

WEB COPY

WA No. 2037 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-07-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

WA No. 2037 of 2023

AND

CMP NO. 17307 OF 2023

1. The Principal Secretary To Government
of Tamil Nadu, Education Department,
Fort St. George, Chennai-9
2. The Director Of School Education
College Road, Chennai
3. The Chief Educational Officer
Thoothukudi District

..Appellant(s)

Vs

Shanmugakani, W/o.Samuthirapandi,
D.No. 1/396-3, Kurinji Nagar Extension,
(B.G.Nagar), Veerapandianpattanam Post,
Thoothukudi District

..Respondent(s)

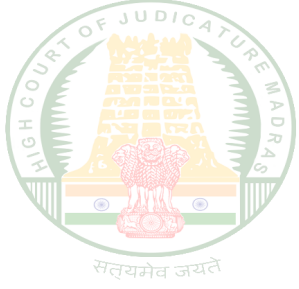
Prayer: Appeal filed under clause 15 of Letters patent to set aside the order dated 30.03.2022 made in W.P.No. 7839 of 2016 and allow the Writ Appeal.

For Appellant(s):

Dr.R.Gouri,
Government Counsel

For Respondent(s):

Mr.V.Vijayashankar

**JUDGMENT**

WEB COPY (Judgment of the Court was delivered by S.M.Subramaniam J.)

Under assail is the writ order dated 30.03.2022 passed in W.P.No.7839 of 2016. The State preferred the present intra Court Appeal. The respondent filed the writ petition.

2.The respondent was appointed as BT Assistant in the year 1994. She was promoted to the post of postgraduate assistant (PG Assistant) in the year 2012. Admittedly, the posts of PG Assistant and high school Headmaster are equivalent, carrying identical scale of pay. Promotion-cum-transfer counsellings are being conducted by the department on an annual basis, based on the vacancies notified. In the year 2014, counselling was conducted. As far as the respondent is concerned, it was a transfer counselling.

3.The cause for filing the writ petition is that the vacancy available in the post of Headmaster in Thoothukudi District was not notified during the counselling. Therefore, the respondent lost her opportunity to get a posting order as Headmaster in Thoothukudi District. Since no vacancy in the cadre of



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high school Headmaster was notified in the 2014 counselling, the respondent submitted a relinquishment letter for a period of three years stating that she will not claim any right for posting her as high school Headmaster for a period of three years. Subsequently, after the expiry of the relinquishment period in the year 2017, she was posted as high school Headmaster in the year 2018 at Thoothukudi District. Subsequently she retired from service on 31.05.2024 on attaining the age of superannuation.

4.The relief sought for in the writ petition is that if at all the post of high school Headmaster which was vacant in the year 2014 was notified, the respondent could have opted for the said post for transfer. Pertinently, both the post of Headmaster and PG Assistant are feeder categories for promotions, since both are equivalent posts.

5.Mr.V.Vijayashankar, learned counsel for the respondent would contend that the post of high school Headmaster at Thoothukudi District in 2014 was not notified, in order to give transfer to another candidate viz., Tmt.Mallika. Thus it was an intentional act on the part of the department. Therefore, the relief granted by the writ Court deserves to be confirmed. The fact that the post of Headmaster was vacant in Thoothukudi District in 2014



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was not disputed by the department. Therefore, the respondent is entitled to the relief of retrospective transfer to the post of High School Headmaster from the year 2014, which would provide some service benefits to the respondent.

6.Per contra, Dr.R.Gouri, learned Government Counsel appearing for the department would oppose the appeal by stating that the relief granted for retrospective posting of the respondent in the post of Headmaster high School at Thoothukudi District, is based on a presumption. No doubt, an error was committed by the department in not notifying the vacant post of high school Headmaster in Thoothukudi District in the year 2014. However, the authorities concerned, who are responsible are subjected to departmental proceedings. Therefore, the error committed by subordinate authorities would not provide a cause to claim retrospective posting as Headmaster high school in Thoothukudi District. The post of high school Headmaster and PG Assistant are equivalent, carrying identical scale of pay. That apart, the respondent at her own volition relinquished her claim for posting at Thoothukudi District for a period of three years and consented to continue as PG Assistant, based on her relinquishment letter submitted in the year 2014. Even in the year 2010, she had submitted a relinquishment letter which expired in the year 2013. Again, she submitted a relinquishment letter in the year 2014 during transfer



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counselling and that was accepted by the authorities. Thereafter, in the year 2018, the case of the respondent was considered and she was posted as Headmaster in Thoothukudi District and retired from service in May 2024. The writ Court has not appreciated these facts and proceeded on an erroneous basis that it was a promotion. Posting of a PG Assistant as high school Headmaster is not a promotion. It was a transfer counselling, conducted in the year 2014.

7.This Court has considered the rival submissions made between the parties to the case. Facts between the parties are not seriously controverted. However, the nature of counselling has been wrongly proceeded on by the writ court on the ground that it was a promotion counselling. The respondent was appointed as BT Assistant in the year 1994 and was promoted to the post of PG Assistant in the year 2012. Counselling was conducted in the year 2014 only for transfer and postings and not for promotion. The respondent has not participated in the counselling and her case was not considered, since no post of high school Headmaster was notified, which was an error committed by the department, despite the fact that one post was vacant and one Tmt.Malliga was subsequently transferred in the said post, which resulted in filing of the writ petition by the respondent. In respect of the error committed, the



competent authorities have already initiated disciplinary proceedings against the authorities concerned, who committed such lapses by not notifying one post of High School Headmaster in Thoothukudi District. Therefore, the department has not condoned the mistake committed by the authorities responsible in the year 2014. However, the department has acted based on the relinquishment letter given by the respondent, which was accepted. Therefore, the respondent was not considered for transfer to the post of high school Headmaster for a period of three years from the year 2014. However, they have posted her as a high school Headmaster in the year 2018.

8.This Court is of the considered view that place or post can never be the choice of a government servant. Transfer counselling is provided to facilitate the employees to choose a post of their choice. However, transfer counselling do not provide any absolute right to claim a particular post or place. No doubt, vacant posts are to be notified by the department, enabling the employees to exercise their option for posting. However, the mistake committed in the present case by not notifying one post of high school Headmaster in Thoothukudi distirct, *per se* would not confer any right. That apart, the department has initiated disciplinary action against the officials, who have committed such mistake. Certain errors committed by the authorities by



not notifying a post in a transfer counselling would not confer any right to other employees to claim that they must be given retrospective posting in a particular place or post which is not in consonance with the principles of service jurisprudence. Transfer counselling is provided only for the benefit of the employees and for better administration. However, such transfer counselling is neither a right nor a condition of service contemplated under the rules. It is a scheme implemented by the government by way of a concession for the benefit of the employees to get a posting of their choice. Section 48 of the Tamil Nadu Government Servants Conditions of Service Act 2016 speaks about posting and transfer and reads as follows:

“(1) A member of a service or class of service may be required to serve in any post borne on the cadre of such service or class for which he is qualified.

(2) All postings and transfers shall be made by the appointing authority: Provided that where the appointing authority is not the Government, any authority to whom the appointing authority is administratively subordinate shall, in respect of any post within the jurisdiction of the appointing authority also be competent to effect postings and transfers to a post within their jurisdiction aforesaid: Provided further that where leave not involving extra cost to the Government is granted to an officer by virtue of the delegation under Fundamental Rule 66, the Head of Department or the subordinate authority concerned may re-post the officer on return from leave granted by it to the same place.

(3) Notwithstanding anything contained in this Act or in any special rules or adhoc rules, the Government may transfer any Government servant from one revenue district to another revenue district within the State, on administrative grounds.”



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Therefore, a government servant may be transferred from one district to another district or between the State on administrative grounds. The guidelines or execute instructions or concessional scheme provided to the employees to get posting in a particular place or post would not confer any absolute right. It is a mere concession and a facility provided to the employees. The scheme for transfer will not have any statutory force.

9. In the present case, the transfer counselling was conducted in the year 2014. Due to the mistake committed by the department by not notifying one vacant post of Headmaster. However, relinquishment letter submitted by the respondent was at the own volition and not at the instance of the department. Even if the post was not notified in the year 2014, the respondent had an option to wait for the next transfer counselling. But she relinquished her right for a period of three years to post her as Headmaster high school. On expiry of the relinquishment period of three years, her case was considered and she was posted as Headmaster in Thoothukudi District. Therefore, the respondent consented by relinquishing her right for a period of three years to post her as Headmaster. This being the factum, she cannot turn around and claim that she must be retrospectively posted as Headmaster high school from the year 2014 and whatever benefits available in that post in addition to the



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post of PG Assistant is to be granted. In the opinion of this Court the claim itself is stale and untenable and beyond the scope of the service rules applicable to the government servants.

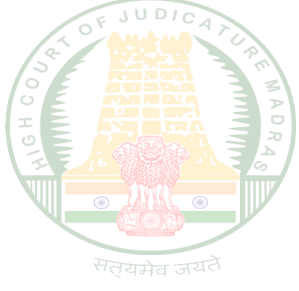
10.The writ Court has proceeded on the basis that it was a promotional counselling, which is factually incorrect. That apart, the relief of retrospective posting granted is incorrect and for all these reasons the writ order dated 30.03.2022 made in W.P.No. 7839 of 2016 is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(S.M.S.,J.) (N.S.,J.)
02-07-2026

Index: Yes
Speaking order
Neutral Citation: Yes/No

sai

To
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