

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.NO.16236 OF 2020

AND

WMP.NO.20284 OF 2020

A.Lalitha

...Petitioner

vs.

1. The Director of School Education,
College Road,
Chennai - 6.
2. The Joint Director of School Education,
(Personnel),
Office of the Director of School Education,
College Road,
Chennai - 6.

...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to consider the petitioner's request for transfer to any of the available vacancies in Kanyakumari District viz., 1) Meenakshipuram Government Higher Secondary School, Kanyakumar, 2) Vellamcode Government Higher Secondary School, Kanyakumari and 3) Potriyur Government Higher Secondary School, Kanyakumari, taking into account petitioner's daughter's health condition and G.O.(D) No.281 School Education Department dated 20.06.2019.

For Petitioner .. Mr.N.Balamurali Krishnan
for Mr.K.S.Saravanan

For Respondents .. Mr.P.Raja,
Government Advocate.

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O R D E R

This matter is taken up through Web hearing.

2. The writ petition has been filed seeking to issue a Writ of Mandamus to direct the respondents to consider the petitioner's request for transfer to any of the available vacancies in Kanyakumari District viz., 1) Meenakshipuram Government Higher Secondary School, Kanyakumar, 2) Vellamcode

Government Higher Secondary School, Kanyakumari and 3) Potriyur Government Higher Secondary School, Kanyakumari, taking into account petitioner's daughter's health condition and G.O.(D) No.281 School education Department dated 20.06.2019.

3. The petitioner is working as a Graduate Teacher (BT Assistant Science) in S.R.Government Higher Secondary School, Thiruthangal, Sivakasi, Virudhunagar District. She was originally appointed in 2007 as Graduate Teacher (Science) and subsequently, her service was regularised on 05.06.2008. According to the petitioner, her husband is working as Head Constable in Central Reserve Protection Force and he is now posted to serve in the State of Nagaland.

4. From the wedlock, the petitioner was blessed with a female child in 2009. Unfortunately, the female child which was born in 2009 is a disabled child with mental retardation and has been in need of physical support all the time. According to the petitioner, she is also suffering from frequent epileptic attack which obviously requires constant attention and medication. The female child who is affected by mental retardation is now 11 years old and due to non-available of special schools in and around Thiruthangal where the petitioner is working, she left her daughter in the custody of her parents at her native village. According to the petitioner, her parents were also very old and not in a position to take care of the child effectively. The petitioner belongs to Kanyakumari District.

5. In the above circumstances, a representation was made to the competent authority to consider the request of the petitioner for transfer and accommodate her at any vacant place in Kanyakumari District to take care of her retarded child. The petitioner has been submitting representations for several years. But unfortunately, no positive action was forthcoming from the competent authority. According to the petitioner, recently, the Government has issued guidelines in G.O.(D).No.218 School Education Department dated 20.06.2019 providing a preference to be given to the Government servant having disabled child. Despite the guidelines, her claim has not been considered as on date and therefore, she is before this Court.

6. Learned counsel appearing for the petitioner, Mr.N.Balamurali Krishnan, would submit that as on date, there are three vacancies available in the schools identified by the petitioner which are indicated in the affidavit filed in support of the writ petition. Since the request of the petitioner has been on a genuine and legitimate ground, the authority, in all fairness, ought to have considered her request already but for some reason, no action has been taken in response to her representations.

7. Notice was issued to the respondents and Mr.P.Raja, learned Government Advocate appeared for the respondents.

8. The matter was adjourned in order to get instructions from the respondents as to the availability of vacancies as identified by the petitioner herself in her affidavit.

9. On instructions, today, when the matter is taken up for hearing, Mr.P.Raja, learned Government Advocate would submit that in respect of one of the schools identified by the petitioner, viz., Vellamcode Government Higher Secondary School, Kanyakumari, vacancy is available in the petitioner's category and the learned Government Advocate would fairly submit that if any direction is issued in this regard to the respondents, the same would be considered.

10. From the above narrative, it could be seen that fairness demands the request of the petitioner is liable to be considered favourably, since the husband of the petitioner is serving in the para military force, far away in the State of Nagaland and the petitioner is posted and working in Thiruthangal. The care and safety of the disabled female child is the paramount consideration of any parent and the Government has issued G.O.Ms.(D) 218 dated 20.06.2019 providing for preferential right to get transfer to a place of choice of the Government servant on that basis. In furtherance of the objective laid down in the G.O., it is incumbent upon the authority to consider the case of the petitioner compassionately and grant the relief as requested by her.

11. In fact, in this case, the petitioner herself has identified three places, where the vacancies are available in her position and on instruction, the learned Government Advocate, Mr.P.Raja, fairly submitted that in Vellamcode Government Higher Secondary School, there is vacancy in Kanayakumar District.

12. In the light of the above, this Court is of the considered view that the petitioner's request for grant of transfer to the School identified by her ought to be considered favourably and appropriate orders to be passed in the light of the Government Order referred to above and also in consideration of the genuineness of the request of the petitioner.

13. In the circumstances, the Writ Petition is disposed of with a direction to the respondents to consider the request of the petitioner and pass appropriate orders, transferring the petitioner to Vellamcode Government Higher Secondary School, Kanyakumari, in the existing vacancy and such order to be passed

by the respondents within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Director of School Education,
College Road,
Chennai - 6.
2. The Joint Director of School Education,
(Personnel),
Office of the Director of School Education,
College Road,
Chennai - 6.

+1cc to Mr.K.S.Saravanan, Advocate, S.R.No.37204
+1cc to the Government Pleader, S.R.No.37378

W.P.No.16236 of 2020

KKV/27/11/2020

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