

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on
28.01.2019**

**Delivered on
13.03.2019**

CORAM:

THE HONOURABLE MR. **JUSTICE K.K.SASIDHARAN**
AND

THE HONOURABLE MR. **JUSTICE P.D.AUDIKESAVALU**
W.P. (MD) No.23772 OF 2018

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K.K.Ramesh

... Petitioner

versus

1.The Union of India,
rep. By its Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi 110 001

2.The State of Tamil Nadu,
rep. By its Chief Secretary,
Secretariat, Chennai 9

3.The State of Tamil Nadu,
rep. By its Home Secretary,
Secretariat, Chennai 9

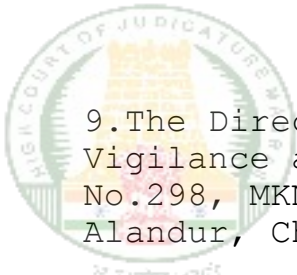
4.The State of Tamil Nadu,
rep. By its Principal Secretary,
Department of School Education,
Secretariat, Chennai 9

5.The Director,
Department of School Education,
DPI Campus,
College Road, Nungambakkam,
Chennai 600 006

6.The Joint Director (HSS)
Department of School Education,
DPI Campus,
College Road, Nungambakkam,
Chennai 600 006

7.The Joint Director (Personal)
Department of School Education,
DPI Campus,
College Road, Nungambakkam,
Chennai 600 006

8. The Director General of Police,
Dr.Radhakrishnan Street,
Chennai



9.The Director,
Vigilance and Anti Corruption,
No.298, MKN Road,
Alandur, Chennai 16

10.K.Ephram ... respondents
(R 10 is impleaded as per order dated 13/12/18 in WMP(MD)No.21983 of 2018)

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Mandamus directing respondents 2 and 3 to order 9th respondent to conduct enquiry regarding the huge amount of bribe and irregularities and violations committed before and after the teacher general transfer counseling in the year 2018 in all districts of Tamil Nadu by considering the petitioner's representation dated 7.8.2018 and 31.10.2018.

For petitioner : Mr.K.K.Ramesh,
Party-in-person

For Respondents : Mr.Aravind Pandian,
Additional Advocate General,
assisted by
Mrs.S.Srimathi, Spl.G.P.
For respondents 1 to 9

Mr.R.Murali, for R-10

O R D E R

K.K.SASIDHARAN, J.

The petitioner filed this Writ Petition in *pro bono publico* alleging large scale transfer of teachers by misusing clause 17 of the Government Order in G.O.Ms.No.403 School Education Department, dated 29 May 2018, and by giving such illegal transfers the brand name, "transfers on administrative ground". The prayer is to direct the Vigilance and Anti Corruption Department to conduct a detailed enquiry and take action against all concerned.

The facts:-

2. The Government of Tamil Nadu issued an order for online counseling for general transfer of teachers across the State during the education year 2018-19. The Government Order in G.O.Ms.No.403 dated 29 May 2018 contain the eligibility criteria for making application for general transfer counseling. The applicant must have joined the present school before 1 June 2017. However, Clause No.17 of the Government Order permits the Government to make transfers on administrative grounds without any regard to the eligibility criteria or guidelines.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The petitioner alleged that by misusing Clause 17, the



respondents 4 to 7 made several transfers on administrative grounds. The petitioner has also alleged *mala fide* exercise of power and acts of corruption and nepotism in the matter of transfer of teachers.

4. The counter affidavit filed by the Additional Secretary to Government, School Education Department, contain a statement with regard to the merits of the action taken by the Government and details of the transfers made on administrative ground.

Production of records:-

5. The Secretary to Government, Education Department produced the records relating to transfers, accompanied by an affidavit. The copies of the documents were furnished to the petitioner and the counsels representing the other Writ Petitioners.

Submissions:-

6. (a) The petitioner by placing reliance on the information collected through Right to Information Act, and certain newspaper reports, contended that there was large scale corruption in the matter of General transfer and the subsequent transfers of administrative ground making use of clause 17 of the Government Order in G.O. (ID) No.403 dated 29 May 2018. The petitioner contended that the matter should be referred to the Vigilance and Anti Corruption Department for a detailed probe. The petitioner also made a request to the Court to issue guidelines to avoid such transfers henceforth;

(b) Thiru.R.Murali, Thiru.V.Panneerselvam and a host of other learned counsels made extensive submissions on the issue highlighting the manner and method of making transfers after the general counseling and the suppression of vacancies to fill up such posts later on administrative ground.

Grant of relief to other petitioners :-

7. The school education Department taking into account the vacancy position considered the case of other petitioners favourably and posted them at their chosen place. The connected Writ Petitions were disposed of consequent to such transfers.

Discussion:-

8. The Government of Tamil Nadu has been issuing orders every year prescribing the guidelines to be followed in the General transfer counseling for teachers. The Government have issued G.O. (ID) No.258 dated 6 July 2016 and G.O.(ID) No.256 dated 19 April 2017 for the education year 2016-17 and 2017-18 respectively. The orders contain a clause for transfer on administrative ground before the general transfer counselling.

9. The Government issued an order in G.O.(ID) No.403 dated 29 May 2018 for the year 2018-19, with a provision for transfer on administrative ground, both before and after the general transfer counselling. Clause no.8, provides a cut off date which is in the



nature of eligibility criteria. As per the said clause, the concerned applicant should have joined in the present school before 1 June 2017.

10. It is the primary contention of the petitioner that clause 17 was misused to effect mass transfers.

11. The Additional Secretary to Government, Education Department cited the following grounds to justify the transfer on administrative grounds:-

(a) several middle schools and high schools were upgraded after the general transfer counselling and posting in such upgraded schools cannot be postponed till the next general counselling;

(b) The resultant vacancies caused due to promotion of the teachers and creation of new posts have to be filled up in the interest of students without delay;

12. Details of transfers made on administrative ground in 2018

(a) Higher Secondary school Headmaster	-	74
(b) High School Headmaster	-	19
(c) Post Graduate Assistant	-	680
(d) B.T. Assistant	-	408

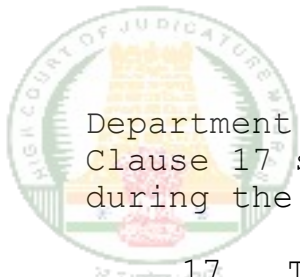
Total		1181

13. The Administrative transfers were not made on pure and simple administrative ground but on the basis of the request made by the teachers, indicating the schools of their choice. The admission to this effect is found in paragraph 13 of the counter affidavit dated 31 December 2018, filed by the Additional Secretary to Government, School Education Department, Chennai. Similarly, one year of service in the previous schools was not insisted while transferring on administrative ground.

14. Therefore, it is very clear that even after the general transfer counseling, specific request was entertained for transfer of teachers. It was only such transfers which were classified under the head "Administrative transfers".

15. There are detailed guidelines issued for general transfer counseling. The applicant must have worked for a minimum period of one year in the present school for making him eligible for general transfer. However, no such norms were framed for transfers on administrative ground.

16. The administrative transfer must be for administrative reasons. The request transfer cannot be termed as one made on administrative exigency. Some of the reasons which weighed with the



Department for transfer on administrative grounds are very strange. Clause 17 should not be a shelter for those who were denied transfer during the general transfer counseling.

17. The petitioner contended that several vacancies were created during the middle of the academic year, with ulterior motive.

18. Though there are records to show irregular transfers made on administrative ground, there are no materials before this Court to prove the motive or to substantiate the ground taken by the petitioner to term it as for "other reasons". There are only official respondents before us. None of them are arrayed in personal capacity. Except the allegations, there are no concrete evidence produced before us to direct the 9th respondent to conduct an enquiry. It would not be legally possible to direct enquiry on the basis of the statement made by the petitioner without any materials to corroborate the allegation.

19. The counter affidavit filed by the Education Department shows that the order in G.O.(ID) 403 dated 29 May 2018 was challenged in W.P.No.16016 of 2018. The challenge was negatived by the High Court by order dated 29 June 2018. Therefore, it would not be possible to take action against the officials for making transfers by invoking Clause 17 of the Government Order.

20. There are no materials before us to arrive at a prima facie view to refer the matter to the 9th respondent. We therefore reject the request for enquiry by the Vigilance and Anti Corruption Unit.

21. The petitioner and the counsel for the parties jointly submitted that this Court should indicate the parameters for making transfers on administrative ground. The learned Additional Advocate General submitted that the State would ensure that administrative transfers are made only on pure and simple administrative ground.

22. The provision made for administrative transfer in the Government Order for general transfer counselling is without any guideline. It is left to the discretion of the authorities. Such unguided and unbridled power were used for accommodating those who have not satisfied the eligibility criteria prescribed under the Government Order for general transfer counselling. Even those who have worked for two or more months at a particular school were given transfer on administrative ground during 2018-19. Similarly, it is a matter of record that even those who failed to get transfer in the general transfer counselling were favoured with transfer by making use of the provision for administrative transfer.

Guidelines:-

23. We therefore issue the following guidelines for General Transfer Counseling, including transfers on administrative ground, which would be in operation till appropriate orders are issued by the Government, incorporating these guidelines:



(a) The annual transfers including the vacancies due to promotion/upgrading of schools must be only on the basis of General counseling;

(b) The Education Department should issue the Government Order for General Counseling sufficiently in advance and at least by 15th of May of the relevant year;

(c) The concerned authority should publish the list of vacancies as on 1 June in the website of the Education Department. The entire vacancies should be shown in clear terms;

(d) The general counseling should be only from the comprehensive list published by the Education Department. The Secretary to the Government, Education Department, must ensure the authenticity of the list of vacancies;

(e) There should be a gap of minimum ten working days between the date of publication of vacancies and the actual date of counseling;

(f) The authorities must also publish the approved panel for promotion at all level, before the commencement of the counseling process;

(g) The authorities should assign numbers to the applications received from the teachers for general transfer in accordance with the prescribed norms like station seniority, priority, category etc. and it should be published in the website;

(h) The resultant vacancies consequent to the transfer should be uploaded immediately so as to enable other applicants to select the desired school;

(i) The list of transfers made pursuant to general counselling must be published in the website without delay;

(j) The vacancies consequent to upgradation of schools must also be published in the website. The vacancies due to such upgradation shall also be filled up by General Transfer Counseling;

(k) In order to fill up the subsequent vacancies including vacancies due to voluntary retirement, death, resignation, promotion and upgradation of schools, there should be at least two counseling, preferably one in August and



another in September, after the general counseling in June. In any case, at least one general transfer counseling should be conducted after upgradation of schools and effecting promotions;

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(l) The clause permitting administrative transfer should not be invoked for making transfers to fill up the vacancies consequent to upgradation of school or promotions;

(m) In case any of the vacancies are left out in the list of vacancies published in the website, additional list should be published by giving reasonable time to the Teachers or by fixing a cut off date to submit option/representation.

(n) The online portal of the Department should be suitably modified to receive the representations of non listing of schools/ posts as informed by the teachers within the time limit prescribed by the Department;

(o) Vacancies should not be created after the completion of general counseling. In case of arising any such vacancy later, the same shall also be filled up by conducting transfer counseling in the very same manner.

(p) The counseling for promotion should also be conducted in a transparent manner by publishing the vacancies and by giving reasonable time to the teachers to submit their representation.

(q) The power to transfer on administrative ground should be invoked only for transfer on administrative exigency. It should not be a ground for another general transfer;

(r) The teachers who were not given transfer during the General Transfer Counseling should not be given transfers on administrative ground during the relevant academic year;

(s) There should be a periodical publication of the list of teachers along with the place, the details of the present school and the transferred school in the website of the Education Department;



(t) The State must fix responsibility on the concerned officials, in case it is found that transfers were made to schools without disclosing the vacancy in such schools in the website;

(u) The Secretary to Government, Education Department must ensure the compliance of the guidelines for transfers in its letter and spirit.

24. The Writ Petition is disposed of with the above direction.
No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi 110 001

2. The Chief Secretary,
Secretariat, Chennai 9

3. The Home Secretary,
Secretariat, Chennai 9

4. The Principal Secretary,
Department of School Education,
Secretariat, Chennai 9

5. The Director,
Department of School Education,
DPI Campus,
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Dr.Radhakrishnan Street,
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9.The Director,
Vigilance and Anti Corruption,
No.298, MKN Road,
Alandur,
Chennai 16

+1cc to Mr.K.K.RAMESH, Advocate, SR.No. 53522
+1cc to M/S.S.SRIMATHY, Advocate, SR.No.53799
+1cc to Mr.R.MURALI, Advocate, SR.No.53880

W.P. (MD) No.23772 OF 2018
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