

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.4933 of 2010 and  
M.P.Nos.2 and 3 of 2010

V.Jensi Devasena

... Petitioner

Vs

- 1.The Director of School Education,  
College Road,  
Chennai - 600 006.
  - 2.The Chief Educational Officer,  
Thiruvannamalai District,  
Thiruvannamalai - 606 601.
  - 3.The District Educational Officer,  
Thiruvannamalai District,  
Thiruvannamalai - 606 601.
  - 4.The Arcot Lutheran Church (Society),  
AIC Central Office,  
No.9, AIC Campus,  
Cuddalore - 607 001  
rep. by its Secretary.
  - 5.The Correspondent,  
Danish Mission Higher Secondary School,  
Tiruvannamalai - 606 601,  
Tiruvannamalai District.
  - 6.The Central Manager,  
Danish Mission Higher Elementary and Elementary Schools,  
No.10, Anna Salai,  
Tiruvannamalai - 606 601.
- ... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records on the file of the 4<sup>th</sup> respondent in his Proceedings CE/ALC S/35/09 dated 17.6.2009 and quash the same and consequently direct the 4<sup>th</sup> respondent to re-transfer and post the petitioner as Secondary Grade Assistant Post in the 5<sup>th</sup>

respondent school restoring his seniority and emoluments as on 16.6.2009 also with all attendant benefits.

For Petitioner : Mr.J.Selvarajan

For Respondents: Mr.A.Rajaperumal  
Addl. Government Pleader  
for respondents 1 to 3

Mr.R.Ramesh  
for M/s.Srinath Sridevan  
for 4<sup>th</sup> respondent

No Appearance (for R5)

#### O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the Proceedings CE/ALC S/35/09 dated 17.6.2009 of the 4<sup>th</sup> respondent and quash the same and consequently direct the 4<sup>th</sup> respondent to re-transfer and post the petitioner as Secondary Grade Assistant in the 5<sup>th</sup> respondent school restoring his seniority and emoluments as on 16.6.2009 with all attendant benefits.

2. The case of the petitioner is that she was working as Secondary Grade Assistant at Danish Mission Carmel Primary School, Tiruvannamalai and she was originally appointed as a Secondary Grade Assistant on 5.1.2001 at the 5<sup>th</sup> respondent school. Her appointment in the 5<sup>th</sup> respondent school was approved by the 3<sup>rd</sup> respondent with effect from 5.1.2001 and subsequently, her service was regularised. While being so, by an order dated 17.6.2009, the 4<sup>th</sup> respondent Management transferred the petitioner to Danish Mission Carmel Primary School, Tiruvannamalai. The petitioner has been relieved from the 5<sup>th</sup> respondent school on the forenoon of 18.6.2009 and has been directed to join duty in the present school on the afternoon of 18.6.2009 and the petitioner had also joined in the present school.

3. According to the petitioner, thereafter, the 4<sup>th</sup> respondent Management has not taken steps to get the approval of petitioner's transfer from 5<sup>th</sup> respondent school to 6<sup>th</sup> respondent school. Even now her transfer was not yet approved by the 3<sup>rd</sup> respondent and on an enquiry with the 3<sup>rd</sup> respondent, the petitioner came to know that the 4<sup>th</sup> respondent does not have any corporate status from the authorities and therefore, her transfer from the 5<sup>th</sup> respondent school to the present school could not be approved.

4. According to the petitioner, the 5<sup>th</sup> respondent school is a Higher Secondary School and the present school in which the petitioner was working is an Elementary School. However, both the schools do not have any corporate management status from the authorities concerned and the said schools are single entity and that is why the 3<sup>rd</sup> respondent could not approve the transfer of the petitioner. Since the 4<sup>th</sup> respondent Management transferred the petitioner without having any corporate management status, the petitioner has filed the writ petition challenging the transfer order and consequently seeks re-transfer.

5. Resisting the writ petition, the respondents 1 to 3 have filed counter stating that Danish Mission Higher Secondary School and Danish Mission Carmel Primary School, Tiruvannamalai are functioning under the control of Arcot Lutheran Church and both schools are recognised and are receiving grant in aid from the Government of Tamil Nadu. The petitioner was relieved on 18.6.2009 forenoon and joined duty in the forenoon of 18.6.2009 in Danish Mission Carmel Primary School and the 3<sup>rd</sup> respondent has countersigned the entries in the Service Register regarding relieving of the petitioner. The Assistant Elementary Educational Officer, Tiruvannamalai also countersigned the entries qua joining duty in Danish Mission Carmel Primary School on 12.1.2010. According to the respondents 1 to 3, the petitioner has been drawing the pay entitled to her in the capacity of the Secondary Grade teacher in Danish Mission Carmel Primary School and Selection Grade was also given to her by computing the service in the Higher Secondary School from 5.1.2001 to 17.6.2009 and also the service rendered in the Primary School from 18.6.2009 to 4.1.2011. According to the respondents 1 to 3, the relieving due to transfer was approved on 31.12.2009 and joining duty in Danish Mission Carmel Primary School was approved on 12.1.2010. The conditions laid down by the Government were satisfied and approved for the transfer of the petitioner by countersigning the entries in the Service Register.

6. The fourth respondent has filed the counter stating that as per the bye-laws and constitution of the Arcot Lutheran Church, the Executive Committee have powers for appointment to the Educational, Medical and other Institutions on the recommendation of the concerned Boards subject to the approval of the Church Board. The Education Board shall maintain a priority list of all qualified teachers/applicants for future appointments. It shall recommend the Executive Committee the appointment and transfer of teachers. Applications for appointments and transfer shall be received by the Central Manager. According to the 4<sup>th</sup> respondent, the transfer effected by the Corporate Management of the Church have been recognised by the Education Board. The transfer order issued by the

Management from one school to another school is in accordance with the conditions laid down by the Government dated 3.11.1987. According to the 4<sup>th</sup> respondent, since there was a delay in getting the approval of the transfer of the petitioner, she had filed the writ petition stating that the 4<sup>th</sup> respondent does not have any corporate status. At the belated stage, if the petitioner is re-transferred that will create unnecessary complication and hence, prayed for dismissal of the writ petition.

7. I heard Mr.J.Selvarajan, learned counsel for the petitioner, Mr.A.Rajaperumal, learned Additional Government Pleader for the respondents 1 to 3 and Mr.R.Ramesh for M/s.Srinath Sridevan, learned counsel for the 4<sup>th</sup> respondent. I have also perused the materials available on record.

8. The learned counsel for the petitioner submitted that the action of the respondents 4 and 6 in transferring the petitioner without having corporate status is highly arbitrary, illegal and also against the principles of natural justice. He would submit that the respondents 4 and 6 ought to have seen that the minority institutions established and administered by it cannot transfer the teachers in different units established and administered by it and the transfer is not necessarily included in the conditions of service unless in appointment itself is expressly or impliedly provided for. According to the learned counsel, there was no minority corporate management status recognised by the authorities and the transfer was not an incident of service. Thus, the 4<sup>th</sup> respondent Management do not have any minority corporate status as held by the Full Bench decision in The Correspondent, Malankara Syrian Catholic School, Marthandam, Kanyakumari District v. J.Rabinson Jacob and others, reported in 1998-III MLJ 595.

9. Countering the arguments of the learned counsel for the petitioner, the learned counsel for the 4<sup>th</sup> respondent submitted that all the schools run by the Arcot Lutheran Church are coming under the aegis of the same Church. It maintains a common seniority list and it does not have separate seniority list. The Church is itself a recognised society and the petitioner was very well aware that the Church having corporate status was exercising the power of transfer. Since the transfer effected by the Corporate Management of the Church have been recognised by the Education Board, the Full Bench decision of this Court in The Correspondent, Malankara Syrian Catholic School, Marthandam, Kanyakumari District v. J.Rabinson Jacob and others, reported in 1998-III MLJ 595 relied by the petitioner has no application to the case on hand.

10. The grievance of the petitioner is that the 4<sup>th</sup> respondent without having any corporate status has transferred

the petitioner from Danish Mission Higher Secondary School to Danish Mission Carmel Primary School, Tiruvannamalai and since the 4<sup>th</sup> respondent Management does not have corporate status, the petitioner's transfer from the 5<sup>th</sup> respondent school to the present school could not be approved. It is the say of the petitioner that the 5<sup>th</sup> respondent school and the present school in which the petitioner is now working have no corporate management status and are single entity and that is why the third respondent could not approve her transfer.

11. The learned Additional Government Pleader for the respondents 1 to 3 submitted that relieving of the petitioner from Danish Mission Higher Secondary School to Danish Mission Carmel Primary School has been entered in the Service Register of the petitioner and the same has been countersigned by the third respondent. Similarly, the Assistant Elementary Educational Officer has countersigned the entries made qua joining duty in Danish Mission Carmel School on 12.1.2010 in the Service Register of the petitioner.

12. The learned Additional Government Pleader submitted that the Management of minority school can transfer a teacher from one school to another school under its control, subject to certain conditions. He has also brought to the notice the conditions laid down in Letter No.1714, dated 3.11.1987 of the Commissioner and Secretary to Government, Education Department, which read as under:

- (1) Both schools should have been recognised by the Director of Elementary Education/Director of School Education.
- (2) The post to which transfer is ordered should be an approved post. Teachers and others who are transferred should possess the requisite educational and other qualification prescribed to the post.

The learned Additional Government Pleader also submitted that the Government further clarified that it is not necessary that the schools should enjoy corporate status to transfer its teacher from one school to another and the transfer of the petitioner was within the norms prescribed by the Government in its letter dated 3.11.1987 supra.

13. At the relevant point of time, the petitioner was working as Secondary Grade Assistant and the transfer order dated 17.6.2009 issued by the 4<sup>th</sup> respondent was based on the resolution passed by the Executive Committee of the Church which is against the law and natural justice. After relieving from the Danish Mission Higher Secondary School, Tiruvannamalai, the petitioner had joined in the new station i.e., Danish Mission

Carmel Primary School, Tiruvannamalai on 18.6.2009 forenoon. The 6<sup>th</sup> respondent requested the Assistant Elementary Educational Officer and the District Elementary Educational Officer to approve the transfer and the Educational Authorities have also approved the transfer of the petitioner on 12.1.2010, but with a delay which is not proper. Therefore, the contention of the petitioner that the 4<sup>th</sup> respondent does not have any corporate status is acceptable one. Since the transfer effected by the Corporate Management of the Church has been recognised by the Education Board, as per the Full Bench decision in The Correspondent, Malankara Syrian Catholic School, Marthandam, Kanyakumari District v. J.Rabinson Jacob and others, reported in 1998-III MLJ 595 relied upon by the petitioner will clearly apply to the case on hand.

14. It appears that the Selection Grade was granted to the petitioner from 5.1.2001 by computing the service in the Higher Secondary School from 5.1.2001 to 17.6.2009 and also the service rendered in the Primary School from 18.6.2009 to 4.1.2011. Benefits entitled to the petitioner in the Secondary Grade post in the Higher Secondary School were also released and all the emoluments applicable to the petitioner in Secondary Grade post in the Higher Secondary School were paid in the Primary School. Therefore, the transfer order issued by the 4<sup>th</sup> respondent transferring the petitioner from Danish Mission Higher Secondary School to Danish Mission Carmel Primary School, Tiruvannamalai is not in accordance with law, the then existing provisions, but the approval of the educational authorities is totally unwarranted.

15. Though the transfer was passed as per the norms prescribed by the Government and the petitioner was granted selection grade from 05.01.2001 by computing the service in the Higher Secondary School from 05.01.2001 to 17.06.2009 and also the service rendered in the Primary School from 18.06.2009 to 04.01.2011. The petitioner is entitled for re-transfer to the Danish Mission Higher Secondary School, Tiruvannamalai. Though the petitioner was made his request in the earlier stage, but now the respondents said that the petitioner's request is totally belated stage and no complication would be arosed, since when the vacancy was available in the 5<sup>th</sup> respondent, the request for re-transfer to the petitioner was well within the norms and the respondents ought to have consider the petitioner's case and re-transferring to the 5<sup>th</sup> respondent school. Therefore, the impugned order passed by the 4<sup>th</sup> respondent is totally arbitrariness and totally illegality and the same is liable to be set aside.

16. In the result:

(a) the writ petition is allowed by setting aside the order

in Proceedings CE/ALC S/35/09 dated 17.06.2009 passed by the 4<sup>th</sup> respondent;

(b) the respondents 1 to 4 are directed to re-transfer the petitioner as Secondary Grade Assistant Post to the 5<sup>th</sup> respondent school by restoring his seniority and emoluments as on 16.06.2009 with all attendant benefits;

(c) the said exercise shall be done within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

vs  
To

1.The Director of School Education,  
College Road,  
Chennai - 600 006.

2.The Chief Educational Officer,  
Thiruvannamalai District,  
Thiruvannamalai - 606 601.

3.The District Educational Officer,  
Thiruvannamalai District,  
Thiruvannamalai - 606 601.

+1cc to Government Pleader SR.No.64998

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W.P.No.4933 of 2010  
and

M.P.Nos.2 and 3 of 2010

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MR (CO)  
GMY (03/04/2019)