

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. Nos.15599, 15600, 15918, 15919 of 2014

S.K.Wellington ...Petitioner in W.P.No.15599 of 2014

A.Moses Mohanraj ...Petitioner in W.P.No.15600 of 2014

T.Jones ...Petitioner in W.P.No.15918 of 2014

I.Joshua Samuel ...Petitioner in W.P.No.15919 of 2014

versus

1.The District Elementary Educational Officer,
Tiruvallur District.

2.The Asst. Elementary Educational Officer,
Poondi Range, Tiruvallur

3.The Chairman,
TELC Education Board,
Tranquebar House,
Trichy 620 001

...Respondents 1 to 3 in W.P.Nos.15599 of 2014

1.The District Elementary Educational Officer,
Kancheepuram District.

2.The Assistant Elementary Educational Officer,
Sriperambudur Range,
Kancheepuram District.

3.The Chairman, TELC Education Board,
Tranquebar House,Trichy 620 001

...R1 to R3 in WP 15600/14

Johnson Sathiyaveeran

J.D.Sathiyaraja, ...Respondents 4 and 5 in W.P.No.15599 of 2014

M.Natchatraraj

M.Powles

K.Lilly Roselin Thilagavathy

P.John William Sundar ...Respondents 4 to 7 in W.P.No.15600 of 2014

1.The Tamil Evangelical Lutheran Church,
rep. By its Secretary,
Tranquobar House,
Trichirapalli.

2.The Chairman,
Education Board,
Tamil Evangelical Lutheran Church,
Tranquobar House, Trichy

3.The Correspondent,
L.M.C. Hr.Sec. School,
Sirkali 609 101
Nagapattinam District.

4.The Correspondent,
TELC Kabis Higher Secondary School,
Pandur, Thiruvallur district.

5.The District Educational Officer,
Myladuthurai.

6.The Chief Education Officer,
Nagapattinam.

7.The District Educational Officer,
Tiruvallur District.

8.Joint Director (High Schools)
Tamil Nadu Education Department,
Nungambakkam, Chennai 6

9.S.Devasir ...Respondents in W.P.No.15918 of 2014

1.The Tamil Evangelical Lutheran Church,
rep. By its Secretary,
Tranquobar House,
Trichirapalli.

2.The Chairman,
Education Board,
Tamil Evangelical Lutheran Church,
Tranquobar House, Trichy

3.The Correspondent,
L.M.C. Hr.Sec. School,
Sirkali 609 101
Nagapattinam District.

4.The Correspondent,
TELC Middle School,
Aranthangi

5.The District Educational Officer,
Myladuthurai.

6.The District Elementary Educational Officer,
Aranthangi

7.The Chief Education Officer,
Nagapattinam.

8.S.David Anugraharaj ...Respondents in W.P.No.15919 of 2014

PRAYER: W.P.No.15599 of 2014 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records oif the 3rd respondent in his proceedings Cr. No.41/2014 dated 23.5.2014 and the consequential order of the 4th respondent in his proceedings dated 2.6.2014 and quash the same and consequently forbear the respondents 1 -4 or anyone claiming through them from transferring the petitioner has Headmaster from T.E.L.C. Primary School Karani Nizampet Tiruvallur District to any other school.

W.P.No.15600 of 2014 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the 3rd respondent in proceedings Cr. No.40/2014 dated 23.5.2014 and the consequential order of the 4th respondent in his proceedings dated 2.6.2014 and quash the same and consequently forbear the respondents 1 to 5 or anyone claiming through them from transferring the petitioner has Headmaster from T.E.L.C. Primary School Valarpuram Kancheepuram District to any other school.

W.P.No.15918 of 2014 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the 2nd respondent herein in CR No.47/276/2014 dated 28.5.2014 and quash the same and consequently forbear the officials respondents their men agents servants or any other person or persons claiming through them or authorized by them from in any manner transferring the petitioner from TELC LMC Higher Secondary School Sirkali to Kabis Higher Secondary School Pandur or any other Institution.

W.P.No.15919 of 2014 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus Calling for the records of the 2nd respondent herein in CR No.47/276/2014 dated 28.5.2014 and quash the same and consequently forbear the officials respondents their men agents servants or any other person or persons claiming through them or authorized by them from in any manner transferring the petitioner from TELC LMC Higher Secondary School Sirkali to TELC Middle School Aranthangi or any other institution.

For petitioner : Ms.Lita Srinivasan
in W.P.Nos.15599 and 15600 of 2014

Ms.A.L.Gandhi mathi
in W.P.Nos.15918 & 15919 of 2014

For respondents : Mr.P.Sanjai Gandhi, A.G.P.
For R-1 and 2 in W.P.Nos.15599, 15600/2014
and R-5 to 7 in W.P.Nos.15918, 15919 of 2014

Mr.G.Sankaran,
for R-3, in W.P.No.15599 and 15600/2014
for R-1 in W.P.Nos.15918 and 15919/2014

COMMON ORDER

The transfer orders issued by Tamil Evangelical Lutheran Church, (for short, "the TELC") are challenged by the petitioners primarily on the ground that each institution being a separate unit, it is not open to the management to make transfer from one institution to another.

Relevant facts :-

W.P.No.15599 of 2014 :-

2. The petitioner joined the service of TELC on 2 September 1991. He was initially appointed as Headmaster in TELC Primary School in

1997. The petitioner was subjected to transfer to other institutions with his consent. The petitioner is presently working as Headmaster in TELC Primary School, Karani Nizampet, Tiruvallur. He is now transferred to TELC Primary School, Mudur, Vellore District.

W.P.No.15600 of 2014 :-

3. The petitioner was appointed as Headmaster in TELC Primary School. He was transferred to other institutions run by TELC with his consent. The petitioner is presently working as Headmaster in TELC Primary School, Valarapuram, Kanchipuram District. The petitioner is transferred as Headmaster of Primary School at Cherambadi, Nilgiris District.

W.P.No.15918 of 2014 :-

4. The petitioner was appointed as Junior Assistant in LMC Higher Secondary School, Sirkali. Thereafter, he was transferred to other institutions run by TELC with his consent. The petitioner is presently working as Junior Assistant in LMC Higher Secondary School, Sirkali. TELC by order dated 28 May 2014, transferred the petitioner to TELC Kabis Higher Secondary School, Pandur.

W.P.No.15919 of 2014 :

5. The petitioner was appointed as Tamil Pandit in LMC Higher Secondary School, Sirkali on 10 June 1994. She was transferred thereafter with her consent. The petitioner is presently working in the said school. By order dated 28 May 2014, TELC, transferred the petitioner to TELC Higher Secondary School, Aranthangi.

6. The Secretary, TELC, in his detailed counter affidavit disputed the claim made by the petitioners. According to the first respondent, TELC is a religious minority institution. The Government have issued a letter dated 3 November 1987 making it clear that it is open to the management to transfer teachers from one school to another and that there is no requirement to declare it as a corporate body. Accordingly, the first respondent justified the impugned orders of transfer.

Rival contentions :-

7. The learned counsel for the petitioner contended that TELC is not recognized as a corporate management and as such, it is not open to the management to transfer teachers and other employees from one institution to another. The learned counsel also contended that the transfer orders are punitive in nature.

8. The learned counsel for the petitioners further contended that there is a dispute in the management and as such, the Secretary has no right to pass the impugned orders of transfer. The learned counsel

also contended that in case the petitioners are transferred to another institution, they would lose their seniority and other service benefits.

9. The learned counsel for TELC while supporting the impugned orders contended that all the institutions are managed by TELC and as such, there is no legal prohibition for transferring the employees from one institution to another. The learned counsel denied the contention regarding mala fides.

Discussion :-

10. The petitioners have taken up a primary contention that TELC was not given management status and as such, it is not possible to transfer employees from one institution to another.

11. The affidavit filed in support of all the Writ Petitions contain a clear statement that the petitioners were earlier transferred from one institution to another. The petitioners have stated that such transfers were made with their consent. The petitioners have not produced their appointment orders to show that appointment was confined to a particular institution. Similarly, they have not produced the earlier transfer orders to prove that it was all transfers, based on consent. When it is made out petitioners were subjected to transfers from one institution to another on earlier occasions, it is too late on their part to contend now that TELC has no authority to effect transfers from one institution to another institution.

12. The question regarding the power of TELC to effect transfer from one institution to another was the subject matter in M.Jeeva Jeyarani vs. State of Tamil Nadu and others (W.P.MD. No.8070 of 2014). Similar contentions were taken in the said Writ Petition by the petitioner therein that in case she is transferred from one institution to another, it would affect her service and consequently, her seniority. I have rejected the said contention by order dated 14 July 2014. I have held that the management of TELC is having every right to transfer employees from one institution to another. The petitioners have not produced any judgment taking a contrary view in the matter. I therefore hold that TELC has acted within its authority while making transfers from one institution to another.

13. The petitioners have taken up a further contention that the impugned proceedings are nothing but punitive in nature. They have not produced any material to prove the said allegation. Mere allegation alone is not sufficient. The petitioners should produce materials to substantiate the allegations. The petitioner have miserably failed to prove that the transfer was nothing but malafide

exercise of power. I am therefore of the view that no interference is called for in any of these transfer orders.

14. This Court granted interim stay of operation of the impugned orders of transfer. The interim orders are still in operation. Since the academic year 2014-15 is in the advanced stage, I am of the view that the petitioners should be permitted to continue in their present school till the end of this academic year. The petitioners are given time till 31 May 2015 to join duty pursuant to the orders of transfer.

15. The Writ Petitions are disposed of with the above direction. No costs. Consequently, all connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Elementary Educational Officer,
Tiruvallur District.
- 2.The Asst. Elementary Educational Officer,
Poondi Range, Tiruvallur
- 3.The Chairman,
TELC Education Board,
Tranquebar House,
Trichy 620 001
- 4.The Secretary,
Tamil Evangelical Lutheran Church,
Tranquobar House,
Trichirapalli.

+2cc's to M/s.S.L.Gandhimathi, Advocate, S.R.No.15475,15477
+4cc's to M/s.G.Sanakaran, Advocate, S.R.No.15306,15305
+1cc to the Government Pleader, S.R.No.15603

W.P. Nos.15599, 15600,
15918, 15919 of 2014

RK(CO)
CA(31/03/2015)