



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No. 3247 of 2022

Sheela Wincy

... Petitioner

Vs.

1. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai.

2. The Chief Educational Officer,
Office of the Chief Educational Officer,
Pudhukottai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the first respondent to consider the petitioner's representation dated 28.01.2022 made for transfer to the post of BT Assistant situated either at Kaniyakumri District or at any place at nearby Districts considering the petitioner's predicament situation.

For Petitioner : Mr.B.Prahalad Ravi

For Respondents : Mr.N.Ga.Nataraj
Government Advocate

O R D E R

No writ is entertainable in the absence of establishing a cause or a right and even for issuing a direction to consider the representation, such a right is to be established.

2. There is a growing trend in the High Court that representations are sent on many issues without even ascertaining the service rights and based on such representations, even before giving breathing time to the Authorities, immediately Writ Petitions are filed. Such Writ Petitions are considered and routine directions are issued to consider the representations. In the event of issuing such directions, the Authorities are bound to consider and pass final orders. Accordingly, the Authorities are also passing final orders. Thereafter, the litigants are creating cause for the purpose of adjudicating the issues on merits. Therefore, such directions of the Courts are either utilized for restoration of



lapsed cause of action or to indirectly achieve their goals in an unethical manner.

3. It is brought to the notice of this Court that by getting an order of such direction, the majesty and the Authority of the High Court is undermined and the Authorities are of the opinion that the decision is in their hands and the High Court has issued directions only to consider the representations. These kind of directions are paving way for corrupt activities on the side of the Competent Authority and therefore, this Court is of the strong opinion that even for issuing direction to consider the representation, the litigant who is approaching the Court must establish his right first and there must be a cause of action. Even in such cases, the High Court are expected to dispose of the same on merits and in accordance with law by crystallizing their rights so as to give quietus to the issues. Contrarily, directions to consider the representation would do no service to the cause of justice. Therefore, in all circumstances, the merits are to be considered and the cause established must be adjudicated. That being the power of judicial review conferred under Article 226 of the Constitution of India, mere direction would do no purpose either to the litigant or to the issues raised on merits. Contrarily, such directions are resulting in corrupt activities or ending in favoritism and nepotism in getting results through the Executives.

4. In exceptional circumstances where a statutory appeal or statutory application is filed before the Competent Authority and rule contemplates such appeal, review or application and if the application or appeal is kept pending unnecessarily by the Competent Authorities, then alone, the High Court may issue such direction to dispose of the appeal or review or the statutory application contemplated under the Act or Rules, but not otherwise.

5. Every representation in a piece of paper would not provide cause of action for the purpose of entertaining the Writ Petition. Therefore, this Court is of the considered opinion that such Writ Petitions if entertained, no doubt would affect the majesty of the High Court in deciding the legal issues and further these kind of orders are utilized for the purpose of achieving goals by the litigants in an unethical, illegal or corrupt manner.

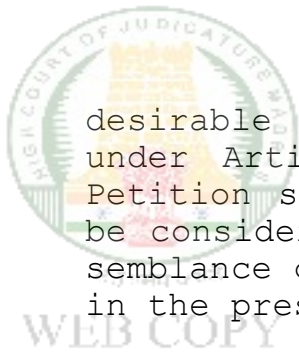
6. As far as the present Writ Petition is concerned, the representation submitted by the writ petitioner dated 28.01.2022 is the representation submitted on certain personal grounds. The High Court cannot consider the personal grounds of the Government employees. The authorities competent alone have to consider the personal grounds in respect of transfer and posting. The transfer is an incidental to service, more so, a condition of service. The transfer *per se* would not provide a cause for the purpose of entertaining the Writ Petition. The transfer order can be challenged



only on limited ground of lack of jurisdiction or malafides, but not otherwise. All other administrative transfers are to be implemented for the efficient public administration and High Court would not interfere with such administrative transfers.

7. Section 48 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 provides transfer and posting. Sub-section (1) stipulates 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. Sub-section (3) stipulates that notwithstanding anything contained in this Act or in any special rules or adhoc rules, the Government may transfer any Government servant from one Revenue District to another Revenue District within the State, on administrative grounds. Therefore, even in the absence of rules or special rules, the Government is empowered to effect transfer and posting on administrative grounds. This being the absolute power conferred on the Competent Authority, the order of transfer can be interfered only on limited grounds. However, a petition to consider the transfer application cannot be entertained by the High Court by way of writ proceedings. If such applications are entertained, then the High Court is being used as a recommending authority for the purpose of considering the transfer applications which is absolutely impermissible. The High Court is not empower to recommend the cases of transfer applications nor issue a direction to consider such applications. This will provide a wrong idea to the Authorities and on most occasions, such directions are either abused or misused by the litigants.

8. As far as the transfer applications are concerned, these all are mere representations to the authorities which is non statute. Therefore, the authorities may consider them in the interest of public administration. Even, they are not empowered to consider the applications in violation of the provisions of the Act or Rules and by extending favoritism or nepotism. Even for considering such transfer applications, the consistency must be followed by the Authorities in order to avoid discretion or create frustration in the mind of the employees. Every Government employee is expected to be treated equally even in the matter of transfer. The authorities cannot issue transfer orders in a vindictive manner or transfer the employees at their whims and fancies. If the administrative transfers are issued in the public interest and to improve the efficiency of the administration, that alone is to be considered as a valid transfer. However, the Courts cannot interfere in such exercise as the Courts are not empowered to interfere with day-to-day administration of the Government Department. The Executives are the best persons to decide, who should be given which post and place for the better administration and the Court cannot decide such matters and in the event of entertaining such Writ Petitions, the Courts are unnecessarily interfering with the administrative affairs of the Government Department which is not



desirable and not within the scope of the power of judicial review under Article 226 of the Constitution of India. Thus, the Writ Petition seeking a direction to consider the representation cannot be considered. Therefore, the petitioner has not established even a semblance of legal right, so as to consider the relief as sought for in the present Writ Petition.

9. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai.

2. The Chief Educational Officer,
Office of the Chief Educational Officer,
Pudhukottai District.

+1 CC to M/s.SPL GP (SR-7787[F] dated 22/02/2022)

+1 CC to M/s.B.PRAHALAD RAVI, Advocate (SR-7941[F] dated 22/02/2022)

W.P. (MD) No. 3247 of 2022
21.02.2022

GM(CO)

TR(11.03.2022) 4P 5C