



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.2233 of 2022

and

W.M.P. (MD) Nos.1943 & 1944 of 2022

M.Kachu Fathima

... Petitioner

vs .

1.The Government of Tamil Nadu
rep.by its Principal Secretary to Government
(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)
Department of School Education
DPI Campus, College Road
Nungampakkam, Chennai-6

4.The Chief Educational Officer
Tenkasi, Tenkasi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of 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 first respondent herein and quash the same and consequently direct the respondents herein to permit the petitioner to take part in the transfer counselling scheduled to be held on 12.02.2022 or any other subsequent dates by placing the petitioner under priority spouse quota.

For Petitioner : Mr.Pon Ramkumar.T., Advocate
For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader



O R D E R

This writ petition is filed questioning the validity of Clause-2(a)(3) of G.O.(Ms) No.176, School Education [SE5(1)] Department, dated 17.12.2021, issued by the first respondent herein and to direct the respondents to permit the petitioner to take part in the transfer counselling scheduled to be held on 12.02.2022 or any other subsequent dates by placing her under the priority spouse quota.

2.The petitioner was initially appointed as Junior Assistant on 04.02.2013 and thereafter, she was promoted to the post of P.G.Assistant on 08.02.2021 and posted in Avvaiyar Government Girls Higher Secondary School, Pavoorchatram, Tenkasi District.

3.The learned counsel for the petitioner made a submission that the earlier counselling policy was issued by the Government vide G.O.(ID) No.256, School Education Department, dated 19.04.2017. Thereafter, the present counselling policy for general transfer for teachers was issued by the Government vide G.O.(Ms) No.176, School Education [SE5(1)] Department, dated 17.12.2021. Clause 2(a)(3) of the Government Order, dated 17.12.2021, deals with categories exempted from the condition of minimum one year of service in the present station, which is extracted hereunder:

- "i. 100% Visually impaired teachers.
- ii. Physically challenged teachers with a disability of 50% and above and in possession of relevant certificate issued by the competent authority.
- Iii. Physically challenged teachers with a disability of 40% and above and in possession of relevant certificate issued by the competent authority.
- iv. Teachers having mentally ill and physically challenged children who possess relevant certificate issued by the competent authority.
- v. Teachers who have undergone kidney transplantation and dialysis treatment, heart operation and those affected by cancer and brain tumour."

4.The learned counsel for the petitioner reiterated that the one year norm has not been contemplated in the Government Order dated 17.12.2021 and exemption from the condition of minimum one year service in the present station is also given in respect of certain categories. The learned counsel states that the petitioner is eligible to participate in the counselling. Therefore, she may be permitted to participate in the transfer counselling scheduled to be held on 12.02.2022.

5.This Court is of the considered opinion that transfer itself is an incidental to service, more so, a condition of service. Transfer can never be claimed as a matter of right by the Government



employees. Transfers are issued on administrative grounds. It is the prerogative of the public administration to transfer the employee in the public interest and to ensure efficient and effective administration. The counselling policy introduced by the Government is a concession extended to the Government employees. Counselling policies are issued for providing an opportunity to the employees to choose the place or post subject to the availability and eligibility and as per the terms and conditions stipulated in the counselling policy. Therefore, a concession can never be claimed as a matter of right. However, such concessions are to be extended strictly in accordance with the terms and conditions of the counselling policy. The officials, who are all implementing the counselling policy, must ensure that the terms and conditions of the policy are strictly followed and the eligibility criterias of the candidates to participate in the counselling are verified and accordingly, appropriate decisions are taken.

6.The power of judicial review in respect of such general transfer counselling policy is limited. High Courts cannot interfere with the day-to-day administration of the Government Departments and it is not within the scope of judicial review. When transfer itself is incidental to service, the concession extended the employees to choose the place or post would never provide any cause for moving a writ petition.

7.For entertaining a writ petition, the right must be established or it's infringement is to be established. A mere general transfer counselling policy would not provide any cause of action for entertaining a writ petition under Article 226 of the Constitution of India. Thus, the eligibility or otherwise is to be considered by the Authority concerned with reference to the transfer policy for general transfer. The power of judicial review, in this regard, is undoubtedly limited and the Courts need not interfere with any such policies, which are all provided to facilitate the employees or to grant concession to choose the place or post, subject to the availability. Even in case if the employees are unable to get a particular post or place, then also it cannot be construed as a right. If at all there is any gross violation of the policy decision taken by the Authorities competent, then the aggrieved person has to approach the Authorities concerned for redressal of his/her grievance in the manner known to law. However, in the present case, the petitioner states that she is eligible to participate in the counselling. The eligibility of the petitioner is to be ascertained by the Authorities competent, while finalizing the list of candidates, who are all eligible to participate in the counselling. As far as the relief as such sought for in this writ petition, the Court cannot consider the same.

8.At this juncture, the learned counsel for the petitioner submitted that the petitioner has completed one year of service in



the present station. If so, it is for the Authorities competent to verify the service register of the petitioner and take appropriate decision in this regard.

9. With the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

11/02/2022

Sub Assistant Registrar (CS)

To:

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+1 CC to M/s. SPL.GP (SR-5678[F] dated 11/02/2022)

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RS (11.02.2022) 4P-6C