



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD) No.26279 of 2019

and

WMP(MD) No.22683 of 2019

WEB COPY

S.Paul Joseph

.. Petitioner

Vs.

1. The Chief Educational Officer,
Sivagangai,
Sivagangai District

2. The District Educational Officer
Devakkottai
Sivagangai District

3. The Block Educational Officer
Kalaiyarkovil
Sivagangai 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 charge memo issued by the second respondent in Na.Ka.No.225/A1/2019 dated 31.01.2019 and quash the same and consequently direct the respondents to include the name of the petitioner in the panel for promotion to the post of Panchayat Union Primary School Headmaster, within a time as stipulated by this Court.

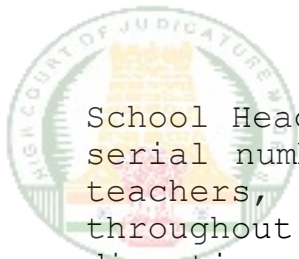
For petitioner : Mr.P.Gunasekaran

For respondents : M/s.Srimathy,
Special Government Pleader

O R D E R

This Writ Petition has been filed by the petitioner challenging the impugned charge memo issued by the second respondent in Na.Ka.No.225/A1/2019 dated 31.01.2019 and for a consequential direction to the respondents to include the name of the petitioner in the panel for promotion to the post of Panchayat Union Primary School Headmaster, within a stipulated time.

2. The case of the petitioner is that the petitioner was appointed as Secondary Grade Teacher in Panchayat Union School on 28.07.1999 and now he is working as Secondary Grade Teacher in Siruvelangudi Panchayat Union School, Sivagangai District. His name is included in the panel for promotion to the post of Elementary



School Headmaster drawn by the respondents for the year 2018 and his serial number is 5. While so, the petitioner, along with the other teachers, participated in the strike conducted by the Association throughout the State during February 2019. Subsequently, as per the direction of this Court, all the teachers resumed to duty and the petitioner also joined duty on 30.01.2019. At the time of resuming to duty, the Government of Tamil Nadu gave two options to teachers. One is to go on transfer to some other school and the other one is to face charges under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Hence, the petitioner opted for transfer and gave representation to the respondents on 04.02.2019 and 25.02.2019, agreeing to go on transfer. It is the further case of the petitioner that though the respondent passed an order transferring the petitioner to Vallakudi Panchayat Union School, the same was not served to him and that was not given effect to. But, on 19.03.2019 the second respondent has served the impugned charge memo, dated 31.01.2019, without considering his option. Challenging the same, the petitioner has come up with the present Writ Petition.

3. The learned counsel for the petitioner submitted that on resuming duty after participation in strike, as per the options given by the Government only, the petitioner had opted to go on transfer and even after passing the transfer order, the respondents unfortunately retained the same. It is further submitted that due to the impugned charge memo, the promotion of the petitioner as Headmaster has been affected. He would further submit that one of the similarly placed persons by name Raja has been transferred to some other school by accepting his option for transfer by the very same respondents and he has not been issued with any charge memo. Hence, the learned counsel for the petitioner prayed this Court to set aside the impugned charge memo on the ground of disparity also.

4. On the other hand, the learned Additional Government Pleader submitted that since the order of the High Court directing the teachers to return to their duties on or before 30.01.2019, was not complied by the petitioner and other teachers, the Government had initially issued administrative transfer orders against the Government employees and teachers, who were participated in the agitation, but subsequently, on the request of the Teachers Association, the Government has stopped the transfer orders and issued charge memo to them. Further, it is stated that as the charge memo issued to the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is pending, his request of administrative transfer cannot be considered.

5. Heard both sides and perused the records carefully.

6. According to the petitioner, as per the option given by the Government at the time of resuming to work after participating in the strike, the petitioner had exercised his option for transfer to some other school and hence, the respondents ought to have



transferred him to some other school by considering the same and the issuance of charge memo is not proper. The respondents have not denied in the counter affidavit about the same. However, it is the only contention of the respondents that since the Teachers Association opted to issue charge memo, instead transfer order, they stopped the transfer order and issued the charge memo. It is stated that the charge memo dated 31.01.2019 has been served to the petitioner only on 19.03.2019 and even before that the petitioner has sent representations to the respondents opting for transfer to some other school and the respondents, without considering the same, has issued the charge memo. As rightly stated by the petitioner, the respondents could have considered the said representations even before the issuance of charge memo and given effect to the transfer order. Having failed to do so, they have issued the charge memo to the petitioner and the same affected the promotional avenue of the petitioner.

7. Further, it is seen that one Raja, who participated in the strike has also exercised his option for transfer and transfer order has been issued to him by the proceedings in Na.Ka.No.225/A1/2019 dated 05.03.2019. This Court is of the view that the respondents have shown disparity to the petitioner by refusing the option exercised by him for transfer. Moreover, it is crystal clear that the petitioner had rightly exercised his option for transfer, that was even before the charge memo was served on him.

8. For all the foregoing reasons, the impugned charge memo issued by the second respondent in Na.Ka.No.225/A1/2019 dated 31.01.2019 is hereby quashed and there shall be a direction to the respondents to include the name of the petitioner in the panel for promotion to the post of Panchayat Union Primary School Headmaster. In case, the promotion has already been given to the junior to the petitioner, the petitioner shall be given promotion and his seniority shall be restored with all service and monetary benefits. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)



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