



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. Nos. 5015, 5021, 5024, 5028 & 5033 of 2021
and

W.M.P. Nos.5590, 5593, 5600, 5598, 5604,
5605, 5610, 5609, 5615 & 5616 of 2021

Indragandhi. P	.. Petitioner in W.P. No.5015 of 2021
Manjula.S	.. Petitioner in W.P. No.5021 of 2021
Sasireka.R	.. Petitioner in W.P. No.5024 of 2021
Saraswathi. S	.. Petitioner in W.P. No.5028 of 2021
Manjula.S	.. Petitioner in W.P. No.5033 of 2021

Versus

1.The State of Tamil Nadu,
Rep. by Principal Secretary,
Dept. of School Education,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus, College Road,
Nungambakkam, Chennai - 600 006.

3.The Joint Director of School Education,
O/o. The Director of School Education,
DPI Campus, College Road,
Nungambakkam,
Chennai - 600 006.

..Respondents in all W.P's.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondents from filling up the existing vacancies in the post of Primary School Headmasters in the State by way of conducting general promotion counselling without conducting general transfer counselling in violation of the Transfer Guidelines issued in the previous years in Government Order in G.O.(1D). No.256 dated 19.04.2017, G.O.(1D). No.403 dated 02.06.2018, G.O.Ms. No.218 dated 20.06.2019 based upon the notification dated 18.02.2021 issued by the respondents.



For Petitioner
(in all W.P's.)

: M/s. Dhruva

For Respondents
(in all W.P's.)

: Mr. C.Kathiravan
Government Advocate

C O M M O N O R D E R

Since the facts in all these writ petitions are identical, these petitions are disposed of by this common order.

2. These writ petitions are filed for issuance of a Writ of Mandamus forbearing the respondents from filling up the existing vacancies in the post of Primary School Headmasters in the State by way of conducting general promotion counselling without conducting general transfer counselling in violation of the Transfer Guidelines issued in the previous years in Government Orders in G.O.(1D). No.256 dated 19.04.2017, G.O.(1D). No.403 dated 02.06.2018 and G.O.Ms. No.218 dated 20.06.2019, based upon the notification dated 18.02.2021, issued by the respondents.

3. It is stated that all these petitioners are working as Primary School Headmasters. The petitioners state that they are entitled to be considered for transfer by request and that the general counselling for transfer should be conducted before conducting general promotion counselling. Learned counsel appearing for the petitioners states that in the case of Jacob and others Vs. State of Tamil Nadu, and others in W.P. (MD) No.3354 of 2021 and batch, the learned single Judge of this Court in Madurai Bench, has already held that counselling for promotion without conducting general transfer counselling is opposed to all the earlier Government orders.

4. Learned counsel appearing for the petitioners produced before this Court the interim order passed by the learned single Judge in a batch of writ petitions in W.P.(MD). No.3354 of 2021 and batch, dated 19.02.2021. The order of interim injunction was supported by the following reasons:

"...

4. The Honourable Division Bench of this Court in the case of K. K. Ramesh Vs. The Union of India and others, passed in W.P. (MD) No.23772 of 2018 had issued certain guidelines for general transfer counseling, pending passing of appropriate orders by the Government for and incorporating such guidelines. Consequently, G.O. (1D) 218 dated 20.06.2019 came to be passed and in clause 2 of the Government order, guidelines were made therein for holding counseling by at filling up of surplus posts, general transfers and then through promotions. However, deviating from



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such guidelines, the respondents herein have scheduled the counseling for the promotion counseling, for the post of High School Headmasters on 20.02.2021, without conducting the transfer counseling. Apparently, the decision to hold such a counseling for promotion without conducting the general transfer counseling is opposed to all the earlier Government Orders.

5. Mrs.S.Srimathy, the learned Special Government Pleader would place reliance on G.O.No.249 Finance (Budget General-1) Department dated 21.05.2020 and submit that the general transfers were directed to be kept on hold for the year 2020-2021, to minimise expenditure on transfer travel expenses and therefore the transfer counseling could not be held prior to the promotion counseling. She would also submit that the general transfers can be held in the ensuing academic year.

6. I am not in agreement with such a submission. G.O.No.249 Finance. (Budget General-1) Department dated 21.05.2020 was issued on the unprecedented situation that arose owing to the COVID-19 pandemic outbreak, which necessitated the Government to withhold general transfer for avoiding/minimising transfer travel expenses. Further more, G.O.No.249 Finance (Budget General-I) Department dated 21.05.2020 did not supersede the earlier Government orders, in G.O. (1D) No.256 dated 19.04.2017, G.O. (1D) 403 dated 29.05.2018 and G.O. (1D) 218 dated 20.06.2019 and neither empowered the authorities to get along with the promotion counseling, by withholding the general transfers.

7.This Court is able to visualise the prejudice that could be caused to the senior teachers, who are awaiting the general transfer counseling and such transfer-postings may become redundant owing to the possibility of junior teachers being posted in the place their choice through promotion counseling. No prejudice would be caused to the Department, if the promotion counseling is postponed by a few days and during which period, the possibility of holding transfer counseling can be explored."

5. Again in the same batch of writ petitions a common final order has been passed on 10.03.2021. The relevant portions of the said order is extracted hereunder:

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this Court in W.P.(MD).No.23772 of 2018, certain guidelines for general transfer counselling, including transfers on administrative grounds, were issued. These guidelines were subject to passing of appropriate orders by the Government. Among such guidelines, it was directed that the annual transfers in the schools must be only on the basis of general counselling which should be held at least by the 15th of May of the relevant year. The Government is yet to pass appropriate orders to this effect, apparently, due to the onset of COVID-19 pandemic. When such orders for general transfer through counselling are yet to be passed pursuant to the guidelines of the Hon'ble Division Bench and in view of the absence of any specific clauses in G.O.Ms.No.249, Finance (Budget General-I) Department dated, 21.05.2020 enabling the Government to conduct promotion counselling prior to the transfer counselling and by taking into account the general practice adopted from the year 2017-2018 onwards to hold the promotion counselling after the general transfer counselling, this Court is of the view that the consistent procedure should not be given a go-by. 13. It would not be out of place to mention here that the Government have now taken a policy decision to increase the retirement age of the teachers to 60 years and hence the ground raised by the learned Additional Advocate General that some of the teachers, who are awaiting for promotions, are at the verge of their retirement, is rendered redundant. However, since the respondents apprehend that some prejudice could be caused to the teachers, who are awaiting for promotions, it would be appropriate that the respondents could be directed to hold both the general transfer counselling and the promotion counselling on the same date. However, such simultaneous counselling should not deviate from the pre-existing procedures and therefore, the general transfer counselling, shall precede the promotion counselling. 14. In the light of the above observations, there shall be a direction to the Director of School Education Department, Chennai and the Director of Elementary Education, Chennai, to conduct the general transfer counselling, followed by the promotion counselling, on the same day or the succeeding days if necessary, in the various vacancies for the posts of High School Headmasters / Middle School Headmasters / B.T.Assistants / Primary School Headmasters / Block Educational Officers in the various schools in the State of Tamil Nadu. Such exercise of conducting counselling shall be done as



expeditiously as possible, in any event, on or before the 30th of April, 2021."

6. The judgment of the learned single judge of this Court, above referred is not challenged in appeal. Learned Government Advocate appearing for the respondents despite getting instructions is unable to report any intention of Government preferring any appeal as against the said order. In such circumstances, applying the same principles reiterated by this Court earlier, all these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

7. It is reported that the petitioners have submitted their representations on 23.02.2021 to the District Educational Officer, Thirupatthur. Based on the representations of the petitioners, the Director of School Education, Chennai is directed to conduct general transfer counselling, followed by the promotion counselling, on the same day or the succeeding days, if necessary, for the posts held by the petitioners in these cases. Such exercise of conducting counselling shall be done as expeditiously as possible, in any event, within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Dept. of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of School Education,
O/o. The Director of School Education,
DPI Campus, College Road, Nungambakkam, Chennai - 600 006.
3. The Joint Director of School Education,
O/o. The Director of School Education,
DPI Campus, College Road, Nungambakkam, Chennai - 600 006.

+1cc to the Special Government Pleader, S.R.No.35319

W.P. Nos. 5015, 5021, 5024, 5028 & 5033 of 2021

RP(CO)
RGA(23/08/2021)