



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.41 of 2013
and
M.P.Nos.1 and 2 of 2018

S.Sivarajan

.. Appellant/Petitioner

..Vs..

1. The Director of Elementary Education,
College Road, Chennai-600 006.
2. The District Elementary Educational Officer,
Erode District, Erode.
3. The District Elementary Educational Officer,
Tiruppur District, Tiruppur. ..Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act,
against the order dated 01.03.2011 made in W.P.No.4580 of 2011.

This writ petition under Article 226 of the constitution of India, praying for issue of a writ of certiorarified mandamus to call for the records of the 1st respondent in relation to his proceedings issued in Na. Ka. No. 1928/I.4/09 dt 3.3.2010 and quash the same and issue a consequential direction to the respondents to consider the petitioners case for transfer from the post of B.Ed. Middle School Headmaster to the post of Assistant Elementary Educational Officer and post the petitioner as Assistant Elementary Educational Officer from the post of B.Ed. Middle School Headmaster by way of transfer.

For Appellants : Mr.R.Saseetharan

For Respondents : Mr.K.Karthikeyan (Edn)
Government Advocate



5. There is no dispute that the appellant submitted an application on 04 April 2018 to the Director of Elementary Education requesting him to post him as Middle Schoolhead Master on account of his family circumstances. There was no indication in the said application as to whether the relinquishment was temporary or permanent in nature. The Director of Elementary Education treated the application as one of permanent relinquishment. The order permitting the appellant to go back to the post of Middle School Headmaster contain a clause that his case would be treated as one of permanent relinquishment. The appellant accepted the said order and joined the post of Middle School Headmaster. It was only thereafter the appellant challenged the condition regarding permanent relinquishment. The appellant with eyes open accepted the order passed by the Director of Elementary Education and joined the post of Middle School Head Master. Thereafter when the circumstances changed decided to come back as Assistant Elementary Educational Officer.

6. Rule 4 of the Tamil Nadu State Subordinate Rules contain conditions with regard to the relinquishment. There are two types of relinquishment i.e. permanent and temporary. The application submitted by the petitioner does not indicate as to whether it was permanent or temporary. The application was treated as one of permanent relinquishment. There was no protest made by the appellant at that point of time that it should be treated only as a temporary relinquishment. The very fact that the appellant accepted the order of transfer back to the post of Middle School Headmaster clearly shows that he accepted the order passed by the Director of Elementary Education with a condition.

7. The learned counsel for the appellant placed reliance on a Division Bench Judgment of this Court in The Director of Elementary Education Vs. S.Amel Antony reported in 2001 WLR 562 to contend that when the posts are identical and the pay scale are equal in nature there would not be any difficulty to post the appellant to the post of Assistant Elementary Educational Officer.

8. The facts of the present case are totally different. The appellant consciously took a decision to go back to his parent post. In case there is any indication in his application that his request is only for temporary relinquishment, the Government would have rejected the said request. Therefore, the appellant made it appear as if it was a permanent relinquishment. Only when the order was passed rejecting his request to retransfer him to the post of Assistant Elementary Educational Officer, the appellant has challenged the condition, contending that his request was for temporary



relinquishment. The application submitted by the appellant was considered by the Director of Elementary Education on merits and it was rightly rejected.

9. The learned single Judge appreciated the facts in the light of the legal position. We do not find any error or illegality in the order passed by the learned single Judge warranting our interference.

10. In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/--

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of Elementary Education,
College Road, Chennai-600 006.
2. The District Elementary Educational Officer,
Erode District, Erode.
3. The District Elementary Educational Officer,
Tiruppur District, Tiruppur.

+lcc to Government Pleader Sr.No.23921

SR(CO)
sm:19.4.2018

W.A.No.41 of 2013