

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.07.2018

CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.Nos.28641, 28642 and 28233 of 2016 and
W.M.P.Nos.24700, 24701,24702, 24703, 24379,27564 of 2016

1.T.Lakshmi	... Petitioner in W.P.No.28641 of 2016
2.K.Muthulakshmi	... Petitioner in W.P.No.28642 of 2016
3.R.Radhika	... Petitioner in W.P.No.28233 of 2016

Vs

1.The State of Tamil Nadu, Rep by its Principal Secretary to Government, School Education Department, Secretariat, Fort St.George, Chennai 600 009.	
2.The Director of School Education, DPI Campus, College Road, Chennai 600 006.	
3.The Commissioner, Chennai Corporation, Ripon Building, Chennai 600 003.	
4.The Deputy Commissioner (Education), Chennai Corporation, Ripon Building, Chennai 600 003.	... Respondents in W.P.Nos.28641 & 28642 of 2016

1.The State of Tamil Nadu Rep by the Principal Secretary, School Education Department, Fort St.George, Chennai 600 009.	
2.The Director of School Education, College Road, Chennai 600 006.	
3.The Chief Educational Officer, Virudhunagar District.	
4.The Commissioner, Corporation of Chennai, Rippon Building, Chennai 600 003.	

5.The Deputy Commissioner,
Corporation of Chennai,
Rippon Building, Chennai 600 003.

... Respondents
in W.P.No.28233 of 2016

PRAYER IN W.P.NOS.28641 & 28642 OF 2016 : Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to pass orders for transfer/restore the petitioner in Tamil Nadu Higher Secondary Education Service in School Education Department as PG Assistant in Government Higher Secondary School based on the selection conducted by Teachers Recruitment Board as per Notification/Advertisement No.3 of 2012 dated 28.02.2012 without any loss of seniority, in the light of the orders passed by State Government in similar cases in G.O.Ms.No.7, School Education (HSC) Department, dated 17.01.2002 and orders passed in G.O.Ms.No.147, School Education Department, dated 16.09.2002 with all consequential and other attendant benefits, within a time frame.

PRAYER IN W.P.NO.28233 of 2016 : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents 1 to 5, to forthwith consider the claim of the petitioner for transfer and absorption into the Tamil Nadu Higher Secondary Educational Services from Corporation without insisting upon No Objection Certificate from 4th and 5th respondents and to consequently, direct the respondents to extend all service benefits of promotion on par with her Teachers Recruitment Board Batchmates.

In W.P.NOS.28641 & 28642 OF 2016

For Petitioners : Mr.G.Sankaran

For Respondents : Mr.C.Munusamy,
Special Government Pleader for RR1 & 2
: Mr.G.Anantharangan,
Standing Counsel for RR3 & 4

In W.P.NO.28233 OF 2016

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.C.Munusamy,
Special Govt. Pleader for RR1 to 3
: Mr.G.Anantharangan,
Standing Counsel for RR 4 & 5

C O M M O N O R D E R

Heard Mr.G.Sankaran and Mr.L.Chandrakumar, learned counsel for the petitioners and Mr.C.Munusamy, learned Special Government Pleader and Mr.G.Anantharangan, learned Standing Counsel, appearing for the respondents in all the writ petitions.

2. All the three writ petitions raised common issues and grounds and therefore, they are taken up together for final disposal.

3. The petitioners have approached this Court, seeking the following reliefs:-

"1. To issue a Writ of Mandamus, to direct the respondents to pass orders for transfer/restore the petitioner in Tamil Nadu Higher Secondary Education Service in School Education Department as PG Assistant in Government Higher Secondary School based on the selection conducted by Teachers Recruitment Board as per Notification/Advertisement No.3 of 2012 dated 28.02.2012 without any loss of seniority, in the light of the orders passed by State Government in similar cases in G.O.Ms.No.7, School Education (HSC) Department, dated 17.01.2002 and orders passed in G.O.Ms.No.147, School Education Department, dated 16.09.2002 with all consequential and other attendant benefits, within a time frame.

2. To issue a Writ of Mandamus, to direct the respondents 1 to 5, to forthwith consider the claim of the petitioner for transfer and absorption into the Tamil Nadu Higher Secondary Educational Services from Corporation without insisting upon No Objection Certificate from 4th and 5th respondents and to consequently, direct the respondents to extend all service benefits of promotion on par with her Teachers Recruitment Board Batchmates."

4. The case of the petitioners is as follows:-

The petitioners were recruited as P.G.Assistant pursuant to the notification of the Teachers Recruitment Board dated 28.02.2012, for the year 2011-12. As per the notification, they were recruited in Tamil Nadu higher Secondary Educational Service. After subjecting them to the selection process, all the petitioners came to be appointed in the service of the third respondent Corporation vide proceedings dated 04.02.2013. Since their appointment, they were working under the control of the third respondent, Chennai Corporation.

5. The grievance of the petitioners is that when notification was issued on 28.02.2012 for the year 2011-12, the recruitment was to take place only for the Tamil Nadu Higher Secondary Educational Services. Believing that they would be appointed only to that service, they participated in the selection. Unfortunately, after being selected, they came to be appointed along with 20 others in the third respondent Corporation Services.

6. According to these petitioners, at the time when they participated in the selection, they were not informed about their recruitment and appointment in the Corporation Service and nowhere in the notification or in the prospectus, it is mentioned that their services were ultimately to be utilized in the Corporation Services. Even in the prospectus enclosed along with the notification, it was mentioned only as appointment in Government higher Secondary Schools. Even at the end of selection process, a notification was issued by the Teachers Recruitment Board on 23.10.2012, publishing approved list of candidates, wherein, it was mentioned only as appointment of P.G.Assistant in Government Higher Secondary Schools. That being the case, contrary to the declaration, these petitioners came to the appointed by Chennai Corporation vide proceedings dated 04.02.2013.

7. After being appointed, these petitioners have successfully completed their probation and since they had certain difficulties in serving in the Corporation, they had collectively submitted a representation to the authorities concerned for transfer of their services to Higher Secondary Educational Services. However, since no action was taken on the representation, the petitioners have approached this Court in W.P.Nos.25661 and 25662 of 2015. This Court on consideration of issues raised in the writ petitions, disposed of the writ petitions on 18.08.2015, as under:-

"5. Though the petitioner has prayed for larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the same, directs the third respondent to consider and dispose of the petitioner's representations dated 09.02.2015 and 06.04.2015, regarding the request made by the petitioner for grant of No Objection Certificate to participate in the counselling to be held on 23.08.2015 and pass orders on merits and in accordance with law on or before 21.08.2015 and communicate the decision taken to the petitioner, second respondent as well as to the fourth respondent."

8. In pursuance of the directions passed by this Court in the aforesaid writ petitions, the fourth respondent issued proceedings on 21.08.2015, rejecting the claim of the petitioners. Therefore, in the light of the rejection of the petitioners' claim, the petitioners are before this Court, praying for relief as stated supra.

9. The learned counsels for the petitioners made the following submissions.

(i) According to the learned counsels, the appointment of these petitioners in the third respondent Corporation is contrary to the notification and prospectus enclosed therein dated 28.02.2012. In the notification, it is clearly mentioned that the recruitment was only to Tamil Nadu Higher Secondary Educational Services and not in the Corporation Services. Believing the notification, these petitioners had participated in selection and to their shock and dismay, they came to be appointed in Corporation Service. The learned counsel would submit that even in the prospectus enclosed along with the notification in paragraph No.1, it is mentioned only as appointment only in Government Higher Secondary Schools. For better understanding of the claim of the petitioners, the said paragraph is extracted hereunder:-

"1. Government of Tamil Nadu has proposed to recruit Postgraduate Assistants / Physical Education Directors - Gr.I for appointment in Government Higher Secondary Schools. The posts will be filled up on the basis of marks secured in the written competitive examination and weightage marks awarded after Certificate Verification, following communal reservation as per existing rules of the Government of Tamil Nadu."

(ii) The learned counsels for the petitioners would further submit that when the approved list of candidates was published which is almost the end of the selection process, it was once again mentioned that only as recruitment of P.G.Assistant etc., in Government Higher Secondary Schools in the publication dated 23.10.2012. By all these communications/notifications, the petitioners were led to believe that the recruitment was only to Government Higher Secondary Schools and not to any other service. On the basis of such representation from the Teachers Recruitment Board, the petitioners had participated in the selection process and got selected.

(iii) The learned counsels for the petitioners would also submit that under similar circumstances, transfer of service was granted as evidenced from G.O.Ms.No.7, School Education Department, dated 17.01.2002 and G.O.Ms.No.147, School Education Department, dated 16.09.2002, wherein, the teachers who were appointed in Adhidraavidar Department, were transferred to

Government Educational Services after they were appointed. When similarly placed persons, on their request, were granted transfer of service, refusing the request of these petitioners for transfer of service is without any justification and the same amounted to discriminatory treatment.

(iv) The learned counsels would further submit that in respect of the subsequent selection for the year 2012-13, the notification dated 21.08.2014, clearly mentioned that the recruitment shall be made in different departments and notified vacancies category wise. By such notification by the Teachers Recruitment Board, the candidates were clearly informed that they would be appointed in any department on the basis of their performance and selection. Such category wise notification was not issued in respect of the subject selection and the petitioners had no clue about their eventual appointment in the Corporation Service at the time when they participated in the selection. Therefore, the appointment of these petitioners in Corporation Service is opposed to the principle of promissory and equitable estoppel and also contrary to the very notification. Such appointment which is contrary to the specific reference as made in the notification/prospectus and further notification of the approved candidates list, cannot be countenanced both in law and on facts. Therefore, the learned counsels would submit that the request of the petitioners for transfer of service to Tamil Nadu Higher Secondary Educational Services is liable to be considered favourably and refusal of the same by the authority concerned cannot stand the test of judicial scrutiny.

10. Upon notice, learned Special Government Pleader and learned Standing counsel, entered appearance and filed a detailed counter affidavit.

11. The learned Special Government Pleader appearing for the respondents would vehemently oppose the grant of relief to the petitioners. He would particularly emphasize the fact that unless No Objection Certificate was issued from the parent department, i.e., Corporation Service, as far as these petitioners are concerned, the question of considering the transfer of these petitioners does not arise. The averments as contained in paragraph No.6 of the counter affidavit is extracted below:-

"6. It is further submitted that the transfer of a teacher from the schools controlled by viz., Corporations, Kallar Reclamation, Adi Dravidar Welfare Schools and the School controlled by the Director of School Education is based on the "No Objection Certificate" issued by the parent department. This was made because of the need of a teacher who is handling a particular subject who is

getting transfer without consent of the controlling department will seriously affect the education of the poor students studying in the respective management schools. To avoid such circumstances, the No Objection Certificate is introduced by the Government. No teacher is transferred to the Directorate of School Education without No Objection Certificate. It is further submitted that no person is transferred from other department without No Objection Certificate from that Department. Hence, the contention raised by the writ petitioners is denied as false and baseless. Hence, the No Objection Certificate is made mandatory for the welfare of the students."

12. The learned Special Government Pleader appearing for the respondents would therefore submit that the third respondent has not issued any No Objection Certificate and such transfer at this point of time would unsettle the academic affairs of the Corporation Schools and also would affect the interest of the students who are studying in the Corporation Schools. He would therefore submit that having accepted the appointment without demur in 2013, it is not open to these writ petitioners to challenge their appointment after having worked for some time in the post. The learned Special Government Pleader would also submit that there was a ban in force for transfer of service and as such the claim of the petitioners could not be considered.

13. At this, the learned counsels for the petitioners would submit that the Government Orders which are referred to in regard to the ban imposed for transfer was only with reference to the particular year and that cannot be pressed into service for all the time to come. The learned counsel would also rely on the recent notification dated 26.07.2017, issued by Teachers Recruitment Board, in which, the recruitment was announced to various departments and vacancies were notified in respect of each department and each service. This would clearly show that at the time when these petitioners were recruited, the intent was clearly disclosed by the authority concerned that the recruitment was only to Tamil Nadu Higher Secondary Educational Services and not to any other Services.

14. This Court has given its anxious consideration to rival submissions of the learned counsels on both sides and perused the materials and pleadings placed on record. From the materials as made available before this Court, it emerges in clear terms that the original intent of the authority concerned in issuing the notification has only contemplated recruitment to Tamil Nadu Higher Secondary Educational Services as evidenced in the notification dated 28.02.2012. This position is further fortified by the fact that even in the prospectus issued along with notification in paragraph 1, which is extracted supra, it

was mentioned that appointment was only to Higher Secondary Schools. The said position gets further strengthened by further notification dated 23.10.2012, publishing approved list of candidates, wherein, it was once again mentioned as recruitment in Government higher Secondary Schools.

15. Further, as rightly pointed out by the learned counsels for the petitioners that in respect of subsequent years, the Recruitment Board issued notification earmarking service wise vacancies, thereby informing candidates that they would be appointed to any service on the basis of the rank in the selection list. Such service wise vacancies was not notified in the subject notification. Therefore, the candidates were led to believe that their appointment would only be in Tamil Nadu Higher Secondary Educational Services and not in any other services. From the documents made available, no way it could be even inferred that appointment to these petitioners would be other than Tamil Nadu Higher Secondary Educational Services.

16. In the said circumstances, this Court is of the considered view that the respondents were estopped from appointing these petitioners to any other service other than what recruitment had intended. Although it is the fact that these petitioners had accepted the appointment without any protest at the time of appointment, that does not mean that they can endure such appointment forever, when such appointment clearly falls outside the scope of the original notification dated 28.02.2012. In regard to delay, the petitioners grievances were projected before this Court in the earlier round of litigations in W.P.Nos.25661 and 25662 of 2015 and the learned Judge of this Court has directed the respondents to consider the representation. On such consideration, the claim of the petitioners was not acceded to. Therefore, these petitioners are before this Court.

17. In the said circumstances, mere acceptance of appointment and mere functioning as such in the Corporation Service, cannot be the fact that would be held against these petitioners for not considering the grievances, if such grievances are legally legitimate and bona fide. In any event, the fact remains that under similar circumstances, the Government had passed G.O.Ms.No.7, School Education Department, dated 17.01.2002 and G.O.Ms.No.147, School Education Department, dated 16.09.2002 and granted transfer from Adidraavidar Welfare Department Service to Government Service, this Court does not see any justification for denying such transfer to these petitioners.

18. Be that as it may, when Teachers Recruitment Board itself has subsequently taken a corrective action for issuing notification and notifying the vacancies in respect of each

service, it is not open to the authorities concerned to stick to the stand that the transfer of service as far as these petitioners were concerned, was not feasible. Once in the absence of any such specific vacancies being notified in respect of each service, the appointment of these petitioners in the third respondent Corporation Service would tantamount to an appointment without the authority of law. Such appointment of these petitioners to the third respondent Services is therefore cannot be countenanced both in law and on facts.

19. For the above said reasons, this Court has no hesitation in allowing the writ petitions. There shall be a direction to the respondents to transfer these petitioners to Tamil Nadu Higher Secondary Educational Services of the School Education Department as P.G.Assistant in the vacancies available in the Government Higher Secondary Schools on the basis of the selection pursuant to notification dated 28.02.2012, with all attendant benefits like seniority etc. The transfer as prayed for in the writ petitions shall be granted by the respondents / competent authorities, within a period of eight weeks from the date of receipt of a copy of this order. The third respondent is also directed to pass appropriate orders in order to enable the Government to effect transfer as prayed for in these writ petitions.

20. With the above direction, the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Principal Secretary to Government,
The State of Tamil Nadu
School Education Department,
Fort St.George, Chennai 600 009.

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

3.The Chief Educational Officer,
Virudhunagar District.

4.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

5.The Deputy Commissioner (Education),
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

+2ccs to Mr.G.Sankaran, Advocate, S.R.No.49709
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.49720
+2ccs to the Government Pleader, S.R.No. 49941,49961
+1cc to Mr.G.Anantharangan, Advocate, S.R.No.49553

W.P.Nos.28641, 28642, and 28233 of 2016

RR(CO)

rrs 09/10/2018



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