

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 23.11.2018

CORAM
THE HONOURABLE DR. JUSTICE S.VIMALA

W.P. NO. 31018 OF 2018

P.Vijayakumari

.. Petitioner

- Vs -

1. The Director of Elementary Education
College Road, Chennai 600 006.
2. The Chief Educational Officer
Ramanathapuram, Ramanathapuram Dt.
3. The Chief Educational Officer
Tirunelveli, Tirunelveli District.
4. The Assistant Educational Officer
Mandapam Camp, Mandapam Post
Ramanathapuram District 623 526.
5. The Assistant Educational Officer
Sankarankoil & Post, Tirunelveli Dt.
6. The Headmaster
Panchayat Union Primary School
Mandapam, Rameshwaram Road
Ramanathapuram District 623 526.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the order of the 1st respondent passed in proceedings Na. Ka. No.18378/D1/2018 dated 28.08.2018 and quash the same and direct the 1st respondent to transfer the petitioner from the 6th respondent school to Panchayat Union Primary School, Palvanathapuram, Sankarankoil Union or in any other school in Tirunelveli District as the petitioner is suffering from cancer and requires the assistance and support of family members for her life forthwith.

For Petitioner : Mr. P.Ebenezer Paul

For Respondents: Ms. P.Kavitha, GA (Edn.) for RR-1 to 5

ORDER

Ms. P.Kavitha, learned Government Advocate takes notice for the respondents.

2. This petition has been filed by the petitioner praying for quashing the impugned order rejecting the request of transfer and to further direct the 1st respondent to transfer the petitioner from the 6th respondent school to the Panchayat Union Primary School, Palavanathapuram, Sankarankoil Union considering the dreadful disease of cancer suffered by the petitioner.

3. The petitioner is working as Secondary Grade Teacher in the Panchayat Union Primary School, Mandapam, Ramnad District since 1.12.05. Her husband is serving as Secondary Grade Teacher in Government Higher Secondary School, Kalingapatti, Sankarankoil, Tirunelveli District. Further, the children of the petitioner are also studying in the school at Tirunelveli.

4. It is the case of the petitioner that she was diagnosed with cancer pursuant to the MRI and CT scan reports taken during January, 2018. Consequent upon the surgery underwent by the petitioner at Christian Medical College & Hospital, Vellore she took chemotherapy treatment for six sittings and has been advised to undergo the treatment for cancer for the next five years. The petitioner is presently taking treatment for cancer at a hospital in Tirunelveli.

5. The petitioner applied for transfer on 1.6.2018 and again on 23.6.2018 on health grounds, citing the nature of treatment referred to supra. On 11.7.18, this Court, in W.P. No.14850/18, filed by the petitioner, directed the respondents therein to consider the representation submitted by the petitioner, dated 23.6.18, on sympathetic grounds and to pass orders. For better clarity, the order passed in the above writ petition is quoted hereunder :-

"The respondents are directed to consider the representation of the petitioner dated 26.03.2018 on merits and pass orders thereon, within a period of four weeks from the date of receipt of copy of this order. The respondents, while making such consideration, must bear in mind that the petitioner suffered a lot and she has been continuously working at Rameshwaram for the past 13 years and her husband is working at Tirunelveli and the children are studying at Tirunelveli and also there are vacancies in Sankarankoil Union, which has been given in the petitioner's representation."

(Emphasis supplied)

6. In spite of the order passed by this Court above, the respondents, by order dated 28.8.18, rejected the request of the petitioner for transfer, which has been challenged by filing the present petition.

7. Learned counsel appearing for the petitioner brought to the notice of this Court the nature of treatments taken by the petitioner by filing the medical reports, such as scan report, MRI, etc. The treatment record of the petitioner dated 27.8.18, filed with the typed set of documents, disclose that the same has been issued by the Department of Nuclear Medicine, Meenakshi Mission Hospital & Research Centre, Madurai, which reveals that the petitioner is suffering from ovarian cancer. Learned counsel for the petitioner further submits that the petitioner is undergoing chemotherapy treatment and without support of the family members it is difficult to bear with the same. Learned counsel for the petitioner also drew the attention of this Court to G.O. Ms. (1D) No.403, Education Department dated 29.5.2018, and submits that the petitioner is entitled to claim the benefit of the said Government Order especially the preference to be given for cancer patients seeking transfer.

8. Learned Government Advocate appearing for the respondents submit that the case of the petitioner for transfer was considered in the general counselling held during August, 2018 and, taking into consideration the shortage of secondary grade teachers, the representation submitted by the petitioner was rejected as it was found not feasible to transfer the petitioner in the interests of the school and the students.

9. A perusal of G.O. Ms. (1D) No.403, Education Department dated 29.5.18 reveals that cancer patients are entitled to certain special considerations. Despite the above Government Order conferring certain special considerations on cancer patients and further this Court, in the earlier writ petition, directing the respondents to sympathetically consider the case of the petitioner, highlighting the ailment suffered by the petitioner, the 1st respondent has chosen to reject the request of the petitioner.

10. It is to be pointed out that Government Orders are issued not only for the purpose of smooth running of the Government machinery, but equally for the purpose of safeguarding the rights and interests of its employees.

11. The framework of law for enforcement is mainly for the purpose of safeguarding the interests of the citizens. A Government Order, issued within that framework, for the purpose of conferring a benefit for a particular reason on certain persons suffering from certain ailments, has to necessarily be

applied to the said individuals, even if it is to the detriment of certain others, as the said persons for whose benefit the said order is issued, is to serve a particular and special purpose. The said individuals cannot be treated at par with all other persons, as they could not be treated to be similarly placed persons.

12. G.O. Ms No.43 dated 29.5.2018, on which reliance has been placed by the petitioner claiming priority in transfer, definitely comes to the aid of the petitioner. Clause 9 of the said Government Order details the sequence of individuals, who are entitled to priority over others in the matter of transfer. In the said sequence, persons with cancer find place at No.3. The two types of persons, who supercede the persons with cancer are persons suffering from total blindness and persons who have undergone kidney transplantation or are under dialysis treatment. This Court is at a loss to understand as to what prevailed over the respondents not to consider the case of the petitioner.

13. Counselling for transfer is conducted openly only for the purpose that persons, who are really deserving and in need do not rot, while the others steal a march over them. The counselling is an open platform, which negates the possibility of trading for transfer. When such is the intention of the Government in conducting counselling, making a deserving individual to run from pillar to post is nothing but subserving the said noble intention of counselling.

14. Law is not a rigid straight jacket formula, but is to be applied with humane touch. The various Government Orders, that are the outcome of benevolence to the citizens, should be properly applied so that it gives out the benefits intended to the common man. When the Government Order mandates the criteria to be followed in the counselling procedure, flouting the same to the detriment of persons, who are to be the recipient of the benevolent gesture, cannot be allowed to suffer silently under the garb of counselling, for reasons that totally bypass the Government Orders.

15. This is a classic case of administrative overreach, negating the Government Order, which confers certain benefits on a class of persons, who are at the helm of suffering. Allowing the impugned order to stay without any interference would not only be justice denied, but would defeat the very intention for which the Government order was issued. It is high time that acts such as these is not only deprecated, but also the Government should take necessary action to curb such acts and put the erring authorities in the proper place. Violation of such Government Orders, which are issued in the interest of the anguished persons, should be viewed seriously and should not be

left unattended for the Court to step in each and every time to correct such actions by issuing a slew of directions.

16. In the case on hand, a mere glance at the medical records of the petitioner would suffice to have granted the benefit of clause 9 of G.O. Ms. No.403. Further, it is to be pointed out that the petitioner has been working at the present place for almost 13 years. Neither it is the case of the respondents that the petitioner has been transferred presently and is not willing to join the post nor there is dearth of vacancies in the place requested by her. Having worked for over 13 years in the place away from her family, due to her critical medical condition, the petitioner has submitted representation for being transferred to a place nearby her family so that she could continue her treatment. In this regard, G.O.Ms. No.403 has also been brought to the notice of the respondents to bolster up her claim for being considered for transfer. However, inspite of the petitioner bringing it to the notice of the respondents G.O. Ms. No.403, the respondents have rejected the case of the petitioner. This clearly shows scant regard for the orders passed by the Government. Therefore, this Court is left with no alternative, but to set aside the impugned order and further direct the 1st respondent to transfer the petitioner. It is submitted that the post of secondary grade teacher is vacant at Panchayat Union School, Sankarankoil. The 1st respondent is directed to issue orders of transfer transferring the petitioner to the vacant post at Panchayat Union School, Sankarankoil, within a period of one week from the date of receipt of a copy of this order. Failing compliance of this order, it is made clear that this Court will be constrained to initiate suo motu contempt action against the erring officials.

17. The writ petition is allowed with the above directions. Though this Court is inclined to impose costs, however, in the circumstances of the case, is not imposing any costs for the present.

18. The Government, pursuant to the directions of this Court in W.P. No.20527/2014 passed G.O. Ms. No.99, Personnel & Administrative Reforms (A) Dept., dated 21.09.2015, directing the authorities to dispose of the representations received within a period of thirty days from the date of receipt. The Government has also made it clear that if for any reason the authority is not able to dispose of the representation within the prescribed time, the individual should appropriately be informed of the status of his representation. In spite of the said direction, day-in and day-out, this Court is flooded with writ petitions seeking direction for disposal of representations filed before the authorities. It is not for the Court to pass directions to the authorities, in each and every case, to consider the representation and pass orders. It is the bounden

duty of the authorities to consider the representation of the individuals and pass orders in accordance with law. However, for reasons best known, the Court is made to step in and issue directions for disposing of the representations, thereby rendering the work of the Court more clerical than judicial. It is high time that necessary introspection is made by the Government and the Government comes out with better administrative discipline making the respective authorities accountable for their action, if the Court is made to step in and issue direction for considering the representation and to pass orders, so that the common man is not made to run from pillar to post to have his grievance/requirement redressed and that the precious judicial time is not wasted.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Director of Elementary Education
College Road, Chennai 600 006.
2. The Chief Educational Officer
Ramanathapuram, Ramanathapuram Dt.
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Tirunelveli, Tirunelveli District.
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Sankarankoil & Post, Tirunelveli Dt.

+1cc to the Mr.P.Ebenezer Paul, Advocate, S.R.No.80085
+1cc to the Government Pleader, Advocate, S.R.No.80473

W.P.NO. 31018 OF 2018

rrs 05/12/2018