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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.3.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.1718 OF 2022
AND W.M.P.NO.1864 & 1866 OF 2022

S.Prabhavathi

...Petitioner

Vs.

1.The Government Of Tamil Nadu
Rep. by its Principal Secretary to Govt.,
(School Education Department)
Fort St. George Chennai-9.

2.The Commissioner Of School Education,
DPI Campus, College Road,
Nungampakkam, Chennai-6.

3.The Joint Director (Personal)
Dept. of School Education, DPI Campus,
College Road,
Nungambakkam, Chennai-6.

4.The Chief Educational Officer,
Villupuram,
Villupuram District.

...Respondents

Prayer : The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to impugned clause 2 (a) (3) of G.O. (Ms) No.176 School Education (SE5(1)) Department dated 17.12.2021 of the 1st respondent herein and the impugned proceedings in Na. Ka. No. 25154/ A1/ E2/ 2021 dated 10.01.2022 of the 2nd respondent herein and quash the same and consequently direct the respondent herein to permit the petitioner to take part in the transfer counselling scheduled to be held on 18.02.2022 or any other subsequent dates by placing the petitioner under priority quota in the light of order dated 07.01.2022 in W.P.(MD) No.266 of 2022 of this Court.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.R.Neelakandan, A.A.G.
Assisted by Mrs.M.Keerthika, G.A.



4. Heard the rival submissions of the parties and perused the materials available on record.

5. The learned counsel appearing for the petitioner drew the attention of this Court to the order passed by this Court in W.P(MD) No.16310 of 2021 datd 24.11.2021 wherein relief has been granted based on the undertaking given by the Additional Advocate General that preference will be given to the BRTE teachers in the General Transfer Counselling and seeks same relief to be granted to the writ petitioner.

6. On perusal of the order dated 24.11.2021 it clearly shows that the writ petition filed against the G.O.Ms.No.134 dated 18.8.2021 challenging the transfer of BRTE teachers to Government High/Higher Secondary Schools as B.T. Assistants. At the time of final order passed by this Court, based on the undertaking given by the learned Additional Advocate General before this Court that the writ petitioners/BRTE teachers will be given preference in General Transfer Counselling. Further, G.O.Ms.No.134 dated 18.8.2021 which was challenged in the aforesaid writ petition was not quashed and recording the said undertaking, the writ petition was dismissed.

7. The Delhi High Court in UNION OF INDIA AND OTHERS. VS. SANJAY KUMAR NAIK AND OTHERS [WRIT PETITION (CIVIL) No.9413 of 2016] has held as under:

'45. A careful reading of the aforesaid principles reveals that the principle of in rem in the second sense is not absolute. It is preferable to follow the said principle so that there is no discrimination or violation of Article 14 in service matters for all similarly situated persons should be treated alike and not differently. However, delay and laches as well as acquiescence can be a ground to deny benefit to fence sitters. Those who do not approach the Court in a timely and prompt manner can be denied "equal treatment". Thus, it will be right to hold that doctrine of in rem in the second sense is not unconditional or unimpeachable. However, this exception would not apply where the earlier judgment pronounced by the Court is with the intent to give benefit to all similarly situated persons, whether they had approached the Court or not. Benefit should not be extended when the said intent is not there and the judgment expressly or impliedly



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states that the benefit of the judgment would be extended to those, who had sought to enforce their rights and their petitions were not stale on account of delay and laches or acquiescence.''

8. The petitioner who has not challenged the said G.O. nor raised any objection to participate in the General transfer Counselling and she has selected the place of her own choice, after watching the proceedings as fencesitter without approaching the Court in time, the petitioner is estopped from claiming the same benefit granted in W.P.(MD) No.16310 of 2021 dated 24.11.2021.

9. In view of the above, the writ petition stands dismissed. No Costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Govt.,
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School Education Department,
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- 2.The Commissioner Of School Education,
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- 3.The Joint Director (Personal)
Dept. of School Education,
DPI Campus, College Road,
Nungambakkam, Chennai-6.
- 4.The Chief Educational Officer,
Villupuram,
Villupuram District.

+1cc to Mr.S.N.Ravichandran, Advocate, Sr.No.17843
+1cc to the Government Pleader, Sr.No.18182

W.P.No.1718 of 2022
and W.M.P.No.1864 & 1866 of 2022

PM(CO)
RVM(11/04/2022)