condition included.

c) The promotions were affected strictly as per the seniority. After the approval of the promotion list, counselling was conducted for choosing places of postings. The priority was given on the spouse grounds for fostering family stability among the employees and this provision acknowledges the challenges faced by the employees working in different stations, allowing them to remain together or closer, thereby enhancing their quality of life and job satisfaction. Eventually, prayed to dismiss the writ petition.

4. Heard Sri O. Manohar Reddy, learned Senior Counsel, assisted by Smt. Lakshmi Priyanvita, learned counsel for the petitioners, Sri R.S. Manidhar Pingali, learned Assistant Government Pleader for Services, for the respondents.

5. Learned Senior Counsel would submit that para 4.2.i of G.O.Ms.No.273 dated 21.05.1999 is irrational and arbitrary. In the guise of spouse quota, the authorities have given go-bye to the seniority among the selected/eligible candidates. Learned Senior Counsel would submit that a reading of clause 4.1 of the aforementioned G.O., would indicate that respondent No.1 shall follow the counselling procedure for the appointment of Civil Assistant Surgeons and also posting of Deputy Civil Surgeons on promotion based on seniority. The said G.O. has no application in respect of promotions in teaching hospitals. If

the said G.O. applies to the teaching staff, the spouses working at different places have been opting for their choice of places, other than where the other spouse works. The petitioners are not challenging the postings of any candidates. Learned Senior Counsel would also point out that nothing was adverted to, in the counter, regarding the averments made in paragraph No.7 of the writ affidavit.

6. Learned Assistant Government Pleader for Services, on the other hand, would contend that the spouse ground mentioned in para 4.2.i is a policy decision. In counselling, the persons/employees choose the place where the other spouse is working or a nearby place. He would also point out that there is no irrationality in the clause. Petitioners 1, 2, 4, 6 and 9 did not submit options. Petitioners 3, 5, 7, 10,12,13,15, and 16 were not approved by the screening committee. Petitioners 8, 14 and 19 to 22 joined the service as per their option. Thus, would contend that the rights of the petitioners have not been infringed and hence, the writ petition is not maintainable.

7. The points for consideration are:

(1) Whether para 4.2.i of G.O.Ms.No.273, Health, Medical and Family Welfare Department, dated 21.05.1999 is irrational and arbitrary?

(2) Whether the G.O. apply to the teaching staff?

8. In so far as the 2nd point is considered, at the hearing learned senior counsel did not press for and the same is recorded. Hence this court is not adjudicating the said issue.

9. The Government of Andhra Pradesh issued G.O.Ms.No.154, Health, Medical & Family Welfare (A2) dated 04.05.2002, issuing Special Rules (Andhra Pradesh Medical Education Service @ Rules) as per the proviso to Article 309 of the Constitution of India. There is no dispute that petitioners 1 to

16 are working in the cadre of Assistant Professors and petitioners 17 to 25 are working as Associate Professors. The main grievance of the petitioners is that para 4.2.i of G.O.Ms.No.273 dated 21.05.1999 is irrational and arbitrary.

10. G.O.Ms.No.273 dated 21.05.1999 was issued, prescribing instructions/guidelines, for posting orders on promotion through counseling. Para 4 of the G.O. is extracted hereunder for better understanding.

- “4. The Procedure to be followed is as follows:
1. The posting shall be given on Counselling basis, i.e. the list of vacancies shall be displayed and candidates called in one by one based on seniority to indicate their choice of posting. Orders shall be issued on the spot to the candidates, and a permanent Register maintained for recording postings on Counselling.
 2. The **following categories** shall be given **priority** & shall be called for Counselling first in order of seniority:
 - i. **Spouses working in Government:**
 - ii. Principal office Bearers of recognized Associations:
 - iii. Employees who have one year of service fell for retirement
 - iv. Physically handicapped:
 - v. Widows/unmarried women:
 3. The remaining persons will be called in order of seniority for counseling after the above categories.”

11. As noted supra, the main grievance of the petitioners is, giving preference to the candidates on spouse's grounds though the employees stand below in the seniority list. In respect of 4.2.ii, it was clarified in the counter affidavit that the said clause was deleted by G.O.Ms.No.308 dated 01.11.2010.

12. In paragraph No.7 of the writ affidavit, it was specifically pleaded that, by the preferential clause, even though the spouse is not choosing the same place where the other spouse is working, in the guise of preference, ignoring the seniors, the employees, in that category, are considered in preference to seniors in the list. Taking advantage of the said clause, the employees are choosing the best colleges. In most of the cases, spouses are working in different districts and not in the same place or nearby place. However, priority is being provided to such candidates on the ground that their spouses are working in the Government.

13. Given the specific averment in paragraph No.7 in the writ affidavit, respondent No.1 is expected to file a counter affidavit by explaining the scenario. Unfortunately, the counter affidavit did not advert to the averment made in paragraph No.7 of the writ affidavit. Respondent No.1, the Principal Secretary to the Government is expected to file a counter by explaining the rationality behind the issuance of G.O.Ms.No.273 dated 21.05.1999. However, respondent No.2 deposed the counter affidavit on his behalf and, on behalf of respondent No.1. It is also a settled principle of law that in the absence of rebuttal, the averment made in the affidavit is deemed to be admitted.

14. In paragraph No.15 of the counter affidavit, it was mentioned that priority was given to the spouses for fostering family stability among employees and this provision acknowledges the challenges faced by couples working in different locations, allowing them to remain together or close by, thereby enhancing their quality of life and job satisfaction.

15. Whether incorporation of para 4.2.i in the G.O., is irrational or arbitrary needs to be addressed.

16. Irrational, in common parlance refers to something that is not reasonable, logical or absurd. When it comes to Arbitrary, the decision or action is made without clear reasoning, evidence or logical explanation.

17. In para 15 of the counter affidavit, as noted supra, explained the logic behind incorporating the clause. No judicial precedents are cited to bolster the contention that para 4.2.i of the G.O. is irrational.

18. The Hon'ble Apex Court in **Tata Cellular v. Union of India**¹, **considering the aspect of irrationality qua decision-making process and court's interference observed as follows:**

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. Committed a breach of the rules of natural justice,
4. Reached a decision which no reasonable tribunal would have reached or,
5. Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned, with the manner, in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

¹ (1994) 6 SCC 651,

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

19. In **State of NCT of Delhi v. Sanjeev²**, the Hon’ble Apex Court observed as follows:

21. In other words, to characterise a decision of the administrator as “irrational” the court has to hold, on material, that it is a decision “so outrageous” as to be in total defiance of logic or moral standards. Adoption of “proportionality” into administrative law was left for the future.

20. In **Gohil Vishvaraj Hanubhai v. State of Gujarat³**, the Hon’ble Apex Court observed that:

“16. Lord Diplock in his celebrated opinion in *Council of Civil Service Unions* [*Council of Civil Service Unions v. Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] summarised the principles as follows: (AC p. 410 D-H & 411 A-B)

“... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call “illegality”, the second “irrationality” and the third “procedural impropriety”. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the

² (2005) 5 SCC 181

³ (2017) 13 SCC 621

future of the principle of “proportionality” which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.

By “illegality”, as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is *par excellence* a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the State is exercisable.

By “irrationality” I mean what can by now be succinctly referred to as “*Wednesbury* unreasonableness (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 (CA)]). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards (Inspector of Taxes) v. Bairstow* [*Edwards (Inspector of Taxes) v. Bairstow*, 1956 AC 14 : (1955) 3 WLR 410 (HL)] of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. “Irrationality” by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as “procedural impropriety” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the

decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all.”

It can be seen from the above extract, Lord Diplock identified three heads under which judicial review is undertaken i.e. illegality, irrationality and procedural impropriety. He also recognised the possibility of new heads such as “proportionality” being identified in future. He explained the concepts of the three already identified heads. He declared that the head “irrationality” is synonymous with “Wednesbury unreasonableness”.

21. In **Sarvepalli Ramaiah v. District Collector, Chittoor**⁴, the Hon’ble Apex Court observed as under:

41. In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court's extraordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.

22. A conspectus of the expressions of the Apex Court discerns that if the decision or clause is to be declared as irrational it should be outrageous and illogical. However, in the case at hand, this Court doesn’t find any such illogical or outrageous in giving preference to an employee in choosing a place on spouse ground.

⁴ (2019) 4 SCC 500

23. The next question would be whether the employer has been following the policy in its letter and spirit, if not such a failure would amount to procedural impropriety.

24. A procedural impropriety in common parlance would mean a failure to follow established procedures or rules resulting in unfairness, injustice or illegality. The object of inserting clause preference to spouse was explained in the counter as follows:

“The priority was given to the spouse grounds for fostering family stability among the employees and this provision acknowledges the challenges faced by the employees working in different stations, allowing them to remain together or closer, thereby enhancing their quality of life and job satisfaction.”

25. However, as seen from the original record produced, across the bar, the authorities have given a go-bye to the object and are mechanically giving preferences to the candidates. In fact, the procedure followed by the authority suffers from procedural impropriety and lacks procedural fairness.

PROCEDURAL IMPROPRIETY IN THE PRESENT CASE

26. In the case at hand, para 4.2.i of G.O.Ms.No.273, dated 21.05.1999, is not being applied consistently with its intended purpose. The procedural impropriety arises because of the reasons mentioned herein below:

i. Overriding of Seniority

27. Under the guise of spouse preference, preference is given to the employee who stands bottom in the seniority list, ignoring the person stood above, to choose the place of choice, though the other spouse has not been working in the chosen place, and thereby seniority has been overridden, which did not align with the intended object.

ii. No justification in decision making

28. The respondent authorities, failed to provide any sort of justification as to why a few employees have been given priority under spouse preference though there is no proximity to their spouse.

29. Therefore, in the case at hand, the Government, as a policy, provided preference to the spouses in employment, to work at one place. Such a policy, *prima facie*, cannot be termed as irrational or is in defiance of logic. Fostering family stability among employees and allowing the employee's spouses to remain together or close by, cannot be termed as irrational. However, disregarding the seniority, in the opinion of this court, amounts to procedural impropriety, thereby warranting the interference of this court.

30. At the hearing, learned Assistant Government Pleader for Services, across the bar, submitted the list prepared by the Selection Committee, regarding the options.

31. As can be seen from the said list, candidates in Anaesthesia, specialization, whose seniority is at 10 and 13 are working in ACSR GMC, Nellore and SVMC, Tirupathi, respectively and their spouses are also working in the same areas. However, the above candidates opted for SSH Kadapa and State Cancer Institute, Kadapa, respectively on spouse grounds. Kadapa is not a nearby place either to Nellore or to Tirupathi.

32. Further, concerning the seniority list in General Medicine Speciality, one Dr. K. Manoj Kumar, working at AMC, Vizag opted for GMC, Guntur, on spouse grounds, even though his wife is an Assistant Professor in Andhra Medical College, Visakhapatnam and the same was in fact, acted upon.

33. In respect of DVL Specialization, one Dr. V. Lakshmi Sarojini, working in GMC, Guntur opted for GMC, Paderu, though her husband is a Professor of Forensic Medicine, GMC, Machilipatnam.

34. In respect of Physiology, one Dr. D. Lavanya (S.No.13) working in SVMC Tirupathi opted for GMC Paderu, despite the fact that her husband is an Assistant Professor of SPM, SVMC, Tirupathi.

35. In all the above instances, the preferences were allowed to the employees on spouse grounds, though they are shown at a lower level in the seniority list. Most of the time, the authority has given a go-bye to the seniority. Thus, this Court is of the considered opinion that the above instances make the things more than discernable that the selection of the places on the spouse's ground is not in consonance with the object put forth in paragraph No.15 of the counter affidavit.

36. However, those individuals are not arrayed as party respondents, and in fact, learned Senior Counsel would submit that the petitioners are not challenging their transfers on promotions.

37. No doubt, as rightly pointed out by learned Assistant Government Pleader that the spouse grounds incorporated in G.O. is a policy decision. However, the laudable object was given a go-bye. Ignoring the seniority and giving preference, though the employee stands below in the seniority, such an exercise by the authority sounds no logic. If both spouses work in one place, such an instance can be considered to achieve the object. However, considering and giving preference to the employees, whose spouses are government employees, though the promotion and posting, will not get a chance to the station, is defiance of logic and such a course adopted is procedural impropriety. Preference needs to be provided if the spouse chooses a place where the other spouse is working.

38. Given the discussion supra, this court is not persuaded by the submission by learned senior counsel that para 4.2.i. of the G.O. is irrational. However, the procedure adopted by the authority in giving preferences on spouse grounds suffers from procedural impropriety. Thus, the writ petition is

disposed of directing the respondent authority to implement para 4.2.i G.O.Ms.No.273 dated 21.05.1999, in its letter and spirit to ensure that the intended purpose of G.O. is served/achieved logically by not disturbing or disregarding the seniority. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

Dated: 17.03.2025
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JUSTICE SUBBA REDDY SATTI

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION No.7291 of 2024

Dated: 17.03.2025

IKN