



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM

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

W.P. (MD) No.2980 of 2022

and

W.M.P (MD) Nos.2612 & 2613 of 2022

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S.Chandrakumaravel

... Petitioner

-VS-

- 1.State of Tamil Nadu,
Rep. by its Additional Chief Secretary to the Government,
Adi Dravidar & Tribal Welfare Department,
Fort St. George,
Chennai-9.
- 2.The Commissioner of Adi Dravidar Welfare,
Ezhilagam,
Chennai-5.
- 3.S.Madhumathi, I.A.S.,
The Commissioner of Adi Dravidar Welfare,
Ezhilagam,
Chennai-5.
- 4.The District Adi Dravidar and Tribal Welfare Officer,
O/o.the District Adi Dravidar and Tribal Welfare Office,
Virudhunagar District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order in Na.Ka.No.01/37368/2021, dated 01.02.2022 on the file of the respondent No.2 in so far as the petitioner is concerned and quash the same as illegal.

For Petitioner	: Mr.T.Lajapathi Roy
For Respondents	: Mr.D.S.Nedunchezian
R1, 2 & 4	Government Advocate

O R D E R

The order, dated 01.02.2022 issued by the Commissioner of Adi Dravidar Welfare cancelling the counselling transfer issued to the petitioner is under challenge in the present writ petition.

2. The petitioner was appointed as B.T.Warden in the year 2007 and he was transferred to Government Tribal Welfare Residential High



School, Melanai, Papanasam, Tirunelveli District. Thereafter, he was transferred to the post of B.T.Assistant Mathematics in Government Adi Dravidar Welfare High School, Valasai, Kadayanallur Taluk, Tenkasi District and working in the said place from the year 2013 onwards. While so, based on the counselling instructions issued for general transfers, the petitioner participated in the counselling and opted the vacant place at Government Adi Dravidar Welfare Higher Secondary School, Sundarajapuram, Rajapalayam Taluk, Virudhunagar District. Accordingly, the second respondent issued an order of transfer in proceedings, dated 22.01.2022 and the petitioner was asked to join duty as he was relieved from the Government Adi Dravidar Welfare High School, Valasai, Kadayanallur Taluk, Tenkasi District.

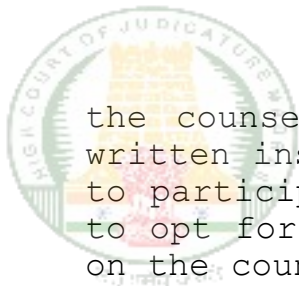
3. The petitioner joined in the transferred place at Sundarajapuram, Rajapalayam Taluk, Virudhunagar District and he was working for about 10 days. Under those circumstances, the second respondent, Commissioner, issued the impugned order by stating that the petitioner was not eligible to participate in the counselling and he was erroneously allowed to participate in the counselling, therefore, the Commissioner thought it fit that such errors should not happen in future, cancelled the counselling transfer and the said cancellation is under challenge in the present writ petition.

4. The petitioner has raised an allegation of malafides against the Commissioner of Adi Dravidar Welfare and impleaded the Commissioner in his personal capacity as third respondent. However, the learned counsel for the petitioner while arguing the case, made it clear that he is not pressing the ground of malafide. This Court is of the considered opinion that there are no sufficient grounds to entertain the allegation of malafides against the third respondent.

5. The learned Additional Government Pleader furnished the copy of the written instructions given by the District Adi Dravidar Welfare Officer in his letter, dated 14.02.2022. The written instructions states that no doubt, the counselling guidelines were issued, however, the petitioner is working at Government Adi Dravidar Welfare High School, Valasai, Tenkasi District for about 9 years continuously. Though, he was eligible to participate in the general transfer counselling, the petitioner has not participated in the said general transfer counselling as per the instructions regarding the counselling procedures.

6. The learned counsel for the petitioner intervened at this juncture and replied by stating that non participation of the petitioner in the general transfer counselling would not have any relevance as far as the impugned order is concerned.

7. Be that as it may, this Court is of the considered opinion that the petitioner admittedly working for more than 9 years in the Government Adi Dravidar Welfare High School, Valasai, Tenkasi District. His participation in



the counselling was found to be erroneous. It was stated in the written instructions that the petitioner was inadvertently permitted to participate in the counselling and therefore, he is not eligible to opt for the post and thus, the order of transfer is issued based on the counselling was cancelled.

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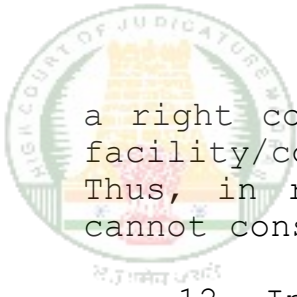
8. The question arises whether the petitioner has a right in respect of the counseling. The petitioner/Government servant has got a right regarding counselling or any of his service rights are infringed.

9. Mere, facility/concession cannot be construed as an enforceable right. Certain concessions are provided by the Government for smooth functioning of the administration and also to ensure that the hardship, if any, to be caused is minimize to the extent possible. However, every Government servant is duty bound to work in the place he/she is posted.

10. 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.

11. 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 a incidental to service, more so, a condition of service. Transfer per se would not provide a cause of action for challenge. Transfer being a 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 such transfer orders. Transfer orders are passed on administrative grounds. In normal circumstances, a Government employee is provided with an option in

<https://hdcases.courts.gov.in/lcservices/> 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.

12. In view of the facts and circumstances, the petitioner has not established any grounds for granting the relief as such sought for and hence, the writ petition is devoid of merits. Accordingly, the writ petition stands dismissed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar(CS)

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To

1.The Additional Chief Secretary to the Government,
Adi Dravidar & Tribal Welfare Department,
Fort St. George,
Chennai-9.

2.The Commissioner of Adi Dravidar Welfare,
Ezhilagam,
Chennai-5.

3.The District Adi Dravidar and Tribal Welfare Officer,
Virudhunagar District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-6651[F] dated 17/02/2022)

+1 CC to M/s.SPL GP (SR-6505[F] dated 16/02/2022)

W.P.(MD) No.2980 of 2022
15.02.2022

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