

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5939 of 2018

R.Renganathan

..Petitioner

vs

- 1.The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
School Education Department
Fort St.George
Chennai - 600 009
- 2.The Commissioner,
Coimbatore Municipal Corporation
Coimbatore - 641 001
- 3.The Educational Officer
Coimbatore Municipal Corporation
Coimbatore - 641 001
- 4.M.Mallika
Head Mistress
S.R.P.Ammanni Ammal Girls Higher Secondary School
R.S.Puram
Coimbatore.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for records relating to impugned proceeding in Na.Ka.No.5773/ 2017/ K-1 dated 24.07.2017 issued by the 2nd respondent and quash the same as illegal and consequently direct the 2nd respondent and transfer the petitioner to S.R.P Ammani Ammal Girls Higher Secondary School.

For Petitioner : M/s.Jerry V.V.Sundar
For Respondents : M/s.V.Annalakshmi
Government Advocate for R1

Mr.K.Magesh for R2 & R3

Mr.P.Naga Raja for R4

O R D E R

The order of transfer issued against the writ petitioner in proceedings dated 24.07.2017, transferring the writ petitioner from Corporation S.R.P.Ammani Ammal Girls Higher Secondary School, R.S. Puram, Coimbatore to Corporation Higher Secondary School, Selvapuram is under challenge in the present writ petition.

2. Interestingly, the distance between these two Schools are 2 kms. Both the 2 Schools are situated within the Coimbatore City Municipal Corporation. The writ petitioner, who is holding the responsible position of Headmaster, has to concentrate in the Administration of the School and for the welfare of the students and to impart best education to the Children, who all are studying in Corporation Schools. Contrarily, they are developing an attitude by challenging these kind of transfer orders, which has been issued to the nearby Schools.

3. The learned counsel for the writ petitioner states that the transfer order was issued by entertaining the request application of the 4th respondent. In this regard, the learned counsel appearing on behalf of the Corporation also states that the 4th respondent submitted a request application to transfer her to the S.R.P.Ammani Ammal Girls Higher Secondary School, R.S. Puram.

4. The learned counsel for the writ petitioner states that the request by the 4th respondent is submitted by way of an appeal and therefore, the respondent Corporation considered the said appeal and issued the transfer order dated 24.07.2017.

5. When this Court directed the Corporation officials, more specifically, the Corporation Educational Officer to submit a report, who in turn, submitted a status report by stating that he inspected the Corporation School and conducted the joint meeting of Parents Teachers Association, who in turn informed the officer that the writ petitioner as well as the 4th respondent are performing their duties and responsibilities without any irregularity or illegality.

6. Under these circumstances, it is not clarified by the Corporation, why such an order of transfer was issued. The impugned order states that the order of transfer was issued on administrative reasons.

7. Now, during the course of hearing, the learned counsel for the Corporation informed this Court that the impugned order of transfer was issued by entertaining the request application submitted by the 4th respondent. Therefore, the very reasons

stated in the impugned order that the transfer order was issued on administrative grounds is absolutely false. The Commissioner, Coimbatore Corporation, while issuing such transfer orders is bound to apply his mind and give the reasons and circumstances correctly. The transfer on administrative grounds cannot be issued on false grounds. If an order of transfer was issued on administrative grounds, the normal impression of the Court would be that the transfer order has been issued in the interest of public administration. If such transfer orders are issued by entertaining the request application/appeal, then the reason for consideration for such request of the individual must be recorded in writing. In the absence of any such findings by the competent authorities, the factual inference is to be drawn that the authorities have issued the order of transfer on extraneous consideration or for the purpose of entertaining the request of another employee.

8. In the present case on hand, admittedly, the impugned transfer has been issued by entertaining the request submitted by the 4th respondent. However, the order states that the transfer order was issued on administrative grounds. The false reasons recorded by the Commissioner in this regard is to be deprecated. The Commissioner should pass orders, considering the circumstances, facts and the guidelines for issuance of transfers.

9. It is expected that no such order can be repeated in future, while considering the request transfer applications or while issuing the transfer orders.

10. Transfer is an incidental to service, more so, a condition of service. Transfer can never be claimed as a matter of right. Post or place also can never be a choice of the public servants. The writ petitioner as well as the 4th respondent are holding the responsible position as a Headmaster and the impugned transfer order has been issued, transferring the writ petitioner to the nearby School situated within 2 kms.

11. On a perusal of the facts and circumstances, the litigations are not only frivolous, but based on certain personal animosity. Such litigations can never be encouraged by the Hon'ble High Courts. If at all, a transfer order is issued to a nearby School, a Headmaster is expected to serve in the interest of public administration. Certain genuine grounds, if any available, then alone a writ proceedings can be entertained.

12. No writ petition can be entertained against an order of transfer in a routine manner. Judicial review against the order of transfer is certainly limited. An order of transfer can be challenged, if the same is issued by an incompetent authority, having no jurisdiction or an allegation of mala fides are raised

or if the same is in violation of the statutory rules in force. Even, in case of raising an allegation of mala fides, the authority against whom such an allegation is raised, to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ petition can be entertained against an order of transfer in a routine manner.

13. The Newspaper informations are also enclosed in the typed set of papers. On a perusal of such Newspaper informations, it seems that the writ petitioner as well as the 4th respondent have attempted to politicize the transfer, which is made between one School to another School. In respect of such Newspaper informations, the Commissioner, Corporation is directed to conduct an enquiry and if such Newspaper informations are given at the instance of the writ petitioner or by the 4th respondent, suitable actions are to be initiated under the Discipline and Appeal Rules.

14. Work performances of these Headmasters and Teachers are to be assessed by the competent authorities including the Commissioner of Corporation. The attendance, taking of regular classes, utilizing the working hours for the betterment of the children studying in the Schools and the School premises are all to be verified. In the event of any lapse including uncleanliness, non-maintenance of class rooms, proper attendance of students and all other related activities of the School are to be closely monitored by the competent authorities. Frequent surprise inspections are to be conducted even by the competent authorities and also by the Commissioner, Corporation to ascertain the functioning of the Corporation Schools within their jurisdiction. The Corporation Teachers, taking Tuitions outside the School premises for monetary considerations to be properly checked and actions are to be initiated.

14(a). In view of the growing indiscipline in the Government Schools, more so, amongst the Teachers and the Teachers filing these kind of writ petitions unnecessarily even without realizing the fact that they are duty bound to serve the public at large and growing instances of Sexual Harassment in Schools, Colleges, Universities, this Court necessarily has to mould the relief in the writ petition by considering these factors as the present writ petition is filed in respect of the transfer order, transferring the writ petitioner to the nearby School, which is 2 kms away. Thus, the attitudinal character of the Teachers and the Headmasters, while performing their noble duties are to be certainly monitored and suitable orders are to be issued in this writ petition. Thus, this Court is constrained to consider the Conduct Rules applicable to the public servants and related issues.

15. It is relevant to point out the provisions of the Tamil Nadu Government Servants Conduct Rules. Rule 8, which reads as follows:-

"8. Private trade or employment - (1) (a) No Government servant shall except with the previous sanction of the Government, engage himself directly or indirectly in any trade or business or undertake any employment;

Explanation (a) - omitted.

(aa) Notwithstanding anything contained in Clause (a), no Government servant shall undertake any part-time employment:

Provided that a Government servant may, with previous sanction of the Government, deliver lectures at a Government, Quasi-Government or Government Aided Academic or technical institutions or at Universities for a period not exceeding one year at a time.

(b) Every Government servant shall, if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency, report the fact to the Government:

Provided that, if it is found that the trade or business is of such a nature that the association of a member of the Government servant's family in that trade or business can embarrass either the Government servant concerned or the Government, then the Government servant shall not permit the said member of his family to continue his association with the trade or business in question.

Explanation - Canvassing by a Government servant in support of any trade, business, insurance agency or commission agency engaged in owned or managed by any member of his family shall be deemed to be a breach of this sub-rule.

(2) No Government servant shall, except with the previous sanction of the Government, take part in the registration, promotion or management of any bank or company registered under the Banking Companies Act, 1949 (Central Act X of 1949), or the Indian Companies Act, 1913 (Central Act VII of 1913), or the Companies Act, 1956 (Central Act I of 1956), or any other law for the time being in force.

Provided that a Government servant may, subject to sub-rules (7) to (10), take part in the registration, promotion or management of a co-operative society registered or deemed to be registered under the Tamil Nadu Co-operative Societies Act, 1961 (Tamil Nadu Act 53 of 1961), or any other law for the time being in force or of a literary, scientific or charitable society registered under the Societies Registration

Act, 1860 (Central Act XXI of 1860), or any other law for the time being in force.

Provided further that the official duty of a Government servant shall not thereby suffer and he shall, within a period of one month of his taking part in such activity, report to the Government giving details of the nature of his participation.

(3) (a) A Government servant shall not act as arbitrator in any case without the sanction of his immediate superior, unless he be so directed to act by a Court having authority to appoint an arbitrator.

(b) No Government servant shall act as an arbitrator in any case which is likely to come before him in any shape by virtue of any judicial or executive office which he may be holding.

(c) If a Government servant acts as arbitrator at the private request of disputants, he shall not accept any fees.

(d) If he acts by appointment of a Court of Law, he may, notwithstanding anything contained in subsidiary rule 4 under Fundamental Rules 46 and 47, accept such fees as the court may fix.

(4) (a) A Government servant shall not, without the permission of the Government publish any book or engage himself habitually in literary or artistic work of any kind:

Provided that a Government servant may publish occasionally books on literature, short story, novel, drama, essay and poetry without obtaining the prior permission of any higher authority, subject to the condition that he/she does not use his/her time and official position to influence the promotion of the sale of such books and that such books do not contain matters of political aspects, objectionable matter and views against the policy of the Government.

(b) Permission to publish a book shall ordinarily be given, subject to the condition that the Government servant does not use his time and official influence for promoting the sale of copies of the book:

Provided that any member of the teaching or the academic staff of all Government Educational and Research Institutions inclusive of Technical Educational Institutions, may publish books on professional and academic subjects without obtaining the prior permission of any higher authority, subject to the condition that he/she does not use his/her time and official influence for promoting the sale of copies of such articles or books, as the case may be, and that such publications do not relate to any acts and policies of the Government and the provisions of clause (d) shall not apply to such publisher.

(c) Permission to accept remuneration on "royalty basis" from the publishers shall be given in all cases except in the case of text-books for use in educational institutions. In the case of text-books, permission to accept remuneration shall be given subject to the conditions that the Government servant retains no interest in the sale of copies of the book and that he receives only a lump-sum as remuneration from the publisher;

Provided that any member of the teaching or the academic staff of all Government Educational and Research Institutions who writes books on professional and academic subjects, may receive remuneration on royalty basis irrespective of the fact whether the books are text-books or general books: Provided further that a Government servant who writes books on literature, short story, novel, drama, essay and poetry shall immediately report to the prescribed authority the remuneration he receives from the publisher.

Explanation - For determining whether a book is a text-book or is a general book, the chief consideration shall be whether it is being submitted to the Text-book Committee, in the case of textbooks for elementary and secondary schools and whether it is a book written according to the syllabus prescribed by the University and his being submitted to the appropriate University Body for approval, in case of text-books for colleges. A general book which may later happen to be approved as a text-book shall not be deemed to be a text-book for purposes of this clause.

(d) while applying to the Government for permission to publish a book which relates to acts or policies of Government, the Government servant shall submit to the Government for scrutiny a manuscript copy thereof.

(e) No Government servant who is member of the Text-Book Committee shall write or edit any text-book for use in recognised school during his membership of the Committee.

Explanation - A recognised school shall mean a school maintained by or opened with the sanction of the Government or to which recognition has been accorded under the Tamil Nadu Educational Rules or under the rules framed under the Tamil Nadu Elementary Education Act, 1920 (Tamil Nadu Act VIII of 1920).

(5) A Government servant who is a touring officer may without the previous permission of the Government engage for driving his car, the peon assigned to him but such engagement shall be a private engagement between the officer and the peon and shall not form part of, or interfere in any manner with the normal

official duties of such peon.

16.As per Rule 8, a Teacher / Headmaster cannot directly or indirectly engage himself / herself in any trade or business or undertake any employment. The prevailing situation across the State noticed by the people at large are that most of the Government Teachers and the Teachers, who are receiving the Government salary are engaged themselves in conducting Tuitions / Tutorials and Private classes for monetary gain. These Teachers are receiving huge amount as remuneration from the parents. It is most unfortunate to state that these Teachers are soliciting the students to join the Tuition classes at their home or in the place organized by such Teachers. The students, after School hours, are sometimes forced to attend the Tuition classes. Taking of Tuition after School hours is also a misconduct. Public servant must show devotion to his duty. The Profession of Teaching as a Noble one, the Teachers both inside the Schools as well as outside the Schools are bound to maintain honesty, integrity and clean life. Contrarily, these Teachers are engaged in trade and business and by conducting Tuitions / Tutorial classes. There is no adequate machinery to check these illegal activities and initiate action. The higher officials, who all are having knowledge about these activities are remaining as mute Spectators. Those higher officials are also committing a misconduct by not initiating proper actions against these public servants, who all are indulging in such illegal activities, which all are stated as misconducts in the Tamil Nadu Government Servants Conduct Rules.

17.Rule 15 of the Conduct Rules states that Vindication of Acts and character of Government servants:- "No Government servant shall, except with the previous sanction of the Government have recourse to the press for the vindication of any official act which has been the subject matter of adverse criticism or an attack of defamatory character."

18.Thus, proper control over these Teachers are to be exercised by the competent authorities. In case of any such information about the misconducts, immediate actions are to be taken and they must be prosecuted under the Discipline and Appeal Rules.

19.Decent salary is being paid to these Teachers by the Government from the tax-payers money. They have got high moral duty towards the society. The Nobility involved in the Profession of Teaching is degraded by these kind of activities of the Teachers. Thus, it is high time that the authorities are bound to open their eyes and monitor the activities and initiate appropriate swift action to uphold the Constitutional values and principles as well as to implement the Educational policies of the Government in its real spirit.

20. Rule 20 of the Conduct Rules speaks about the Integrity and devotion to duty - "Every member of the Service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service."

21. Conducting Tuition classes after the School hours are the acts, which all are unbecoming of a public servant and furthermore, they are taking such Tuitions / Tutorial classes for monetary benefits. Thus, all those activities of the Teachers across the State are to be monitored and suitable actions are to be initiated.

22. The growing indiscipline in Schools, Colleges and Universities are the greatest concern, which affects the development of our great Nation. This apart, the Children and Students are the future of this great Nation. If the School Education and Collegiate Education are not properly imparted, then the same will create an impact throughout their life. Thus, discipline in the Schools, Colleges and Universities are of paramount importance. Encouragement of original thinking of the children and students are also equally important. A striking balance in between are to be adopted by the competent educational authorities. Thus, the standard of discipline, the quality of freedom, opportunity for original thinking, are all to be provided only by the Teachers, who all are responsible and considered as the performers of noble duty. This Court, with great pain, records that growing instances of Sexual Harassment in Schools, Colleges and Universities are causing greatest concern both to the parents as well as to the society at large. Even young School children are not spared. Such instances are frequently published in media. However, the authorities are not showing any sensitiveness towards this issues. They are pretending to be sensitive, but actually not. If at all, the genuinity in sensitiveness is to be established, consistent and constant actions are to be initiated. No such actions are initiated. Contrarily, they are closing the issues by taking actions in a particular case alone. Streamlining of the discipline and improvements in the system are not implemented in order to avoid such growing offences of Sexual Harassment in Schools, Colleges and Universities. It is unfortunate to record that only very few cases are reported in the public domain. Large number of such cases are decently buried on extraneous considerations. Thus, the parents and the interested persons are bound to have a vigil over these kind of offences. The activities in the Schools are not only to be monitored by the educational authorities, but also, to be monitored by the parents and all other interested persons. If any such incidences are noticed, then the parents, public, students must be in a position to immediately register a complaint in a Toll Free Telephone Number, which is to be provided by the Education

Department of the State. In the event of receiving any such complaint from any person, the authorities must immediately conduct an enquiry and find out the truth regarding the complaint. Such a system requires an immediate implementation in order to create awareness in the minds of the students, parents and public at large.

23.The Teachers, at all levels, in various educational institutions are the trustees. They must ensure quality of education to be imparted to the children and students. Thus, monitoring of their activities by the State is of paramount importance. These Teachers sometimes conducting agitations, Dharnas during the eve of public examinations in order to threaten the "State Government" as well as the public. Such activities of the Teachers are to be viewed seriously and constant actions in this regard are to be taken by the competent authorities. There cannot be any leniency or misplaced sympathy in respect of such activities, causing great damage to the society at large as well as affecting the developments of our great Nation through the young minds.

24.All the students are good. Every student has got his / her ambitions in their life. They are thriving hard to reach their goal and ambitions. Thus, it is duty mandatory on the part of the parents as well as the Teachers to kindle them to achieve their goals and ambitions. In the event of any failure on the part of the "State" to initiate action in these aspects, undoubtedly, the "State" is failing in its duty to achieve the Constitutional goals and perspectives. Our Constitution provides importance to education. Our Constitution speaks about education. Thus, the "State" must be vigil in the matter of improving the quality of education by monitoring the activities of the Teachers, who all are otherwise committing negligence, lapses and dereliction of duty, which all are frequently noticed and criticized in the public domain.

25.As far as the present writ petition is concerned, the writ petitioner has approached this Court in respect of the order of transfer issued to the writ petitioner, transferring him to the nearby School within Coimbatore City situated 2 kms away. Under these circumstances, this Court is of the considered opinion that no interference is required as such a transfer would not affect the service conditions of the writ petitioner nor the transfer affected the normal life of the writ petitioner in Coimbatore City. Thus, no interference is required and the writ petition is liable to be rejected. While declaring the present writ petition as unnecessary, this Court intends to mould the prayer in the interest of the students, studying in educational institutions and the relief is granted by moulding the prayer under Article 226 of the Constitution of India, which is traceable in the Constitution and affirmed by the Hon'ble

Supreme Court of India in umpteen number of judgments.

26. Accordingly, the following orders are passed:-

(1) The relief as such sought for in the present writ petition stands rejected.

(2) The 1st respondent is directed to provide Toll Free Telephone Numbers, within a period of eight weeks from the date of receipt of a copy of this order, enabling the students, parents, interested persons, and public in general to register complaints regarding the indiscipline, illegal activities, irregularities, Sexual Harassment etc., and also in respect of the conduct of private trade business or Tutions or Tutorial classes by the Teachers or authorities of the Education Department.

(3) The 1st respondent is directed to display the said Toll Free Telephone Numbers and the details of the authorities in the Notice Board of all the Schools, Educational institutions across the State of Tamil Nadu in Bold Letters in a visible place, which would be accessible to the parents, students and public in general.

(4) The 1st respondent is directed to ensure that the complaints, if any registered through such Telephone Numbers are attended immediately by the designated authorities and swift actions are initiated within a period of 24 hours from the time of registration of a complaint.

(5) The 1st respondent is directed to issue consolidated instructions / circulars to all the Educational Institutions, Schools, stating that the Teachers and the public servants shall not involve in any trade business or taking Tutions or Tutorial classes even after the School hours or in holidays by clearly mentioning that such conduct of trade, business or taking Tutions etc., are already described as misconduct under the Tamil Nadu Governments Conduct Rules, warranting Disciplinary proceedings under the relevant Rules.

(6) As the present writ petition is filed on certain personal animosity between the writ petitioner as well as the 4th respondent, this Court is inclined to direct the writ petitioner as well as the 4th respondent to plant 50 Tree Saplings within the School campus, where they are now serving, within a period of two weeks from the date of receipt of a copy of this order and, report the same to the Commissioner, Coimbatore City Municipal Corporation, who in turn, is

directed to send a report to the Registrar General,
High Court of Madras, Chennai - 600 104 immediately.

27.With the above directions, the writ petition stands
disposed of. However, there shall be no order as to costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

kak
To

1.The Principal Secretary to Government,
School Education Department
Fort St.George
Chennai - 600 009

2.The Commissioner,
Coimbatore Municipal Corporation
Coimbatore - 641 001

3.The Educational Officer
Coimbatore Municipal Corporation
Coimbatore - 641 001

Copy to
The Registrar General,
High Court of Madras,
Chennai - 600 104.

+1 CC to Mr.Jerry V.V.Sundar, Advocate sr 33902.
+1 CC to Mr.P.Nagarajan, Advocate sr 32801.
+1 CC to Mr.K.Magesh, Advocate sr 32439.
+1 CC to Govt. Pleader sr 34239.

WEB COPY

W.P.No.5939 of 2018

EV(CO)
SP(26/04/2019)