

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.02.2019

CORAM

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

W.P.Nos.15267, 15658, 15876, 16129, 16130, 16531, 16965,
16971 & 17186 of 2018

and

W.M.P.Nos.18101, 18594, 18595, 18883, 18884, 19163 to 19166,
19709, 19710, 20204, 20205, 20214, 20215, 20455 of 2018

S.Mithila Bai	..Petitioner in W.P.15267/18
V.Elumalai	..Petitioner in W.P.15658/18
S.Poovarasu	..Petitioner in W.P.15876/18
R.Bhavani	..Petitioner in W.P.16129/18
K.Santhi	..Petitioner in W.P.16130/18
K.Thulasiram	..Petitioner in W.P.16531/18
R.Senthil Vadiyu	..Petitioner in W.P.16965/18
G.Shanmugalakshmi	..Petitioner in W.P.16971/18
J.Muppudathi	..Petitioner in W.P.17186/18

-VS-

1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government
School Education Department
Secretariat, Fort St.George
Chennai - 600 009

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006

..RR1 & 2 in all WPs

3.The Chief Educational Officer
Thiruvallur District,
Thiruvallur - 602 001.

..R3 in WPs.15267,16128,16130 & 17186/18

The Chief Educational Officer,
Villupuram.

...R3 in W.P.15658/18

The Chief Educational Officer,
Kanchipuram Dist.

..R3 in WPs.15876/18, 16531/18
16965/18 & 16971/18

Prayer in WP No.15267 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka.No.6986/A4/2017 dated 19.06.2018 and to quash the same and consequently directing the respondents to allow the petitioner to continue to work in the post of BT Assistant (English) in Kannappasamy Nagar Government High School, Chennai-66, Thiruvallur District with all consequential and other attendant benefits.

Prayer in WP No.15658 of 2018:-

To call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka. No.10796/ A2/ 2017 dated 19.06.2018 and to quash the same and consequently directing the respondents to allow the petitioner to continue to work in the post of BT Assistant (Science) in Government Higher Secondary School, Marakanam, Villupuram District with all consequential and other attendant benefits

Prayer in WP No.15876 of 2018:-

To call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka. No.3750/A3/2018 dated 19.06.2018 and to quash the same and consequently directing the respondents to allow the petitioner to continue to work in the post of BT Assistant (Tamil) in Government Higher Secondary School, Chennai-43, Chrompet, Kanchipuram District, with all consequential and other attendant benefits

Prayer in WP No.16129 of 2018:-

To call for the record relating to the impugned proceedings issued by the 3rd respondent in Na.Ka. No.6986/A4/2017 dated 19.06.2018 and to quash the same and consequently directing the respondents to allow the petitioner to continue to work in the post of B.T.Assistant (Maths) in Ambattur Municipal High School, Thiruvallur District, with all consequential and other attendant benefits

Prayer in WP No.16130 of 2018:-

To call for the record relating to the impugned proceedings issued by the 3rd respondent in Na.Ka. No.6986/A4/2017 dated 19.06.2018 and to quash the same and consequently directing the respondents to allow the petitioner to continue to work in the post of B.T.Assistant (Maths) in Ambattur Municipal High School, Thiruvallur District, with all consequential and other attendant benefits

Prayer in WP No.16531 of 2018:-

to call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.ka.No. 3750/A3/2018 dated 19.06.2018 and to quash the same and consequently directing the respondent to allow the Petitioner to continue to work in the post of BT Assistant (English) in Government High School, Thammanur, Kancheepuram District, with all consequential and other attendant benefits.

Prayer in WP No.16965 of 2018:-

to call for the records relating to the impugned proceedings issued by the 3rd respondent in Na. Ka. No. 3750/A3/2018 dt 19.6.2018 and to quash the same and consequently directing the respondents to allow the petitioner to continue to work in the post of BT Assistant (Science) in Vadakkupattu Government High School, Kancheepuram District, with all consequential and other attendant benefits

Prayer in WP No.16971 of 2018:-

To call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka. No.3750/A3/2018 dated 19.06.2018 and to quash the same and consequently directing the respondents to allow the petitioner to continue to work in the post of BT Assistant (English) in Government Girls Higher Secondary School, Kundrathur, Kancheepuram District with all consequential and other attendant benefits

Prayer in WP No.17186 of 2018:-

Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 3rd Respondent in Na.Ka.No.6986 / A4 / 2017 dated 19.06.2018 and to QUASH the same and consequently directing the Respondents to allow the Petitioner to continue to work in the post of BT Assistant(Science) in Kamarajapuram Municipal High School, Thiruvallur District, with all consequential and other attendant benefits to pass such further or other orders.

For Petitioners : Mr.G.Sankaran(in all W.Ps)

For Respondents : Mr.A.Rajaperumal
Additional Government Pleader
(in all W.Ps)

C O M M O N O R D E R

The orders, treating the writ petitioners as surplus and deploying them to another School in an existing vacancy are under challenge in the present writ petitions.

2.The learned counsel for the writ petitioners state that the guidelines issued in respect of treating the Teachers as surplus by the Government has not been followed in its letter and spirit. This apart, the facts and figures are not verified with accuracy and unnecessarily the Teachers are treated as surplus and deployed to some other Schools at whims and fancies of the authorities concerned. Thus, the policy of declaring the employees as surplus must be regulated and strictly with reference to the terms and conditions stipulated in the Government orders for redeployment of Teachers from one School to another School.

3.The learned counsel for the writ petitioners state that in certain Schools, where adequate students strength are established. Even then, the same Teachers are treated as surplus and redeployed to some other Schools unnecessarily and based on the facts and figures, which all are not connected with the current academic year and based on certain previous records, Redeployments are being done. Such actions of the respondents are improper and in violation of the guidelines issued by the Government in this regard.

4.The learned Additional Government Pleader appearing on behalf of the respondents state that following aspects were taken into account with reference to the Circular dated 16.04.2018 issued by the Director of School Education to exercise the revised staff based on 01.08.2017 students strength and as per the Government orders and letters and circulars, which are extracted hereunder:

- "1.G.O.No.525, Education Department, Dated 29.12.1997
- 2.Right of Children to Free and Compulsory Education Act, 2009
- 3.G.O.No.231, Education Department, Dated 11.8.2010
- 4.G.O.No.266, Education Department, Dated 6.7.2012
- 5.Ministry of Human Resource Development D.O.Letter dated 3.8.2012"

5. In addition to the above said norms, Number of periods of Classes IX and X were allocated to P.G.Assistants handling XI and XII classes also. ie., If the number of period allocation to a particular subject P.G.Assistant is lesser than the maximum 28 periods, then the particular subject P.G.Assistant should handle the periods for the classes IX and X. Each subject teachers is required to teach atleast 28 periods in his subject per week. The revised staff fixation exercise was conducted on 26.4.2018 and 27.4.2018 for 2 days with all district Chief Educational Office staff based on the above said revised norms. Sanctioned post to each and every school was fixed, Surplus Teachers with person, (in total 17464 BT Asst Surplus post identified) were identified in the month of April 2018. The same was verified in this Directorate in the month of May 2018.

6. It is stated that the staff fixation pertaining to the year 2017-18 was exercised by taking into account of various Government orders, acts, MHRD Norms, it took lot of time and same was completed only in the month of May 2018. Since deployment is concluded only one day prior to the date of General transfer counseling every year based on the General transfer guidelines issued by the Government, 2017-18 General transfer guidelines G.O.No.403, School Education Department, Dated: 29.05.2018 has been issued only at the end of May 2018. Thus, deployment counseling was conducted in June 2018.

7. The grievances of the writ petitioners are that the details were not collected properly by the respective Chief Educational Officers and based on certain erroneous facts and figures, the process of declaring the Teachers as surplus and redeployments were done. Thus, they have violated the terms and conditions stipulated in the Government orders in respect of treating the Teachers as surplus and to redeploy them in any one of the existing vacancy.

8. Let us now consider the basic principles in the matter of treating an employee as surplus and redeploying.

9. Treating an employee as surplus and redeploying such employees to any other place or post or department, it is an administrative exigency. The basic service conditions and rights of the employees are not infringed. Surplus employees are redeployed in any other post or place in the interest of public administration and to protect the financial interest of the State Exchequer.

10. For instance, if more number of teachers are allowed to work in a School, where there is no adequate students strength, then those teachers will be drawing the tax payers money as salary without working/serving as teachers in the School. Such

situation if allowed to continue in the State, undoubtedly, the same would cause financial loss to the State Exchequer. Thus, periodical inspection for identifying the surplus employees in all departments of the State are certainly imminent and the authorities competent must ensure that the financial interest of the State as a whole is protected in all respects.

11. Thus, treating an employee as surplus in normal circumstances, would not cause any infringement of right to the employee in view of the fact that their service conditions are protected and mere redeployment in another place or post would not cause any violation of service conditions like salary, perquisites etc., All such benefits ensured under the Rules are allowed to be paid by the competent authorities to all those teachers, who were treated as surplus employees and redeployed to some other post.

12. Even otherwise also, post or place can never be claimed as a matter of right. Teachers, on appointment, are accepting the service conditions to serve in any post or place, wherever the work is available. For instance, if some Schools are closed on account of certain administrative reasons, then it would be imminent on the part of the authorities to transfer all those Teachers to any other schools in available vacancies. These all are administrative exigencies on account of various reasons and those exigencies or administrative reasons can never be taken undue advantage by the employees/teachers or as a matter of fact any other public servants.

13. In the event of stalling such administrative exigencies from rectification, then the routine administration and the concept of protection of financial losses are not taken care of.

14. Though such policies of treating the teachers as surplus and redeploying in any other available post is not infringing the rights of the teachers/employees, the writ petitions are filed mostly based on certain guidelines/instructions issued by the Government to the Subordinate officials to follow certain procedures for the purpose of treating these employees as surplus and to redeploy them to any other available vacancies.

15. One apprehension on the part of the petitioners are certainly reasonable. The apprehension is that such guidelines or instructions issued by the Government are not followed scrupulously by the competent authorities/Subordinate officials on certain extraneous considerations or by extending some Favoritism and Nepotism. It is true that such circumstances are arising on account of various reasons. Under these circumstances, the Head of the Department namely, the Director of School Education as well as the Principal Secretary to

Government, School Education Department must periodically verify and inspect the actions taken by the District level officers in the matter of treating the teacher as surplus and redeploying them in any other available vacancies. An uniformity in such matters are certainly warranted. In the event of any inconsistency, Teachers will get agitated and resulting in filing of the writ petitions before this Court. Such situations are to be averted by the higher officials by properly verifying the actions taken by the respective Chief Educational Officers or any other Subordinate officials, who all are responsible for following and implementing the guidelines issued by the Government in this regard.

16. In writ petitions, mostly they are raising disputes in respect of the facts and figures considered by the respective Subordinate officials and the manner, in which, the redeployment is undertaken. In this regard, the Director of School Education as well as the Principal Secretary to Government must ensure that a consistency in implementation, is followed and the actions taken by the Subordinate officials are reviewed properly and periodically and if there is any lapses, negligence, Favoritism or Nepotism on the part of the Subordinate officials, suitable actions must be taken against those officials, who all are responsible for such consequences.

17. All such decisions taken, must be recorded by the Subordinate officials. Suitable instructions must be issued to record all such reasons and details for treating an employee as surplus and redeploying them by following the Government orders in force. In the event of any lapses, appropriate actions must be taken against all concerned. Under these circumstances, this Court is of an undoubted opinion that though treating teachers as surplus and redeploying them in an available vacancy, would not cause any infringement of the service rights, the same can be restricted to the extent that certain Subordinate officials have not followed the procedures as contemplated in certain Government orders in respect of treating the teachers as surplus and redeploying such teachers in any other available vacancies. Uniformity and indiscrimination and treating the teachers in an equal manner, are of paramount importance. Thus, the authorities concerned must keep in mind that all such basic principles enunciated under the Constitution are also being followed scrupulously.

18. This Court is of the considered opinion that certain factual details now disputed by the parties to the lis on hand can never be adjudicated in a writ proceedings. The writ petitioners are pleading that the facts and figures given by the authorities are incorrect. The authorities are stating that they have considered the facts and figures collected by the office of

the respective Chief Educational officers. Those complex facts and circumstances are to be adjudicated by the competent authorities and this Court cannot go into the process of enquiry for the verification of the facts and details with reference to the original Registers of the Schools and with reference to the documents available. All such efforts are to be undertaken only by the competent authorities for the purpose of reviewing these cases in the matter of surplus and redeployment.

19. The scope of judicial review under Article 226 of the Constitution of India is limited to the extent that the decision itself cannot be interfered with in a routine manner. However, the process, through which, such a decision is taken by the competent authorities can be subjected to review and in the event of any non-adherence of such established procedures, then a writ can be issued by the Hon'ble High Court.

20. This being the basic principles of the writ jurisdiction, this Court is of an opinion that the authorities competent must review such cases for verifying the facts and circumstances, details and the original records in the matter of surplus and redeployment and a decision is to be taken in respect of the correctness of the decision already taken and if necessary, pass suitable orders with reference to the facts and circumstances.

21. This being the scope of the facts and circumstances, now placed before this Court in these writ petitions, this Court is inclined to pass the following orders:

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

(2) The respondents 1 to 3 are directed to review the cases of surplus and redeployment on individual case basis with reference to the facts and details available on record and accordingly, review the cases, wherever required and in such an event, reasons must be recorded.

(3) The competent authorities, if necessary, shall consider the representations of the petitioner in this regard and verify the original records once again with reference to the guidelines issued by the Government and accordingly, take a decision and confirm or modify or cancel the orders in accordance with the guidelines/instructions issued by the Government in the matter of surplus and redeployment.

(4) The said exercise can be done without causing any delay by the authorities and as expeditiously as possible, so as to avoid further complications.

22.With the above directions, all the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

kak

Sd/-
Assistant Registrar

//True Copy//

To Sub Assistant Registrar

- 1.The Principal Secretary to Government
School Education Department
Secretariat, Fort St.George
Chennai - 600 009
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006
- 3.The Chief Educational Officer
Thiruvallur District, Thiruvallur - 602 001.
- 4.The Chief Educational Officer
Villupuram District, Villupuram.
- 5.The Chief Educational Officer
Kanchipuram District, Kanchipuram.

+6 CCs to Mr.G.Sankaran, Advocate, Sr.No.17916

+1 CC to Govt.Pleader, vide SR.NO.18920

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Kak(10/04/2019)