



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.22911 of 2019

and

W.M.P (MD) Nos.19652 & 19653 of 2019

WEB COPY

P.Sankarkarikalan ... Petitioner

-Vs-

1. State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George,
Chennai-9.
 2. The Director of School Education,
O/o.The Director of School Education,
DPI Campus,
Chennai-6.
 3. The Joint Director of School Education (Higher Secondary),
O/o.The Joint Director of School Education (Higher Secondary),
DPI Campus,
Chennai-6.
 4. The Chief Educational Officer,
O/o.The Chief Educational Officer,
Thanjavur,
Thanjavur District.
 5. The District Educational Officer,
O/o.The District Educational Officer,
Orathanadu,
Thanjavur District.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Government Order in G.O(1D) No.218, School Education (Pa.Ka.5(1)) Department dated 20.06.2019 on the file of the first respondent and quash the same as illegal in so far as Condition No.9(1) and consequently directing the respondents to permit the petitioner to participate in the General Transfer Counselling for the year 2019-20 within the time period stipulated by this Court.

For Petitioner : Mr.T.Lenin Kumar
For Respondents : Mr.M.Karuppasamy,
: Government Advocate



ORDER

The Writ Petition is filed challenging the Government Order in G.O(1D) No.218, School Education (Pa.Ka.5(1)) Department, dated 20.06.2019, passed by the first respondent and quash the same as illegal insofar as Condition No.9(i) and consequently, directing the respondents to permit the petitioner to participate in the General Transfer Counselling for the year 2019-2020.

2. Mr.M.Karuppasamy, learned Government Advocate, takes notice on behalf of the respondents. By consent of both parties, the Writ Petition is taken up for final disposal at the stage of admission itself.

3. According to the petitioner, he participated in the selection process conducted by the Teachers Recruitment Board in the year 2012. The petitioner was successful in the written examination. The Teachers Recruitment Board did not give any appointment order. Hence, the petitioner filed a writ petition in W.P(MD)No.1846 of 2015. This Court, by order dated 11.03.2016, directed the Teachers Recruitment Board to consider and appoint the petitioner as P.G. Assistant (Commerce). After passing the orders of this Court, the petitioner was appointed as P.G.Assistant on 13.06.2016. Even though this Court directed the respondents to accommodate the petitioner nearby his native place, he was appointed in the Government Higher Secondary School, Karukkadipatti, Thanjavur District, after a lapse of 110 days only on 13.06.2016. The said school is far away from his residence. He has accepted and joined the School on the scope that he get a transfer in nearby his native place in the general counselling. While so, the Government issued G.O.(1D) No.218, School Education (Pa.Ka.5(1)) Department, dated 20.06.2019 and a condition is imposed in Clause 9(i) that only persons, who have worked for three years as on 1.6.2019 on the same School, alone are entitled to participate in the general counselling for the year 2019-2020.

4. The learned counsel appearing for the petitioner contended that the condition imposed in the said Government Order that the Teachers must work in a same school for three years instead of one year as per the earlier Government Order, is arbitrary. This Court, by order dated 13.03.2019 in W.P(MD)No.23772 of 2018, issued guidelines to the respondents to conduct the general counselling atleast thrice in a year so that, persons like petitioner, can opt for better work place. Instead of following the said guidelines, the respondents have modified the period of one year and increased the same into three years. Clause 9(i) of the said G.O.(1D) No.218, dated 20.06.2019, was challenged by number of teachers and this Court by order dated 27.08.2019, made in W.P(MD)No.14188 of 2019 etc. batch, modified the said clause and held that the said order is applicable to the persons, who have filed the writ petitions. The respondents have stated that the persons, who filed the writ petitions, will be alone participated in the general counselling.



The said act of the respondents is arbitrary and illegal and prayed for allowing the writ petition.

5. Mr. M. Karuppasamy, learned Government Advocate appearing for the respondents contended that the transfer in Government service is not only an incident of service but also a condition of service and the petitioners have no vested right to challenge the transfer. He further submitted that the Hon'ble Apex Court in number of judgments, held that policy decision of the Government cannot be interfered by the Courts and prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents and perused the materials available on record.

7. The petitioner is challenging Clause 9(i) of G.O.(1D) No.218, School Education (Pa.Ka.5(1)) Department, dated 20.06.2019 wherein, the condition is imposed that only a person, who has worked for three years as on 1.6.2019 in the same school alone is eligible to participate in the general counselling to be held for the year 2019-2020. This Clause was challenged by number of Teachers by filing writ petitions. This Court, after considering the submissions made by the learned counsel for the petitioner and the learned Additional Advocate General, by order dated 27.08.2019, modified the said Clause and Clause 10 of the said G.O.(1D) No.218, dated 20.06.2019, and passed the following order:-

"17. Therefore, in the interest of justice, this Court is inclined to modify the condition 9(i) of the G.O.(1D) No.218, School Education (Pa.Ka.5(1)) Department dated 20.06.2019 and Clause (1), omitting the relaxation available to the physically disabled candidates, with the following directions:

i) The petitioners, who are all coming under the categories of deployment or by promotions for the academic year 2018-2019, not completing one year of service in the present working place, and entitled to attend the General Transfer Counselling to be held for this academic year 2019-20, provided, they have not attended the General Transfer Counselling prior to 1.6.2019 as per the impugned order passed by the respondent.

ii) The petitioners, who are all coming under the categories of deployment or by promotions for the academic year 2017-2018, not completing one year of service in the present working place as on 1.6.2018, are entitled to attend the General Transfer Counselling to be held for this academic year 2019-20, provided they have not attended the General Transfer Counselling prior



to 1.6.2019 as per the impugned order passed by the respondent.

iii) Clause 10 of the impugned order relates to priority category, the Secretary to Government is directed to pass appropriate orders, in view of letter No.21787/SE5(1) 2019-1, date 26.08.2019, School Education Department, Secretariat, Chennai-9, within a period of two weeks from the date of receipt of this order.

iv) If any of the writ petitioners have not submitted their applications so far to seek their remedy, they are at liberty to submit their applications before the appropriate authority within a period of one week from the date of receipt of a copy of this order. This order is applicable only to the writ petitioners herein.

v) In the light of the aforesaid order, after receiving such applications from the writ petitioners, the authority concerned shall permit the writ petitioners to the forthcoming General Transfer Counselling for the academic year 2019-20, if they are otherwise eligible."

8. In the said order, this Court modified the condition of three years and permitted the petitioner to participate in the general counselling for transfer, who have not worked for three years in the same school. The cut-off date in Clause 9(i) is 1.6.2019. In the present case, the petitioner was appointed and posted to the present school and he is working from 13.06.2016 and he completed three years of service in that School on 12.06.2019. The petitioner is short only 12 days as on 1.6.2019. For such shortage, the petitioner cannot be made to work for one more year to participate in the general counselling. Further, general counselling is yet to be conducted.

9. Considering the above facts, the petitioner is completed three years of service on 12.06.2019 and the respondents are directed to permit the petitioner to participate in the general counselling as and when the same is conducted.

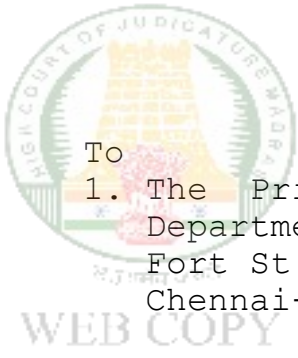
10. With the above observations and directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Ad-II)

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Sub Assistant Registrar (CS)



To

1. The Principal Secretary, State of Tamilnadu
Department of School Education,
Fort St. George,
Chennai-9.

2. The Director of School Education,
DPI Campus,
Chennai-6.

3. The Joint Director of School Education (Higher Secondary),
DPI Campus,
Chennai-6.

4. The Chief Educational Officer,
Thanjavur,
Thanjavur District.

5. The District Educational Officer,
Orathanadu,
Thanjavur District.

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-94937[F] dated 30/10/2019)

+1 CC to M/s.SPL GP (SR-95117[F] dated 31/10/2019)

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30.10.2019