



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.05.2019
(Reserved on 16.05.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANUW.P (MD) No.4721 of 2019

G.M.Carmel Vigila Bai

... Petitioner

vs.

1)Th.e Principal Secretary to Government,
Higher Education, Secretariat,
Chennai.2)The Director of Collegiate Education,
E.V.K.Sampath Maligai,
College Road,
Chennai.3)The Regional Director,
Directorate of Collegiate Education,
Tirunelveli.4)The Principal,
Government Arts & Science
College, Nagercoil,
Kanyakumari District.

5)S.Vinu

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent connected with impugned order in Na.Ka.No.37782/C3/2018 dated 25.09.2018 and quash the same as unconstitutional and unenforceable and cancel the ante dated transfer order issued to 5th respondent dated 27.07.2018 referred in the impugned order which was created to defeat ends of justice and against the order of this Hon'ble Court in W.P.(MD) No.19310 of 2018 dated 06.09.2018.

For Petitioner : Mr.S.Titus
For R1 to R4 : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader

ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent connected with impugned order in Na.Ka.No.37782/C3/2018, dated 25.09.2018, and quash the same as unconstitutional and unenforceable and cancel the ante-dated transfer order issued to 5th respondent dated 27.07.2018 referred in the impugned order which



was created to defeat the ends of justice against the order of this court in WP (MD) No 19310 of 2018 dated 06.09.2018.

2. The petitioner was appointed as Assistant Professor (Physics) on 07.12.2007 by the Government of Tamil Nadu and joined duty on 26.12.2007 in Sethupathi Government Arts College, Ramanathapuram and later got transferred to Rani Anna Government College for Women, Tirunelveli, on 13.10.2008 through counselling and as such, the petitioner has over 10 years of station seniority. The petitioner had consistently applied for transfer to Kanyakumari District and had also attended transfer counselling regularly. She was not successful in getting transfer as there were no physics vacancies in Government Colleges in Kanyakumari District filled up in the counselling attended by her.

3. Consequent to the decision to introduce physics subject in the 4th respondent's Government College of Arts & Science, Nagercoil, one post of Assistant Professor (Physics) was sanctioned for the year 2018-19 and one post each for the next two years by G.O.Ms.No.120 dated 22.06.2018. Counselling for general transfer of teachers of government colleges was called for on 24.08.2018 and the petitioner, aware of the above sanctioned post in the 4th respondent's college, had applied for transfer on 31.08.2018. Counselling for physics subject was scheduled on 12.09.2018 at Queen Mary's College, Chennai.

4. The petitioner alleges that the 5th respondent who is two years junior to her, who already has two transfers of his choice, was also trying to get transfer to the 4th respondent's college by foul means in the midst of media reports of large scale foul play in the transfer bypassing the counselling. Smelling the same, the petitioner avers, she had filed WP (MD) No 19310 of 2018 before this Court to direct the respondents to fill the Assistant Professor Post in Physics in the 4th respondent college only through counselling scheduled on 12.09.2018 and direct the respondents to permit the petitioner to participate in the counselling and to consider the petitioner's seniority to accommodate her in the said vacant post. While hearing the above said writ petition, the Special Government Pleader had made an undertaking before this Court which was recorded in the order dated 06.09.2018 passed in WP (MD) No 19310 of 2018. The effective portion of the order reads as under :-

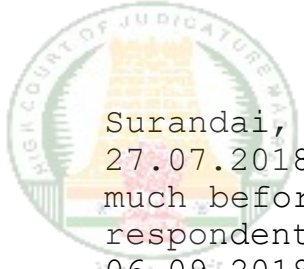
"At the time of hearing, the learned counsel for the respondent would submit that the petitioner, who is working as Assistant Professor in the Government Arts & Science College, Nagercoil would be called for counselling in terms of G.O.MS No 120, Higher Education (G1) Department dated 22.06.2018, provided she fulfils necessary requirements/qualifications and meritorious than other candidates including the 5th respondent and the 5th respondent would also be called to participate in the counselling, if she is also eligible."



5. The petitioner submits that after receiving the copy of the above said order of this Court on the evening of 11.09.2018, she presented herself at Queen Mary's College, Chennai, from 8.00 AM on 12.09.2018, the appointed day for counselling for the physics subject. The petitioner states that she was shocked at not seeing the post, sanctioned as per G.O. Ms No 120 dated 22.06.2018, vacant in the list of vacancies pasted in the notice board at the counselling centre. The petitioner had handed over a copy of the order dated 06.09.2018 in WP (MD) No 19310 of 2018 of this court to Smt.Sarumathi, the Director of Collegiate Education who was camping at the centre at about 11.30 hrs on 12.09.2018. The petitioner avers that the 5th respondent was not present at the Counselling centre contrary to the order of this court. The petitioner submits that the petitioner's husband had filed a petition under RTI Act to be informed that the 2nd respondent had filled up the post at the 4th respondent's college by issuing transfer order to the 5th respondent at an earlier date raising suspicion of foul play.

6. The petitioner, therefore, submits that the respondents had issued an ante dated order to the 5th respondent and have passed the impugned order dated 25.09.2018 only to defeat the ends of justice. It was alleged that the orders came to be issued only subsequent to the filing of the contempt petition in Cont. P.(MD) No 1531 of 2018 which is pending before this Court. The petitioner contends that the impugned order dated 25.09.2018 of the 2nd respondent is against the order of this court in WP (MD) No 19310 of 2018 dated 06.09.2018. It was alleged that the transfer of the 5th respondent is passed ante dated only after the order dated 06.09.2018 passed by this court in WP (MD) No 19310 of 2018. The petitioner alleges that the medical reasons of the 5th respondent is suspicious and may not exist in view of his commuting in bike to work spanning 80 kilometres every day. The petitioner points out that the impugned order dated 25.09.2018 is falsified by the RTI reply dated 25.01.2019 of the 4th respondent in O.Mu.No 1521/Aa/2018 dated 25.01.2019 wherein, it is stated that all transfers to the 4th respondent's college were done through counselling. It was also submitted that the transfer of the 5th respondent is liable to be set aside as he had not participated in the counselling as per the order of this court. It was alleged that the respondents had not obeyed the order dated 06.09.2018 of this court in WP (MD) No 19310 of 2018 and that the impugned order of the 2nd respondent is against her own order Na.Ka.No 19106 dated 24.08.2008 providing the guidelines for transfer.

7. The respondents, on the other hand, submit that the transfer order to the 5th respondent was issued on medical grounds that stands higher in priority over the petitioner's ground of seniority including station seniority and reproduced the guidelines issued by the Government for counselling and transfers in support of their case. It was submitted that the 5th respondent was issued with transfer order from Kamarajar Government Arts College,



Surandai, to the Government Arts and Science College, Nagercoil, on 27.07.2018 and he had joined the new place of posting on 20.08.2018 much before the initiation of the transfer counselling process. The respondents submit that the petitioner had obtained the order dated 06.09.2018 of this court in WP (MD) No 19310 of 2018 without presenting the fact of the 5th respondent joined duty at the Government Arts & Science college, Nagercoil on 20.08.2018 and denied the allegation of ante dating of the transfer order of the 5th respondent levelled by the petitioner and sought to reject the allegations of the petitioner. They also assailed the grounds of the petitioner on the same lines as malafide with an intention to bring disrepute to the respondents. They pointed out serial No.4 of the letter dated 24.08.2018 that exempts the application of the guidelines in special situations. It was also submitted that the impugned order was passed in obedience of the order dated 06.09.2018 of this court in WP (MD) No 19310 of 2018 and there was no place for keeping the post vacant for the petitioner. No counter was filed on behalf of the 5th respondent.

8. Heard the counsel for the petitioner and the respondents and perused the records of the case. The petitioner is senior to the 5th respondent herein and has long standing station seniority compared to two other aspirants for transfer to Kanyakumari District. Consequent to the decision to introduce physics as a subject in the Government Arts & Science College, Nagercoil, one Post of Assistant Professor (Physics) for the year 2018-19 and one each for the next two years were sanctioned vide G.O.Ms.No 120 dated 22.06.2018. Meanwhile, applications for general transfer for government colleges were called for and the process of counselling for transfer was set in motion during August, 2018. The petitioner had filed her application for transfer on 31.08.2018. During the last week of August, 2018, it was widely reported in the media that large scale unfair transfers are being ordered to favour a few, bypassing the transfer counselling process. The petitioner smelt foul play and after learning that the 5th respondent is attempting to covet the newly sanctioned post at Government Arts & Science College, Nagercoil, by foul means, filed WP (MD) No 19310 of 2018 before this court after arraigning the 5th respondent herein as a respondent.

9. In the course of hearing of the Writ Petition in WP (MD) No 19310 of 2018, the Special Government Pleader appearing for the respondents had undertook before the open court that the vacancy for the post of Assistant Professor (Physics) at Government Arts & Science College, Nagercoil, will be filled through counselling and that the petitioner and the 5th respondent and all other eligible candidates will be called for the counselling and the transfer will be accorded on merit. This Court vide its order dated 06.09.2018 in WP (MD) No 19310 of 2018 had disposed of the Writ Petition after recording the undertaking of the Special Government Pleader made on behalf of the respondents. Interestingly, at the time of hearing the writ petition in WP (MD) No 19310 of 2018, the respondents had



not informed the court about the post being filled up by transfer on medical grounds by the 5th respondent. This adds credence to the allegation of the petitioner about the suspected ante dating of the transfer order of the 5th respondent to frustrate the petitioner and the order of this court. On perusing the order dated 06.09.2018 of this court in WP (MD) No 19310 of 2018, it is very clear that this court was left to understand that the post of Assistant Professor (Physics) at Government College of Arts & Science, Nagercoil, lied vacant at the time of hearing the writ petition contrary to the current averments of the respondents and the order came to be passed on the basis of that understanding arrived after hearing the respondents.

10. Despite the fact of the order being produced to the 2nd respondent at the counselling centre on the appointed day, no counselling happened for the petitioner regarding the sanctioned post at Government Arts & Science College, Nagercoil. Puzzled by the respondents' submissions before the court in WP (MD) No 19310 of 2018 vis a vis the conduct of the respondents on the counselling day, the petitioner took recourse to the RTI Act only to find that the subject post was already filled by transfer to the 5th respondent at a date much earlier to the Counselling. In the circumstances, the fear expressed by the petitioner about the possible ante dating of the transfer order by the respondents is well founded. Frustrated and aggrieved, the petitioner had issued a contempt notice to the respondents and filed a contempt petition in Cont. Petn (MD) No 1531 of 2018 that is pending before this court. In response to initiation of contempt proceedings, the impugned order in Na.Ka.No 37782/C3/2018 dated 25.09.2019 is issued by the 2nd respondent to inform the petitioner about the circumstances of the actions taken/omitted to have taken by them.

11. On perusal of the order dated 06.09.2018 WP (MD) No 19310 of 2018, it is evident that the respondents had instructed their counsel to say before the court that the post will be filled through counselling to be held on 12.09.2018 and that the petitioner and the 5th respondent and all other eligible candidates will be called for counselling for transfer to the post of Assistant Professor (Physics) at the Government Arts & Science College, Nagercoil, and the meritorious/most deserving will be posted on transfer. The Petition was disposed of by this court on the strength of the above undertaking after recording the same. But the order of the court was not enforced by the respondents. The reason of receiving the order by private service belatedly adduced by the 2nd respondent is not sufficient to disobey the order of this court, particularly, after making the undertaking before the court. From the sequence of the events, there is a prima facie case of contempt established by the petitioner. After giving an undertaking to the court and by not informing the court about the filling up of the vacancy by transfer of the 5th respondent and not denying the vacancy position as presented in the writ petition at the time of hearing WP (MD) No 19310 of 2018, it is not open for the



respondents to argue that the undertaking was wrongly given. It only adds to the suspicion that the transfer orders were passed in ante. It is absurd for the respondents to argue that the petitioner obtained the order dated 06.09.2018 in WP (MD) No 19310 of 2018 by suppressing the fact of transfer order of the 5th respondent when the respondents themselves had the opportunity to say so at the time of giving the undertaking before the court.

12. Now therefore, it appears that this court is either consciously misled by the respondents about the fact of existence or otherwise of the vacancy in WP (MD) No 19310 of 2018 as well as in the present case, or fraud is played before this court for the vicious to have their way. However, it is a subject matter of investigation and it is not for this court to pass any judgment without an investigation and it is a matter for the petitioner to take up in the contempt petition. Similarly, the claim of higher priority accorded to the 5th respondent in merit of transfer on account of medical condition is also a matter of fact that cannot be fixed without an investigation. What is clear is that the order of this court was not obeyed and weird arguments and improbable facts are placed before this court by the respondents for the failure to obey the order dated 06.09.2018 in WP (MD) No 19310 of 2018 of this Court.

13. In the circumstances, the legitimacy of the transfer of the 5th respondent is clouded with suspicion and the conduct and response of the respondents is far from normal. Normally, this court does not think it right to interfere in matters of posting and transfers unless there is grave bias and unfair conduct of the authorities as in the present case. The bone of contention between the petitioner and the 5th respondent is as to who holds the most merit in terms of the guidelines issued by the government in respect of transfer and positions of teachers in government colleges that has to be settled fairly in counselling. In other words, there will be no grievance against the 5th respondent for the petitioner in the event she is transferred to Government Arts & Science College, Nagercoil.

14. In the circumstances, the impugned order in Na.Ka.No.37782/C3/2018 dated 25.09.2018 passed in defiance of the order dated 06.09.2018 of this court in WP (MD) No 19310 of 2018 is liable to be quashed as unconstitutional and unenforceable. Though this court is convinced that the transfer order dated 27.07.2018 issued to the 5th respondent is clouded with suspicion, the same shall be appropriately taken up in the contempt petition in Cont.Petn (MD) No 1531 of 2018 filed by the petitioner. This court consciously restrains from passing any orders on the transfer order of the 5th respondent as there is an opportunity for the respondents to correct the wrong done to the petitioner and for the reason that this court has made up its mind to interfere with the injustice meted out to her and provide alternate relief to the petitioner.



15. One post of Assistant Director (Physics) was sanctioned at the Government Arts & Science College, Nagercoil for the year 2018-19. Two more posts one each for the years 2019-2020 and 2020-21. Therefore, another vacancy arise in the current year in the said Government Arts & Science College, Nagercoil. As the petitioner had attended the counselling as per the orders of this court, and the petitioner is denied a fair opportunity at the counselling despite the undertaking of the respondents before this court and also the resultant order of this court, and for the reasons that she is put to anxiety and agony owing to the weird conduct of the respondents, the ends of justice would be met only if the petitioner is accorded transfer to one of the two posts sanctioned for the Government College of Arts & Science, Nagercoil for the academic year 2018-19 and 2019-20. Accordingly, the 2nd respondent is directed to issue transfer orders to petitioner for the post of Assistant Professor (Physics) at the Government College of Arts & Science on the strength of the application filed by her on 31.08.2018 within a period of 2 weeks from the date of this order and report compliance to the registry.

The Writ Petition is allowed on the terms indicated above. No costs.

Sd/-

Vacation Officer/
Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

1) The Principal Secretary to Government,
Higher Education, Secretariat,
Chennai.

2) The Director of Collegiate Education,
E.V.K. Sampath Maligai,
College Road,
Chennai.

3) The Regional Director,
Directorate of Collegiate Education,
Tirunelveli.



4) The Principal,
Government Arts & Science
College, Nagercoil,
Kanyakumari District.

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

+1CC TO MR.S.TITUS, Advocate Sr. No. 66140

order made in
W.P (MD) No. 4721 of 2019
21.05.2019

ARS (CO)
TR (21.05.2019) 8P 7C