The Tamil Nadu agricultural university & Anr.Etc. v. R. Agila etc

- **TOPIC :** Government Employee can't Refuse to Join New Place of Posting while Contesting Transfer
- **BENCH** : Justices Vikram Nath and Prasanna B Varale

- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Whether Government employees can refuse to join a new place of posting while contesting transfer or not.
- **OBSERVATIONS**
  - The Supreme Court recently condemned frequent instances of transferred employees not joining new places of posting while legal or administrative challenges to their transfer are underway.
  - "It is not uncommon to see employees who challenge such orders of transfer before various forums, extending the litigation to several years, while choosing to not join the service and still seeking full salary, and often citing medical conditions as a ground for such inability to join. It is of utmost importance that, while the legal challenge runs its course, the needs of administration are treated paramount in comparison to the inconvenience faced by the employees in cases of transfer.In this regard, the Government employers should also take stern measures against such employees who fail to join the new places of posting without any rationale or an order of stay being in place", said a bench of Justices Vikram Nath and Prasanna B Varale.
  - The Court opined that when a person works for the government, incidence of transfer becomes inherent in the terms of service unless it is specifically barred.
  - As such, once relieved from a particular place of posting, the employee has no right to remain absent or to refute to join the new place of posting. He can join the new place of posting and continue to contest the transfer. An employee has no right to remain absent or refuse to join the new place of transfer once relieved from their current place of posting.
  - The employee is entitled to avail all available remedies for redressal of grievances, but it does not entitle them to not comply with the transfer orders. The employee is well within his rights to join the transferred place of posting and still continue to avail the remedies available under the law for redressal of his grievances against the transfer.
  - Briefly put, the Court was dealing with the case of Tamil Nadu Agricultural University and 6 private respondents, who initially challenged their transfer orders by the University before the Madras High Court. A Single Judge allowed the respondents' pleas and quashed the transfer orders. Against the same, the appellant-University filed writ appeals. The Division Bench of the High Court dismissed the appellant-University's appeals. Aggrieved by the same, it approached the Supreme Court. Pursuant to the Supreme Court's initial orders, the private respondents joined their new places of posting. However, an issue remained with regard to regularization for the period during which they did not join services despite transfer.
  - With regard to 4 respondents, who had interim orders in their favor from the High Court, the appellant-University conceded that it was not opposed to regularization and payment of arrears.
  - So far as the other 2 respondents, the Court noted that without any interim order in their favour, they remained unauthorizedly absent from service during the pendency of their petitions before the Single Judge of the High Court. As such, they could not be regularized and/or paid arrears for the said period. However, they were entitled to regularization and payment of salaries for the period after the Single Judge pronounced the decision quashing the transfer orders.
  - "Despite there being no interim order in their favour, respondent nos. 4 and 7 continued to remain absent after being relieved from their original place of posting. As such, this Court is not inclined to extend any benefit of salary for the period of unauthorised absence. However, as the transfer order was quashed by the learned Single Judge, their service periods shall continue to be treated in continuity, and they would be entitled to whatever other benefits accrued to them due to this continuity, but no salary for the said period of unauthorized absence."
  - Ultimately, the appeals were allowed, with a direction to the appellant-University to clear

arrears of the private respondents, subject to the condition that two respondents (who did not have interim orders in their favor) were not to be paid for the period of unauthorized absence.

Omkar Ramchandra Gond v. Union of India & Ors.

- **TOPIC :** Government And Private Sector Should Focus on How to Accommodate, Not Disqualify, Candidates with Disabilities
- **BENCH :** Justice BR Gavai, Justice Aravind Kumar and Justice KV Viswanathan

- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Whether the Government and private sector should focus on how to accommodate the candidate with disabilities or not.
- **OBSERVATIONS**
  - The Supreme Court on Tuesday stressed that the focus of the government, regulatory bodies, and the private sector should be on how to accommodate and provide opportunities for candidates with disabilities, rather than seeking ways to disqualify them or hinder their educational goals.
  - ‘‘ The approach of the Government, instrumentalities of States, regulatory bodies and for that matter even the private sector should be, as to how best can one accommodate and grant the opportunity to the candidates with disability. The approach should not be as to how best to disqualify the candidates and make it difficult for them to pursue and realize their educational goals.’’
  - A bench of Justice BR Gavai, Justice Aravind Kumar and Justice KV Viswanathan observed that the Disability Assessment Boards are not to function as "monotonous automations" that merely check the percentage of disability. The Court emphasized that the role of the Disability Assessment Boards is to determine whether a candidate's disability will impede their ability to pursue the course in question.
  - ‘‘ Disabilities Assessment Boards are not monotonous automations to just look at the quantified benchmark disability as set out in the certificate of disability and cast aside the candidate. Such an approach would be antithetical to Article 14 and Article 21 and all canons of justice, equity and good conscience. It will also defeat the salutary objectives of the RPwD Act. The Disabilities Assessment Boards are obliged to examine the further question as to whether the candidate in the opinion of the experts in the field is eligible to pursue the course or in other words, whether the disability will or will not come in the way of the candidate pursuing the course in question.’’
  - The Court passed the following directions in this regard:
  - The Court held that the Disability Assessment Boards must positively record whether the disability would impede the candidate's ability to complete the course. If the Board concludes that a candidate is ineligible, it must provide reasons for its decision.
  - Pending the formulation of revised regulations by the National Medical Commission, the Disability Assessment Boards must consider the principles outlined in a communication from the Ministry of Social Justice and Empowerment dated January 25, 2024. This communication emphasized the need for incorporating advancements in assistive technology and ensuring that regulations comply with the objectives of the RPwD Act.
  - The Court held that candidates can challenge negative opinions of the Disability Assessment Boards through judicial review. The courts have to refer such cases to premier medical institutions for independent opinions.
  - The Court passed the aforementioned directions while ruling that the mere existence of a benchmark disability cannot disqualify a candidate from pursuing educational courses, including the MBBS program.
  - The Court allowed an appeal filed by a candidate with a speech and language disability quantified at 44-45%. The candidate sought admission to the MBBS program under the Persons with Disabilities (PwD) category, but was denied admission on the ground of having a benchmark disability. This decision was based on the Graduate Medical Education Regulation, 1997 as amended in 2019. This regulation barred candidates with 40% or more disability from pursuing an MBBS course.
  - The question before the Court was whether a

candidate with a benchmark disability exceeding 40%, such as the appellant's speech and language disability, should be automatically disqualified from admission under the PwD category for the MBBS course.

- The Supreme Court stressed that the Rights of Persons with Disabilities Act, 2016 was framed to give effect to the principles set forth in the United Nations Convention on the Rights of Persons with Disabilities, which emphasize respect for individual autonomy, non-discrimination, equality of opportunity, and full participation in society.
- The Court referred to Article 41 of the Constitution, which mandates the State to make effective provisions for securing the right to education for persons with disabilities. It also focused on Sections 2(m), 2(r), 2(y), 3, and 32 of the RPwD Act, 2016, which provide for inclusive education, reasonable accommodation, and reservation of seats in higher educational institutions for persons with benchmark disabilities.
- The Court criticized appendix H-1 inserted by the 2019 amendment to the Regulations for creating an absurd situation wherein candidates with less than 40% disability could pursue the MBBS course without PwD reservation, and those with 40% or more disability were not eligible at all to pursue the course.
- The Court stressed the importance of inclusive education, noting that reasonable accommodation, as defined in Section 2(y) of the RPwD Act, includes making necessary adjustments to ensure equal participation for persons with disabilities.
- The Court confirmed the appellant's admission to the MBBS program, which had been granted earlier through an interim order dated September 18, 2024, based on a favorable report by the Maulana Azad Medical College.
- The Supreme Court also referenced individuals who have overcome disabilities and achieved great success.

Keerthan Kumar & Anr v. State of Karnataka

- **TOPIC :** Karnataka HC Quashes Case Over Shouting 'Jai Shriram' Inside Mosque, Says It Doesn't Outrage Religious Feelings
- **BENCH :** Justice M Nagaprasanna
- **FORUM:** Karnataka High Court

- **MAIN ISSUE**
  - Whether a case can be quashed or not against two men accused of an offence under IPC Section 295A for allegedly shouting 'Jai Sriram' in a mosque.
- **OBSERVATIONS**
  - Quashing a case against two men accused of an offence under IPC Section 295A for allegedly shouting 'Jai Sriram' in a mosque, the Karnataka High Court said it was not understandable how the slogan would outrage the religious feelings of any class.
  - This the High Court said after noting that the complainant in the case had himself said that Hindus and Muslims were living in harmony in the concerned area.
  - It further said that as no ingredients of the offences alleged were made out, permitting further proceedings against the petitioners would become an abuse of process of law.
  - The two men were booked under various IPC offences including Sections 447(Punishment for criminal trespass), 505 (Statements conducing to public mischief), 506(Punishment for criminal intimidation), 34 (common intention) and 295A.
  - Taking note of IPC Section 295A a single judge bench of Justice M Nagaprasanna in its order observed, "Section 295A deals with deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs. It is not understandable as to how if someone shouts 'Jai Sriram' it would outrage the religious feeling of any class.
  - When the complainant himself states that Hindu – Muslims are living in harmony in the area the incident by no stretch of imagination can result in antimony". With respect to allegation of Section 505 the high court observed that there was no allegation that the alleged incident has caused public mischief or any rift. On Section 506 the high court said that the complaint itself narrates that the complainant had not seen the person who allegedly committed the offence of criminal intimidation

under IPC Section 506.

- The prosecution had alleged that on September 24, 2023, at about 10.50 p.m some unknown persons barged into the Masjid and shouted slogans saying 'Jai Sriram'' and alleged to have threatened that they will not leave the community. The complaint named unknown persons but while conducting investigation, the petitioners were drawn as accused in the case. The petitioners moved the high court seeking quashing of the registration of the crime.
- The petitioners argued that none of the ingredients that are necessary for the allegations are present in the case. The offence, under Section 447 of the IPC which deals with criminal trespass, is not made out as a Masjid is a public place and entry into it cannot mean a criminal trespass, they said.
- The prosecution sought to dismiss the plea saying the petitioners cannot enter into the Masjid and shout 'Jai Sriram' or threaten the muthavalli. It was contended that the least the matter requires is an investigation.
- The high court noted that the complaint had narrated that "Hindus and Muslims in the jurisdiction" of the concerned police station are "living in great harmony and these persons who have shouted 'Jai Sriram' are creating a rift between the communities". With respect to offences alleged under Sections 503 and 447 the high court said that the complaint "nowhere even remotely touches upon" the ingredients of the two offences in the case.
- It thereafter said, ''Finding no ingredients of any of the offences so alleged, permitting further proceedings against these petitioners would become an abuse of the process of law and result in miscarriage of justice".
- Allowing the plea, the high court quashed the criminal proceedings pending before the trial court.

XXX v. XXX

❖ **TOPIC :** Inconvenience of Accused No Grounds To Transfer Case, P & H HC Dismisses Plea of 77 – Yr Old To Transfer Cruelty FIR , Exempts Personal Appearance

❖ **BENCH :** Justice Sumeet Goel

❖ **FORUM:** Punjab & Haryana High Court

❖ **MAIN ISSUE**

- Regarding inconvenience to the accused

❖ **OBSERVATIONS**

- Observing that inconvenience caused only to the accused cannot be the ground for transfer of FIR, the Punjab & Haryana High Court dismissed the plea of a 77-year-old woman filed for transfer of cruelty FIR filed against her by daughter-in-law.
- The Court rejected the contention that the FIR should be transferred because the woman is at old age and there is no man to accompany her from her hometown Amritsar to Haryana's Karnal.
- Justice Sumeet Goel said, "It is not the parameter of inconvenience of the petitioner- accused alone that has to be considered; rather convenience must be adjudged on the touchstone of relative convenience and difficulties of all parties concerned in the process i.e. the accused, victim/complainant, witnesses and State (prosecution). In other words; the concept of convenience herein entails familial triangulation of comparative convenience of accused, victim/complainant and the Society at large (represented by State/prosecuting agency)."
- The Court added that the comparative inconvenience and "hardships likely to be caused to all concerned" is a factor that should be borne in mind while considering a plea for transfer of the FIR.
- These observations were made while hearing the plea of a 77 years old woman (mother-in-law of complainant), to transfer cruelty FIR lodged in Karnal which is the parental house of her daughter-in-law to Amritsar. The FIR was lodged under Sections 323, 406, 420, 498-A, 506 and 354 of the IPC in 2021. It was alleged that the woman was harassed and beaten by her in-laws.
- Counsel for the petitioner argued that the marriage of the son of the petitioner and complainant was solemnized in 2006 and they went to England in 2010 and resided there till 2016. However, whenever they were in India, they used to live in Amritsar. Thus, no cause of action arose at Karnal.
- After hearing the submissions, the Court said that it could not be said at this stage that the Karnal

Police did not have the requisite jurisdiction to register the FIR or to investigate the same.

- Accordingly, the plea raised by the petitioner deserves to be rejected on this ground.
- It further rejected the contention that the petitioner would suffer general inconvenience on account of her being aged 77 years, and no adult male member being available in her family to accompany her from Amritsar to Karnal to attend each and every date of the hearing.
- "The huge distance of about 350 kilometres from Amritsar to Karnal, cannot be considered to be a ground, by itself, to transfer the FIR in question from Karnal (Haryana) to Amritsar (Punjab)," the Court said.
- Justice Goel opined that "manageable and real time solutions can be undertaken to mitigate this seeming difficulty/inconvenience being faced by the petitioner-accused by granting personal presence exemption to her keeping in view her age and the distance between Karnal (Haryana) to Amritsar (Punjab)."
- However, the judge imposed certain conditions including that the petitioner will be represented by a counsel and she will not stall the proceedings of the trial Court.
- In the light of the above, the plea was dismissed

X v. State of Andhra Pradesh and Another

- **TOPIC** : Andhra Pradesh High court Declines To Quash Case Against Man Accused of Cheating, Raping Women on 'False Promise' of Marriage
- **BENCH** : Justice BVLN Chakravarthi

- **FORUM:** Andhra Pradesh High Court
- **MAIN ISSUE**
  - Whether a case can quashed or not involving allegations of rape and cheating under the guise of "false promise" of marriage.

- **BACKGROUND**
  - The order was passed in a plea challenging a case registered against the petitioner under IPC Sections 376(rape), 417(Punishment for cheating), 420 (cheating and dishonestly inducing delivery of property) and 354 (D) (Stalking).
  - The petitioner and complainant were both medical students in a college wherein the petitioner was the complainant's senior.
  - The complainant woman alleged that the petitioner "was after her", stating that he loves her and intends to marry her. She claimed that in July 2021, she visited his flat where he sexually assaulted her on the pretext of marriage.
  - The relationship continued with the petitioner repeatedly promising to marry the complainant. Subsequently, the petitioner allegedly stopped taking the complainant's phone calls and started avoiding her and when she asked him about marriage he said that he will not marry her.
  - The woman thereafter approached the police. Later, the police report (charge sheet) was presented before the Judicial Magistrate of First Class. The magistrate's court took cognizance and registered the case. Against this the petitioner approached the high court seeking quashing of proceedings
- **OBSERVATIONS**
  - While declining to quash a case involving allegations of rape and cheating under the guise of "false promise" of marriage, the Andhra Pradesh High Court said that whether the relationship was consensual or the woman's consent was based on a misconception of fact can be decided only after recording of evidence.
  - It further noted certain factual questions in the case, which it said that were key to decide the offences of rape and cheating as alleged in the case before it.
  - The court noted that in the FIR as well in the statement of the complainant, the woman had categorically stated that the alleged incident happened in the flat of the petitioner in the month of July, 2021 which was against her will and she remained silent "on account of promise to marry".
  - It however said, "There is no material available before this Court to presume that subsequently they continued sexual relationship".
  - Taking note of the contentions the high court said that "recording of the evidence" is necessary to answer the "disputed facts and defence pleas".
  - Before parting, the high court said, "At this juncture, it is pertinent to note down that the Parliament included a Section in BNS, 2023 to deal

with sexual intercourse by employing deceitful means. Section 69 of BNS 2023, deals with sexual intercourse by employing deceitful means, which are on raise and affecting the society".

- Finding it not a fit case to quash the criminal proceedings, the high court dismissed the man's plea.

Rahul v. State of Haryana and others

- **TOPIC :** ''Shown Disrespect to Soldier Wounded In Action'', High Court Imposes Rs.10 Lakh cost On Haryana PSC For Denying Reservation Claim
- **BENCH :** : Justice Mahabir Singh Sindhu

- **FORUM:** Punjab & Haryana High Court
- **MAIN ISSUE**
  - Regarding disrespect to the soldier wounded in action.
- **OBSERVATIONS**
  - The Punjab & Haryana High Court imposed an exemplary cost of Rs.10 lakh on the Haryana Public Service Commission (HPSC) for denying a rightful claim for reservation to "Dependent of Ex-serviceman (disability beyond 50%)" in the recruitment of sub-inspector post advertised in 2021.
  - The candidate was denied the benefit of reservation by the Commission on the ground that he failed to attach the certificate of the category of Dependent of Ex-Service Men (ESM) (Disabled). However, the Court found that no such certificate was issued by the authorities.
  - Justice Mahabir Singh Sindhu said, "The respondent-Commission has shown complete disrespect to 'a soldier wounded in action' while denying the benefit of reservation to his dependent son. The petitioner has been forced to resort to avoidable litigation and fighting since November 2021. There is no quarrel that similarly situated candidates are serving for the last about three years as Sub Inspector in Haryana Police."
  - The Court "in order to emolliate the miseries of petitioner and as a deterrence for future" imposed a cost of Rs.10 lakh on the HPSC.
  - These observations were made while hearing the plea of a candidate Rahul, who applied for the post of sub-inspector post issued by HPSC in 2021, under the Dependent of Ex-servicemen disabled category (beyond 50% disability) in general category in terms of Haryana Government Instructions 1972.
  - It was submitted that Rahul's father suffered injuries from a rocket launcher during a military operation in 1995 (Sri Lanka), and both hands were damaged, resulting in permanent disability to the extent of 90%. Consequently, he was discharged from the Army Service.
  - Despite securing a position in the merit list, Rahul was denied the right of consideration under DSM (Disabled) on the premise that "he did not attach a valid certificate at the time of filling the application form; hence, he has been considered in General ESM category," the plea stated.
  - After hearing the submissions and examining the material, the Court found that no exclusive certificate is to be issued for the category of Dependent of ESM (Disabled) by the Haryana Government.
  - "Thus, the Eligibility Certificate attached by the petitioner at the time of filling the online application was valid and moreover, he cannot be penalized, if at all, there is any fault on the part of the issuing authority," the Court added.
  - Justice Sindhu highlighted that despite asking repeatedly, the State counsel failed to show any instructions or circular that a separate Eligibility Certificate is to be issued by the Rajya Sainik Board for claiming reservation under the Dependent of Ex-servicemen (Disabled) category.
  - In light of the above, the Court opined that HPSC "grossly erred while depriving the petitioner of his lawful claim and as such, negated the Rule of Law."
  - Taking note of the plight of the candidate, the Court imposed a cost of Rs.10 lakh on HPSC and directed it to "treat the petitioner as Dependent of an Ex-serviceman (disabled beyond 50%), being duly eligible and proceed further in the matter as per law, without any further delay and necessary exercise be carried out within a period of three months.