



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos. 4969 & 4970 of 2015

and

M.P. (MD) Nos. 1 & 2 of 2015 (in both W.Ps)

S.Murugan ... Petitioner in both W.Ps.

vs.

1. The Secretary to Government of Tamil Nadu
Department of School Education
Chennai-9

2. The Director of School Education
Chennai-6

3. The Chief Educational Officer
Madurai @ Madurai District

4. The District Educational Officer
Madurai Educational District
Madurai-2

... R1 to R4 in both W.Ps.

5. The Secretary
PKN Boys Higher Secondary School
Thirumangalam, Madurai District ... R5 in W.P. (MD) No. 4969/2015

6. The Secretary
APPAR High School
Karuppayurani
Madurai District ... R5 in W.P. (MD) No. 4970/2015

PRAYER (in both W.Ps.): Writ Petitions filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the record from the 3rd respondent in his proceedings in Na.Ka.No.8587/A1/2014 Dated 30.01.2015 and Quash the same and consequently direct the 3rd respondent to fix the staff strength of the petitioners school in the cadre of B.T. Assistant as per norms issued in the G.O.No.525/ Education Dated. 29.12.1997.

For Petitioner : Mr.N.Sathish Babu
(in both W.Ps.)

For Respondents : Mrs.S.Srimathi

<https://hcservices.ecourts.gov.in/hcservices/> (in both W.Ps.) Special Government Pleader for R1 to R4
No appearance for R5

C O M M O N O R D E R

The relief sought for in the present writ petitions is to quash the orders of transfer dated 30.01.2015 transferring the writ petitioners on the ground of surplus.

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2. The impugned orders were passed on 30.01.2015. The writ petitioners were treated as surplus Teachers based on the inspection report submitted by the competent Educational authorities considering the students-teachers ratio. The Government issued orders stating that in the event of inadequate students strength in a School, the Teachers cannot be paid salary without any work. Thus, those Teachers are to be treated as surplus Teachers and to be accommodated in some other School, where the Teachers are required. This being the policy adopted by the Government and the policy was implemented in order to protect the financial interest of the State, this Court is of the considered opinion that if there is no adequate students strength in a particular School, then the Teacher, who has no work in that School, must be treated as a surplus Teacher and redeployed to any other School, where the Teacher is required in a particular subject. The issues in this regard are settled by this Court in a batch of writ petitions in W.P.Nos.15267 of 2018 etc., batch vide order dated 26.02.2019 and the relevant paragraphs are extracted hereunder:

"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



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 an 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."

3. In view of the order cited supra, the following orders are passed:

- (i) The relief as such sought for in the present writ petition stands rejected.
- (ii) The respondents 1 to 4 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.
- (iii) The competent authorities, if necessary, shall consider the representation 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.

- (iv) The said exercise shall be done without causing any delay by the authorities and as



expeditiously as possible, so as to avoid further complications.

4. With the above directions, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To:

1. The Secretary to Government of Tamil Nadu,
Department of School Education,
Chennai-9.
2. The Director of School Education,
Chennai-6.
3. The Chief Educational Officer,
Madurai @ Madurai District.
4. The District Educational Officer,
Madurai Educational District,
Madurai-2.

+ 1 CC TO Mr.N.Sathish Babu, ADVOCATE IN SR No.70837
+ 1 CC to The Special Government Pleader SR.No.70458

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and

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