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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.05.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13228 of 2022
and
W.M.P.No.12561 of 2022

S.Jamuna Rani

...Petitioner

Vs.

- 1.The Commissioner of School Education,
Directorate of School Education,
DPI Complex, College Road,
Chennai - 600 006.
- 2.The Joint Director of School Education,
(Higher Secondary Education)
Directorate of School Education,
DPI Complex, College Road,
Chennai - 600 006.
- 3.The Joint Director of School Education,
(High School Education)
Directorate of School Education,
DPI Complex, College Road,
Chennai - 600 006.
- 4.The Chief Educational Officer,
Thiruvallur District, Thiruvallur - 602 001.

..Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the Respondents 2, 3 and 4 to comply with the order dated 15.03.2022 in W.P.No.3089/2022 and call the Petitioner for Special Transfer Counselling before 31.05.2022 to enable the petitioner to opt for transfer as Headmistress in the retirement vacancy in the post of Headmistress, Government High School, Annai Sivakami Nagar, Thiruvotriyur, which school is near petitioner place of residence in Anna Nagar, Chennai.



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For Petitioner: M/s.Nalini Chidambaram
Senior Advocate
For M/s.C.Uma

For Respondents: Mr.P.Bala Thandayuthan
Special Government Pleader

ORDER

The relief sought for in the present writ petition is to direct the Respondents 2, 3 and 4 to comply with the order dated 15.03.2022 passed in W.P.No.3089 of 2022 and call the Petitioner for Special Transfer Counselling before 31.05.2022 to enable the petitioner to opt for transfer as Headmistress in the retirement vacancy in the post of Headmistress, Government High School, Annai Sivakami Nagar, Thiruvotriyur, which school is near petitioner place of residence in Anna Nagar, Chennai.

2. The petitioner is now working as Headmistress in Kesavarajakuppam Post, Pallipattu Taluk, Thiruvallur district.

3. The learned Senior Counsel appearing on behalf of the writ petitioner contended that the petitioner was transferred, in view of the upgradation of the High School to Higher Secondary School and she was not transferred on account of her own volition. Therefore, she must be permitted to participate in the Special Counselling to be conducted by the Department.

4. The learned Senior Counsel made a submission that the petitioner along with 70 other Teachers filed W.P.Nos.3081, 3089 and 3122 of 2022 and this Court passed an order on 15.03.2022, permitting the petitioners to participate in the general transfer counselling for the Academic Year 2021-22. In this regard, the Commissioner of School Education is directed to conduct Special Counselling for all the 72 Teachers in that writ petition on or before March 2022.

5. The grievances of the writ petitioner is that the said order has not implemented. The petitioner was not called for to participate in the Special Counselling. Thus, the present writ petition is filed, seeking for a direction to implement the orders passed in the above writ petition on 15.03.2022.

6. The learned Special Government Pleader appearing on behalf of the respondents objected the contentions raised on behalf of the petitioner by stating that the petitioner is



working as Headmistress in High School and there is no vacancy in respect of the Headmistress Post and the other writ petitioners in the said writ petition are working as PG Assistants and therefore, the petitioner was not provided with an opportunity to participate in the general transfer counselling.

7. In reply, the learned Senior Advocate made a submission that the statement made by the learned Special Government Pleader is incorrect and in fact, there is a retirement vacancy available in Government High School, Annai Sivakami Nagar, Thiruvotriyur and the petitioner may be accommodated in the said post by permitting her to participate in the General Transfer Counselling.

8. This Court is of the considered opinion that the relief sought for in the present writ petition perse is not entertainable. The relief sought for is to direct the respondents to implement the orders passed in writ petition in W.P.Nos.3081, 3089 and 3122 of 2022 dated 15.03.2022. Such a relief cannot be granted in a writ proceedings. Thus, the writ petition is not entertainable at the first instance.

9. Let us now consider the scope of the transfer and posting and also to participate in the process of counselling.

10. This Court is of the considered opinion that the rights of the petitioner regarding posting and transfer of his/her choice is to be first considered.

11. With reference to the above issue, it is relevant to consider Section 48 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which contemplates posting and transfer. Sub-section (1) states that a member of a service or class of service may be required to serve in any post borne on the cadre of such service or class for which he is qualified. Sub-section (3) stipulates that notwithstanding anything contained in this Act or in any special rules or adhoc rules, the Government may transfer any Government servant from one Revenue District to another Revenue District within the State, on administrative grounds.

12. Thus, the power of transfer and posting conferred under the Act on the Government is an absolute one. Any guidelines or instructions cannot supersede the provisions of the Act. The guidelines or instructions are issued only for the administrative convenience and to provide certain concessions to



the Government employees. Such concession or choice provided to the employees can never be construed as a legal right for the purpose of instituting a writ proceedings under Article 226 of the Constitution of India.

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13. Concessions and facilities are provided only for the purpose of efficient public administration and not for providing absolute right in the matter of transfers. Therefore, the instructions and guidelines are issued by the Government for following uniformity in the matter of extending the concession and certainly not to confer any right on the Government employees. In other words, in the absence of any instructions / guidelines, the Sub-ordinate Authorities may exercise their powers in a whimsical manner and on some occasions, based on favouritism and nepotism. Therefore, the instructions and guidelines for transfer and posting are certainly necessary for the purpose of maintaining the consistency and uniformity. However, such instructions or guidelines would not confer any absolute rights for the Government servant to seek a place or post as a matter of choice.

14. A distinction is to be drawn in between the service rights and the concession extended to the Government servants. A service right is a right, which is conferred under the provisions of the Act, Rules or through the Government Orders in the matter of governing the services of the employees. However, while taking certain decisions for efficient and effective public administration, certain facilities and concessions are extended to the Government employees and such facilities or concessions would not provide a service right enabling the employees to approach the High Court under Article 226 of the Constitution of India. Thus, the distinction is to be drawn in between the service rights and the concessions/facilities provided.

15. The Hon'ble Supreme Court of India consistently took decisions that the instructions / guidelines provided in the matter of transfer for effective administration would not confer any right on the employees. However, the order of transfer can be challenged on the ground of lack of jurisdiction or malafide. No doubt, if any transfer is issued on malafide ground, then the Court can interfere. If it is issued by the incompetent authority having no jurisdiction, then also, appropriate relief can be granted. But, in all other circumstances, the transfer per se would not confer any right on the Government servants.



16. The facilities / concessions provided by way of transfer counselling is being taken as a cause for the purpose of filing Writ Petitions. Several Writ Petitions are filed in respect of transfer counselling. In the event of interference by the High Court, it would be difficult for the public administration to issue transfer and posting to the employees. The seniority plays no role in the matter of administrative transfers. Therefore, in all circumstances, the authorities are bound to exercise the power of transfers judiciously and for efficient public administration. The transfers cannot be issued on extraneous considerations. Even in the case where the Subordinate Authorities violated certain instructions, the employees may submit a complaint before the higher authorities against the wrong implementation of the instructions issued by the Head of the Department and the Head of the Department may initiate appropriate action against the authorities, who have violated the instructions including the departmental disciplinary proceedings. Contrarily, the High Court cannot interfere with such day-to-day administration of the Government Departments. The power of judicial review need not be extended for the purpose of interfering with the day-to-day administration of the Government Department.

17. The power of judicial review under Article 226 of the Constitution of India to the High Court is to ensure the process through which a decision is taken by the Competent Authority in consonance with the statute or not, but not the decision itself. Therefore, such administrative decision taken in the matter of concession / facilities would not be construed as a cause for the purpose of entertaining the Writ Petition nor would confer the right on the Government employee to seek the place or post as a matter of choice.

18. Therefore, this Court is of an opinion that certain Government orders in the matter of promotion, seniority or relating to service conditions were issued in consonance with the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act. Those guidelines get an approval of statutory force and all other instructions issued in the matter of transfer and posting would not get the approval of statutory enforceability. Such instructions or guidelines are issued for the Subordinate Authorities to implement the instructions given by the Higher Authorities and violation of such instructions may provide circumstances for an employee to submit a complaint against the Authority for initiation of action, but certainly not the Writ Petition for the High Court to interfere and



adjudicate the disputes in such matters. Thus, the distinctions are to be drawn by the Court in such matters, where service rights, concessions and facilities are provided to the Government employees. In the absence of drawing such distinction, every such Government Order will be taken as a cause for the purpose of filing the Writ Petition and the High Court cannot interfere in such matters regarding the routine administration of the Government and such interference is absolutely not contemplated to exercise the power of judicial review under Article 226 of the Constitution of India.

19. In the present case, the writ petitioner has earlier filed a writ petition in W.P.No.3089 of 2022. This Court directed the authorities to conduct a Special Counselling and the learned Special Government Pleader brought to the notice of this Court that there is no vacancy in respect of the Headmistress Post. However, the said submission is disputed by the learned Senior Advocate appearing on behalf of the petitioner. The learned Special Government Pleader made a submission that the vacancy may arise during the end of May 2022 and this being the factum, the petitioner cannot claim any right in respect of transfer and postings and further, counselling being a concession, cannot be claimed as a matter of right. Further, seeking a direction to implement the earlier orders of this Court cannot be granted in another writ petition.

20. For all these reasons, the petitioner has not established any right for the purpose of considering the relief and consequently, the writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

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DPI Complex, College Road,
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4. The Chief Educational Officer,
Thiruvallur District,
Thiruvallur - 602 001.

+1 CC to The Government Pleader sr 31792
+1 CC to Ms.C. Uma, advocate sr 31706.

W.P.No.13228 of 2022

AKII(CO)
SP(31/05/2022)