



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2015

CORAM:

THE HONOURABLE DR. JUSTICE S.TAMILVANAN

and

THE HONOURABLE MR. JUSTICE V.S.RAVI

W.A.(MD)No.1458 of 2014

and

M.P.(MD)No.1 of 2014

- 1.The Director of Elementary Education,
College Road, Chennai - 6.
- 2.The District Elementary Educational Officer,
Karur, Karur District.
- 3.The Assistant Elementary Education Officer,
Karur Union,
Karur District. ... Appellants/Respondents

Vs.

- 1.K.Bhavani Bai ... 1st Respondent/Writ petitioner
- 2.K.Rajeswari ... 2nd Respondent/4th Respondent

PRAYER: The Writ Appeal is filed under Clause 15 of Letters Patent Act, to set aside the Order dated 28.10.2014 in W.P.(MD)No.12248 of 2014 passed by this Court.

Prayer in WP(MD). 12248/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd Respondent in Na.Ka. NO. 1723/A3/2014 dated 18.06.2014 and the consequential order in Na.Ka.No. 1245/A1/2014 dated 16.07.2014 of the 3rd respondent herein and quash the same and consequently direct the respondents herein to promote the petitioner to the post of BT Assistant (Science) in the Panchayat Union Middle School, N.Pugalur, Karur Union, Karur District or any other schools in Karur Union, Karur District as per the panel for promotion as on 01.01.2014 issued by the 3rd respondent herein in accordance with the G.O. Ms. NO. 239 dated 22.09.2007 and pass such further or other orders.

For Appellants : Mr.V.R.Shanmuganathan, Spl.G.P.

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents : Mr.T.Pon Ramkumar

**JUDGMENT**

(Judgment of this Court was delivered by S.TAMILVANAN,J.)

The Writ Appeal has been preferred challenging the order dated 28.10.2014 made in W.P.(MD)No.12248 of 2014 passed by the Learned Single Judge whereby, the impugned orders dated 18.06.2014 and the consequential order dated 16.07.2014 passed by the appellants herein were set aside and the Writ petition was allowed directing the appellants herein to consider the case of the petitioner for promotion to the post of B.T. Assistant (Science) in the Panchayat Union Middle School, N.Pugaloor, Karur Union, Karur District, within a period of six weeks from the date of receipt of a copy of the order.

2.Heard the learned Special Government Pleader appearing for the appellants as well as the learned counsel appearing for the respondents.

3.Learned Special Government Pleader appearing for the appellants drew the attention of this Court to G.O.Ms.No.239 School Education Department, dated 22.09.2007 and submitted that earlier 50% of the promotion was made by way of promotion and 50% by direct recruitment. However, as per the aforesaid Government Order, the post of B.T. Assistant became a promotional post to be settled from the eligible feeder category of teachers, who possess the required qualification. According to the learned Special Government Pleader, since there was surplus of B.T. Assistant (Science) Teacher (Science) in Sivagangai District, the second respondent herein was transferred and posted to the post that was available in Karur District and it was only on administrative convenience, hence, which cannot be challenged by the first respondent / Writ petitioner.

4.Per contra, the learned counsel appearing for the first respondent / Writ petitioner submitted that if it is a mere transfer within the district that could be construed as administrative convenience. The first respondent / Writ petitioner was eligible on for getting promotion as B.T. Assistant being the senior mist B.T.Teacher (Science) in the District, which is not in dispute even in the panel prepared the first respondent has been shown as the senior most teacher for getting promotion as B.T. Assistant (Science). However, the second respondent B.T.Assistant working in another District is posted so as to adversely affect the accrued right of the first respondent / Writ petitioner, which necessitated in filing this Writ petition.

5.A perusal of the transfer order dated 18.06.2014, which is available at page No.18, shows the reason for the said transfer as "administrative reason" and no other details are available as argued by the learned counsel appearing for the appellants.



6. Learned Special Government Pleader appearing for the appellants submitted that there is no mala fide intention in transferring the second respondent to Karur District, where the first respondent / Writ petitioner is said to be No.1 in getting promotion as B.T. Assistant (Science). Hence, the transfer cannot be questioned by the first respondent.

7. It cannot be disputed that in so far as the B.T. Assistants (teachers) are concerned, district level transfer could be construed as administrative transfers and if it is a transfer from district to district, the authority should assign proper reason. In the instant case, admittedly, the first respondent / Writ petitioner is expecting her promotion as B.T. Assistant (Science) in Karur District. There is no specific reason stated on the part of the appellants as to how the second respondent herein was chosen to be transferred from Sivagangai District to Karur District and there is no details available about the surplus teachers working in other districts in the State. It cannot be disputed that the impugned order of transfer, affects the right of the first respondent / Writ petitioner and for the said transfer no satisfactory reason has been given. Had that been any state level seniority maintained by the appellants, based on which the transfer could be maintained from district to another district, however, pick and choose method cannot be adopted, whereby without proper reason, the second respondent cannot be transferred so as to take away the right of promotion of the first respondent / petitioner arbitrarily. It is an admitted fact that only District level seniority of the particular cadre post is maintained by the appellants. Hence, the appellants cannot select a teacher of a particular district and transfer the B.T. Assistant Teacher as surplus to another district so as to prevent or postpone the promotional opportunity of another who is the senior most teacher in the district, otherwise the appellants should maintain State level seniority list. Having gone through the impugned order passed by the learned Single Judge, we are of the considered view that it is a detailed order and cogent reasons are given by the Learned Single Judge in allowing the Writ petition and setting aside the order passed by the appellants. Hence, we are not inclined to interfere with the impugned order passed by the Learned Single Judge.

8. In the result, the Writ Appeal is dismissed confirming the order passed by the Learned Single Judge. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (A.S.,)

/True Copy/



To

1.The Director of Elementary Education,
College Road, Chennai - 6.

2.The District Elementary Educational Officer,
Karur, Karur District.

3.The Assistant Elementary Education Officer,
Karur Union, Karur District.

+1cc to Mr.T.Pon Ram Kumar, Advocate, in SR. No.6069.

+1cc to Special Government Pleader, in SR No.6624.

nbj

msm 10.04.2015 p4/6c

W.A. (MD) No.1458 of 2014
10.02.2015