



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P(MD)No. 21457 of 2018

M.Esther Navaroji

... Petitioner

Vs.

1.The Principal Secretary to Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 600 009.

2.The State Project Director,
Sarva Siksha Abiyan,
Chennai.

3.The Director,
School Education Department,
DPI Complex, College Road,
Chennai - 600 006.

4.The Joint Director (Personnel),
School Education Department,
DPI Complex, College Road,
Chennai - 600 006.

5.The Chief Education Officer,
Tirunelveli.

6.The Chief Education Officer,
Thiruvavur.

... Respondents

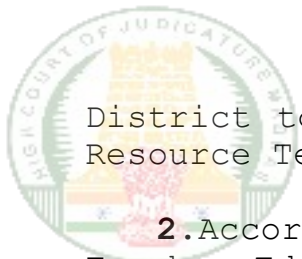
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 4th respondent to transfer the petitioner from Needamangalam Block Resource Centre, Thiruvavur District to any one of the existing vacancies in the post of Block Resource Teacher Educator in Tirunelveli District.

For Petitioner : Mr.V.Sasikumar

For Respondents : Mr.A.K.Manickam,
Counsel for State.

O R D E R

This Writ Petition has been filed for the issue of a Writ of Mandamus, directing the fourth respondent to transfer the petitioner from Needamangalam Block Resource Centre, Thiruvavur



District to any one of the existing vacancies in the post of Block Resource Teacher Educator in Tirunelveli District.

2. According to the petitioner, she is working as Block Resource Teacher Education (Mathematics) at Needamangalam. She came to know that there are five vacancies available for Maths Teachers (Block Resources Teacher Educator) in Tirunelveli District. Hence, the petitioner made a representation on 04.08.2018, seeking transfer from Needamangalam Block Resource Centre, Thirvarur District to any one of the existing vacancies in the post of Block Resource Teacher Educator in Tirunelveli District. Since the same was not considered so far, the petitioner has filed the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner's husband is working as a Teacher in Government Higher Secondary School, Munnerpallam, Tirunelveli District. He further submits that G.O.1D No.652, School Education Department, dated 31.10.2017 contemplates that if both the husband and wife are worked more than 30 kms., distance, they should be treated as spouse employee and therefore, prays for appropriate orders.

4. The respondents 5 and 6 have filed their counter affidavit. In the counter affidavit of the sixth respondent, it is stated as follows:

"3. The petitioner was recruited as Block Resource Teachers Educator [Mathematics] on 21-10 -2010 at Tirunelveli, under the Special Scheme of Sharva Shiksha Anhiyan that is scheme of Education to all. The petitioner was rendered surplus. Normally surplus staff should be retrenched from service. However, with sympathetic consideration, Government introduced a concession to save surplus teachers from retrenchment, by redeploying such surplus teachers to the needy place with their posts. Therefore the petitioner herein was redeployed to Thiruvarur District as Block Resource Teachers Educator to Needamangalam Block. At the same time 51 Block Resource Teachers Educators who were rendered in Tirunelveli District were redeployed to different Block Centers in Other Districts. Service in order to provide job protection from retrenchment, the petitioner was transferred to the needy Block Centre and hence there is no assurance by the Department was given in the redeployment order that she will re-posted to Tirunelveli District as and when vacancy arises through the transfer counseling. The petitioner's service is transferable within the state. As stated by the petitioner, transfer Government Go [1D] No.652 Dated 31-10-2017 has specified various preferential cases to be considered for transfer. Transfer of wife



or husband to the place around 30 Kms where his / her spouse is working, is one amount the various preferential cases for transfers. The petitioner has not stated the reason for not making application of transfer by the husband of the petitioner seeking transfer to Thiruvarur District where the petitioner is working. Transfers could be made only as per creation for transfer and it could ne made only vacancies are available. Hence it is not possible to give transfer to government servant to a place where his / her spouse is working when there is no vacancy. It is pertinent to note that the petitioner had applied for transfer to a place in Kanyakumari District. Which is far away from Melapalayam where her husband is working.

4.The petitioner has not stated the place of the office of the Public Information officer who furnished information to the petitioner. The Petitioner has averred that before applying request transfer to Tirunelveli District she had applied for transfer to two Blocks in Kanyakumari District and it was rejected by the fourth respondent herein.....

5. Request transfers shall be considered during the transfer counseling alone. Individual request could not be considered prior to the transfer counseling since it would affect the rights of others who are expecting to get transfer when transfer counseling will be conducted.

6.In the present case the petitioner has not proved that due to perversity or malafide intention, the respondents have not considered her request for transfer. At present Election code of conduct is invogue and the schools are closed for summer vacation and hence no transfer could not be made further there is no vacancy to consider the request of the petitioner as per criteria for request transfers and in accordance with law on merits...."

5.I have anxiously considered the rival submissions made by both sides and also perused the materials on record.

6.In the considered opinion of this Court the writ petition was filed in the year 2018 and sought for transfer during that point of time. Now after the lapse of four years, the said request cannot be considered by this Court. Therefore, in the light of the above facts and circumstances, this Court is of the view that there is no merit in this Writ Petition and the Writ Petition deserves to be



dismissed. Accordingly, this Writ Petition is dismissed. However, it is for the petitioner to make a fresh representation seeking transfer or participate in the counseling for the coming years.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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- 5.The Chief Education Officer,
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- 6.The Chief Education Officer,
Thiruvarur.

+1 CC to M/s.GP (SR-27893[F] dated 02/09/2021)

W.P(MD) No. 21457 of 2018

31.08.2021

RS (16.09.2021) 4P 8C

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