

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14658 of 2018

V.Ramachandran

... Petitioner

Vs.

1. The Principal Secretary
Government of Tamil Nadu
School Education Department
Secretariat, Fort St. George
Chennai - 600 009.
- 2.The Secretary to the Government Tamil Nadu
School Education Department
Fort St. George, Chennai -9.
- 3.The Director of Elementary Education
College Road, Nungambakkam
Chennai - 600 006.
- 4.The District Educational Officer
Nagapattian, Nagapattinam District.
- 5.The District Elementary Educational Officer
Nagapattinam, Nagapattinam District.
- 6.The Block Educational Officer
Vedaranyam Block, Vedaranyam Taluk
Nagapattinam District.

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in relates to the order Para No.1(iii) in G.O. (1D) No.403 issued by the first respondent School Education Department dated 29.05.2018 and schedule of counselling issued by the third respondent and quash the same and consequently direct the respondents to conduct the transfer counselling prior to the deployment counselling.

For Petitioner : Mr.V.Kasinatha Bharathi

For Respondents: Mr.K.Karthikeyan
Government Advocate

O R D E R

The present writ petition has been filed challenging Para No.1(iii) in G.O.(1D) No.403 issued by the first respondent School Education Department dated 29.05.2018 and schedule of counselling issued by the third respondent and quash the same and consequently direct the respondents to conduct the transfer counselling prior to the deployment counselling.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner had already participated in several counselling conducted on earlier occasions. However, the petitioner was not able to get the post and place of her choice. It is contended that the writ petitioner is continuing in the present post for the past 17 years and her frequent request for transfer has not been considered by the respondents.

3.This Court is of an opinion that transfer is an incidental to service, more so, a condition of service. Posts or Place can never be claimed as a matter of right. A public servant wherever posted has to work in the interest of public and the public administration. Only on exceptional circumstances, where the transfers are mala fides or without jurisdiction, then alone the employee will get a right to challenge the same. The powers of judicial review for grant of transfers or refusal of transfers are certainly limited. The Constitutional Courts cannot run the day-to-day administration of the State and its administration. It is for the competent authorities to take a decision in respect of transfer of employees in the interest of public and by applying their minds. Such administrative decisions in normal circumstances, cannot be subjected to judicial review under Article 226 of the Constitution of India. Courts can interfere only on exceptional circumstances. Undoubtedly, the authorities competent are bound to follow uniformity and certain guidelines/instructions issued by the Government in this regard. However, non adherence of such instructions/guidelines in the interest of public administration will not confer any right on the Government employee to agitate the matter before the High Court in respect of transfers.

4.On a perusal of G.O.(1D) No.403 issued by the School Education Department dated 29.05.2018, it is the instructions issued to be followed by the authorities, while conducting the counselling. Such instructions are issued to the authorities in order to maintain uniformity in the matter of conducting the counselling. Such instructions will not confer any legal right for the writ petitioner to seek transfer from one place to another place. Instructions or guidelines are issued to the competent authorities in order to avoid discrepancies and to avoid arbitrary exercise of powers by its subordinate officials. Thus, the Government issued instructions for the authorities to conduct counselling in an uniform manner while

conducting the counselling. The clause challenged by the writ petitioner is also an instruction issued to the authorities. However, such instructions /guidelines issued can never be claimed as a rule for the purpose of enforcement. The employees cannot have any legal right in respect of such guidelines issued for the purpose of conducting the counselling.

5.The learned Government Advocate appearing on behalf of the respondents brought to the notice of this court that the counselling has already been completed.

6.However, the learned counsel for the petitioner opposed the same by stating that the counselling is yet to be concluded.

7.May that it be. If at all the writ petitioner is eligible to participate in the counselling, if she is otherwise qualified and if the places of her choice is vacant, then the case of the writ petitioner is to be considered based on the instructions/guidelines issued by the Government to the authorities concerned. In other words, the writ petitioner is also entitled to participate in the counselling in accordance with the procedures laid down in the Government orders.

8.Under these circumstances, the writ petitioner has not made out any valid and acceptable ground for the purpose of quashing the mentioned clause in the Government order. Thus, it is left open to the writ petitioner to avail the facility of counselling if otherwise eligible and in accordance with the procedures as contemplated in the Government orders. All the counselling provided by the Government is a facility granted to the Government employees. Thus, such a facility can never be construed as a legal right nor form part of any service conditions. Such additional facilities are provided by the State to the Government employees enabling the Government servants to function efficiently in a conducive administrative transfers. Thus, the same would not provide any legal right to claim the place or posts as a matter of choice.

9.In this view of the matter, the writ petitioner has not established any valid ground for entertaining the relief as such sought for in this writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

maya/kak

Sd/-

Assistant Registrar(CS VI)

//True Copy//

To

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+1cc to Government Pleader Sr.No.38267

sm:27.6.2018

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सत्यमेव जयते

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