

APHC010598232022



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

[3388]

**TUESDAY ,THE TWELTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

WRIT APPEAL NO: 845/2022

Between:

P Tejeswari and Others

...APPELLANT(S)

AND

The State Of Ap and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.M/S INDUS LAW FIRM

Counsel for the Respondent(S):

1.GP FOR SERVICES I

2.K V RAGHU VEER

3.GP SERVICES III

WRIT APPEAL NO: 851/2022**Between:**

The Principal Secretary and Others	...APPELLANT(S)
------------------------------------	-----------------

AND

J Nagarathnamma and Others	...RESPONDENT(S)
----------------------------	------------------

Counsel for the Appellant(S):

- 1.K V RAGHU VEER
- 2.GP FOR SERVICES I
- 3.GP FOR SERVICES I

Counsel for the Respondent(S):

- 1.AKULA SRI KRISHNA SAI BHARGAV
- 2.GP FOR FINANCE PLANNING

WRIT APPEAL NO: 857/2022**Between:**

The State Of Ap and Others	...APPELLANT(S)
----------------------------	-----------------

AND

Y Hanuma Devi and Others	...RESPONDENT(S)
--------------------------	------------------

Counsel for the Appellant(S):

- 1.K V RAGHU VEER

Counsel for the Respondent(S):

- 1.M/S INDUS LAW FIRM
- 2.GP FOR FINANCE PLANNING

4.GP FOR SERVICES I

WRIT PETITION NO: 11861/2023**Between:**

Bejjam Bhagya Latha and Others

...PETITIONER(S)**AND**

The State Of Ap and Others

...RESPONDENT(S)**Counsel for the Petitioner(S):**

1. GUNDALA SIVA PRASADA REDDY

Counsel for the Respondent(S):

1 GP FOR SERVICES III

.

2 REVANURU SUDHA RANI (SC FOR SAMAGRA SHIKSHA)

.

SUBMITTED FOR APPROVAL:**THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Lordships wish to
see the fair copy of the Judgment? | Yes/No |

U.DURGA PRASAD RAO, J

Dr. V.R.K.KRUPA SAGAR, J

*** HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
* HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR
+ WRIT APPEAL No.845 OF 2022**

% 12.03.2024

Between:

P Tejeswari and Others

...APPELLANT(S)

AND

The State Of Ap and Others

...RESPONDENT(S)

! Counsel for the Appellant(s) : Sri N.V.Sumanth

**^ Counsel for Respondent(s) : Sri K.V.Raghuveer, learned standing
counsel for Samagra Shiksha**

+ WRIT APPEAL No.851 OF 2022**% 12.03.2024****# Between:****The Principal Secretary and Others ...APPELLANT(S)****AND****J Nagarathnamma and Others ...RESPONDENT(S)****! Counsel for the Appellant(s) : Sri K.V.Raghuveer, learned standing
counsel for Samagra Shiksha****^ Counsel for Respondent(s): Sri N.V.Sumanth**

+ WRIT APPEAL No.857 OF 2022**% 12.03.2024****# Between:**

The State Of Ap and Others

...APPELLANT(S)**AND**

Y Hanuma Devi and Others

...RESPONDENT(S)**! Counsel for the Appellant(s) : Sri K.V.Raghuveer, learned standing
counsel for Samagra Shiksha****^ Counsel for Respondents****: Sri N.V.Sumanth**

+ WRIT APPEAL No.861 OF 2022**% 12.03.2024****# Between:****The Principal Secretary and Others APPELLANT(S)****AND****P Tejeswari and Others ...RESPONDENT(S)****! Counsel for the Appellant(s) : Sri K.V.Raghuveer, learned
standing counsel for Samagra Shiksha****^ Counsel for Respondents : Sri N.V.Sumanth**

+ WRIT APPEAL No.869 OF 2022**% 12.03.2024****# Between:****J Nagaratnamma and Others****...APPELLANT(S)****AND****The State Of Andhra Pradesh and
Others****...RESPONDENT(S)****! Counsel for the Appellant(s): Sri N.V.Sumanth****^ Counsel for Respondent(s) : Sri K.V.Raghuveer, learned standing
counsel for Samagra Shiksha**

+ WRIT PETITION No.11861 OF 2023**% 12.03.2024****# Between:****Bejjam Bhagya Latha and Others****...PETITIONER(S)****AND****The State Of Ap and Others****...RESPONDENT(S)****! Counsel for the Petitioner(s) : Sri N.V.Sumanth****^ Counsel for Respondent(s) : Sri K.V.Raghuveer, learned standing
counsel for Samagra Shiksha**

< Gist:

> Head Note:

? Cases referred:

1. AIR 1960 SC 650
2. 2003 (3) L.L.N 648
3. 1994 – 1 L.L.N 485
4. (2009) 2 SCC 592
5. (2014) 1 SCC 351
6. (2013) 11 SCC 162 (Para 12)
7. (2008) 13 SCC 1 (Para 7)
8. 2001 (4) ALD 852 (AP)
9. 2023 SCC Online Ker 58
10. 2021 SCC Online AP 340
11. (2017) 1 SCC 148
12. AIR 1958 SC 36
13. 1987 Lawsuit (SC) 768
14. 2022 SCC Online Jhar 1586

The Court made the following Judgment:

**THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

**WRIT APPEAL Nos.845, 851, 857, 861 and 869 of 2022
and
WRIT PETITION No.11861 of 2023**

COMMON JUDGMENT: (Per Hon'ble Justice Dr. V.R.K.Krupa Sagar)

The present group of Writ Appeals and the Writ Petition hold same set of facts and law and therefore, they are argued together and are to be considered together.

2. Principals, Contract Residential Teachers (CRT), Physical Education Teachers (PET) working in Kasturba Gandhi Balika Vidyalaya (KGBV) at different places in the State raised grievance concerning transfers and Minimum of Time Scale Pay (MTS). Questioning their transfers without extending Minimum of Time Scale of Pay in revised pay scales, 2022, they had filed W.P.No.26030 of 2022, W.P.No.27799 of 2022 and W.P.No.23060 of 2022. A learned Single Judge of this Court had considered all the writ petitions and by a common order dated 27.09.2022 directed respondents therein to pay Minimum of Time Scale of pay in the revised pay scales of 2022 along with arrears to all the writ petitioners within a period of six weeks. With reference to transfers, to the extent of writ petitioners, they were directed to be retained at the places where they have been

working prior to the filing of the writ petitions. Orders of transfer were not set aside on the premise that the orders of transfer were implemented and those who already joined in other stations were not parties in the writ petitions and therefore, it was found not proper to disturb the transfer proceedings.

3. Both parties to the writ petitions were aggrieved of those orders. Writ petitioners in W.P.No.26030 of 2022 filed W.A.No.845 of 2022 wherein they sought for setting aside of transfer orders. Respondents in W.P.No.26030 of 2022 filed W.A.No.861 of 2022 seeking to set aside the impugned orders concerning MTS and transfers. Similarly writ petitioners in W.P.No.27799 of 2022 preferred W.A.No.869 of 2022. Whereas, the respondents in that writ petition preferred W.A.No.851 of 2022. Further, the respondents in W.P.No.23060 of 2022 preferred W.A.No.857 of 2022.

4. Similarly placed teaching staff filed W.P.No.11861 of 2023 wherein they questioned the transfer orders alone.

5. Sri K.V.Raghuveer, the learned Standing Counsel for Samagra Shiksha appearing for all the respondents in the writ petitions and for all appellants in Writ Appeals preferred by

them and M/s. Indus Law firm represented by Sri N.V.Sumanth, learned counsel for writ petitioners and the respective appellants in their appeals argued their respective contentions.

6. The Government of India, Ministry of Human Resource Development, New Delhi have introduced a Scheme called Kasturba Gandhi Balika Vidyalaya (KGBV) to provide elementary education to girls in Educationally Backward Blocks. For implementation of the objectives of the KGBV Scheme, residential schools for girls called KGBV have been established in the State of Andhra Pradesh and “Andhra Pradesh KGBV Society” has been constituted as an autonomous body in October 2011 under the Societies Act, 2001 vide Registration No.491/2011 on 14.10.2011. The Society was initially being run under the aegis of Rajiv Vidya Mission and later under Samagra Shiksha. In order to achieve the above objectives, the KGBV Society issued employment notification dated 11.09.2013 calling for suitable candidates for the posts of Principals, Contract Residential Teachers (CRT), Physical Education Teachers (PET) etc., on tenure basis on a consolidated pay. Accordingly, writ petitioners were selected and appointed against their respective posts as Principals,

Contract Residential Teachers (CRT), Physical Education Teachers (PET). The writ petitioners were appointed in their respective posts on 12.12.2013 on a contract tenure of one year. The petitioners on appointment entered into a Contract of Employment for a duration of 11 months or till the last day of April whichever is earlier. On completion of the said period, the contract of employment was terminated en masse and they were re-engaged with effect from 2nd day of May and this process is repeated every year. Writ petitioners have put in almost 9 years of service.

7. While things stood thus, the Government of Andhra Pradesh considering various representations received from contract employees working in various Government Departments were pleased to constitute a Committee of Group of Ministers to review the existing system of contractual employment and make necessary recommendations vide G.O.Rt.No.3080, General Administration (Cabinet) Department dated 09.09.2014. After due deliberations, the Committee of Ministers had resolved for extension of Minimum of Time Scale to the contract employees working in various Government Departments in the revised pay scales of 2015 vide Council of Ministers Resolution C.R.No.77-10/2019, dated 21.01.2019.

Accordingly, Government of Andhra Pradesh issued G.O.Ms.No.12 Finance (HR.I-Plg. & Policy) Department, dated 28.01.2019 wherein orders have been issued for extension of Minimum of Time Scale to the contract employees working in various Government Departments in revised pay scales of 2015.

8. The Council of Ministers vide a separate resolution in C.R.No.201-16/2019 dated 08.02.2019 resolved for extension of Minimum of Time Scale to the contract employees of Universities, Societies, KGBV and Model Schools in revised pay scales, 2015. Accordingly, the Government vide G.O.Ms.No.24 dated 18.02.2019 ordered extension of Minimum of Time Scale to the contract employees of Universities, Societies, KGBV and Model Schools in revised pay scales, 2015, in which the employees are working on par with the contract employees covered in the G.O.Ms.No.12, Finance (HR.I-Plg. & Policy) Department dated 28.10.2019, subject to adhering the guidelines stipulated therein with effect from 01.04.2019.

9. Further, the Government of Andhra Pradesh vide G.O.Ms.No.40 dated 18.06.2021 had issued comprehensive orders regarding the remuneration and other benefits to be paid

to the persons who have been appointed on contract appointment.

10. Writ petitioners state that despite their requests, the benefit of MTS that was granted, has not been implemented. While they are only contract employees and are not liable for transfers, they are ordered to be transferred and G.O.Rt.No.103 dated 29.06.2022 was issued and implemented. Without extending MTS they shall not be transferred.

11. Grounds raised in the counters filed in the writ petitions:

That the writ petitioners were engaged on contract basis with a consolidated pay. Their posts are in KGBV and not under Government management. There are at present 352 Principals and 3489 Contract Residential Teachers and 352 Physical Education Teachers at various places in KGBV in the State. They were not engaged against vacant sanctioned posts and were not engaged by Government Orders with finance concurrence. G.O.Ms.No.12, dated 28.01.2019, G.O.Ms.No.24, dated 18.02.2019, G.O.Ms.No.40 dated 18.06.2021 provided for implementation of Minimum of Time Scale to all the contract employees working in KGBV, Universities, Societies and Model Schools but that could be extended only to those who were

engaged against vacant sanctioned posts and not to others. Since the petitioners were not engaged against vacant sanctioned posts, they are not eligible to stake their claims for extension of Minimum of Time Scale pay.

12. In fact the Government in Memo No.ESE01-SED NOSPD/27/2020-2, dated 29.07.2021 clarified stating that the contract employees working in KGBV are appointed without concurrence of Finance Department, the honorarium and other allowances are being paid as per the approval provision in the Annual Work Plan and Budget by the Government of India and the contract employees of KGBV are not eligible for Minimum of Time Scale and revised pay scales as they have not fulfilled conditions governing the sanction as contained in G.O.Ms.No.24, dated 18.02.2019 and G.O.Ms.No.12, dated 28.01.2019. However, since G.O.Ms.No.5, dated 17.01.2022 was issued extending Minimum of Time Scale to contract employees in KGBV, the State Project Director, Samagra Shiksha sought clarification from the Finance Department of the Government of Andhra Pradesh and the same is awaited.

13. With reference to transfers, it is stated that the writ petitioners and such other teachers have been working for

about 10 to 15 years and that presented several issues among staff leading to disruption of smooth functioning of KGBV and there were also representations from the teaching staff and from public representatives and unions seeking for affecting request transfers on spouse grounds, medical grounds etc. It was in that regard a decision was taken by the Government for affecting transfers to the teaching staff in KGBV. Therefore, G.O.Rt.No.103 School Education (Prog-II) Department dated 29.06.2022 was issued for effecting transfers providing various guidelines and online transfers were taken up after addressing all the grievances by District Level Committees. Many of the petitioners applied for the transfers by exercising their options and transfer orders were issued accordingly and they were relieved from the places where they have been working and they joined in the new stations allotted to them. That, the writ petitions were filed with ulterior motives to stop the process of transfers. The process of transfers has been taken up at District Level with the approval of the District Collector on note file and based on the orders, the department concerned have issued orders on behalf of the District Collector. There is no justification for the petitioners to claim Minimum of Time Scale

Pay since they are not even on salary and they are paid only honorarium. They sought dismissal of the writ petition.

14. The following points fall for consideration before us: -

1. **Whether contractual teachers in KGBV are arbitrarily deprived of MTS in Revised Pay Scales, 2022?**
2. **Whether contractual teachers in KGBV are not liable for transfers and whether they could be transferred only on extending the benefit of MTS in Revised Pay Scales, 2022?**

15. At the outset, it is to be made clear that extension of MTS and transfers are two different subjects and in the given facts and circumstances of the rival contentions they are not interlinked. Considering the nature of the controversy, we are inclined to consider the aspect of transfers first and thereafter, the aspect of Minimum of Time Scale.

Transfers:

The triggering factor for the teaching staff to file writ petitions is transfers. G.O.Rt.No.103, School Education (Prog-II) Department, dated 29.06.2022 was issued by the Government of Andhra Pradesh providing guidelines for online transfer of teaching staff working in KGBV for the year 2022-2023. By

virtue of this G.O., District Level Committees were constituted consisting of

District Collector or his nominee as Chairman

District Education Officer and Ex-officio Project Coordinator as Member,

Additional Project Coordinator, Samagra Shiksha as Member Convener

Principal, DIET as Member.

This committee was to prepare seniority list with entitlement points and shall publish the same on website and on the notice boards at relevant places. It also provided guidelines for online applications and the process to be adopted for counselling. The objections and grievances were permitted to be lodged and they were to be considered and the competent authority mentioned therein shall dispose them off. It further mentions that the District Level Committee shall take the final decision of transfers and the District Collector and Chairman, Samagra Shiksha shall be the competent authority for issuance of transfer orders based on the final outcomes.

16. While, this process of transfers were under implementation, the writ petitions came to be filed questioning

G.O.Rt.No.103, dated 29.06.2022. The principal contention raised on behalf of the writ petitioners in W.P.Nos.27799, 26030 and 23060 of 2022 is that the teaching staff in KGBV are contractual employees appointed on tenure basis terminable by the end of each year and they are not cadre based employees and their contract of appointment inhibited them from seeking transfers. While permanent employees under transfer would get their transfer allowances and they also get Dearness Allowance, House Rent Allowance etc., these contractual employees whose salary is very low are not provided with all attendant benefits from the inception of their employment in the year 2013 and transfers were never effected and now under the impugned G.O. the transfers are taken up. While the Government was successively issuing Government Orders in G.O.Ms.No.24, Finance (HR.I-Plg. & Policy) Department, dated 18.02.2019, G.O.Ms.No.40, Finance (HR.I-Plg. & Policy) Department, dated 18.06.2021 and G.O.Ms.No.5, Finance (HR.I-Plg. & Policy) Department, dated 17.01.2022 to extend the Minimum of Time Scale pay to these teaching staff of KGBV, the authorities concerned did not extend such Minimum of Time Scale and yet it has resorted to transfer all these contractual employees and therefore, G.O.Rt.No.103 dated 29.06.2022 is arbitrary, illegal

and violative of Articles 14 and 21 of the Constitution of India and it is also violative of terms of contract of employment and therefore, the impugned G.O. shall be set aside.

17. As against this, the contention raised on behalf of the respondents in the writ petitions is that these teaching staff of KGBV have been working at the same stations for about 10 to 15 years and that resulted in several issues among the staff and that spoiled the school environment and hindered the smooth functioning of KGBV. In fact newspapers published certain adverse items against the staff members. Some of the teaching staff submitted representations by themselves or through public representatives and other unions making requests for transfer citing various reasons such as spouse grounds, medical grounds and health of parents and children. All that impelled the Government to take a decision for effecting transfer of teaching staff in KGBV. Transparent process was taken up by virtue of the impugned G.O.Rt.No.103, dated 29.06.2022 and applications for transfers were received and various objections and grievances were received and they were all resolved and a seniority list was prepared and the same was displayed and thereafter, transfers were effected and therefore, there is no merit in the contentions raised by the writ petitioners.

18. Learned Single Judge did not find need to test the legality of the impugned G.O. and granted a relief to the writ petitioners with a direction to the Government to retain the writ petitioners in their respective stations where they were working by the time of filing the writ petitions and stated that the transfers were already effected and many of the teaching staff joined their new stations and therefore, disturbing them without they being parties to the proceedings was incorrect. Questioning that part of the order the writ appeals have been filed wherein the contentions are reiterated on both sides.

19. Precedent is cited at the bar in support of their respective contentions.

1. ***Kundan Sugar Mills V. Ziyauddin***¹.

2. ***Priscy D'Souza V. Indamer Company (Private), Ltd.***²Bombay High Court.

3. ***Susmriti Das V. Basumati Corporation***³Calcutta High Court.

20. In all those cases, the question that was considered was with reference to transfer of employees appointed on contract

¹AIR 1960 SC 650

²2003 (3) L.L.N. 648

basis. It was held that in cases of contractual employees the terms of the contract bind the employer and the employee and transfer is governed by those terms. If the terms of contract provide a clause of transfer then the employer can transfer the employees. If the contract does not have a term of transfer, it was not within the competence of the employer to transfer the employee.

21. For Government, ***Somesh Tivari v. Union of India***⁴ is cited for the principle - the transfer is an administrative order and transfer is ordinarily an incident of service and the Court should not interfere with it except in cases where *mala fides* on the part of the authority are established.

22. A proforma of contract of employment of the year 2013 is placed on record in W.P.No.26030 of 2022. As per term No.4, contractual employees shall not be considered as regular staff and they are not entitled to apply for transfer from the place where they are appointed. It is based on this term, the claim of the writ petitioners hinged. However, one needs to consider term No.2 also. **This term provides for the place of work on appointment and further reads – “employee will work at,**

³1994 - 1 L.L.N 485

⁴(2009) 2 SCC 592

and travel to, such locations as may be necessary for the proper discharge and fulfillment of the services”. The latest proforma of the contract is made available in W.A.No.857 of 2022 and this pertains to the latest period of May, 2022. In this term No.2 is similar to the term mentioned as above. What was mentioned in term No.4 in the earlier agreement finds complete omission in the new format of contract of the year 2022.

23. Thus, on considering the terms of contract of employment, one would notice that the employer was empowered to direct the employee to work at a place other than the place of his appointment and the employee can be directed to travel to such other locations and work there. That in effect is what transfer is meant by. Thus, by the terms of contract the contracting employer has always been empowered and entitled to effect transfers. The initial standard format of the contract of the year 2013 specifically inhibited the contractual employee from seeking a transfer. In the latest of the standard format of the contract of the year 2022 that disability is removed to the employees. The contracting employer is now inclined to receive request transfers from contracting employee also. As the precedent indicated, the transfer in a case of contractual employment is governed by the terms of the contract and since

the format of contract in the case at hand indicate the right of the employer to effect transfers, the challenge laid in the writ appeals filed by the teaching staff in questioning the transfer guidelines on the basis of terms of contract is ineffective as the contract of employment permits the employer to effect transfers. Therefore, the impugned G.O., in our considered view, is in tune with terms of contract of employment.

24. In all the three writ petitions that were decided by the learned Single Judge, the affidavits filed in support of the respective writ petitions at paragraph No.12 is relevant for consideration which reads:

“Thus, even the writ petitioners are not averse to transfers and they questioned the legitimacy of transfers on the ground that they are not provided with Minimum of Time Scale.”

25. Learned counsel for appellants/writ petitioners in W.A.No.845 of 2022 and W.A.No.869 of 2022 also argued that the teaching staff could be transferred provided Minimum of Time Scale is given to them. The question of eligibility or otherwise for Minimum of Time Scale of Pay would be dealt with a little latter by us. The contention is that unless and until Minimum of Time Scale Pay is given they shall not be

transferred. This is an argument which has no legal basis on facts and therefore we cannot agree with such contention. The need and necessity and virtue of transfer orders are not the subject matter and no arguments are made in questioning them. No *mala fides* are alleged in the decision to transfer the teaching staff. Therefore, even that aspect has not fallen for decision. Since the facts on record clearly indicate as to what impelled the Government to take up the task of transferring contractual teaching staff and as the terms of the contract of employment permit the employer to effect transfer of teaching staff of KGBV, we are of the considered opinion that there is no merit in these writ appeals which have challenged the vires of G.O.Rt.No.103, dated 29.06.2022. We uphold the transfers for the contractual teaching staff of KGBV. The orders of the learned Single Judge directing the Government to retain the writ petitioners at their respective stations where they were working by the time of filing these writ petitions, cannot in the light of the view we have taken, be sustained.

26. This takes us to W.P.No.11861 of 2023, wherein the prayer is to set aside the transfer orders. However, this challenge is laid on the premise that while the impugned G.O.Rt.No.103, dated 29.06.2022 permits the District Collector

and Chairman to issue transfer orders, the transfer orders to the writ petitioners were issued by District Education Officer and that is invalid. In all the appeals filed by the teaching staff as well as in this writ petition the learned counsel appearing for them argued that when the statute vested the power with an authority it is the same authority which had to exercise that power and in the absence of power of delegation on part of that authority, the said authority could not delegate the power vested with him to a lower authority. In other words, the learned counsel argued the doctrine of *delegatus non potest delegare*. Learned counsel cited ***Union of India V. B.V. Gopinath***⁵ in support of the principle argued.

27. As against it, the learned Standing Counsel for Samagra Shiksha argued that these teaching staff already participated in the transfer counseling process and exercised their web options and at this juncture they cannot be permitted to contend otherwise. The order of the learned Single Judge in allowing only the writ petitioners to continue in the stations where they have been working while allowing already transferred employees to work at their new stations resulted in several difficulties which include hindrance to effect the remaining parts of the

⁵(2014) 1 SCC 351

transfer of those employees who opted for those stations where the writ petitioners have been now working. In other words, learned counsel contends that the benefit conferred on the writ petitioners resulted in complete deprivation of opportunity to the effected employee who opted for such stations.

28. Learned Standing Counsel further contended, making reference to counter affidavits filed in the writ petitions, to the effect that the District Education Officer merely issued the orders in terms of the decisions taken by the District Level Committee constituted under G.O.Rt.No.103, dated 29.06.2022 and after obtaining the orders of the District Collector on note file. Thus, the submission is to the effect that decision of transfers was taken by the District Level Committee and the list of transfers kept by way of a note file was approved by the District Collector and since the matter pertains to education the District Education Officer merely signed the orders and served them on the transferred employees which is a concomitant act and therefore there was no unlawful delegation and the orders of transfer are valid.

29. Thus, the controversy boils down to one fact, namely, whether the orders of transfer are to be signed in each case by

the District Collector? While no one disputes the doctrine of *delegatus non potest delegare*, when it comes to invoking it the ratio laid down by the Hon'ble Supreme Court of India in the above cited ***Union of India V. B.V. Gopinath***(supra 5) has to be noticed. Their Lordships held that a discretionary power, must, in general, be exercised only by the authority to which it has been committed. When a power has been confided to a person in circumstances **indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally** unless he has been expressly empowered to delegate it to another. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable.

30. Tested on the said ratio, it is clear that in the case at hand, the authority to consider and take a decision about transfers is vested with the District Level Committee. In G.O.Rt.No.103 dated 29.06.2022 at Para No. IV it is mentioned that transfer orders shall be issued by the District Level Committee constituted for this purpose in each district. We have already mentioned the composition of this committee. It is not in dispute that it is only that committee that took decision of

transfers of all those applicants who applied for transfers. Thus, the authority which was vested with the power to take decision is not really in controversy here. What there remained is issuance of transfer orders. On the note file, it is stated that the District Collector had endorsed his approval for the transfer list. That is also not disputed. Once District Collector did that, he discharged his essential functions. Mere issuance of orders in terms of the decisions already taken was taken up by District Education Officer who was also one of the Members of the committee. One could not see from the impugned G.O any aspect of Government placing any trust in the individual Judgment of the District Collector in considering the transfers. Therefore, there is no occasion to say that he had delegated any of his powers. It is not the case of teaching staff that the District Education Officer signed the orders without the approval of the committee or the District Collector. In signing the transfer order there was no particular trust to be placed or individual judgment or discretion to be exercised since that part of the duties were already discharged by the District Collector being the Chairman of the District Level Committee and by signing on the note file in the office. Therefore, when a lower level officer such as District Education Officer signed and dispatched the

transfer orders, the same cannot be considered as violation of the principle *delegatus non potest delegare*. Therefore, the contentions raised questioning the transfer orders are found to be without merit.

31. In the light of the above we hold that contractual teaching staff of KGBV are amenable for transfers and G.O.Rt. No.103 dated 29.06.2022 is valid and transfers taken up in pursuance of it are valid and those transfers shall be effected fully. Hence, this point is answered accordingly.

Remuneration:

32. The employment is contractual and temporary in nature. From the rival contentions, it is clear that the teaching staff have not been asking for regularization of their services or absorption. They have been only contending that the Government having in principle accepted and ordered for Minimum of Time Scale respondents failed to extend the benefit to them and therefore they pray for its implementation.

33. That in KGBV there are no sanctioned posts of teaching staff. Thus, the appointments are not against sanctioned vacancies.

34. It is in the light of such admitted position, the rival contentions are required to be analysed: -

The principal contention of Samagra Shiksha is that as these teachers are not appointed as against sanctioned vacancies, they cannot ask for Minimum of Time Scale. In this regard we have to notice that Council of Ministers Resolution C.R.No. 77-10/2019 dated 21.01.2019 resolved for extension of Minimum of Time Scale to the contract employees working in various departments in the revised pay scale 2015 with the effect from 01.04.2019 vide G.O.Ms.No.12 dated 28.01.2019 issued by Government of Andhra Pradesh, Finance (HR.I – Plg. & Policy) Department. Thereafter, came G.O.Ms.No.24 dated 18.02.2019 of Government of Andhra Pradesh Finance (HR.I – Plg. & Policy) Department granting Minimum of Time Scale to the contract employees of KGBV, Universities, Societies, Model Schools in the revised pay scales 2015 with effect from 01.04.2019. It makes reference to, *inter-alia*, G.O.Ms.No.12 dated 28.01.2019 and states that this extension of Minimum of Time Scale is to the employees who are working on par with the contract employees covered in G.O.Ms.No.12 and the guidelines stipulated therein shall be adhere to. Then came G.O.Ms.No.40

dated 18.06.2021 issued by the Government of Andhra Pradesh

Finance (HR.I – Plg. & Policy) Department. That reads as below:

**“GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

Finance Department – Contract Employment - Remuneration & Other Benefits
Comprehensive orders – Issued.

FINANCE (HR-I Plg. & Policy) DEPARTMENT

G.O.MS.No . 40

Dated: 18-06-2021

Read the following:

1. G.O.Ms.No.94, General Administration (Ser.A) Department, Dt.28.03.2003.
2. G.O.Ms.No.12, Finance (HR.I-Plg. & Policy) Department, Dt.28-01-2019.
3. G.O.Ms.No.24, Finance (HR.I-Plg. & Policy) Department, Dt.18-02-2019.
4. G.O.Ms.No.17, Finance (HR.I-Plg & Policy) Department, Dt.31.01.2019.
5. G.O.Ms.No.25, Finance (HR.I-Plg & Policy) Department, Dt.18.02.2019.

ORDER :

Human resources are critical for the grounding & execution of the manifold schemes of the Government & for translating ideas & plans into tangible results. An efficient system & planned calendar for recruitment is sine qua non for the on boarding & deployment of qualified workforce & ensuring their availability to the various Departments. The Government is currently taking significant steps in this direction and for the streamlining of the existing system.

2. However, in the past, due to the lack of adequate focus & planning in the recruitment and deployment of qualified personnel, to meet demand for augmenting the professional workforce, the Government has issued the orders in G.O. 1st read above, introducing the system of contract employment. Several successive recruitments have been made by various Departments to meet the requirement of the workload using the newly introduced contractual system & it is observed that the recruitments have been made both in conformity & in deviation with the procedure governing contract employment.

3. The Government have examined the terms and conditions of the persons who have been engaged by method of contractual employment in the past & it is observed that the remuneration and the other benefits provided are governed by the following orders.

I. G.O.Ms.No.12, Finance (HR.I-Plg. & Policy) Department, dated 28-01-2019: In this G.O. orders were issued providing the Minimum of Time Scale to contract employees working in Government Departments in the Revised Pay Scales, 2015. This order is with effect from 01.04.2019.

II. G.O.Ms.No.24, Finance (HR.I-Plg. & Policy) Department, dated 18-02-2019: In this G.O. orders were issued providing the Minimum of Time Scale to the contract employees working in Universities, Societies, KGBV and Model Schools in the Revised Pay Scales, 2015. This order is with effect from 01.04.2019.

III. G.O.Ms.No.17, Finance (HR.I-Plg & Policy) Department, dated 31.01.2019: In this G.O. orders were issued sanctioning 180 days of paid maternity leave to the married women contract or outsourcing employees for their first two deliveries. This order is with effect from 01.04.2019.

IV. G.O.Ms.No.25, Finance (HR.I-Plg & Policy) Department, dated 18.02.2019: In this G.O. orders were issued sanctioning an ex-gratia of Rs.5,00,000/- (Rupees Five Lakhs only) for accidental death & Rs.2,00,000/- (Rupees Two Lakhs only) in case of natural death, to the legal heir of the deceased contract or outsourcing employee. This order is with effect from 01.04.2019.

4. The orders mentioned above, extending the various benefits to the contract employees, were issued on various dates in the months of January & February of 2019. However, the effective date for the implementation is w.e.f. 1-4-2019 in all the orders.

5. The estimated additional outgo resulting from the implementation of the above orders, amounting to approximately Rs 30.4 crore (Rupees Thirty crores and forty lakhs) per month and Rs 365 crore (Rupees Three Hundred & Sixty-Five crore) on an annual basis, has occurred only subsequent to 01-04-2019.

6. It is also observed that the mentioning of the eligible remuneration & the other benefits to the contract employees in different G.O.s is giving rise to ambiguity and lack of clarity among the employees, the drawing & disbursing officers and the audit authorities & is causing unnecessary delay & in some cases deprivation of the intended benefits.

7. Government after careful consideration of the entire matter & keeping the welfare of the contract employees in perspective, have decided to issue the following comprehensive orders, in supersession of all the orders issued earlier, regarding the remuneration & other benefits to be paid to the persons who have been appointed on contract appointment in terms of the instructions issued in the G.O. 1st cited, and as mentioned hereunder:

A. Payment of Minimum of Time Scale(MTS) in Revised Pay Scales 2015 to the Contractual employees engaged in the Government Departments, Universities, Societies, KGBV and Model Schools: The Minimum of Time Scale (MTS) shall be paid to the contractual employees working in various Government Departments, Universities, Societies, KGBV and Model Schools in the Revised Pay Scales, 2015 of the relevant posts, in which the employees are working. The remuneration (Minimum of Time Scale in RPS 2015) to the contractual employees shall be governed by the following conditions:

- a) The remuneration extended shall form an all-inclusive consolidated monthly payment for all purposes.
- b) No other allowances shall be paid.
- c) No other increase in any form like annual grade increments, etc., shall be admissible on the above consolidated monthly remuneration equivalent to the Minimum of Time Scale in RPS, 2015.
- d) The extension of Minimum of Time Scale is applicable to those contractual employees who have been appointed against vacant sanctioned posts and for those who have been appointed by the specific Government orders have been issued with the concurrence of Government in Finance department.**
- e) No further recruitment shall be made on contractual basis without prior approval of the Government in Finance Department. For any appointment in deviation, disciplinary proceedings shall be initiated against the appointing authorities and severe penalties under A.P. C.C.A. Rules, 1991, will be initiated and the appointments made irregularly shall be cancelled. The salary bills of such irregular appointees shall not be admitted in the audit.
- f) The departments shall pay utmost attention to the conditions as referred to above, while extending the remuneration (Minimum of Time Scale in RPS 2015) to the personnel working on contractual basis under their administrative control.

g) These orders shall not apply to the Consultants/Advisors/ OSDs and those appointed on specific consolidated pay, working on contractual basis in Government Departments.

h) These orders shall not apply to the employees working on outsourcing basis.

B. Maternity Leave for women employees engaged on contractual basis:

Married women employees engaged on contractual basis in Government Departments, Universities, Societies, KGBV and Model Schools shall be eligible for 180 days of paid maternity leave for the first two child births. This condition is relaxed in cases of employees having less than two surviving children. The paid maternity leave benefit shall be equivalent to the existing remuneration drawn by the above women employees.

The statutory benefits such as EPF & ESI and other recoveries wherever applicable, shall also be admissible by treating them as being “on duty”.

C. Sanction of Ex-gratia to the contract employees: Ex-gratia of Rs.5.00 lakhs (Rupees five lakhs only) shall be provided for accidental death and Rs.2.00 lakhs (Rupees two lakhs only) for natural death to the legal heir of the deceased Contract employees, who die in harness, while in service, duly following the following procedure.

a) The application seeking ex-gratia shall be submitted by the Legal heir of the concerned deceased Contract employees with in a period of three (3) months from the date of demise to the unit/head of the office concerned.

b) After receipt of the application for sanction of Ex-gratia from the Legal heir, the Administrative Officer/Drawing and Disbursing Officer concerned has to conduct personal enquiry in the matter within fifteen (15) days and confirm the death.

c) The A.O./D.D.O., after thorough enquiry shall submit report to the unit/head of the office, confirming the death and recommends for sanction of Ex-gratia.

d) After receipt of the enquiry report, the Unit/Head of the Office may sanction the Ex-gratia of Rs.5.00 lakhs in cases of accidental death and Rs.2.00 lakhs in case of natural death, as the case may be.

8. All the Secretariat Departments & the Heads of Departments shall take further necessary action in the matter accordingly.

9. The order is available online and can be accessed at <http://www.goir.ap.gov.in>

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

**SHAMSHER SINGH RAWAT
PRINCIPAL FINANCE SECRETARY”**

35. The first point to be observed is: -

From the time of G.O.Ms.No.40 as per para 7A(e), the appointments on contractual basis without prior approval of the Government in Finance Department shall not be made. At this juncture, it is relevant to notice, the State Project Director, Samagra Shiksha, Andhra Pradesh, Amaravati issued proceedings in Rc.No.SS/42/2021-ADMIN-SSA dated 29.04.2022 directing all the additional project coordinators to issue proceedings to terminate the contractual service of contract employees on the afternoon of 29.04.2022. That was implemented. Then came, on the very next day, the proceedings issued by the State Project Director in Rc.No.SS/42/2021-ADMIN-SSA-1 dated 30.04.2022 directing the authorities to re-engages the services of contract employees on and from 02.05.2022 on contract basis. Accordingly, the teaching staff were re-engaged on execution of fresh contracts. The standard form of such contract is also placed on record in Writ Appeal No.857 of 2022. It is important to notice that G.O.Ms.No.40 dated 18.06.2021 came first and the fresh re-engagement and

fresh contract of services came much thereafter on 02.05.2022. The implication is that the contractual services shall be taken to have been only in terms of G.O.Ms.No.40 dated 18.06.2021 with the prior approval of the Government in Finance Department. Government now cannot contend that re-engagement of services of teaching staff since 02.05.2022 is even now against the principles contained in G.O.Ms.No.40 dated 18.06.2021. For all these nearly 10 years remunerations have been paid to contract teaching staff and that cannot be said to be without the financial concurrence.

36. On now having engaged once again contract employees on execution of fresh contract of employment one has to see whether G.O.Ms.No.40 dated 18.06.2021 can be considered as one that grants Minimum of Time Scale to KGBV. Be it noted, under the same G.O, Minimum of Time Scale was granted to contract employees engaged in Government Departments, Universities, Societies and Model Schools also. It is undisputed by both sides that for all of them Minimum of Time Scale was applied and implemented. It is undisputed that KGBV mentioned in this G.O.Ms.No.40 alone was kept out of consideration and Minimum of Time Scale was not implemented to them. The main reason for not extending that benefit to

employees in KGBV is Para No.7A(d) wherein it is mentioned that the extension of Minimum of Time Scale is applicable to those contractual employees who have been appointed against vacant sanctioned posts and for those who have been appointed by the specific Government orders issued with the concurrence of Government in Finance Department. On the grounds that employees in KGBV are not appointed against vacant sanctioned posts, the denial of benefit is sought to be justified. Therefore, now the question is whether that is a justifiable ground to refuse to grant Minimum of Time Scale Pay to employees in KGBV. We have already seen that way back in the year 2019 under G.O.Ms.No.24 dated 18.02.2019 of the Government of Andhra Pradesh, Finance Department granted extension of Minimum of Time Scale to KGBV. Two years thereafter by G.O.Ms.No.40 dated 18.06.2021 of the Government of Andhra Pradesh, Finance (HR.I – Plg. & Policy) Department issued in the name of the Governor of Andhra Pradesh, it once again reiterated the extension of Minimum of Time Scale to KGBV. The Government has full information and knowledge about existence of contract employees and their engagement in various institutions and the existence of sanctioned posts in various institutions and engaging contract

employees as against those sanctioned posts and it is also aware that in those institutions, it permits engagement of contract employees as against non-sanctioned posts also. Government is also fully aware that in KGBV so far as the teaching staff is concerned, it has never created any regular cadre and there are no sanctioned posts. Being fully aware of it, it has consciously and consistently taken a decision to grant Minimum of Time Scale to the staff working in KGBV also. This determined desire of the Government is also emphatically continued even in its latest G.O.Ms.No.5 dated 17.01.2022 of Government of Andhra Pradesh, Finance (HR.I – Plg. & Policy) Department. It reads as below:

“ The Government of Andhra Pradesh have constituted the 11th Pay Revision Commission (PRC), vide the reference first cited, with detailed terms of reference relating to pay and emoluments of employees and pensioners. The Pay Revision Commission submitted that its report to the Government on 5th October, 2020.

2. In the reference second read above, the Government constituted a Committee of Secretaries to examine the recommendations of the 11th PRC.

3. In the reference third read above, keeping in view the welfare of the Contract employees, the Government have issued comprehensive orders for payment of Minimum of Time Scale (MTS) in Revised Pay Scales, 2015.

4. The Government, after careful examination, hereby order for the extension of Minimum of Time Scale (MTS) in Revised Pay Scales, 2022 w.e.f 01.01.2022 (January 2022 Pay) to the Contract employees engaged in the Government

*Departments, Universities, Societies, **KGBV** and Model Schools in the respective relevant posts in which the employees are working.*

5. All the Secretariat Departments & the Heads of Departments shall take further necessary action in the matter accordingly.

This G.O was also issued in the name of the Governor of Andhra Pradesh.”

By these G.Os.', the Government disclosed itself that it considered the contract employees of KGBV which have no sanctioned posts and it also considered Universities and Government Departments where there are sanctioned posts and then treated them equally and extended Minimum of Time Scale in revised pay scales 2022 to KGBV. This determined and pronounced policy of the Government makes it very clear to this court that the desire and intendment of the Government is to grant Minimum of Time Scale in Revised Pay Scales, 2022 to contractual employees in KGBV with effect from 01.01.2022. The condition concerning application of Minimum of Time Scale to those who are engaged against sanctioned posts is to be understood only as applicable to those institutions which have got sanctioned posts and not to those institutions which have no sanctioned posts at all from the very inception. If this is not the meaning that could be given to this, one has to necessarily accuse the Government that it committed mistake in giving its

G.Os by including employees of KGBV. On analysis, we find that any contention that it is a mistake cannot stand to reason for the following reasons: -

37. The counter affidavits filed on behalf of Samagra Shiksha do indicate that on two occasions it had addressed letters to the Government seeking clarifications as to whether teaching staff in KGBV who are not appointed against sanctioned vacancies can be granted Minimum of Time Scale or not. Despite such request for clarifications, Government did not issue any amended G.O by Order and in the name of the Governor of Andhra Pradesh making any rectifications such as omission of KGBV. Thus, G.O.Ms.No.40 and G.O.Ms.No.5 stand intact un-amended till now. That itself suggests clearly that the Government intends to grant Minimum of Time Scale for the teaching staff in KGBV. Therefore, the argument of the learned standing counsel based on the ground that the writ petitioners were not appointed as against sanctioned posts and therefore they are not entitled to claim what the Government had granted to them is untenable as it failed to notice that the Government considered the case of KGBV as a class by itself.

38. In continuation of the same line of argument, the learned standing counsel, in this regard places faith in Memo No. ESE01 – SEDN0SPD/27/2020-2 dated 29.07.2021 which reads as below: -

“The attention of the State Project Director, APSS, is invited to the reference 2nd cited, wherein she has informed that the KGBV Teachers Association has submitted representation with a request to consider their demand for implementation of Minimum of Time Scale, and she has therefore, requested to Issue necessary Instructions in the matter.

2. In this regard, the State Project Director, APSS, Is informed that as per para 6 (d) of the orders Issued In G.O.Ms.No.12, Fin. (HR.I Plg. & policy) Dept. dt.28.01.2019, the extension of MTS is applicable to those contract employees, who have been appointed by the specific Govt. orders issued with the concurrence of Finance Department. Whereas, the contract employees working in KGBV were appointed without concurrence of the Government in Finance Dept. as the honorarium and other allowances are being paid as per approved provisions In the Annual Work Plan and Budget of Government of India. Therefore, the contract employees of KGBV are not eligible for Minimum of Time Scale In RPS, 2015, as they have not fulfilled the conditions governing sanction of Minimum of Time Scale in RPS, 2015 as per the orders Issued in the G.O.Ms.No.24. (HR.I.Plg.&Policy) Dept. dt. 18.02.2019 read with G.O.Ms.No. 12. Finance (HR.I-Plg.&Policy) Department, dt/28.01.2019.

3. This memo issues with the concurrence of the Finance (HR.I-Plg. & Policy) Department, vide U.O.No.HROPDPP (TRPO)/136/2020 (Computer No.1167332) dt.15.03.2021.”

Principal Secretary to Government”

39. Subsequent thereto, State Project Director, Samagra Shiksha addressed a letter dated 24.04.2022 to the Principal Secretary to Government, Finance Department once again asking for clarification on the advent of issuance of G.O.Ms.No.5 dated 17.01.2022 by the very Finance Department wherein KGBV were also included for extension of Minimum of Time Scale Pay to contract employees in KGBV. As per the record no further clarification came.

40. Whether these letters and clarification Memos would have any legal difference on what is mentioned in the Government orders issued by the Finance Department of the Government of Andhra Pradesh in G.O.Ms.No.40 dated 18.06.2021 and G.O.Ms.No.5 dated 17.01.2022 shall now be considered. On a careful consideration, we are of the considered opinion that the contentions of the learned standing counsel based on these letters and clarification memos have absolutely no legal bearing for the following reasons: -

41. Circulars, Memos, Instructions issued merely represent the understanding of the statutory provisions by the authority which issued them. They cannot abridge or enhance what is provided in the Government orders. A memo is a

communication of the authority that conveys some information and is not equivalent to a decision of the Government. In the hierarchy of executive legislation, a memo of the Government cannot supersede or depart from the provisions of any earlier order. Unless an order is expressed in the name of the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. The memos have no binding effect on the courts. It is for the courts to declare what the particular provision of the statute says or how a Government order has to be construed. Even a clarificatory G.O cannot by any means supersede or over-write the terms of the main order. These well settled principles have been laid down and followed continuously and reference in this regard can be made to:

1. ***B. Rugmini Amma V. B.S. Nirmala Kumari***⁶.
2. ***Commissioner of Central Excise, Bolpur V. Ratan Melting & Wire Industries***⁷.
3. ***K.V. Ramana Rao V. Government of Andhra Pradesh***⁸.

⁶(2013) 11 SCC 162 (para 12)

⁷(2008) 13 SCC 1 (Five Judges) (Para 7)

⁸2001 (4) ALD 852 (AP)

4. ***Abilash V. State of Kerala and Siraj V. State of Kerala***⁹.

5. ***Kaluvoy Fishermen Cooperative Society V. State of Andhra Pradesh***¹⁰.

42. In the light of such principles of law, the Memo dated 29.07.2021 issued by Principal Secretary to Government which is not in the name of the Governor or by the order of the Governor cannot be given effect to. This memo is not equivalent to modification of G.O.Ms.No.40 or G.O.Ms.No.5. The said memo merely represents the view point of the learned Principal Secretary to Government which issued the memo. Even subsequent to this memo, G.O.Ms.No.5 dated 17.01.2022 came and therefore this memo dated 29.07.2021 ceases to hold any bearing whatsoever. Despite view point taken by Principal Secretary in the memo dated 29.07.2021, when the Government issued G.O.Ms.No.5 dated 17.01.2022, reiterating its earlier position, the only reasonable inference one could draw is that Government intends and desires to grant Minimum of Time Scale in revised pay scales 2022 to the contract employees engaged in KGBV. This latest of the Government orders makes it

⁹2023 SCC Online Ker 58

very clear and is in tune with the view taken by us that the clause - appointment against sanctioned vacancies is applicable to only those institutions where such sanctioned posts are there and that clause was and is never meant to apply to KGBV where there are no sanctioned posts since inception. This is the only logical interpretation that can be made out. Thus, we find justification in the prayers of teaching staff of KGBV seeking extension of benefit of Minimum of Time Scale.

43. Education is the most important tool for social, economic and political transformation and a key instrument for building an equitable society. Improvement in the status and professional competence of teachers is the corner stone of educational reconstruction so as to achieve goals enshrined in National Policy on Education and the Right to Children to Free and Compulsory Education Act, 2009. In ***State of Punjab V. Jajith Singh***¹¹, the Hon'ble Supreme Court of India held that in a welfare state any act of paying less wages as compared to others similarly situated constitutes act of exploitative enslavement. In G.O.Ms.No.40 dated 18.06.2021 Government of Andhra Pradesh, in tune with its welfare policy, stated that

¹⁰2021 SCC Online AP 340

¹¹(2017) 1 SCC 148

having kept the welfare of the contract employees in perspective, it has decided to issue the comprehensive orders where under it granted Minimum of Time Scale to various contractual employees including those who are working in KGBV. Successive Government orders since the year 2019 in G.O.Ms.No.24, G.O.Ms.No.40 and G.O.Ms.No.5 granted Minimum of Time Scale to contract employees in KGBV where there are no sanctioned posts while extending similar benefits to other institutions such as Universities and Model Schools. The authorities having extended the MTS to all other institutions mentioned in the G.Os. arbitrarily excluded employees of KGBV. The justification offered is now seen untenable under law and therefore it is negated. Therefore, the view taken by the learned single Judge in ordering Minimum of Time Scale to the writ petitioners cannot be criticized.

44. At the Bar arguments were made on the doctrine of equal pay for equal work, pay parity, regularization of services with reference to various categories of employees, various organizations and precedent is cited. For instance, in ***Parshotam Lal Dhingra V. Union of India***¹², the prime question that fell for consideration before their Lordships was

whether the protections of Article 311 are available to each of the several categories of Government servants or not. ***Daily R C Labour, P And T Deptt V. Union of India***¹³ was a case where the issue was about daily paid casual labourers as against regular workers and the payment of minimum pay in the pay scale of regular workers along with Dearness Allowance (DA) and the scheme introduced for absorption of certain categories of casual labourers. All such aspects fell for consideration where equal pay for equal work was one aspect that was debated and decided.

45. In the light of the view that we have taken we are inclined to state that the facts presented in the case at hand do not require any consideration of these arguments concerning equal pay for equal work and pay parity as this is not a case requiring examination of those principles. Therefore, we do not wish to dilate and burden this record on those arguments and precedent cited.

46. Learned standing counsel for Sarva Shiksha places strong reliance on Division Bench Judgment of the High Court of Jharkhand at Ranchi in ***Sunil Kumar Yadav V. State of***

¹²AIR 1958 SC 36

Jharkhand¹⁴. That is also a case concerning Para teachers on contract employment in Samagra Shiksha Abhiyan. The writ petitioners sought for regularization of their services or sought for pay scales on par with regular school assistant teachers. The Division Bench refused to grant either of those reliefs. In the case at hand before us, the above two questions are strangers and therefore to that extent the ruling does not require any exploration. However, there is one another point that fell for consideration before the Division Bench of the Jharkhand High Court where the question raised was whether as a last alternative relief, those para teachers were entitled to get Minimum of Time Scale. In conclusion, the Jharkhand High Court declined to grant it. Before any assistance can be taken from this ruling one has to notice the legal framework available for Jharkhand which is enumerated at Para no.32 of the said ruling. There in that State, **Jharkhand Primary School Teacher Appointment Rules, 2012** were passed wherein 50% of the vacant and sanctioned posts of teachers in the regular establishment of state Government have been reserved for para teachers on satisfying certain conditions. One should also notice at Para No.93, it is stated that the para teachers were taken on

¹³1987 Lawsuit (SC) 768

contract on payment of Honorarium only. In the case at hand before us, the standard form of contract for the year 2013 as well as standard form of contract of the year 2022 used the word “Remuneration” and not “Honorarium” (in the counters filed, it is stated that writ petitioners are paid only Honorarium but the same shall be held incorrect since the standard form of contracts that are provided in the material papers, the word used is Remuneration and not Honorarium). That is another distinguishing feature. What influenced the reasoning of the Hon’ble Jharkhand High Court consists of the above referred points as well as what is mentioned in the Para Nos.86 and 87 to the effect that the writ petitioners were not on a specific prayer but they were praying for one or other reliefs. It is in such circumstances, the Jharkhand High Court declined to grant Minimum of Time Scale. This ruling does not help since the legal framework and facts presented in that writ petition are significantly different from the governing G.Os and facts available on record here. Here, the case is not about pay parity of these writ petitioners as against any other similarly placed employees. The question that fell for consideration before us is only as to whether the Government orders that pronounced

¹⁴2022 SCC Online Jhar 1586

extension of revised pay scales 2022 to contractual employees in KGBV was withheld rightly or wrongly. As we have observed in the earlier paragraphs of this judgment that withholding of that benefit to them is incorrect. Therefore, the mandamus prayed must be granted. Hence, this point is answered accordingly.

47. In summation, we agree, though for different reasons, with the conclusions of the learned single Judge to the extent of extending the benefit of Minimum of Time Scale in Revised Pay Scales, 2022 to the contract employees of KGBVs and uphold the same. We are unable to agree with the orders of the learned single Judge concerning the aspects of transfers of teaching staff of KGBVs and therefore set aside the impugned orders to that extent.

48. We hold and conclude that the G.O.Rt.No.103, School Education (Prog-II) Department, dated 29.06.2022 is valid and the transfers of teaching staff working in KGBVs for the year 2022-23 made in pursuance of the said G.O.Rt.No.103, dated 29.06.2022 are valid. We further hold that payment of remuneration at the Minimum of Time Scale (MTS) in Revised Pay Scales, 2022 vide G.O.Ms.No.5, Finance (HR.I – Plg. & Policy) Department dated 17.01.2022 of the Government of Andhra Pradesh (by order and in the name of the Governor of

Andhra Pradesh) for contract employees engaged in KGBVs shall be implemented with effect from 01.01.2022 (January, 2022 pay) and the arrears shall be paid within 12(twelve) weeks from the date of this order.

49. In the result, in terms of Paragraph Nos.47 and 48, these matters are disposed of and accordingly,

W.A.No.845 of 2022 is dismissed.

W.A.No.851 of 2022 is allowed in part.

W.A.No.857 of 2022 is allowed in part.

W.A.No.861 of 2022 is allowed in part.

W.A.No.869 of 2022 is dismissed.

W.P.No.11861 of 2023 is dismissed.

There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dr. V.R.K.KRUPA SAGAR, J

Date: 12.03.2024
LR copy to be marked
(B/o)
Ivd/Dvs

**THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

**WRIT APPEAL Nos.845, 851, 857, 861 and 869 of 2022
and
WRIT PETITION No.11861 of 2023**

Date: 12.03.2024

Ivd/Dvs