

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 28-11-2016

Orders pronounced on : 02 -12-2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.36408 of 2016

and

W.M.P.No.31359 of 2016

Dr.Hema Nalini Raghunath ... Petitioner

Vs.

1. The Director of Collegiate Education,
(Full Additional Charge),
College Road, Chennai-600 006.
2. The Joint Director of Collegiate Education,
(Planning and Development),
-cum-Deputy Director (Admin) (i/c),
Chennai-600 006.
3. Thiru.N.Sakthivel ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified mandamus to call for the records relating to the orders in (1) Pro.Na.Ka.No.8682/B3/2016, dated 30.08.2016 of the first respondent (2) Pro.Na.Ka.No.035672/A1/2016-2, dated 02.09.2016 of the second respondent, to quash the same and to issue consequential directions to the respondents 1 and 2 to allow the petitioner to continue to serve in the post of Assistant Director (Aided Colleges) or Personal Assistant to Director of College Education, till her retirement on 31.07.2017 AN.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.R.Venkatesh, Govt. Advocate
for RR-1 & 2 R3
No appearance

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified mandamus to call for the records relating to the orders in (1) Pro.Na.Ka.No.8682/B3/2016, dated 30.08.2016 of the first respondent (2) Pro.Na.Ka.No.035672/A1/2016-2, dated 02.09.2016 of the second respondent, to quash the same and to issue consequential directions to the respondents 1 and 2 to allow the petitioner to continue to serve in the post of Assistant Director (Aided Colleges) or Personal Assistant to Director of College Education, till her retirement on 31.07.2007 AN.

2. Though the name of the third respondent is printed in the cause list, there is no appearance for him either in person or through counsel. Hence, the Writ Petition is taken up for hearing on merits.

3. It is the case of the petitioner that she joined service on 07.11.1986 as Junior Assistant in the Collegiate Education Department and she rose to the position of Bursar/Assistant Director of Collegiate Education on 10.03.2010. She is due to retire from service on 31.07.2017 AN on attaining the age of superannuation. She joined duty as Assistant Director of Collegiate Education (Aided Colleges) in the office of the Director of Collegiate Education, Chennai-6 on 02.08.2014. The Director of Collegiate Education, Chennai, in and by proceedings in K.Dis.No.20066/B3/2016, dated 13.06.2016, had issued No Objection Certificate to permit her to see her son in USA for the period from 20.06.2016 to 30.11.2016, subject to usual conditions, apart from sanctioning leave on loss of pay for the above said period of 164 days. Accordingly, she proceeded to USA on 06.07.2016. As she is on the verge of retirement and had to resume duty within a period of 150 days, one Thiru.K.Janarthanan was posted as in-charge of her post, i.e. Assistant Director (Aided Colleges) in the office of the Director of Collegiate Education. While so, in order to accommodate the third respondent, one Tmt.S.Madhumathi, IAS, who within her very short tenure as Director of Collegiate Education, vide order dated 30.08.2016, had ordered transfer of the third respondent to the petitioner's place and in the resultant vacancy in his post of Bursar, Government Arts and Science College, Burgur, the petitioner had been ordered to be transferred on vice-versa transfer. Even while the petitioner was on leave, another order, dated 02.09.2016 had been passed by the second respondent that the petitioner shall be deemed to have been relieved consequent on the joining duty of the third respondent (N.Sakthivel) on 02.09.2016 AN in the petitioner's place. Even though the leave sanctioned to the petitioner would expire only on 30.11.2016, immediately, on hearing the news of the petitioner's transfer,

she rushed back to Chennai.

4. It is the further case of the petitioner that the third respondent is six years junior to the petitioner in the cadre of Bursar/Assistant Director. While the petitioner was promoted to the said cadre as early as in the year 2010, the third respondent was promoted as Bursar only on 10.02.2016, vide G.O. (Ms).No.25, Higher Education (G.2) Department, dated 10.02.2016. While in accordance with the transfer policy of the Government, no person who has not even completed one year of service in a Station, is eligible for request-transfer and no person who has less than one year of service prior to the date of retirement, could be subjected to transfer. It is the grievance of the petitioner that the order of her transfer is on the verge of her retirement, in order to accommodate the third respondent, who is not only six years junior to the petitioner, but has also been ordered to be transferred even within a period of seven months from the date of his earlier order of transfer on promotion. Now, the petitioner came to know that the third respondent has been posted as Personal Assistant to the Director in the place of Tmt.Thannoli, who is also far junior to the petitioner, who has now been posted as Assistant Director (Aided Colleges). Hence, the petitioner states that the impugned orders, dated 30.08.2016 and 02.09.2016, served on the petitioner on 05.10.2016, are not legally sustainable. Therefore, challenging the said orders, the petitioner has come forward with this Writ Petition for the above stated relief.

5. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that the petitioner is due to retire on 31.07.2017 AN on attaining the age of superannuation. The impugned order of transfer is in violation of the transfer policy of the Government, because the petitioner's left over service is less than one year prior to the date of retirement, and hence, she should not be disturbed and be allowed to serve in the same place till retirement. Moreover, the third respondent is six years junior to the petitioner in the cadre of Bursar/Assistant Director. Further, the third respondent's posting as Personal Assistant to the Director in the place of Tmt.Thannoli, is not legally sustainable. Hence, he prayed for allowing the Writ Petition.

6. Learned Government Advocate appearing for the respondents 1 and 2, by filing detailed counter affidavit, contended that the petitioner entered into Government service on 07.11.1986 and promoted to the position of Bursar/Assistant Director on 10.03.2010 and she is due to retire from service on 31.07.2017. She has proceeded on foreign trip after obtaining No Objection Certificate (NOC) from the first respondent for the period from 20.06.2016 to 30.11.2016. In the meanwhile, vide order dated

30.08.2016, the third respondent had been transferred in her place and in the resultant vacancy in his post in Government Arts and Science College, Burgur, the petitioner had been transferred. The petitioner had joined in the office of the Directorate of Collegiate Education, as Assistant Director on 02.08.2014 and had not been rendering her service continuously.

7. Learned Government Advocate further contended that she used to go on leave and during the period from 18.05.2015 to 19.06.2016, for a total number of 127 days out of 263 working days, she availed leave. In view of the prolonged absence of the petitioner, the files relating to Aided Colleges Secretary Approval, Aided Colleges Principal Approval, NOC to go abroad for attending seminars/conferences, RTI petitions, CM Cell petitions and Court cases, are pending heavily. During the said leave period, the petitioner had applied for voluntary retirement scheme on 03.02.2016, which was forwarded to the Government on 24.02.2016 for necessary action, vide Director of Collegiate Education Letter Na.Ka.No.5051/B3/2016, dated 24.02.2016. Subsequently, she has withdrawn the application on 20.04.2016. Thereafter, she has applied for NOC to see her son in USA for the period from 26.06.2016 to 30.11.2016, which amounts to more than five months. The petitioner has left for USA for more than five months and during that long period, such an important post cannot be run on additional charge, and on the ground that she is on the verge of retirement, the post of Assistant Director (Aided Colleges) cannot be kept vacant or run on in-charge basis till such time she returns back to duty. As the petitioner was not available for more than five months in the first respondent's office, in order to facilitate smooth functioning of the Department and clearing of pending time-bound files, Thiru.K.Janarthanan, who is working as Bursar, Arignar Anna College for Women, Walajapet, had been directed to hold charge as Assistant Director (Aided Colleges) as a purely temporary measure. On this date, the petitioner is also working in the first respondent's office as Assistant Director (Aided Colleges). Totally 162 Aided Colleges are running around the State and the Assistant Director (Aided Colleges) is most responsible to the function of the above said Aided Colleges.

8. It is further contended by the learned Government Advocate that in the interest of administration, permanent arrangement has to be made at a point of time, and that is the reason why the third respondent has been transferred and posted vice-versa. The third respondent is equal to the petitioner's cadre and he is purely eligible for the place of Assistant Director/Personal Assistant to Director. Hence, the contention of the petitioner that no person who has not completed one year of service in a Station, is eligible for request-transfer, is liable to be rejected. Seniority is not an important issue for

transferring the petitioner, instead smooth functioning and administrative set up, is required for urgent intervention and there is no mala-fide in the transfer and she has been transferred only on administrative exigency. If the impugned orders are quashed, the administration will get struck and the third respondent will also be put to hardship and mental agony. Hence, learned Government Advocate prayed for dismissal of the Writ Petition.

9. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

10. From the materials available on record, it is seen that the petitioner was frequently availing leave and was absent for 127 days out of 263 working days from 18.05.2015 to 19.06.2016. So, many administrative files and other related works got affected and in order to avoid the backlog of work, the third respondent had been transferred and posted in the place of the petitioner, that too, due to administrative exigency. Except a bald statement made by the petitioner in the affidavit filed in support of the Writ Petition that the third respondent is not eligible to occupy the post which the petitioner was holding, there is no valid reason to substantiate the same. Moreover, it is not for the petitioner to dictate terms with regard to her place of posting and it is for the administration to decide as to who should hold the respective posts, that too in the absence of the petitioner on her foreign trip, which would adversely affect the administrative work of the office of the respondents 1 and 2. It is well settled legal principle that the transfer order could be interfered with only when the same is tainted with mala-fides, which is not the case here. No ground is made by the petitioner to interfere with the impugned orders, even on the factual aspects of the matter.

11. Hence, for the above reasons, there being no merits, this Court cannot interfere with the impugned orders. Accordingly, the Writ Petition is dismissed. No costs. Consequently, W.M.P. is closed.

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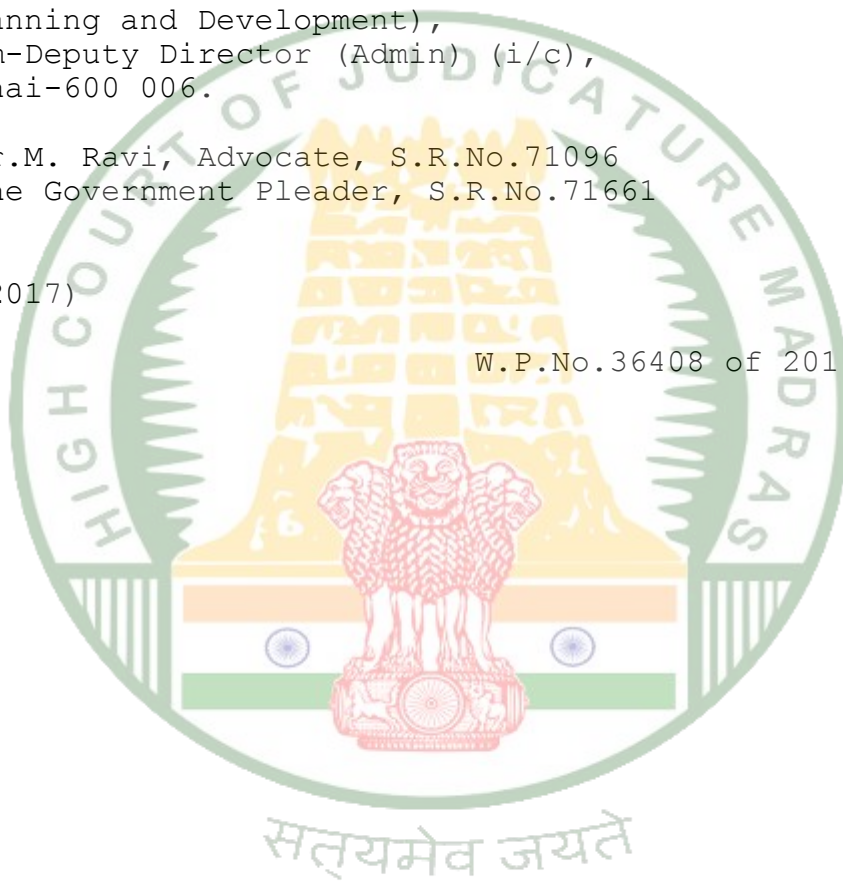
Copy to

1. The Director of Collegiate Education,
(Full Additional Charge),
College Road, Chennai-600 006.
2. The Joint Director of Collegiate Education,
(Planning and Development),
-cum-Deputy Director (Admin) (i/c),
Chennai-600 006.

+lcc to Mr.M. Ravi, Advocate, S.R.No.71096
+lcc to the Government Pleader, S.R.No.71661

nri(CO)
md(18/01/2017)

W.P.No.36408 of 2016



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