



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P. (MD) No. 19848 of 2018

and

W.M.P. (MD) No. 17628 of 2018

T. Paulraj

.. Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George,
Chennai - 9.
2. The Director of School Education,
O/o. The Director of School Education,
DPI Campus,
Chennai - 6.
3. The Joint Director of School Education (Higher Secondary),
O/o. The Joint Director of School Education (Higher Secondary),
DPI Campus,
Chennai - 6.
4. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.
5. The District Educational Officer,
O/o. The District Educational Officer,
Kanyakumari District,
Nagercoil.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of MANDAMUS, directing the respondents 4 & 5 to transfer the petitioner as P.G. Teacher (Botany) to any one of the Higher Secondary Schools in Kanyakumari District, within the time stipulated by this Court.



For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mrs.S.Srimathy,
Special Government Pleader

O R D E R

This writ petition has been filed seeking a Writ of Mandamus directing the respondents 4 & 5 to transfer the petitioner to any one of the Higher Secondary Schools in Kanyakumari District, within a stipulated time frame.

2. The petitioner before this Court is a P.G.Teacher (Botany) and his grievance is that though he is the senior most, both in service seniority and in station seniority, his request for transfer to Kanyakumari District, being his native place, was not entertained, whereas, his juniors were transferred to Kanyakumari District. Therefore, the petitioner has made a representation dated 11.08.2018 to the fourth respondent, but, the same is yet to be considered. Hence, the present petition came to be filed for the aforesaid relief.

3. Learned Special Government Pleader, on instructions, would submit that the petitioner was, at first, posted at Pazhavor, Tirunelveli District and as there was a surplus, he was transferred to Thirukkurungudi, Tirunelveli District. She would further submit that at present, there are no vacancies in Kanyakumari District and therefore, the request of the petitioner, as such, could not be conceded.

4. At this juncture, learned Counsel for the petitioner submitted that the transfer orders have been passed in violation of the petitioner's seniority and therefore, he prays for directing the fourth respondent to consider the pending representation of the petitioner, dated 11.08.2018, in the light of G.O.(1D)No.403, School Education Department, dated 29.05.2018.

5. Considering the facts and circumstances of the case and also the limited scope of the relief sought for by the petitioner, this Court, without going into the merits of the matter, directs the fourth respondent to consider the representation of the petitioner dated 11.08.2018, on its own merit and in the light of G.O.(1D) No.403, School Education Department, dated 29.05.2018, if applicable, and pass appropriate orders, after affording an opportunity of personal hearing.

6. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

7. This Court in several cases has described the importance of the teacher in the society by citing a judgment of the Hon'ble Supreme Court in the case of Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others, reported in 1997(2) SCC 534, wherein it has been held as under:



"Before answering the question whether the order terminating the services of the appellant in terms of his appointment letter is in violation of the Rules or the principles of natural justice, it is necessary to consider the need for the education and the place of the teacher in that behalf. Article 45 of the constitution enjoins the State to endeavour to provide free and compulsory education to all children, till they complete the age of 14 years. The Supreme Court has held that right to education is a fundamental right and the State is required to organise education through its agencies or private institutions in accordance with the law and the regulations or the scheme. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate the imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51 A so as to make the students responsible citizens of the country. The quality, competence and character of the teacher are, therefore, most significant to mould the institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities."

10. Mahatma Gandhi, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them. ...

.....Dr.S.Radhakrishnan has stated that "we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness."

11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as "Guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and



knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance."

8. In yet another judgment in the case of The Secretary, Sri Ramakrishna Vidhyalayam High School, Tirupparaithurai, Tiruchirapalli District Vs. State of Tamil Nadu, Rep.by Special Commissioner and Secretary to Government and others, reported in 1990 (9) WLR 62, this Court has categorically held as follows:

"51.It is very lamentable state of affairs that in this country, a teacher who was considered as equal to God, should fall from the high pedestal to the lowest level. Out scriptures command the students to consider the teacher as a God (Acharya Devo Bhava). The term "Acharya" in Sanskrit means a person who not only teaches lessons to students, but also ensures good conduct of his pupils. The more important part of the definition is that he shall himself practice what he preaches. In Sanskrit language the term "Guru" also means teacher. The syllable "Gu" represents darkness (symbolising ignorance). The syllable "Ru" represents the removal thereof. Thus, a Guru is so called as he removes the darkness and the ignorance from the minds of the students. In fact, there is a saying that it is only with the blessings of a teacher that a person blossoms into a full man."

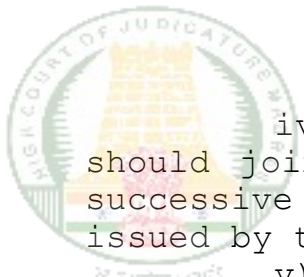
9. The job of a teacher is equivalent to that of a Sculptor, who, with his profuse efficiency shapes a material like stone or wood, by whittling away at it. Likewise, a teacher brings out the dreams of students into reality so as to shine in the society like stars and because of involvement of reckless and unprincipled reprobate, like the Headmistress, the teachers lose their reputations in the society.

10. This Court expects the Government to issue a Government Order in respect of surplus teachers, by incorporating the following suggestions:

i) The authority concerned shall assess the average strength of students in the school and thereafter, decide regarding deployment of teachers as per the guidelines issued time and again on or before 30th September of every academic year;

ii) The assessment report shall be forwarded to the competent / Higher authority in the State on or before 31st October of every academic year;

iii) The competent authority, on receipt of the report, shall identify the schools, where surplus teachers are deployed and transfer them to the needy schools on due notice to the Manager / Correspondent of such Schools and such exercise shall have to be completed within a period of two months, viz., on or before 31st December of every academic year;



iv) The teacher, who is found to be surplus in a school, should join the deployed school on or before commencement of the successive academic year, on receipt of deployment order to be issued by the Competent Authority;

v) Insofar as Schools run by Corporate Management are concerned, the group of schools should be considered as a single unit and thereafter, the strength of the students shall be assessed and after calculating the total number of surplus teachers in the Corporate Management, the same shall be informed to the Management;

vi) The Corporate Management, on receipt of such information, shall deploy surplus teachers to the needy school under their management and report the compliance to the authority concerned, failing which, the grant-in-aid being extended to the Management shall be stopped in respect of the post, which was declared surplus from the commencement of next academic year. But, at the same time, the Management School is entitled to get back the deployed teachers in the event of increase in student strength in successive years and in that case, the Competent Authority, based on the application to be made by the Manager shall re-deploy the same teacher to the very same school on proper inspection on or before commencement of next academic year;

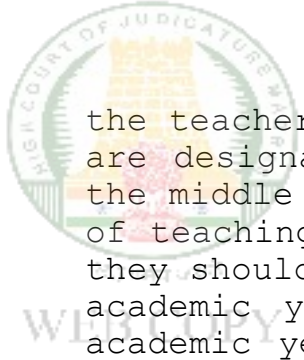
vii) The grant-in-aid being extended to the Management School, which refuses to deploy excess teachers to other schools shall be stopped and the teachers, who refuse to join the needy school shall be deprived of their service and monetary benefits for the period in which he/she rendered service at the post declared as surplus.

viii) When the recruitment takes place, the candidates/teachers should be informed that during the last academic year of the service, they would be re-deployed in any place in the State of Tamil Nadu or in the alternative post in the administrative work so that they could be allowed to retire at the end of the month, when they attain the age of superannuation or they can be retained till the academic year at the discretion of the Government.

ix) This Court has come across several cases of re-deployment and that teachers are insisting upon a particular place, more so, in and around Kanyakumari District. Nearly, 5% of the service matters pending in Madurai Bench pertains to re-deployment and another 5% pertains to compassionate appointment. Teachers cannot have vested interest and they cannot choose a particular place of work, as they should be prepared to work in any school.

x) The teachers, who are going to retire in the middle of the academic year need not be provided with teaching work during that academic year so that the students will not be affected and it is better that they may be paid wages without extracting any work so that their tenure need not be extended till the end of the academic year and there is no need for the Government to pay any wages or salary till the end of the academic year;

xi) The sum and substance of the decision of this Court is that the students shall not be affected, even if the teachers are allowed to superannuate in the middle of the academic year. The interest of the students alone should be taken into account and if



the teachers are posted in the administrative side, even though they are designated as teachers, they can attain superannuation even at the middle of the academic year, as they would not be in the process of teaching. The teachers shall have no vested right to insist that they should stick on to a particular place of work during their last academic year and if they want to continue till the end of the academic year, the decision vests with the Competent Authority and the teachers, who are not given any teaching work in the last academic year, have no right to demand that they should be allowed to work till the end of the academic year.

11. The above guidelines, if forming part of the Government Order, shall take effect from the academic year 2019 - 2020 and this Court expects that the Government will issue orders at the earliest. The guidelines mentioned supra are only illustrative and it is open to the Government to incorporate such other conditions as may be required in the interest of student community and not in the interest of teachers.

12. List this matter on 07.12.2018 at 02:15pm through video conference for reporting compliance in respect of issuance of Government Order with the guidelines stated supra.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-II)

To:

- 1.The Principal Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai - 9.
- 2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus,
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- 3.The Joint Director of School Education (Higher Secondary),
O/o. The Joint Director of School Education (Higher Secondary),
DPI Campus,
Chennai - 6.
- 4.The Chief Educational Officer,
O/o. The Chief Educational Officer,
<https://hcservices.ecourts.gov.in/hcservices/>
Tirunelveli District,
Tirunelveli.



5. The District Educational Officer,
O/o. The District Educational Officer,
Kanyakumari District,
Nagercoil.

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Copy To:

The Section Officer,
Writ Section, Posting
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.T.LAJAPATHY ROY , ADVOCATE IN SR No.85438.
+1 cc to Special Government Pleader, SR.No.85899

GK/AR

DS RSK SAR2 15 11 2018 7P 9C

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