

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.12744 of 2015

B.M.Gowran

...Petitioner

vs.

1.The Director of School Education,
DPI Campus, College Road, Chennai - 600 006.

2.The Chief Educational Officer,
Dharmapuri District, Dharmapuri.

3.The Headmaster,
Avvaiyar Government Girls Higher Secondary School,
Dharmapuri, Dharmapuri District.

...Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of mandamus, directing the first respondent to consider the representation submitted by the petitioner dated 09.04.2015 and to transfer back the petitioner to the 3rd respondent school in the existing vacancy to the post of BT Assistant (Science) on medical and equitable grounds.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.S.Gunasekaran
Government Advocate

O R D E R

The petitioner was working as BT Assistant (Science) in the third respondent school. While so, he was placed under suspension by order dated 01.11.2014. Thereafter, he was issued with a show cause notice under Rule 17(a) of Tamil Nadu Civil Services (D & A) Rules.

2. According to the petitioner, the District Collector, Dharmapuri, issued proceedings, dated 26.11.2014 addressed to the

Joint Director (Personnel), Office of the Director School Education, recommending for revocation of suspension taking into account the fact that only Rule 17(a) charges were issued against him.

3. While so, the first respondent issued proceedings, dated 16.12.2014 revoking the order of suspension and posting him to Government High School, Vattalamalaiperiyur, Dharmapuri District, which is a hill station.

4. In these circumstances, the petitioner made a representation dated 09.04.2015 to transfer him back to the third respondent school in the existing vacancy on medical and equitable grounds. The petitioner has come up with this writ petition, seeking for a direction to the first respondent to consider his representation dated 09.04.2015.

5. Heard the learned counsel for the petitioner and the learned Government Advocate on behalf of the respondents.

6. The learned counsel for the petitioner would submit that the petitioner is having severe back pain and wheezing problem. The petitioner has also enclosed Medical Certificate, dated 07.01.2015 to the effect that he is suffering from disc prolapse. It is further stated that there is no transport facility to the transferred place and hence, he has to travel in two wheeler to reach the said school. In view of his health condition, it is very difficult for him to go and discharge his duties.

7. On the other hand, the learned Government Advocate would submit that the distance between the third respondent school and the place to which the petitioner is transferred is only about 40 kms and the said place is having bus facility and the petitioner could easily travel to the transferred place. He would also submit that the petitioner did not even choose to join the transferred place, pursuant to the order dated 16.12.2014 revoking the suspension.

8. I have considered the submissions made by the learned counsel on either side.

9. As rightly pointed out, the distance between the third respondent school and the transferred place is only about 40 kms and it is also in the same district. Furthermore, the petitioner has not chosen to join at the transferred place. I am not able to appreciate the attitude of the petitioner in not even joining at the transferred place. The petitioner should first join at the transferred place and thereafter, he should have expressed his

grievance by way of representation. At this juncture, the learned counsel for the petitioner would submit that once the petitioner joins at the transferred place, his representation will not be considered by the respondents. I am of the view that his apprehension is misconceived. Hence, I am not inclined to issue a direction as sought for by the petitioner.

10. However, in the facts and circumstances of the case, the petitioner should first join duty at the transferred place and thereafter, he shall submit a representation for re-transfer on health grounds or any other grounds. If any such a request is made, the first respondent is directed to consider and pass orders, based on records, if any, produced by the petitioner, on merits and in accordance with law. The joining of the petitioner at the transferred place would not dis-entitle him from making a request for re-transfer.

The writ petition is disposed of in the above terms. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Director of School Education,
DPI Campus, College Road, Chennai - 600 006.
- 2.The Chief Educational Officer,
Dharmapuri District, Dharmapuri.
- 3.The Headmaster,
Avvaiyar Government Girls Higher Secondary School,
Dharmapuri, Dharmapuri District.

1 CC to Mr.G.Sankaran, Advocate SR.No. 24638

1 CC to the Government Pleader, SR.No. 24275

W.P.No.12744 of 2015

MP (CO)
PSI (13.05.2015)