



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**W.P (MD) No. 2358 of 2020 and
W.M.P. (MD) Nos. 2016 and 2018 of 2020**

E.Angappa Raja

... Petitioner

-Vs-

1. The State Commissioner for the Differently Abled,
Commissionerate for Welfare of Differently Abled,
Lady Willington College Campus,
Kamarajar Road,
Chennai - 600 005.
2. The Joint Director for Welfare of Differently Abled,
Lady Willington College Campus,
Kamarajar Road,
Chennai - 600 005.
3. The Headmaster,
Government Higher Secondary School for Hearing Impaired,
Membalam,
Thanjavur - 1.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order of the second respondent through his proceedings in Na.Ka.No.0129/Se.Pa.3/2019 dated 31.01.2020 and quash the same.

For Petitioner : Mr.D.Venkatesh

For Respondents : Mr.S.Saji Bino
Special Government Pleader

O R D E R

This Writ Petition has been filed as against the proceedings of the second respondent in Na.Ka.No.0129/Se.Pa.3/2019 dated 31.01.2020.

2. By the order impugned in this Writ Petition, the petitioner, who is working as a Secondary Grade Teacher at Thanjavur is transferred and posted as Deputy Warden to the Special School,



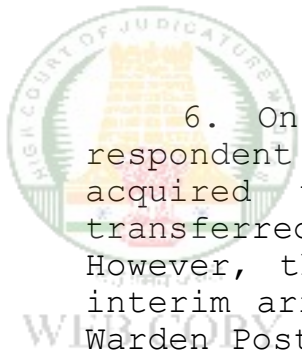
Thanjavur. The grievances of the petitioner is that the petitioner, who is working as a Secondary Grade Teacher, cannot be transferred and posted as a Deputy Warden and therefore, he filed this Writ Petition.

3. The first respondent / State Commissioner has filed a counter affidavit stating that due to administrative reasons and also considering the health condition of one Tamilselvi, a Secondary Grade Teacher, who was then working in the post of Deputy Warden, the petitioner was temporarily assigned to work in the vacant post of Deputy Warden, as interim arrangement and it is also on rotation basis, so as to ensure all the Secondary Grade Teachers are given equal work allocation for holding additional charge as maintainable by law and facts.

4. By referring paragraph 5 of the counter affidavit filed by the first respondent, the learned counsel appearing for the petitioner submits that the Secondary Grade Teacher who acquired the Teacher Eligibility Test - Paper 1 cannot be transferred into a Deputy Warden Post and it is not maintainable. The said contention of the learned counsel appearing for the petitioner is also accepted in the counter affidavit. The relevant paragraph is extracted hereunder:

"5. With reference to the averments made in paragraphs 6 & 7, it is most respectfully submitted that I deny the allegations of the petitioner stating that there was a proposal to transfer the petitioner from the post of Secondary Grade Teacher to Deputy Warden, since he is the junior most in the seniority list maintained by the third respondent's School. As submitted above, though the posts of Secondary Grade Teacher and Deputy Warden come under the same scale of pay which was Rs.5200-20200+GP 2800, the Secondary Grade Teacher who acquired the Teacher Eligibility Test - Paper 1 cannot be transferred into a Deputy Warden post since it is not maintained by law and facts. It is further humbly stated that the petitioner has submitted a representation dated 23.09.2019 that the petitioner was under an assumption that he will be transferred to the post of Deputy Warden in Government Higher Secondary School for the Hearing Impaired, Thanjavur, since he is being the most junior person in seniority and has stated that there is no provision / rules in Government to appoint the person who had passed TET examinations in the post of Deputy Warden.

5. It is also stated in the counter affidavit that there is no plan of action initiated for transferring the petitioner to the post of Deputy Warden by the Department as assumed by the petitioner.



6. On reading of the counter affidavit filed by the first respondent it appears that the Secondary Grade Teacher, who acquired the Teacher Eligibility Test Paper - 1 cannot be transferred into a Deputy Warden post and it is not maintainable. However, the petitioner has been posted on temporary basis, as an interim arrangement, in view of the existing vacancy in the Deputy Warden Post that too on rotation.

7. The learned Special Government Pleader clarified the counter affidavit made in paragraph 5 that it is not the acceptance of the respondents that the transfer is permissible under law and the petitioner can be accommodated depending upon the administrative exigency.

8. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

9. It is the specific ground taken by the petitioner that the petitioner, who is working as a Secondary Grade Teacher, cannot be posted as a Deputy Warden. The respondents have also accepted that the petitioner, who is a Secondary Grade Teacher cannot be transferred and posted as Deputy Warden and law does not permit the same. However, the petitioner is transferred from the post of Secondary Grade Teacher and posted as Deputy Warden. Though the respondents claimed that the transfer is on temporary basis due to administrative exigency, when law does not permit transfer of Secondary Grade Teacher to a Deputy Warden, then, the impugned order passed by the respondents posting the petitioner as Deputy Warden is against the law, which cannot be sustained and accordingly, the same is liable to be quashed.

10. In the result, the Writ Petition is allowed and the impugned order of the second respondent, dated 31.01.2020, is quashed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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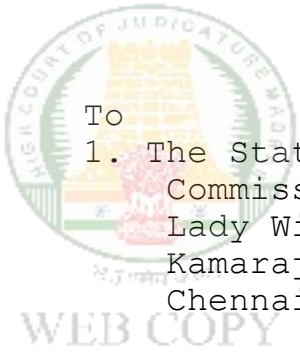
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Sub Assistant Registrar(CS)

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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

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+1 CC to M/s.SPL.GP (SR-3936[F] dated 03/02/2022)

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and
W.M.P. (MD) Nos. 2016 and 2018 of 2020
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RK(30/03/2022) 4P 5C