

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2017

CORAM:

THE HON'BLE MR. JUSTICE T. RAJA

W.P. No.25598 of 2015

&

M.P. No.1 & 2 of 2015 and W.M.P. Nos.32926,
35503 and 35651 of 2016

A. Antony Margret

Petitioner

vs.

- 1 The Chief Educational Officer
Coimbatore, Coimbatore District
- 2 The District Educational Officer
Coimbatore, Coimbatore District
- 3 The Superintendent of Schools
R.C. Schools
Diocese of Coimbatore
Coimbatore
Coimbatore District
- 4 The Corresondent
St. Antony's High School
Puliakulam
Ramanathapuram Post
Coimbatore, Coimbatore District

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records pertaining to the transfer order passed by the third respondent in No. Nil. dated 29.07.2015 and the consequential relieving order passed by the fourth respondent in No.Nil. dated 31.07.2015 and quash the same and direct the respondents to confer all the consequential benefits on the petitioner.

(Prayer amended as per order dated 01.12.2016
in W.M.P. No.35502 of 2016)

For petitioner Mr. P. Ganesan

For RR 1 & 2 Mr. P.Sanjay Gandhi
Addl. Government Pleader

For RR 3 & 4 Fr. Dr. A. Xavier Arulraj,
Senior Counsel
for M/s. A. Arul Mary

ORDER

This writ petition has been preferred calling in question, the legality and validity of the transfer order dated 29.07.2015 passed by the Superintendent of Schools, R.C.Schools, Diocese of Coimbatore, the third respondent herein and also the consequential relieving order dated 31.07.2015 passed by the Correspondent, St. Antony's High School, Puliakulam, Ramanathapuram Post, Coimbatore, the fourth respondent herein and direct the respondents to confer all the consequential benefits on the petitioner.

2 The learned counsel for the petitioner, assailing the impugned transfer order and relieving order, would submit that when the petitioner was working as a B.T. Assistant in a self financing Matriculation school, a vacancy arose in the post of B.T. Assistant in the fourth respondent school and she was appointed as Junior Grade B.T. Assistant on 01.06.2006 and her appointment was also approved by the educational authorities in the time scale of pay as a regular B.T. Assistant; since then, she has been working as B.T. Assistant in the fourth respondent school, which is coming under the control of R.C.Schools, Diocese, Coimbatore, Tiruppur, Erode, Karur and the Nilgiris Districts; as per the policy decision of the Government, all the classes from VI to VIII standards must be handled only by B.T. qualified persons; in the fourth respondent school, 18 teachers are working; there are two sections each in Standards VI and VII and three sections each from Standards VIII to X; out of the 18 teachers, 2 are Secondary Grade teachers and the remaining 16 are B.T. Assistants; the fourth respondent school, being a High School, as per the guidelines, all the teachers who are working are having sufficient workload, i.e., each teacher has 28 periods; while so, for the academic year 2015-2016, when the staff fixation had to take place after inspection by the officers of the Department in the month of August, the petitioner was orally informed that she has been transferred on the ground that she was found surplus in April 2015; therefore, the petitioner addressed a representation, subsequent to which,

it was found that she was not surplus and as a result, she was not disturbed; however, the relieving order dated 31.07.2015 came to be issued and therefore, the petitioner addressed a representation seeking a copy of the transfer order dated 28.07.2015; after the petitioner was provided with a copy of the transfer order, the order dated 31.07.2015 was issued by the fourth respondent, stating that as per the transfer order dated 28.07.2015, she was relieved from fourth respondent school to join Bishop Upakarasamy Higher Secondary School, Tiruppur; challenging the said transfer order and relieving order, the present writ petition has been preferred.

3 The learned counsel for the petitioner would further submit that when the staff fixation has not been done for the years 2015-2016 and 2016-2017 and as per the staff fixation done for the academic year 2014-2015, although the sanctioned strength for the post of B.T. Assistant (Science) is 3 in number, more than 3 teachers were permitted to work in the fourth respondent school, perhaps, due to increase in the strength of students; therefore, the petitioner also should be retained in the fourth respondent school.

4 In response, detailed counter affidavits have been filed by respondents 2 and 4 separately.

5 The counter affidavit filed by the District Educational Officer, Coimbatore, the second respondent herein, shows that two posts of B.T. Assistant (Science) were found surplus in the fourth respondent school and as per the norms, the juniormost teachers in the respective subjects are to be deployed to the needy schools and accordingly, one of the surplus teachers was transferred on his willingness to the nearby school in the same Management and the petitioner, being the next in order and also the juniormost, was transferred to Rosari Girls High School, Mettupalayam, by the first respondent, inasmuch as there was no vacancy for the post of Science teachers in the R.C. Schools of Coimbatore region; but, the petitioner was not willing to join Rosary Girls High School, Mettupalayam; meanwhile, vacancies arose in Bishop Upakarasamy Higher Secondary School, Tiruppur; therefore, the third respondent, who is the competent authority to transfer teachers working in the Diocese of Coimbatore R.C.Schools, issued transfer order to the petitioner with instruction to join immediately; but, the petitioner has not obeyed the said order passed by the third respondent; when the third respondent, in his letter dated 23.11.2015, has specifically stated that there is no Science teacher post in the R.C. Schools of Coimbatore Region, the petitioner has to go and work in Bishop Upakarasamy Higher Secondary School, Tiruppur, which is one of the schools run under the control of Coimbatore Region of R.C. Schools.

6 The counter affidavit filed by the fourth respondent also shows that the petitioner has been transferred to Bishop Upakarasamy Higher Secondary School, Tiruppur, since a vacancy had arisen there and therefore, the petitioner cannot waste her time and lose her salary.

7 The learned Senior Counsel appearing for respondents 3 and 4 also would submit that when the third respondent has transferred the petitioner to Bishop Upakarasamy Higher Secondary School, Tiruppur, on the ground that there was surplus teacher in the fourth respondent school, with an assurance that as and when any vacancy arises in any of the nearby schools in the city, she would be accommodated, the petitioner cannot waste her time.

8 A perusal of the counter affidavit filed by the second respondent also shows that during the academic year 2014-2015, when the staff strength was fixed in the fourth respondent school by the District Educational Officer, Coimbatore, two B.T. Assistants (Science) were found surplus. Therefore, one of the surplus teachers was transferred on his willingness to the nearby school under the same Management and another teacher, viz., the petitioner who is the juniormost, was also transferred to Rosari Girls High School, Mettupalayam by the first respondent, because, there was no vacancy of Science teachers in R.C. Schools of Coimbatore region. But, the petitioner was not willing to join Rosari Girls High School, Mettupalayam. However, the Superintendent of R.C. Schools, Diocese of Coimbatore, being the competent authority, passed the transfer order with instruction to join in the said place. When Coimbatore and Tiruppur are well connected by train and road, the petitioner cannot be hesitant to go and join in the transferred place. Further, when the third respondent has transferred the petitioner from the fourth respondent school to Bishop Upakarasamy Higher Secondary School, Tiruppur, on the ground that there is no vacancy in the fourth respondent school, with an assurance that the petitioner's request would be duly considered as and when any vacancy arises in the vicinity of Coimbatore city, the petitioner is under an obligation to report for duty at Bishop Upakarasamy Higher Secondary School, Tiruppur.

In view of the above reasoning, this writ petition is dismissed with a direction to the petitioner to join duty at Bishop Upakarasamy Higher Secondary School, Tiruppur, within a period of one week from the date of receipt of a copy of this order. Costs made easy. Connected M.Ps. and W.M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chief Educational Officer
Coimbatore
Coimbatore District

2.The District Educational Officer
Coimbatore
Coimbatore District

3.The Superintendent of Schools
R.C. Schools
Diocese of Coimbatore
Coimbatore
Coimbatore District

4.The Correspondent
St. Antony's High School
Puliakulam
Ramanathapuram Post
Coimbatore
Coimbatore District

+1 CC to M/s. A. Arul Mary, Advocate sr 40772
+1 CC to Ms. C.S. Associates, Advocate sr 41041(07/07/2017)

W.P. No.25598 of 2015

NRJK (CO)
sp/15/6