

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.08.2020

Pronounced on : 25.08.2020

CORAM:

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.7200 of 2020  
and WMP No.8600 of 2020

S.Maniammal

.. Petitioner

-Vs-

1. The Principal Secretary to Government,  
School Education Department,  
Fort St. George, Chennai - 9.
2. The Director of Elementary School Education,  
Nungambakkam, College Road,  
Chennai - 600 006.
3. The District Elementary Educational Officer,  
Mettur, Krishnagiri District.
4. The Chief Educational Officer,  
Office of the Chief Educational Office,  
Krishnagiri District.
5. The Block Educational Officer,  
Bargur, Krishnagiri District.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to conduct Special Transfer Counselling to the Middle School Headmasters including the petitioner herein pursuant to the directions issued by this Hon'ble Court in WP No.25150 of 2019 dated 17.10.2019 and allot the available vacancies before conduct of the General transfer counselling for the academic year 2020-2021.

For Petitioner : Mr.Vijayashankar

For Respondents: Mr.P.Raja  
Government Advocate

O R D E R

The matter is taken up today through web hearing.

2. The writ petition has been filed seeking for the following prayer:

"for issuance of a Writ of Mandamus, directing the respondents to conduct Special Transfer Counselling to the Middle School Headmasters including the petitioner herein pursuant to the directions issued by this Hon'ble Court in WP No.25150 of 2019 dated 17.10.2019 and allot the available vacancies before conduct of the General transfer counselling for the academic year 2020-2021."

3. The petitioner was appointed as a Secondary Grade Teacher in 1989, at Panchayat Union Elementary School. Later she was promoted as Elementary School Headmistress in July 2006 and in November 2007, she was further promoted as BT Middle School Headmistress. According to the petitioner, she had been working in different Panchayat Unions over the years. Lastly, the petitioner was posted to Pudhumottur Panchayat Union Middle School, Bargur on 05.08.2016.

4. According to the petitioner that Pudhumottur Panchayat Union Middle School was located 70Kms away from her residence and considerable time was consumed in commuting back and forth to the school and her residence. Besides, the petitioner was also facing certain difficulties at home and also was having certain health issues. Therefore, the petitioner appeared to have submitted representations in 2018 requesting for transfer within the Bargur Union, close to her place of residence.

5. In the mean while, the Government have issued G.O.1(D) No.218 School Education [Pa.Ka.5(1)] Department, dated 20.06.2019, announcing the schedule of transfer for the Academic Year 2019-20. As per the Government Order, one of the conditions in Clause 9(i) was that a teacher must have worked for a minimum period of three years in the present station before seeking for transfer in the Annual Counselling Process.

6. According to the petitioner, such stipulation was made for the first time and because of the said clause, the petitioner was not permitted to appear for the Annual Counselling conducted in July 2019. The petitioner by then could not complete three years of service in the station, as she joined the earlier posting only on 05.08.2016.

7. Several teachers, who were aggrieved by the stipulation of three year period had approached this Court in a batch of writ petitions and those writ petitions came to be disposed of on 27.08.2019 and on subsequent dates, modifying the condition prescribing three year period. The petitioner herein has also approached this Court in WP No.25150 of 2019 and this Court disposed of the writ petition on 17.10.2019, following the earlier orders passed by this Court.

8. The learned Judge of this Court while disposing of the writ petition filed by the petitioner has incorporated in Paragraph No.5, the entire directions issued by this Court in the earlier batch of writ petitions as found in Paragraph No.17 therein.

"5. This Court also perused the above decision and heard the submissions made on either side. The very same prayer has been dealt with in the batch of writ petitions in W.P.Nos.14188 of 2019 and etc batch dated 27.08.2019 by the Madurai Bench of this Court. It is useful to extract hereunder the relevant paragraph No.17 of the above 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 (10), 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, 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.

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, dated 26.8.2019, School Education Department, Secretariat, Chennai -9, within a period of two weeks from the date of receipt of a copy 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."

After incorporating the above directions, the learned Judge has directed as under.

"6. In view of the above, this Court directs to extend the same benefit to the petitioner herein. Accordingly, the writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petitions are closed."

9. Since there was a direction from this Court to extend the same benefit to the petitioner herein as well, a representation was made on 07.11.2019, pointing out that in the General Counselling for the Academic Year 2019-20, juniors to the petitioner had been accommodated in Bargur Union and therefore, requested that she may be considered for posting her in one of the schools identified by her.

10. Since there was no action forthcoming in response to her representation, the petitioner was once again constrained to approach this Court in the present writ petition.

11. At the time when the notice was ordered in the writ petition, an injunction order was passed on 13.07.2020 by this Court, restraining the respondents from filling up the vacant

post of Headmaster of Panchayat Union Middle School, Thellabenda Border, Bargur, as the vacancy was not filled up for some time as claimed by the petitioner and also according to the petitioner, she was senior and therefore, she had a rightful claim to be posted in that place.

12. After notice Mr.P.Raja, learned Government Advocate entered appearance.

13. Mr.P.Raja, learned Government Advocate in response to the writ petition would submit that the claim of the petitioner cannot be considered at this point of time, for the reason that when the petitioner's writ petition was disposed of on 17.10.2019, the Annual Counselling for the year 2019-20 was over in July 2019 itself. Therefore, the petitioner has to wait for the present Academic Year Annual Counselling for the year 2020-21, as per her turn.

14. The learned counsel Mr.V.Vijayashankar, appearing for the petitioner would submit that the submission as above by the Government Advocate cannot be valid, as several teachers like the petitioner, who had approached the Court and obtained orders after the conclusion of the General Counselling for the year 2019-20, their requests had been considered and transfer was effected much after the General Counselling.

15. In fact, the learned counsel for the petitioner would submit that after the disposal of the writ petitions, Counselling was done in respect of Secondary Grade Teachers and Elementary School Headmasters, but, only in respect of the petitioner's category, the authority is not inclined to consider the request of the petitioner, particularly, when the vacancy pointed out by the petitioner is very much available. When in respect of other category posts, the requests were entertained and the teachers were accommodated, unfortunately, for this petitioner alone, the request has not been considered and instead, the petitioner is now being advised to await the announcement of the present Academic Year General Counselling for the year 2020-21. The learned counsel would also submit that when a direction has been issued in clear terms by this Court, at the instance of the petitioner herself, such direction has to be implemented in its letter and spirit.

16. Learned Government Advocate would submit that after the disposal of the earlier writ petition, a further Government Order was passed in G.O.1(D) No.393 School Education [Pa.Ka.5 (1)] Department, dated 04.10.2019, laying down certain principles for General Transfer, revising the norms.

17. Learned Government Advocate would take this Court to the contents of the Government Order dated 04.10.2019, wherein an identical condition of three year period has been prescribed in a particular station before a teacher becomes eligible for seeking transfer through General Counselling. The learned counsel would also submit that the order passed by this Court modifying the identical clause in the earlier G.O.1(D) No.218 School Education [Pa.Ka.5(1)] Department, dated 20.06.2019 was in relation to non granting of relaxation to certain categories of staff like physically handicapped persons, widows, etc., which alone was the subject matter of consideration before this Court. Therefore, he would submit that the modification ordered by this Court in respect to stipulation of three year period could be confined only to special categories of persons suffering from various disabilities, widows, wives of defence personnel, etc. Therefore, the learned Government Advocate would submit that the petitioner was informed of the position vide communication dated 20.05.2020, by the 5<sup>th</sup> respondent.

18. At this, the learned counsel for the petitioner would submit that G.O.1(D) No.393 School Education [Pa.Ka.5(1)] Department, dated 04.10.2019, cited by the learned Government Advocate, cannot be operated against the petitioner, when the petitioner being one of the parties in the earlier round of litigations and the directions issued by the Court have been complied with, in respect of similarly placed persons, as it is understood. Therefore, he would request this Court to direct the respondents to consider the petitioner's request for transfer and accommodate her in the identified post at Bargur village in pursuance of the directions of this Court dated 17.10.2019 in WP No.25150 of 2019.

19. This Court considered the submissions of the learned counsel for the petitioner as well the learned Government Advocate Mr.P.Raja.

20. Although several writ petitions had been filed before the Madurai Bench and also before the Principal Bench of this Court and directions were issued, as contained in Paragraph No.17, extracted above, but, as far as this Court is concerned, the submission made by the learned Government Advocate appears to be of some substance. Originally, it appears that the challenge to the stipulation of three year period was only in respect of exclusion of special category people like persons of disability, widows, etc. This Court has however, modified the conditions stipulating three year period per se and many teachers had derived the benefit of those directions, as it were understood by the implementing authorities. In such circumstances, this petitioner alone cannot be discriminated against and denied the benefit, particularly in the face of the

specific direction issued by this Court in paragraph 6 [extracted supra] of the order in WP No.25150 of 2019 filed by the petitioner herein.

21. When the respondents have understood and carried out the directions of this Court in the earlier round of litigation in a particular manner, the same yardstick ought to be applied to the petitioner herein as well. It is also not disputed that after the General Counselling was over in July 2019 for the year 2019-20, the request of various petitioners in the batch of writ petitions for transfer to various places had been considered and granted. As stated by the learned counsel for the petitioner in respect of Secondary Grade Teacher and Elementary School Head Master, such action was taken by the Government.

22. While so, this Court is unable to understand as to why the competent authority is not inclined to consider the request of the petitioner, more particularly, when there is a clear vacancy exists for some time in the place identified by the petitioner. When directions have been issued by this Court and the directions have been understood in a particular fashion and implemented in respect of one set of teachers, fairness demands that the government maintains parity in treatment in order to satisfy the equality doctrine enshrined in the Constitution of India. All persons equally placed ought to be treated equally and no infraction, on that score, is permissible in law. Any departure from such principle tantamount to discriminatory treatment, which is patently opposed to fair play and good conscience.

23. Therefore, this Court is of the considered view that the petitioner, who had earlier obtained orders from this Court in W.P.No.25150 of 2019 dated 17.10.2019, wherein a learned Judge of this Court has directed to extend the same benefit to the petitioner as that of the other petitioners, it is imperative, therefore that the competent authority herein has to implement the order in its letter and spirit. When the direction passed by a learned Judge of this Court has become final, the authority has no option except to implement the same. Even otherwise, this Court is of the view that when identically placed teachers had been the beneficiaries of the directions as it was understood by the authorities, the denial of such benefit to the petitioner alone, is not a fair judicious reaction.

24. In any event, it now appears that due to the passage of time, the petitioner has now completed three year period and in that circumstances, her claim becomes all the more justifiable, nonetheless her request need not be clubbed alongwith other teachers who are to participate in the General Counselling, which is to take place some time in future for the present

Academic Year 2020-21, as she had already obtained directions from this Court as early as on 17.10.2019.

25. In the circumstances, the writ petition is allowed and the respondents are directed to consider the request of the petitioner by conducting Special Transfer Counselling for the petitioner, for accommodating her in the available vacancy, as pointed out by her. The respondents/competent authority are directed to comply with the above direction and pass orders on the transfer request of the petitioner within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,  
School Education Department,  
Fort St. George, Chennai - 9.
2. The Director of Elementary School Education,  
Nungambakkam, College Road,  
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Mettur, Krishnagiri District.
4. The Chief Educational Officer,  
Office of the Chief Educational Office,  
Krishnagiri District.
5. The Block Educational Officer,  
Bargur, Krishnagiri District.

+1cc to M/s.V.Vijay Shankar, Advocate, Sr.No.27596  
+1cc to the Government Pleader, Sr.No.27780

Pre-delivery order in  
WP No.7200 of 2020

cp (co)  
rr ii (28/09/2020)