

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WRIT PETITION NOS.27992 OF 2016 & 12897 OF 2017 AND
W.M.P.NOS.24153 & 30147 OF 2016 AND
12234 & 13763 OF 2017

James Jeyaselvi ...Petitioner in both W.P.'s

Vs.

1. The Director of Elementary Education
College Road, Chennai - 600 006.
2. The District Elementary Education Officer
Thoothukudi District.
3. The Assistant Elementary Education Officer
Vilathikulam
Thoothukudi District.
4. Tamil Nadu Primary School Teachers Federation
No.221A, Palayamkottai Road
Tuticorin - 628 003.
Rep. By its Vilathikulam Block Secretary
P.Subburaj
5. G.Pandarasamy ...Respondents in
W.P.No.27992 of 2016

(Respondents 4 & 5 are impleaded as per order dated 09.12.2016
in W.M.P.Nos.28816 & 29076 of 2016 in W.P.No.27992 of 2016)

1. The Director of Elementary Education
Directorate of Elementary Education
DPI Complex
College Road
Chennai - 600 006.
2. The District Elementary Education Officer
Thoothukudi District. ...Respondents in
W.P.No.12897 of 2017

Prayer in W.P.No.27992 of 2016: Writ Petition, filed under
Article 226 of the Constitution of India, for issuance of Writ

of Certiorari to call for records relating to proceedings Na.Ka.No.0017166/I1/2016 dated 01.08.2016 issued by the 1st respondent herein and consequential impugned proceedings Na.Ka.No.968/A1/2016 dated 03.08.2016 issued by the 2nd respondent herein, quash the same.

Prayer in W.P.No.12897 of 2017: Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the respondents to allow the petitioner to participate in the counseling process for transfer from the post of Assistant Educational Officer, Thoothukudi conducted on 19.05.2017 based on her application dated 24.04.2017 and also to pay salary for the petitioner from the month of August, 2016 to till date.

In both W.P.'s

For Petitioner : Mr.R.Murali

In W.P.No.27992 of 2016

For Respondents : Mr.M.Perumal
Government Advocate for R1 to R3

In W.P.No.12897 of 2017

For Respondents : Mr.M.Perumal
Government Advocate for R1 & R2

COMMON ORDER

The order of transfer issued by the first respondent in proceeding No. Na.Ka.No.0017166/I1/2016 dated 01.08.2016, transferring the writ petitioner from the post of Assistant Elementary Educational Officer to the post of Headmaster of Middle School, is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner would mainly contend that such a transfer amounts to demotion, in view of the fact that the writ petitioner was holding the post of Assistant Elementary Educational Officer. Therefore, she cannot be transferred to the post of Headmaster of the Middle School. This apart, the order of transfer was issued by way of punishment and therefore, such order deserves to be scrapped.

3. Relying on these grounds, the learned counsel states that even as per the rules, the post of Assistant Elementary Educational Officer is not equivalent to that of the Headmaster under the Tamil Nadu Elementary Educational Subordinate Service Rules and therefore, the order impugned is not sustainable.

4. The learned Special Government Pleader appearing on behalf of the respondents made a submission that the post of Assistant Elementary Educational Officer and Headmaster falls

under Clause 1 of the Special Rules for Tamil Nadu Elementary Educational Subordinate Service Rules and both are equivalent and interchangeable. This apart, the scale of pay for these posts are one and the same and therefore, the grounds raised in this regard cannot be entertained. Secondly, the order of transfer cannot said to be punitive, since, there was no initiation of disciplinary proceedings against the writ petitioner. On receipt of certain complaints against the writ petitioner, the Department had conducted enquiry and thereafter, the order of transfer was issued in order to neutralize the situation in the particular place and post. No doubt, the competent authority is having administrative power to issue an order of transfer in order to neutralize the circumstances and the situations arising on account of certain issues in the interest of public. To say that, if there are frequent complaints against the officer in a particular post or particular place, instead of initiating disciplinary proceeding, it is certainly preferable to transfer such an officer from one place to another place, in order to maintain good administration. However, such practices are followed to maintain an effective administration in the interest of the public in general and therefore, such administrative transfers are not punitive in nature. Transfers are incidental to service. More so, a condition of service. Courts cannot interfere in the day today administration of the State and it is for the competent authority to run the administration in the manner prescribed. Frequent interventions in the administrative transfer will cause in-convenience for the effective administration of the Departments. All administrative transfers issued by the competent authorities are to be implemented and a judicial review under Article 226 of the Constitution of India shall be exercised only under exceptional circumstances, if the transfer orders are issued without jurisdiction or on malafides. Even in the case of raising the allegation of malafide, the authority against whom such an allegation is made, has to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained challenging the administrative ground transfers.

5. In the case on hand, the writ petitioner was holding the post of Assistant Elementary Educational Officer and the authority competent received frequent complaints against the writ petitioner and on conducting the preliminary enquiry against the writ petitioner has passed the order of transfer, transferring the writ petitioner from the post of Assistant Elementary Educational Officer to the post of Headmaster in Middle School. However, the scale of pay and other service conditions are similar and there is no question of demotion as contended by the learned counsel for the petitioner and hence

the said contention deserves to be rejected.

6. In view of this fact, the writ petition in W.P.No.27992 of 2016 deserves no further consideration.

7. The very same writ petitioner filed another writ petition in W.P.No.12897 of 2017, for issuance of a Writ of Mandamus, directing the respondents to issue an order of transfer to join in the post of Assistant Elementary Educational Officer at the place to be selected by the petitioner on the counselling to be held on 19.05.2017.

8. The learned counsel for the petitioner made a submission that the petitioner had already participated in the counselling and selected the place. Therefore, the direction sought to be issued to the respondents are innocuous and this Court cannot issue any such direction to the administration to issue an order of transfer. Issuing an order of transfer is an administrative prerogative of the competent authorities and the Courts cannot interfere in such administrative matters.

9. In the event of participating in the counselling, it is for the authorities to consider the administrative exigencies and issue suitable orders in this regard. Post and place can never be claimed as a matter of right by the Government employees. Even if the petitioner had selected the place, such a place or post can never be claimed as a matter of right under Article 226 of the Constitution of India. A public servant enjoys a special status in the society and by virtue of that status, they are bound to serve for the interest of the society, wherever they are posted. That should be the object and it applies for all the public servants, while serving in Government Departments.

10. Such being the view taken by this Court, the direction as such sought for in W.P.No.12897 of 2017, to issue a transfer order cannot be considered and deserves rejection.

11. Accordingly, both the writ petitions are dismissed. However, no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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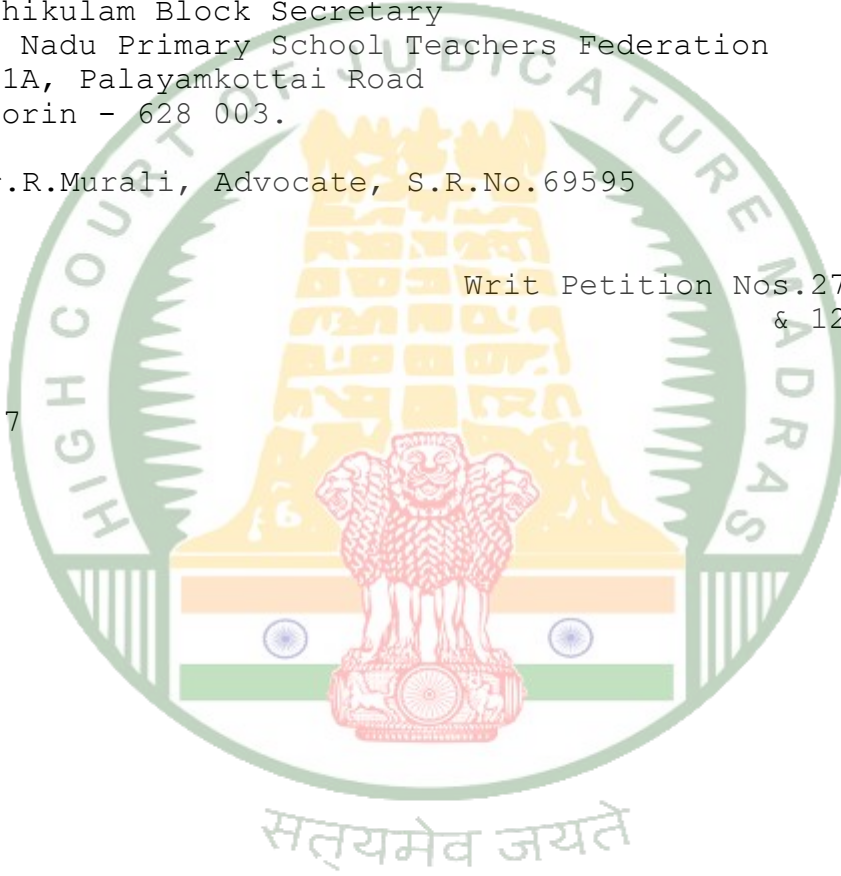
To

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+lcc to Mr.R.Murali, Advocate, S.R.No.69595

Writ Petition Nos.27992 of 2016
& 12897 of 2017

LRS (CO)
CS/22/11/17



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