



WEB COPY

W.P.(MD) No.2976 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.2976 of 2022

and

W.M.P (MD) Nos.2608 & 2609 of 2022

M.Sumathi

... Petitioner

-vs-

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.

2.The Joint Director of Elementary Education,
Madurai Zone.

3.The Chief Educational Officer,
Meenachinayakkanpatti,
Dindigul District.

4.The District Elementary Educational Officer,
Vedasandur, Dindigul.

5.The Block Educational Officer,
Reddiar Chathiram,
Dindigul.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the first respondent in Na.Ka.No.756/D1/2021 dated 11.01.2022 quash the same and consequently forbear the respondents herein from conducting General Counseling for Hill Rotation Transfer in view of withdrawal of G.O.Ms.No.404, Education, Science & Technology (S2) Department, dated 25.05.1995 by virtue of G.O.Ms.No.176, School Education (SE5 (1)) Department, dated 17.12.2021 and Amendment thereto.

For Petitioner : Mr.K.Muthu Ganesa Pandian

For Respondents : Mr.V.Om.Prakash
Government Advocate

O R D E R

The writ petition has been filed with an apprehension that the petitioner is going to be transferred to a Hill place. The apprehension of a Government employee in this regard, at no circumstances be entertained. The Government employees have gone to

<https://hcservices.ecourts.gov.in/hcservices/>

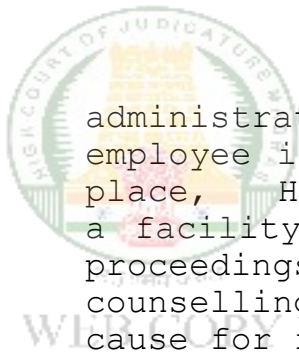


the extent of filing the writ petition that he is going to be transferred to Hill station and therefore, the circular issued by the authorities in general is to be set aside.

2. The circular impugned, dated 11.01.2022 is relating to the counselling procedures to be followed in respect of the schools in Hill areas. The said circular is issued based on the Government Order No.176, School Education [SE5(1)] Department, dated 17.12.2021. The said Government Order is relating to general transfer counselling policy for teachers working in Government/Panchayat Union/ Municipal Primary/ Middle Schools and Government/Municipal/ Corporation High/Higher Secondary Schools for the year 2021-2022. It is the guidelines issued for counselling to effect general transfers. Based on the guidelines, the Director issued a circular to the subordinates in proceedings, dated 11.01.2022. Such circular would not provide a cause for moving a writ petition, in view of the fact that the petitioner has not even transfer to any other place and furthermore, the counselling itself is a concession granted to the employees facilitate them to choose a place or posting of their choice.

3. Even counselling is a facility provided, counselling is a concession extended by the Government by way of guidelines. Concession can never be construed as a right. Under Section 48 of the Tamil Nadu Government Servants (Conditions of Service Act) 2016, provides posting and transfers. Sub Section (1) enumerates 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. Therefore, the statute contemplates that the Government servant is bound to work wherever he/she is posted. If at all an order of transfer has been issued, the same can be challenged in a writ proceedings on a limited ground of jurisdiction or malafides. Even a case of raising an allegation of malafides, the authorities against whom such allegation is raised, must be, impleaded as party respondent in his personal capacity.

4. Thus, transfer is a rule. All other guidelines, schemes are concession. Those concessions or guidelines would not confer any right on the Government servant to seek a particular posts or place, while availing the concession, they are at liberty to do as per the guidelines. Even, the violations in respect of those guidelines would not result in infringement of rights in view of the fact that those guidelines do not have statutory enforcement. The transfer is incidental to service, more so, a condition of service. Transfer *per se* would not provide a cause of action for challenge. Transfer being incidental, counselling concessions are made available for smooth running of the administration. Therefore, such counselling facility provided would not infringe the right of an employee. Even if an employee is unable to get a particular post or place during counselling, the same would not confer any right on the employee to challenge the transfer orders. Transfer orders are passed on



administrative grounds. In normal circumstances a Government employee is provided with an option in the counselling to choose a place, However, such an option is not a right conferred and it is a facility provided and based on such facility/concession, a writ proceedings need not be entertained. Thus, in respect of counselling procedures, a Government employee cannot constitute a cause for filing a writ petition.

5. In view of the facts and circumstances, the petitioner has not established even a semblance of liable right nor established a cause of action for the purpose of granting the relief. Further, the petitioner is working as of now in the present place at Puthuettamanaickanpatti. This being the factum, the writ petition is not entertained and accordingly stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Director of Elementary Education,
DPI Campus, College Road, Chennai-600 006.

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+1 CC to M/s.SPL GP (SR-6472[F] dated 16/02/2022)

W.P. (MD) No.2976 of 2022
15.02.2022

CK(CO)

TR(01.03.2022) 3P 7C