



WP No.11506 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-10-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.11506 of 2017

And

WMP Nos.12483, 12484 and 18663 of 2017

C.Lakshmi Priya

..

Petitioner

VS.

1.The Chief Educational Officer,
Cuddalore,
Cuddalore District-607 001.

2.The District Educational Officer,
Cuddalore,
Cuddalore District-607 001.

3.Sri Padaleswarar Higher Secondary School,
Thiruppapuliyur,
Cuddalore-607 002,
Represented by its Secretary,
V.S.Veeraragavan ..

Respondents



WP No.11506 of 2017

WEB COPY

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the proceeding of the first respondent in Na.Ka.No.5771/B3/2016 dated 05.04.2017 and 19.04.2017 and quash the same in so far as the petitioner as B.T. Assistant (English) is concerned.

For Petitioner	: Mr.Srinivasulu for Mr.M.Joseph Thatheus Jerome
For Respondents-1 and 2	: Ms.S.Mythreye Chandru, Special Government Pleader.
For Respondent-3	: Mr.R.Arumugam

ORDER

The order of administrative transfer issued by the first respondent in proceedings dated 19.04.2017, is under challenge in the present writ petition.

2. The impugned order of transfer reveals that the writ petitioner, who is working as P.G. Assistant (English), was transferred from



WP No.11506 of 2017

Thiruppapuliyur to Panruti, which is in the same District. The petitioner was declared as surplus in Sri Padaleswarar Higher Secondary School, Thiruppapuliyur and based on the proceedings declaring the petitioner as surplus, she was transferred to Sri A.Subburayachettiyar Girls Higher Secondary School at Panruti. Thus the distance between these two schools are about 22 kilometers and the transfer was effected on account of the fact that the petitioner was declared as a surplus teacher in the Higher Secondary School at Thiruppapuliyur. Therefore, an order was passed on account of Higher Secondary Administrative Exigency and based on the Inspection conducted by the Competent Educational Authorities regarding the students strength prevailing during the relevant point of time in Sri Padaleswarar Higher Secondary School at Thiruppapuliyur. Such an administrative transfer is challenged and pursuant to the interim order granted in the present writ petition, the petitioner is allowed to continue in the same school for more than five years.

3. It is not made clear whether the petitioner has performed her duties and responsibilities, since the Authorities during the relevant point of



WP No.11506 of 2017

time found that there was no required number of students, so as to sanction the post of B.T. Assistant (English).

4. This Court is of the considered opinion that the administrative transfers are issued on various circumstances for effective public administration. The High Court is not expected to interfere with such administrative transfers in a routine manner. The High Court cannot run the administration and in the event of any such interference in such administrative transfers, it would cause inconvenience to the public administration as the Competent Authorities are bound to ascertain the requirements and accordingly post the employees for efficient public administration. An order of transfer can be challenged before the High Court, if it is tainted with an allegation of mala fides or issued by an Incompetent Authority, but not otherwise.

5. In the present case, the order of transfer was issued based on the fact that the petitioner was treated as surplus pursuant to the inspection conducted by the Competent Authorities of the Education Department. She



WP No.11506 of 2017

was transferred to the nearby school, which is at 22 kilometers distance and the petitioner instead of joining challenged the transfer order and the vacate stay petition filed by the Government is also not taken up by the Courts for the past about five years, which caused inconvenience to the public administration and in this regard, this Court is of an opinion that the Registry of the Madras High Court is also expected to list the vacate stay petitions as per the mandate of the Constitution under Article 226 of the Constitution of India. Once the vacate stay petition is filed, it is to be listed without causing any undue delay. But the practice prevailing in this High Court is that the vacate stay petitions are not even listed for several years.

6. It is pertinent to look into the mandate under Article 226 sub-clause (3), which reads as under:-

"(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without -

(a) furnishing to such party copies of such petition and all documents in support of the plea



for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.”

7. The situation remains that a large number of vacate stay petitions are filed and not even listed for hearing, which causes heart burning issues amongst the litigants, who all are prejudiced or affected on account of any interim order granted merely based on the submissions by



WP No.11506 of 2017

the petitioners. Once the vacate stay petition is filed, it is to be treated as a right on the person, who filed such writ petition for hearing. Since the petitions are filed with certain facts and circumstances, which may be right or wrong. When the opposite party files the vacate stay petition, then it is to be considered as right conferred under Article 226 sub-clause (3) of the Constitution of India.

8. The very purpose and object of the sub-clause (3) to Article 226 of the Constitution of India is to ensure that the judicial process has not been abused by any of the party based on the pleadings or documents. For example, a writ petition is filed by a person with some pleadings and documents and sometimes, such pleadings may be erroneous, false or incorrect statements. In the event of granting an interim order, the rights of the opposite parties are infringed. In such circumstances, if the opposite party files a vacate stay petition and such vacate stay petitions are not even listed in accordance with Article 226 sub-clause (3) of the Constitution of India, then it would cause infringement of her right.



WP No.11506 of 2017

9. Therefore, the importance of listing of the vacate stay petitions filed by the opposite parties must be understood with the spirit of the Constitution and all such petitions are to be listed on priority basis and to be heard by the Court as mandated under the Constitution of India.

10. This Court on earlier occasion passed a similar judicial order in WP No.11798 of 2016 and based on the said order, the Registrar-General of the Madras High Court issued a Circular in Roc.No.66574-A/2018/F1 dated 01.10.2018. Even after issuance of the said Circular, the vacate stay petitions are not listed.

11. In the present case, it is not even listed at least once from the date of filing i.e., on 3rd July, 2017. Contrarily, the vacate stay petition was tagged along with the writ petition only in the year 2022, when it was taken up for final hearing. Such a practice of listing the matters are to be reconsidered by the High Court Registry and the fact that the vacate stay petitions are to be listed periodically in order to protect the rights of the other opposite parties, who all are likely to be prejudiced on account of the



WP No.11506 of 2017

interim orders, if any passed by the High Court in any of the proceedings.

Thus, the Registry of the Madras High Court has to initiate appropriate steps in this regard to list the vacate stay petitions, if necessary, by obtaining the orders from the Hon'ble The Chief Justice.

12. As far as the case on hand is concerned, it is an administrative transfer issued on account of an administrative exigency and the petitioner has already served for more than five years in the place where there is no sanctioned post was available and received the salary.

13. That being the factum, no further consideration needs to be undertaken and the respondents 1 and 2 are directed to ascertain the present position of the school and act accordingly.

14. With the abovesaid observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

18-10-2022

Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

Svn

Note to Office: The Registry is directed to communicate a copy of this order to The Registrar-General, High Court, Madras.

9/10



WEB COPY



WP No.11506 of 2017

S.M.SUBRAMANIAM, J.

Svn

To

- 1.The Chief Educational Officer,
Cuddalore,
Cuddalore District-607 001.
- 2.The District Educational Officer,
Cuddalore,
Cuddalore District-607 001.

WP 11506 of 2017

18-10-2022

10/10