



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.4344 of 2015

S.B.Jasmin Ponmalar

... Petitioner

Vs.

1.The Principal Secretary,
School Education Department,
St.George Fort, Chennai.

2.The Director of School Education,
Chennai.

3.The Director,
Most Backward Class and Denotified
Communities Welfare Department,
Chennai.

4.The Joint Director,
Office of Kallar Reclamation,
Madurai.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in Memo No.B1/6109/14, dated 08.12.2014 and quash the same and consequently, direct the respondents 1 to 3 to transfer the petitioner from Kallar Reclamation School to any Government High School in Krishnagiri District as Post Graduate Assistant on par with the teachers whose request for transfer were considered positively in pursuance G.O. (ID) No.86, School Education (H.Sc., Education) Department, dated 02.03.2011.

For Petitioner : Mr.D.Sasikumar

For Respondents : Mr.G.Arjunan

Government Advocate

ORDER

The relief sought for in the present writ petition is to quash the order of the third respondent dated 08.12.2014 regarding claim of the petitioner to transfer the petitioner from Kallar Reclamation School to any Government High School in Krishnagiri District as Post Graduate Assistant as per G.O.(ID) No.86, School Education (H.Sc., Education) Department, dated 02.03.2011.

2.Admittedly, the writ petitioner was appointed as Junior Grade Assistant and posted in Kallar Reclamation School under the control



of the Commissioner of Most Backward Classes and Denotified Communities Welfare Department. The services of the petitioner were regularised and she was promoted to the post of Post Graduate Assistant in proceeding dated 21.09.2012.

3.The grievance of the petitioner is that her husband is working in the District Central Co-operative bank, Hosur in Krishnagiri District as Branch Manager which is a non transferable post and therefore, she must be transferred to the Education Department as P.G.Assistant and to be posted. The grievance of the petitioner is based on his personal difficulties. A public servant is entitled to put forth her personal grievances to the authorities concerned. However, the public interest is of paramount importance and only if there is a viability to consider such personal request, the authorities may consider and not in all circumstances. Such requests are considered only as a concession and cannot be claimed as a matter of right. Therefore, the claim of the petitioner cannot be considered with reference to the G.O.(cited supra) which was passed in favour of few other candidates. There cannot be any precedent for consideration of such requests and if at all an earlier case is considered, that cannot be cited as precedent for continuously considering such request of individuals based on personal grievances.

4.The grievances of the petitioner is that her husband is working at Krishnagiri and therefore, she must be transferred to any Government High School in Krishnagiri District as P.G.Assistant. Post or place can never be claimed as a matter of right by the Government employee. The Government employees are bound to work wherever they are posted in the interest of public at large. However, if there is any opportunity or viability, then alone, the authorities may consider the case of the individuals based on their personal requests and all other circumstances, the Government employees are bound to work wherever they are posed. The writ petitioner has cited G.O.(ID) No.86, School Education (H.Sc., Education) Department, dated 02.03.2011 which was passed based on the request of some other candidates. There cannot be any precedent in such principles regarding consideration of personal grievances. All depends on the facts and circumstances and with reference to the availability of vacancies or otherwise.

5.In this regard, the fourth respondent filed a detailed counter affidavit and the relevant Paragraph Nos.3 and 4 of the counter affidavit reads as under:-

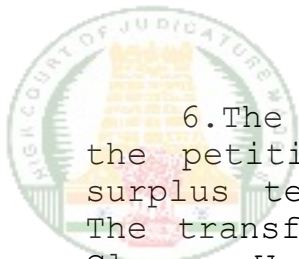
"3.I submit that the Kallar Reclamation Schools are run by the respondents 2 and 4 at Madurai, Dindigul and Theni District only. Normally the teachers of Secondary Grade, B.T.Assistant and P.G.Assistant Cadre have been sanctioned periodically to the Kallar Reclamation Department by the Government. However, the said sanction of the teachers to the Kallar Reclamation



Department had been reduced drastically by the Government and as a result many posts are lying vacant in the Department. The serving teachers under the control of this respondent also made request periodically to transfer them to the control of the third respondent to the control of the third respondent by citing various reasons. Since, there is a need of teachers at this respondent's Kallar Reclamation Schools of the above said districts, this respondent would not normally relieve them because of the shortage of the teachers prevailing of the above said schools. The petitioner had been appointed as a Junior Grade Assistant on temporary basis by the fourth respondent on 12.07.2004 at Government Kallar Reclamation High School, Ayyappanayakkanpatti, Madurai District and thereafter, the petitioner's service were made as a permanent on 01.06.2006 and was regularised with effect from 05.09.2006. Subsequently, the petitioner was promoted as a P.G.Assistant by the third respondent vide his proceeding dated 21.09.2012 and till now, he is working as P.G.Assistant at Government Kallar Reclamation Higher Secondary School, Vellaimalaipatti.

4.I submit that the Government vide G.O.(ID)No.86, School Education Department dated 02.03.2011 though had issued orders to transfer 119 B.T.Assistants and 27 P.G.Assistants of Kallar Reclamation Schools functioning under the most backward classes and de-notified communities of the welfare department. However, considering the short fall of teachers in the Kallar Reclamation Schools had vide Para No.3(9) of the above said G.O had orderd that the teachers who permitted to the transfer to education department will be relieved only on appointing substitutes to the post where they are presently working. As a result though the said teachers were transferred to the school education department vide G.O.(ID)No.86, they could not relieved fro the reason that substitutes have not been appointed to their posts. Regarding the issue transfer of teachers from Kallar Reclamation Schools to the School Education Department, a minutes of the meeting held on 04.12.2013 at Secretariat, School Education Department, Chennai. I submit that the crux of the meeting as follows:-

"The Principal Secretary to School Education Department has deliberated the recent scenario regarding the process of recruitment of teachers in School Education Department such as introduction of RTE Act and absorption of BRTES/CRTES who were appointed under SSA to School Education Department. The Principal Secretary to Government has also informed that the teachers of Education Department are unwilling to move to Kallar Reclamation Schools due to limited promotional avenues. The Principal Secretary, School Education Department has also pointed out that the transfer request to the teachers could consider only after appointing substitutes to them with due consideration to the educational welfare of the students of Kallar Reclamation Schools."



6.The reasons stated by the respondents are that the case of the petitioner was rejected in view of the fact that even now surplus teachers are working in the School Education Department. The transfer of teachers from Kallar Reclamation School, Backward Classes Welfare Department and Adhi Dravidar Welfare Schools to the schools coming under the School Education Department could not be considered by the Government because the surplus teachers are already working in the Education Department itself. This apart, the welfare of the children studying in the Kallar Reclamation School are to be taken into consideration. Providing better education to the children studying in the Kallar Reclamation School is of paramount importance. The children from downtrodden and poor community are studying in the Kallar Reclamation School and the interest of those children is of paramount importance. Many number of senior teachers are also required to educate those poor children and therefore, transfer cannot be considered without considering all these factors.

7.The profession teaching is a noble one. The teachers are bound to struggle to educate the children, more specifically, from poor and downtrodden community. Equal opportunity being a constitutional mandate to create equality and to attend social justice. Best teachers must be appointed in Kallar Reclamation School and in Backward Classes Welfare Department and in Adhi Dravidar Welfare Schools. If the teachers are always with an idea to get appointment in such Backward Classes Welfare Department and thereafter, submitting an application for transfer to the Government Schools, such mind set or approach can never be encouraged and all these teachers who all are talented and capable, are deputed to teach to the children who all are coming from the rural areas. The respondents have already considered the case of the petitioner and rejected her claim as the surplus teachers are working in the Education Department.

8.This being the factum, this Court cannot consider the relief as such sought for in view of the fact that the transfer cannot be claimed as a matter of right and transfer is incidental to service and a condition of service. Thus, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)



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+1 CC to M/s.SPL GP (SR-23146[F] dated 27/11/2020)

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