



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE **B. PUGALENDHI**

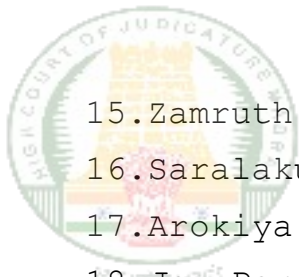
W.P. (MD) Nos. 16310, 16312, 16313, 16506, 16508, 16510, 16507, 16509, 16396, 16401, 16400, 16403, 16399, 16402, 16398, 16431, 16432, 16434, 16441, 16435, 16436, 16438, 16437, 16439, 16440, 16433, 16443, 16564, 16663, 16665, 16664, 16666, 16668, 16669, 16677, 16678, 16680, 16681, 16683, 16679, 16682, 16685, 17829 of 2021

and

W.M.P. (MD) Nos. 13165, 13158, 13169, 13157, 13160, 13166, 13159, 13162, 13168, 13379, 13380, 13382, 13394, 13395, 13397, 13387, 13388, 13390, 13378, 13381, 13384, 13246, 13247, 13251, 13254, 13255, 13260, 13257, 13259, 13261, 13270, 13271, 13272, 13263, 13266, 13267, 13258, 13264, 13269, 13248, 13253, 13256, 13311, 13313, 13315, 13319, 13320, 13323, 13293, 13295, 13299, 13302, 13304, 13309, 13301, 13306, 13312, 13321, 13324, 13325, 13328, 13329, 13330, 13297, 13298, 13300, 13310, 13314, 13318, 13326, 13327, 13331, 13290, 13291, 13292, 13303, 13305, 13308, 13440, 13441, 13443, 13535, 13536, 13537, 13526, 13529, 13533, 13542, 13543, 13544, 13551, 13553, 13524, 13525, 13527, 13532, 13531, 13534, 13554, 13555, 13570, 13571, 13557, 13559, 13556, 13558, 13560, 13563, 13561, 13564, 13562, 13565, 13566, 13567, 14701, 14702, 16359 of 2021

1.M.Arockiya Rajkumar	... Petitioner in WP (MD) No. 16310/ 2021
2.I.Pandima Devi	... Petitioner in WP (MD) No. 16312/ 2021
3.C.Arunadevi	... Petitioner in WP (MD) No. 16313/ 2021
4.K.Kasthuri Thilagam	... Petitioner in WP (MD) No. 16506/ 2021
5.D.Jeyasri	... Petitioner in WP (MD) No. 16508/ 2021
6.H.David Charles	... Petitioner in WP (MD) No. 16510/ 2021
7.M.Rajarajan	... Petitioner in WP (MD) No. 16507/ 2021
8.Palaniyammal	... Petitioner in WP (MD) No. 16509/ 2021
9.M.Muthuraja	... Petitioner in WP (MD) No. 16396/ 2021
10.M.Muthukrishnan	... Petitioner in WP (MD) No. 16401/ 2021
11.Joselin Victor	... Petitioner in WP (MD) No. 16400/ 2021
12.S.Rajendran	... Petitioner in WP (MD) No. 16403/ 2021
13.Subbulakshmi	
W/o.Ramesh	... Petitioner in WP (MD) No. 16399/ 2021
14.Subbulakshmi	
W/o.M.Thirunavukarasu	... Petitioner in WP (MD) No. 16402/ 2021

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15. Zamruth	... Petitioner in WP (MD) No. 16398/ 2021
16. Saralakumari	... Petitioner in WP (MD) No. 16431/ 2021
17. Arokiya Amala Loyala	... Petitioner in WP (MD) No. 16432/ 2021
18. Joy Peral	... Petitioner in WP (MD) No. 16434/ 2021
19. R. Victoria	... Petitioner in WP (MD) No. 16441/ 2021
20. E. S. Suji	... Petitioner in WP (MD) No. 16435/ 2021
21. T. S. Mallika	... Petitioner in WP (MD) No. 16436/ 2021
22. K. Amutha	... Petitioner in WP (MD) No. 16438/ 2021
23. Muthuselvi	... Petitioner in WP (MD) No. 16437/ 2021
24. Irine	... Petitioner in WP (MD) No. 16439/ 2021
25. Sheela Wincy	... Petitioner in WP (MD) No. 16440/ 2021
26. Ramalakshmi	... Petitioner in WP (MD) No. 16433/ 2021
27. Angelin Kavitha	... Petitioner in WP (MD) No. 16443/ 2021
28. P. Krishnamoorthy	... Petitioner in WP (MD) No. 16564/ 2021
29. S. Berla Pushparani	... Petitioner in WP (MD) No. 16663/ 2021
30. J. Mercy Jeba Angel	... Petitioner in WP (MD) No. 16665/ 2021
31. K. Subani	... Petitioner in WP (MD) No. 16664/ 2021
32. P. Xavier	... Petitioner in WP (MD) No. 16666/ 2021
33. A. Jasmin Lyla	... Petitioner in WP (MD) No. 16668/ 2021
34. S. Jayasheela	... Petitioner in WP (MD) No. 16669/ 2021
35. P. Vengatachalam	... Petitioner in WP (MD) No. 16677/ 2021
36. S. Jebaselvi	... Petitioner in WP (MD) No. 16678/ 2021
37. M. Nirmala	... Petitioner in WP (MD) No. 16680/ 2021
38. R. Ravichandran	... Petitioner in WP (MD) No. 16681/ 2021
39. C. Sasikala	... Petitioner in WP (MD) No. 16683/ 2021
40. M. Rajalakshmi	... Petitioner in WP (MD) No. 16679/ 2021
41. M. Ganesan	... Petitioner in WP (MD) No. 16682/ 2021
42. J. Porkodi Poomozhi	... Petitioner in WP (MD) No. 16685/ 2021
43. P. Kavitha	... Petitioner in WP (MD) No. 17829/ 2021

Vs.

Respondents in WP (MD) Nos. 16310 and 16312 of 2021 :

1. The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat,
Chennai.

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2. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.

3. The State Project Director,
Samagra Shiksha,
DPI Campus, Nungampakkam,
Chennai - 600 006.

4. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.

5. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

Respondents in WP (MD) No. 16313 of 2021 :

1. The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat,
Chennai.

2. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.

3. The State Project Director,
Samagra Shiksha,
DPI Campus, Nungampakkam,
Chennai - 600 006.

4. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.

5. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Sivagangai District,
Sivagangai .

Chennai.

- Respondents in WP (MD) No.16431 of 2021 :**

- <https://hcservices.ecourts.gov.in/hcservices/006>



5. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.

6. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Radhapuram, Tirunelveli District.

Respondents in WP (MD) Nos. 16432 to 16436, 16438 and 16441 of 2021 :

1. The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat, Chennai.
2. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
3. The State Project Director, Samagra Shiksha,
DPI Campus, Nungampakkam,
Chennai - 600 006.
4. The Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
5. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
6. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

Respondents in WP (MD) Nos. 16439 and 16440 of 2021 :

1. The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat, Chennai.
2. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.



3. The State Project Director, Samagra Shiksha,
DPI Campus, Nungampakkam,
Chennai - 600 006.
4. The Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
5. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
6. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Nagercoil, Kanyakumari District.

Respondents in WP (MD) Nos. 16506 to 16510 of 2021 :

1. The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat, Chennai.
2. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
3. The State Project Director, Samagra Shiksha,
DPI Campus, Nungampakkam,
Chennai - 600 006.
4. The Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
5. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
6. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Thanjavur, Thanjavur District.

Respondents in WP (MD) No. 16564 of 2021 :

1. The Principal Secretary to Government,
Department of School Education,
Secretariat, Chennai.



2. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
3. The State Project Director, Samagra Shiksha,
DPI Campus, Nungampakkam, Chennai - 600 006.
4. The Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
5. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
6. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Madurai, Madurai District.

Respondents in WP (MD) Nos. 16663 to 16666 and 16668 of 2021 :

1. The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat, Chennai.
2. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
3. The State Project Director, Samagra Shiksha,
DPI Campus, Nungampakkam,
Chennai - 600 006.
4. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
5. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Kanyakumari District, Kanyakumari.

Respondents in WP (MD) Nos. 16677 to 16683 and 16685 of 2021 :

1. The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat, Chennai.



2. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
3. The State Project Director, Samagra Shiksha,
DPI Campus, Nungampakkam,
Chennai - 600 006.
4. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
5. The Chief Educational Officer,
Theni District, Theni.

Respondents in WP (MD) No. 16669 of 2021 :

1. The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat, Chennai.
2. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam, Chennai - 600 006.
3. The State Project Director, Samagra Shiksha,
DPI Campus, Nungampakkam,
Chennai - 600 006.
4. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
5. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.

Respondents in WP (MD) No. 17829 of 2021 :

1. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam, Chennai - 600 006.
2. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
3. The Chief Educational Officer,
Madurai District, Madurai.



Common Prayer for WP(MD) Nos. 16310, 16312, 16313, 16396, 16398 to 16403, 16431 to 16441, 16443, 16506 to 16510, 16564, 16663 to 16666, 16668 and 16669 of 2021:

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the Government Order vide G.O. (1D) No. 134, School Education (Pa.Ka.5) (1) Department, dated 18.08.2021 and quash the impugned Clause in paragraph No. 4(1) (a) & (b) issued by the first respondent and consequently, direct the respondents to conduct the transfer / conversion counselling by giving the right of exercising option for relinquishment and to continue as Block Resource Teacher Educators in the same place.

Prayer in WP(MD) Nos. 16677 to 16683 and 16685 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or Direction particularly in the nature of writ, calling for the records pertaining to the Impugned order passed by the 1st respondent in G.O. (1D) No. 134, School Education (Pa.Ka.5(1)) Department, dated 18/08/2021 and quash the same in so far as para 4(I) (A) making the conversion of senior most 500 Block Resource Teacher Educators as B.T. Assistants and transferring them to Government Schools as Mandatory without giving any right of option for relinquishment and to continue as Block Resource Teacher Educators in the same place and para 4(I) (Vu) are concerned and consequently direct the respondents to conduct the transfer/conversion counselling by giving the right of exercising option for relinquishment and to continue as block resource teacher educators in the same place.

Prayer in WP(MD) No. 17829/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No. 41779/C4/E1/2021 dt. 15.09.2021 forwarded through the 3rd respondent herein thereby transferring the petitioner to the post of graduate teacher Mathematics at Government Higher Secondary School, Thirukarukkavur (33210903702), Thanjavur District from the post of BRTE at Madurai and quash the same and consequently direct the respondents to post the petitioner either in the post of BRTE or graduate teacher Mathematics at Madurai district or any other nearby districts within a time frame as fixed by the Honble Court and thus render justice.

For Petitioners

Mr. B. Prahalad Ravi

: Petitioner Counsel in
WP(MD) Nos. 16396, 16398 to 16403,
16431 to 16441, 16443, 16506 to
16510, 16564 and 17829 of 2021



Mr.D.Shanmugaraja Sethupathi: Petitioner Counsel in
WP(MD) Nos.16310, 16312, 16313,
16663 to 16666, 16668 and
16669 of 2021

Mr.M.Saravanan : Petitioner Counsel in
16677 to 16683 and 16688 of 2021

For Respondents : Mr.Veera Kathiravan,
in all WPs Additional Advocate General
Assisted by
Mr.S.Shaji Bino,
Special Government Pleader

COMMON ORDER

These writ petitions are filed by the petitioners / Block Resource Teacher Educators (BRTE) mainly challenging the Clauses 4 (1)(a) and (b) of G.O.(1D)No.134, School Education (Pa.Ka.5)(1) Department, dated 18.08.2021.

2.By the said Government Order, the Government has framed guidelines for transferring the Block Resource Teacher Educator (hereinafter referred to as BRTE), by treating all the posts as vacant, ie., zero vacancy and decided to transfer 500 senior most BRTEs to Government High / Higher Secondary Schools as B.T. Assistants for the Academic Year 2021-22.

3.Clause 4(1)(b) of the impugned Government Order refers to the decision taken to treat all the posts as vacant and by Clause 4(1)(a), 500 senior most BRTEs were ordered to be transferred, irrespective of their objections, if any.

4.The Government of Tamil Nadu implemented a scheme, namely, Sarva Shiksha Abhiyan (now integrated as Samagra Shiksha) sponsored by the Government of India, with an object to improve the quality of imparting education in Government and Government Aided Primary, Middle, High and Higher Secondary Schools, especially located in the rural areas. The petitioners are selected and are working as BRTEs. They are aggrieved by the aforesaid clauses in the impugned Government Order and are before this Court.

5.Learned Counsel for the petitioners submitted that treating all the posts as vacant is against the service jurisprudence and compelling the senior most BRTEs to be transferred as BT Assistants is a discrimination amongst the BRTEs. These clauses in the impugned Government Order are against the settled principles of law. According to the learned Counsel, in the absence of any statutory rule, there cannot be any administrative instruction in the form of a Government Order, taking away the rights of the employees, by



treating all the existing posts as zero vacancy and also compelling a set of BRTEs alone to be transferred as BT Assistants.

6.Learned Counsel for the petitioners further submitted that when a similar decision was taken in the year 2006 to transfer some of the BRTEs as BT Assistants to various Government Schools, an option was provided to them to give their consent. But, by the impugned Government Order, all the 3700 BRTE posts are shown as zero vacancy and all the BRTEs are compelled to participate in the counselling and chose the respective place, according to their appointment seniority. Adding fuel to the flame, the senior most 500 BRTEs are compelled to be converted as BT Assistants. These guidelines issued by the impugned Government Order are contra to the guidelines to be followed in the matter of transfer.

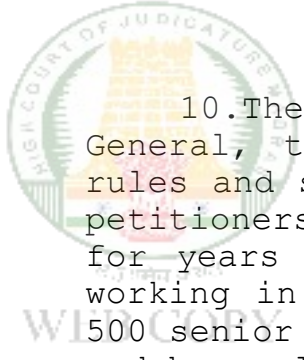
7.Learned Counsel has also relied upon the following decisions in support of their case:

i) **2009 AIR (SCW) 5511, Ajaya Kumar Das v. State of Orissa and Others;** and

ii) **2011 (3) CTC 129, Deputy Inspector General of Police v. V.Rani.**

8.Learned Additional Advocate General appearing for the respondents submitted that the BRTEs were appointed under a scheme of the Union Government, namely, Sarva Shiksha Abhiyan. The object of recruiting BRTEs is to improve the quality of imparting education in Government and Government Aided Primary, Middle, High and Higher Secondary Schools especially located in the rural areas and for providing training to Secondary Grade Teachers, BT Assistants and Headmasters / Headmistresses. These BRTEs were appointed between 2006 and 2010, based on the rank issued by Teachers Recruitment Board, on subjects such as Physics, Chemistry, Zoology, History, Tamil, English and Mathematics. Pursuant to the Sarva Shiksha Abhiyan scheme, the Government of Tamil Nadu, vide G.O.Ms.No.16, School Education (Q2) Department, dated 05.02.2002, recruited Teachers as BRTEs with a condition that they may be absorbed in the Government Schools.

9.The Government has also issued adhoc rules on the service conditions of BRTEs vide G.O.(Ms)No.52, School Education (C2) Department, dated 30.03.2006, that the posts of BRTE and BT Assistant are inter-changeable. Subsequently, by virtue of G.O.(Ms) No.158, School Education (C2) Department, dated 07.09.2006, the Government has permitted to transfer 500 BRTEs as BT Assistants in various Government Schools, on seniority basis, however with their consent. In the year 2014, the Department identified 395 surplus posts among the BRTEs and the junior most BRTEs, who were working in Chennai, Cuddalore, Dindigul, Karur, etc., ie., from surplus areas, were deployed to the required areas like Coimbatore, Dharmapuri, Kancheepuram, etc.



10. Therefore, according to the learned Additional Advocate General, the post of BRTE is inter-changeable, as per the adhoc rules and similar transfers were made in the year 2006 and that the petitioners cannot claim that they can be retained in the same place for years together. He further submitted that the petitioners are working in the same place as BRTEs for several years and among the 500 senior most BRTEs, around 420 have accepted the Government Order and have also opted the place in the general counselling.

11. He further submitted that transfer of an employee or allowing the employee in a particular place is purely within the prerogative of the Government. The petitioners cannot claim that they should be allowed to continue in the same place as BRTE all along their service by utilizing the option of relinquishment. Most of the BRTEs are continuing as BRTEs in the same place for more than seven years, which hampers the monitoring and administration by the School Education Department. The relinquishment as offered in the earlier occasions at the initial stage of implementation of scheme will not confer any right on the petitioners to have such option in all the general transfer counselling. If the claim of the petitioners to permit them to continue in the present station is considered, it will dislocate the entire administration. It is unfair to claim for continuing in the same place for a longer period. In fact, it is common practice for BRTEs to relocate to schools as Teachers and transfer them to other BRCs due to long period of stay in the same station to avoid malpractices. By conversion or transfer, their rights for promotion are not affected.

12. No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice, since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. The petitioners before this Court have also participated in the counselling, pursuant to the interim orders of this Court. He has also relied upon the following decisions:

- i) **(2004) 11 SCC 402, State of U.P. v. Gobardhan Lal;** and
- ii) **SLP.No.36717 of 2017, dated 06.09.2021, Namratha Verma v. State of U.P.**

13. This Court paid it's anxious consideration to the rival submissions and also perused the materials placed on record.

14. The petitioners before this Court are Block Resource Teacher Educators (BRTEs). They have been appointed under a scheme, namely, Sarva Shiksha Abhiyan. This scheme is sponsored by the Government of India, throughout the nation, with an object to provide quality education to all the children. The Government of Tamil Nadu has been implementing the said scheme in all the Districts in the State. The period of the scheme itself is for ten years.



15. The Government of Tamil Nadu conducted special recruitments through the Teachers Recruitment Board vide G.O.Ms.No.16, School Education (Q2) Department, dated 05.02.2002. To improve the teaching skills of Teachers, BRTes were recruited in the pay scale of School Assistants, with a condition that they would be absorbed in the Government Schools thereafter. As per G.O.Ms.No.94, School Education Department, dated 01.07.2002, BT Assistants appointed in Block Resource Centres and the Regular BT Assistants are inter-changeable.

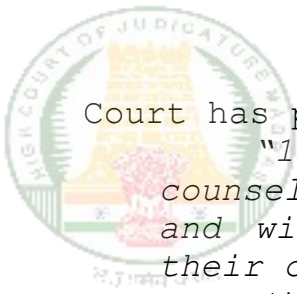
16. The BRTes' Association made a request to the Government on 20.06.2006 that they are not having any promotional options and they may be transferred and posted as BT Assistants. The said request was considered positively by the Government and vide G.O.(Ms)No.158, School Education (C2) Department, dated 07.09.2006, the Government has permitted the transfer of 500 BRTes of seniority as BT Assistants. However, an option has been provided to those Teachers to remain as BRTes, depending upon their consent. Prior to this, adhoc rules for BRTes are framed, vide G.O.(Ms)No.52, School Education (C2) Department, dated 30.03.2006 that the posts of BRTes and BT Assistant are inter-changeable.

17. Pursuant to G.O.(Ms)No.52 and G.O.(Ms)No.158, School Education Department, 500 BRTes have been transferred as BT Assistants, in the year 2006. In the year 2014, the Government has identified 395 BRTes as surplus in certain Districts, like, Chennai, Cuddalore, Madurai, etc., and deployed them to places where there is shortage of BRTes, like, Dharmapuri, Pudukottai, Ramanathapuram, etc. While deploying the BRTes, the junior most were deployed, irrespective of their consent.

18. General guidelines were issued for transfer of Teachers, who are working in the Government and Corporation Schools, in the year 2009 vide G.O.(1D)No.218, School Education (Pa.Ka.5)(1) Department, dated 20.06.2019 and in that Government Order, in Clause 17, it is stated that separate guidelines would be issued for the transfer of BRTes. But the Government has not taken any decision framing the guidelines and therefore, one Sampath and six other BRTes have approached this Court by filing a writ petition in W.P.No.27085 of 2019, seeking a mandamus directing the Department to conduct transfer counselling by framing separate guidelines, as per Clause 17 of G.O.Ms.No.218, School Education (Pa.Ka.5)(1) Department, dated 20.06.2019, by following the guidelines issued for the transfer of counselling in the year 2014. The said writ petition was disposed of by this Court by order dated 30.09.2019, with a direction to the respondents to frame guidelines as per Clause 17 of G.O.Ms.No.218, School Education (Pa.Ka.5)(1) Department, dated 20.06.2019, within a period of twelve weeks. Accordingly, the Government Order in G.O.(1D)No.134, School Education (Pa.Ka.5)(1) Department, dated 18.08.2021, came to be passed, which is impugned herein.

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19. While entertaining these writ petitions on 14.09.2021, this



Court has passed an interim order as follows:

"12. ... (i) The petitioners shall participate in the counselling scheduled to be held tomorrow (i.e.15.09.2021) and without prejudice to their rights, they can exercise their option for the transferring place.

(ii) The respondent - Chief Educational Officer shall not pass any final orders insofar as the petitioners herein are concerned.

(iii) The petitioners shall also make application before the respective Chief Educational Officer stating that without prejudice to their right, they are participating in the transfer counselling.

(iv) It is made clear that the above interim order is applicable only to the petitioners, who have filed writ petitions till today (i.e.14.09.2021)."

20. The issue of transfer and posting has been considered time and again by the Hon'ble Supreme Court and the entire law has been settled by catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time, a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee, holding a transferable post, does not have any vested right to be posted at a particular place.

21. In **Gujarat Electricity Board v. Atmaram Sungomal Poshani**, reported in **1989 AIR 1433**, the Hon'ble Supreme Court has observed as under:-

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the another is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration."

22. In **Union of India v. H.N. Kirtania**, reported in **1989 AIR 1774**, the Hon'ble Supreme Court has observed as under:-

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide."

23. In **State Bank of India v. Anjan Sanyal, Appeal (Civil) No.226 of 1997**, dated 12.04.2001, the Hon'ble Supreme Court has held



as under:-

"4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

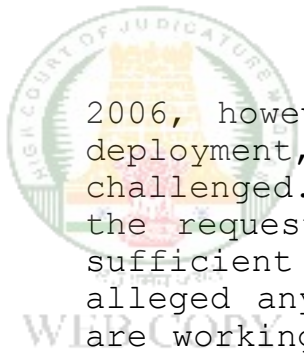
24. The Hon'ble Supreme Court, in the decision reported in **(2004) 11 SCC 402 [State of U.P. v. Gobardhan Lal]**, has held as follows:-

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment, but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service."

25. In **Namratha Verma v. State of U.P. [SLP.No.36717 of 2017, dated 06.09.2021]**, the Hon'ble Supreme Court has held that "it is not for the employee to insist him / her and or not to transfer him / her at a particular place. It is for the employer to transfer an employee considering the requirement."

26. The transfer order may cause great hardship, as an employee would be forced to have a second establishment at a far distant place; education of his / her children may be adversely affected; may not be able to manage his / her affairs and to look after his / her family. This aspect was also considered by the Hon'ble Supreme Court in **State of M.P. v. S.S. Kaurav, 1995 AIR 1056**, wherein it has been held that it is not permissible for the Court to go into the relative hardship of the employee. It is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration.

27. These petitioners were initially appointed under the Sarva Shiksha Abhiyan scheme, vide G.O.(Ms)No.16, School Education Department, dated 05.02.2002. In the said Government Order itself, it is mentioned that the scheme is for ten years initially and may extend beyond ten years. It is also stated that the posts of BTRE and BT Assistant are inter-changeable, considering the nature of resource development contemplated. Adhoc rules were also framed vide G.O.(Ms)No.52, School Education (C2) Department, dated 30.03.2006 and as per the rules, the posts of BRTE and BT Assistant are inter-changeable.



2006, however with consent and then, in the year 2014, by way of deployment, after framing the adhoc rules, which were not challenged. The deployment by transfer was initially made only on the request of the association of BRTes that they are not having sufficient promotional opportunities. The petitioners have not alleged any mala fide in the present transfer counselling and they are working as BRTes for more than ten years. They are seeking the right of relinquishment / option, as has been given in the year 2006. But the fact remains that guidelines have now been issued by way of the impugned Government Order, pursuant to the orders of this Court in W.P.No.27085 of 2019, dated 13.09.2019.

29. In view of the above position and the guidelines of the Hon'ble Supreme Court, this Court is not inclined to entertain these writ petitions.

30. During the course of arguments, it is represented that among the 500 BRTes, who are identified as the senior most persons, as per Clause 4(1)(m) of the impugned Government Order, 420 persons have not challenged the Government Order, participated in the Counselling and they have been accommodated in the respective places. These petitioners have also participated in the Counselling, however, no orders have been issued in view of the pendency of the writ petitions.

31. At this juncture, learned Additional Advocate General brought to the notice of this Court that the general counselling is yet to commence for BT Assistants and that if the petitioners are not inclined to take any place, which is available in the present transfer counselling, they can opt for the general counselling and that they would be given priority at the time of general counselling. This submission made by the learned Additional Advocate General stands recorded.

In the result, these writ petitions stand dismissed. There shall be no order as to costs. Pending interim orders shall stand vacated and consequently, all the connected miscellaneous petitions shall stand dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

gk



To

1. The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat,
Chennai.
2. The Commissioner of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
3. The State Project Director,
Samagra Shiksha,
DPI Campus, Nungampakkam,
Chennai - 600 006.
4. The Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
5. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai - 600 006.
6. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
7. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Sivagangai District,
Sivagangai .
8. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Tenkasi, Tenkasi District.
9. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Radhapuram, Tirunelveli District.
10. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
11. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Nagercoil, Kanyakumari District.



12. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Thanjavur, Thanjavur District.

13. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Madurai, Madurai District.

14. The Chief Educational Officer,
Theni District, Theni.

+8 CC to M/s. D. SHANMUGARAJA SETHUPATHI, Advocate (SR-36107, 36110, 36116, 36115, 36114, 36113, 36112, 36111[F] dated 26/11/2021)
+1 CC to M/s. SPL GP (SR-36023[F] dated 26/11/2021)

W.P. (MD) Nos. 16310, 16312, 16313, 16506, 16508, 16510, 16507, 16509, 16396, 16401, 16400, 16403, 16399, 16402, 16398, 16431, 16432, 16434, 16441, 16435, 16436, 16438, 16437, 16439, 16440, 16433, 16443, 16564, 16663, 16665, 16664, 16666, 16668, 16669, 16677, 16678, 16680, 16681, 16683, 16679, 16682, 16685, 17829 of 2021
24.11.2021

KMV (CO)
SB (31.12.2021) 18P 24C