

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2568 of 2018
and
CMP No.20825 of 2018

Pradeeph

... Appellant

Vs.

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

2. The Joint Director of School Education,
(Higher Secondary),
DPI Complex,
College Road, Chennai - 600 006.

3. The Chief Educational Officer,
Villupuram District,
Villupuram.

4. The District Educational Officer,
Kallakurichi,
Villupuram District.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 18.09.2018 made in W.P.No.21104 of 2018.

Writ Petition filed under Article 226 of the Constitution
of India praying for the issuance of a Writ of Mandamus,
directing the Respondents to consider the representation of the
petitioner dated 31.07.2018 in accordance with law and Direct
the Third Respondent to Transfer the petitioner as Headmaster
from Government Higher Secondary School Chellampattu, Villupuram
District to Government Higher Secondary School,
Karuvallanpankurichi, Cuddalore District.

For Appellant : Mr.R.Suresh Kumar
for M/s.K.M.Vijayan Associates

For Respondents: Mr.C.Munusamy
Spl. Govt. Pleader (Education)

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal is directed against the order dated 18.09.2018 made in W.P.No.21104 of 2018, by which the Writ Court declined to grant the relief sought for in the writ petition.

2. Short facts leading to the filing of writ appeal are as follows:

Appellant, a Post Graduate Teacher (English) working as a Headmaster in Government Higher Secondary School, Karunkuzhi, Cuddalore District was transferred to Government Higher Secondary School, Chellampattu, Villupuram District, vide proceedings dated 20.05.2017. Since, appellant's wife is working as a Headmistress, in Government Girls Higher Secondary School, Kurinjipadi, Cuddalore District and the distance is more than 110 kilo meters, appellant applied for transfer counselling, based on the Government Order in G.O.(1T).403, School Education (Pa.Ka.5(1)) Department dated 29.05.2018. In this regard, appellant submitted a representation dated 31.07.2018. As there was no response, he filed W.P.No.21104 of 2018, for a writ of mandamus, directing the respondents to consider his representation dated 31.07.2018 in accordance with law and prayed for a consequential direction to the Chief Educational Officer, Villupuram District, Villupuram, the 3rd respondent therein to transfer the appellant, as Headmaster from Government Higher Secondary School, Chellampattu, Villupuram District to Government Higher Secondary School, Karuvallanpankurichi, Cuddalore District.

3. Before the writ Court, placing reliance on an interim direction of this Court given in a similar situation by the Madurai Bench of this Court, vide order passed in WMP (MD) No.11349 of 2018 in W.P.(MD) No.12470 of 2018 dated 11.06.2018 (G.Sekar Vs. the State of Tamilnadu rep. by the Principal Secretary and 4 Others), appellant has submitted that in the said case, notwithstanding the fact that the petitioner therein joined after the cut-off date, he was allowed transfer counselling, and on that basis sought for similar direction.

4. After hearing the learned counsel for both parties and perusing the material on record, Writ Court, dismissed W.P.No.21104 of 2018 vide order dated 18.09.2018. Relevant portion of the said order is extracted hereunder.

"5. On consideration of the facts and submissions made, especially the fact that the petitioner herein in this case joined in a post that arose after the cut-off date and there is no material indicating the fact even though the petitioner was promoted earlier but for the reasons attributable to the respondents he could not join before the cut-off date, the interim direction given by this Court in the aforesaid case therefore is of no assistance to the petitioner as admittedly, he is not qualified to be included in the transfer counselling as per the policy decision of the Government taken in this regard.

6. I would therefore, dismiss this writ Petition at the stage of admission itself. No costs. Consequently, connected Miscellaneous Petition is closed."

5. Aggrieved by the abovesaid order, appellant has filed the instant writ appeal, raising the following grounds.

(i) that the appellant promoted on 20.05.2017, against the vacancies, as on 01.06.2017 is eligible to participate in the transfer counselling as per Clause 4 of G.O.No.256 dated 19.04.2017 and that the appellant is well within the cut off limits and exception granted in the above G.O.

(ii) that the appellant has the right of priority for transfer, as per Clause 11 of G.O.No.403, wherein the spouse employed candidates, could seek for transfer within 30 kilometers of each other and presently, the appellant is working in Villupuram District and the appellant's wife is working at Cuddalore with a distance of more than 110 kilo meters.

Heard the learned counsel for the appellant and perused the material on record.

6. Transfer is an incidence of service. On the basis of G.O.(1T).403, School Education (Pa.Ka.5(1)) Department dated 29.05.2018, appellant has made a representation. Counselling is a chain of action. Trite law is that interim orders are not precedents and in the relied on case, interim order has been granted, in the beginning of the academic year, whereas, in the

case on hand, transfer sought for, is on the middle of the academic year. Any transfer to be made at this stage, on the grounds that his wife is working in a school in Cuddalore, which is 110 kms away, would affect the interests of the students. Whether both the spouses should be posted in the same District or nearby places, Government instructions are only to the effect that "as far as possible" and not mandatory.

7. In Bank of India Vs. Jagjit Singh Mehta, reported in AIR 1992 SC 519, while considering a similar issue of posting of both the spouses at the same place if they were in service, the Hon'ble Apex Court held that transfer policy though provided 'as far as possible', it does not take away the right of the employer to transfer on any administrative exigency or even on administrative ground. Hon'ble Apex Court held that this phrase really means that the principles are to be observed, unless it is not possible to follow them in the particular circumstances of a case. By use of this phraseology the rule etc. is made directory instead of mandatory. (Vide Rani Vs. Deputy Director of Consolidation, AIR 1959 All 525; and Gopalpur Tea Co. Ltd. Vs. Corporation of Calcutta, AIR 1966 Cal 51).

8. The expression 'as far as possible' inheres in it an inbuilt flexibility. (Vide Osmania University Vs. V.S. Muthurangam & Ors., reported in AIR 1997 SC 2758). The expression "as far as practicable" mean, practicable, feasible, possible, performable. It means, not interfering with the ratio prescribed under any rule, which fulfills the interest of administration, but flexible provision clothing the government with powers to meet special situations where the normal process of the government resolution cannot flow smooth. (Vide N.K. Chauhan & Ors. Vs. State of Gujarat & Ors., reported in AIR 1977 SC 251). Therefore, as far as possible means, so long it remains practicable and feasible. Thus, it is the discretion to the authority to carve out an exception and it is not necessary for the authority to give strict adherence to the statutory provisions.

9. In Rajender Singh & Ors. Vs. State of U.P. & Ors., reported in (1998) 7 SCC 654, the Hon'ble Apex Court explained the meaning of words 'as far as possible' as under:-

".....These words are not prohibitory in nature. They rather connote a discretion vested in the prescribed authority which can exercise that discretion It is thus "discretion" and not "compulsion" which contributes the core of this statutory provision....."

10. In view of the above, the instant writ appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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+1cc to M/s.K.m.Vijayan Associates, Advocate, S.R.No.80269

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SR(CO)
KAK(25/02/2019)

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