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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.347 of 2022

and

W.M.P(MD)Nos.268 to 270 of 2022

J.Franklin Lourdu Selvarani

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai - 9.
- 2.The Commissioner of School Education,
O/o. The Commissioner of School Education,
DPI Compound,
Chennai.
- 3.The State Project Director,
Samagra Shiksha
(Integrated School Education),
State Project Directorate,
DPI Campus,
Chennai - 6.
- 4.The Joint Director School Education (Personnel),
O/o. The Joint Directorate School Education,
Chennai - 6.
- 5.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Virudhunagar,
Virudhunagar District.
- 6.The Chief Educational Officer,
O/o. The Chief Educational Office,
Tirunelveli,
Tirunelveli District.



7.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Tenkasi,
Tenkasi District.

8.The Headmaster,
Government Higher Secondary School,
Ulloorpatti,
Srivilliputtur Educational District,
Virudhunagar District.

... Respondents

Prayer : Writ Petition 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 1st respondent vide G.O.(Ms)No.176, School Education [SE5(1)] Department, dated 17.12.2021 and quash the same as illegal insofar as it relates to Clause 2(a)(3) is concerned and consequently directing the respondents to allow the petitioner to take part in the transfer counselling scheduled to be held on 24.01.2022 in conformity with the order dated 24.11.2021 of this Court in W.P.(MD)Nos.16310 of 2021, etc., within a stipulated time limit.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

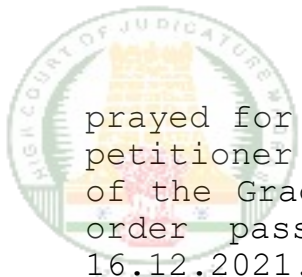
For Respondents : Mr.J.Ashok
Additional Government Pleader

ORDER

The petitioner has filed this writ petition as against the Clause 2(a)(3) of the Government Order in G.O.Ms.No.176, School Education [SE5(1)] Department, dated 17.12.2021. By the Government Order, the Government has announced for the General Transfer Counselling for Teachers working in Government / Panchayat Union / Municipal / Primary / Middle Schools and Government / Municipal High / Higher Secondary Schools and by the impugned clause, certain categories have been exempted from the condition of minimum one year of service to participate in the counselling.

2.Heard Mr.H.Mohammed Imran, learned counsel appearing for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents.

3.Though the writ petition has been filed challenging a particular clause in the Government Order, learned Counsel appearing for the petitioner, after some arguments, confined his relief and



prayed for a direction to the respondents to provide priority to the petitioner in the general counselling to be conducted for transfer of the Graduate Assistant Teachers (B.T. Assistant), in view of the order passed by this Court in WP(MD) No.22337 of 2021 dated 16.12.2021.

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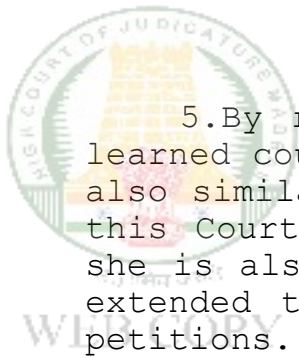
4.The petitioner was initially appointed under the Sarva Shiksha Abhiyan scheme, as Block Resource Teacher Educator (in short, 'BRTE') by the fourth respondent / Joint Director of School Education (Personnel) vide proceedings dated 14.07.2006, based on the Government Order in G.O(Ms) No.16, School Education (Q2) Department, dated 05.02.2002. The Government, vide G.O(1D)No.134, School Education (Pa.Ka.5)(1) Department dated 18.08.2021 framed certain guidelines for conducting transfer counselling and also conversion of BRTEs as BT Assistants to the Government High Schools and Higher Secondary Schools. By the said Government Order, 500 senior most BRTEs were transferred and posted as BT Assistants, irrespective of their willingness. The said Government Order was challenged by the similarly placed BRTEs in WP(MD) Nos.16310 of 2021 etc., batch and this Court, vide order dated 24.11.2021 while dismissing the Writ Petitions, has observed as under in paragraphs 29 to 31:

"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.''

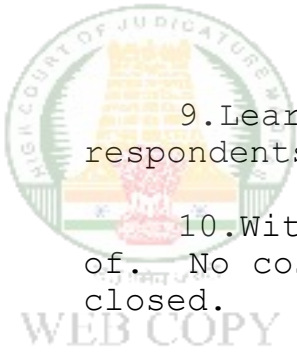


5.By referring to the above earlier order of this Court, the learned counsel for the petitioner submits that the petitioner is also similarly placed person as that of the persons who approached this Court in WP(MD) Nos.22337 of 2021 etc batch, and therefore, she is also entitled to get priority in the general counselling as extended to the writ petitioners in the above said batch of writ petitions.

6.Learned Additional Government Pleader, on the other hand, would submit that this petitioner may not get the benefit which was granted earlier, since priority has been provided in respect of those who filed the Writ Petitions before this Court and the same cannot be taken advantage by this petitioner, since she had not approached this Court challenging the Government Order earlier and thereby, she is not entitled for the same.

7.Though the learned Additional Government Pleader opposed that the petitioner is not entitled for the relief, the earlier order has been passed based on the undertaking given by the learned Additional Advocate General. Considering the fact that these persons who have been appointed as BRTEs in the year 2002 have been permitted to work as BRTEs, in the same posts for several years and only by way of G.O.Ms.No.134, dated 18.08.2021, a decision has been taken by the Government to post senior most 500 BRTEs as BT Assistants. Some of the BRTEs challenged the relevant portion of conversion of BRTEs to BT Assistants in WP(MD)No.16310 of 2021 and etc., batch and the same was dismissed by this Court by order dated 24.11.2021. However, during the course of hearing in the above writ petitions, the learned Additional Advocate General has submitted that those petitioners would be considered and would be given preference during the general counselling. Though the petitioner herein is not a party to the above Writ Petitions, she is also a similarly placed person as that of those Writ Petitioners in WP(MD) No.16310 of 2021 and etc., batch and therefore, she is also entitled for a preference during the general counselling. The statement made by the learned Additional Advocate General is the statement of the Government and is binding on all the similarly placed persons.

8.At this juncture, learned Counsel for the petitioner submitted that the cut-off date for applying to the transfer counselling ended on 07.01.2022 and the petitioner was not permitted to apply for the transfer counselling, by referring that she has not completed the minimum criteria of one year service in the present place. Since this Court has held that the petitioner is entitled for a preference during the general transfer counselling, as that of the similarly placed other persons, the respondents shall permit her to make an application for the general transfer counselling on or before 12.01.2022, which shall be considered by the respondents, in the light of the observations made supra.



9.Learned Additional Government Pleader shall inform the respondents as to the order passed by this Court, forthwith.

10.With the above observation, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions stand closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gk

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:

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat,
Chennai - 9.
- 2.The Commissioner of School Education,
O/o. The Commissioner of School Education,
DPI Compound,
Chennai.
- 3.The State Project Director,
Samagra Shiksha
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- 5.The Chief Educational Officer,
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Tenkasi District.

8.The Headmaster,
Government Higher Secondary School,
Ulloorpatti,
Srivilliputtur Educational District,
Virudhunagar District.

+1 CC to M/s.SPL.GP (SR-1492[F] dated 12/01/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-1140[F] dated
11/01/2022)

W. P (MD) No. 347 of 2022
10.01.2022

RD(03.02.2022) 6P 11C