



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.13923 of 2015

and M.P.(MD) Nos. 1 and 2 of 2015

WEB COPY

R.Jayasankar

... Petitioner

Vs.

1.Joint Director of School Education,
(Personal Establishment),
College Road, Nungambakkam,
Chennai - 600 006.

2.Additional Chief Educational Officer(SSA),
Tirunelveli District, Tirunelveli.

3.Supervisor,
Education for All(SSA),
Block Resource Centre,
Kuruvikulam - 627 754,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in connection with the impugned transfer order passed by him in his proceedings in Na.Ka.No.10737/C4/E1/2015 dated 02.03.2015 and the consequential impugned relieving order passed by the second respondent in his proceedings Na.Ka.No.519/A1/2014 dated 06.03.2015 and quash the both as illegal and arbitrary and direct the respondents to allow the petitioner to continue at Block Resource Centre, Kuruvikulam thereby pay the arrears of salary from March 2015 onwards to till date within the time limit that may be stipulated by this Court and pass such further or other other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.N.S.Karthikeyan

Addl. Government Pleader

ORDER

This Writ Petition has been filed by R.Jayasankar for the issuance of a Writ of Certiorarified Mandamus to quash the impugned transfer order passed by him in his proceedings in Na.Ka.No.10737/C4/E1/2015 dated 02.03.2015 and the consequential impugned relieving order passed by the second respondent in his proceedings Na.Ka.No.519/A1/2014 dated 06.03.2015 and consequential direction to the respondents to allow the petitioner to continue at Block Resource Centre, Kuruvikulam thereby pay the arrears of salary from March 2015 onwards to till date within the time limit that may be stipulated by this Court.

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2. By consent, this Writ Petition is taken up for final disposal



at the stage of admission itself.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

4. The brief facts of the case are as follows:

WEB COPY The petitioner was appointed as Block Resource Teacher Educator under the Sarva Shiksha Abiyan Scheme on 14.07.2006 by the first respondent and initially the petitioner was posted at Villupuram District and subsequently transferred to various other regions and now the petitioner was posted at the second respondent jurisdiction since 01.06.2013. Based on the District Seniority and Counselling done for the year 2014-15 on transfer of service, the petitioner was posted as Supervisor In-charge by the proceedings of the Chief Educational Officer made in Na.Ka.No.5488/A4/2014 dated 21.06.2014. The petitioner availed Medical Leave for the period from 09.03.2015 to 14.03.2015 and further on 15.03.2015 to 01.04.2015 and for 02.04.2015 to 30.04.2015 and the petitioner reported for duty on 01.05.2015 along with Medical Certificate. The petitioner was not allowed to join duty and the petitioner was informed that he has been transferred to Radhapuram. Therefore, the petitioner made a detailed representations dated 07.05.2015 and dated 10.06.2015. But without considering the petitioner's representations, the first respondent issued 17(b) charge vide proceedings in Na.Ka.No.031887/C4/E3/2015 dated 18.05.2015 levelling 14 counts of charges against the petitioner. The petitioner has put on the post of Supervisor In-charge by the impugned order dated 02.03.2015 issued by the Joint Director of School Education (Personal Establishment), Chennai. Hence, the petitioner has challenged the impugned order on the ground that the first respondent cannot issue any punitive transfer order as it is ex-facie illegal and arbitrary and against the principles of natural justice.

5. The learned counsel for the petitioner in support of his submission has referred to the reference No.1 of the impugned order wherein the first respondent has referred a letter dated 09.02.2015 that indicates certain adverse remark against the petitioner. Therefore, his contention is that the said transfer order has been passed considering the complaint made against the petitioner. Therefore, without showing the same, the transfer order has been passed as a punitive measure, which is not permissible in law.

6. Adding further, he would submit that the transfer order cannot be treated simply as the transfer order, which is construed as an order of reversion since he was transferred from the post of Supervisor In-charge to Block Resource Teacher. Although this Court agrees that, no transfer order can be effected by way of punitive measure, but, the present case is completely different for the following three reasons:

i) Firstly, the petitioner, who is holding the post of Supervisor In-charge, has gone on Casual leave on 05.03.2015 and 06.03.2015 and he has gone on Medical Leave for the period from 09.03.2015 to 14.03.2015 and further on 15.03.2015 to 01.04.2015 and he has gone on Medical Leave for another span from 02.04.2015 to 30.04.2015. Since the petitioner is not serving in the said post which caused grave inconvenience and hardship to the public office, the respondent has no option except to transfer somebody in his place.



ii) Secondly, the petitioner has been issued with a memo by the Secretary in Na.Ka.No.519/AKE/A1/2015 dated 08.01.2015 calling for explanation against 11 allegations against the petitioner for which the petitioner has submitted a detailed explanation on 10.01.2015.

iii) Thirdly, the petitioner has been issued another memo in proceedings in Na.Ka.No.196/A1/Pani/AKE/2015 for which the petitioner submitted a detailed explanation through proper channel on 03.03.2015, therefore, the impugned order of transfer falls within the mischief of clause(f) to III Exceptions to the general guidelines of G.O.Ms.No.10, dated 07.01.1994 Personnel and Administration Reforms.

7. Considering the fact that the petitioner, who is not working for the past three months as mentioned above, cannot challenge the impugned order for the reason that the relevant point of time, in which the petitioner is not working cannot be allowed to be remained idle as it is going to cause hardship to the public. Therefore, in the present case, the impugned order passed by the first respondent cannot be construed as an order of reversion as the petitioner was already posted as Supervisor In-charge. Accordingly, this Court is of the view that the impugned order, transferring the petitioner to another place and replace the said post by another person, through which, pending work can be completed cannot be found fault with.

8. In view of the above this Writ Petition is dismissed. No costs. Consequently, connected M.P.s are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. Joint Director of School Education,
(Personal Establishment),
College Road,
Nungambakkam, Chennai - 600 006.
2. Additional Chief Educational Officer(SSA),
Tirunelveli District, Tirunelveli.
3. Supervisor,
Education for All(SSA),
Block Resource Centre,
Kuruvikulam - 627 754,
Tirunelveli.

+ 1 CC TO MR.G.THALAIMUTHARASU, ADVOCATE IN SR NO.103 45471
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR NO. 45574

SES

TE/SK-SKN/ 19/11/2015 : 3P/6C

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