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W.P.(MD) No.3304 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.3304 of 2022

and

W.M.P. (MD) Nos.2903 & 2904 of 2022

K.Radha

... Petitioner

vs.

1.The Chief Educational Officer
Panagal Building
Thanjavur Town
Thanjavur District

2.The District Educational Officer
Office of the District Educational Officer
Kumbakonam, Thanjavur District

3.The Block Educational Officer
Pabanasam Block
Pabanasam 614 205
Thanjavur District

4.The Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai-600 009

5.The Commissioner of School Education
College Road, Chennai-600 006
(R4 & R5 are *suo motu* impleaded vide Court
Order dated 22.02.2022)

... 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 the impugned order of the 3rd respondent in Na.Ka.No.32/A2/2022, dated 25.01.2022, quash the same and consequently direct the respondents herein to consider the petitioner for transfer under Spouse Category as per Clause (viii) of (d) in Clause 2 Special Category in G.O.(Ms) No.176, School Education (SE5(1)1) Department, dated 17.12.2021, on merit and in accordance with law.

For Petitioner : Mr.Vadivel.P.

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



O R D E R

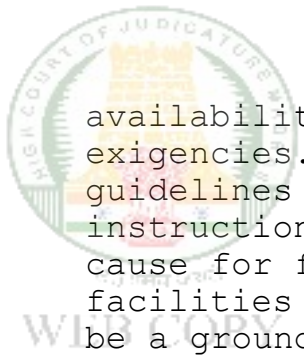
The order of rejection rejecting the claim of the writ petitioner to transfer her within the radius of 30 kms, as per the Government instructions on the ground of spouse working is under challenge in the present Writ Petition.

2. The petitioner is working as a Secondary Grade Teacher in the Panchayt Union Middle School, Eachangudi at Pabanasam Union for about eight years. The petitioner was initially appointed as Secondary Grade Teacher on 17.12.2012 and thereafter, she was transferred to the present School.

3. The husband of the petitioner namely Mr.J.D.ABernadrine is also working as Secondary Grade Teacher in Corporation Middle School at Chinnakadi Street, Old Mariyamman Kovil Road, Thanjavur Town. The petitioner states that they have got two daughters and they are studying in schools. Her mother-in-law is also aged. Therefore, she is unable to travel from Thanjavur to Eachangudi in bus daily. The distance between the school of her husband at Chinnakadi Street, Thanjavur Town and the school in which the petitioner is working at Eachangudi is approximately 32 to 33 kms. Based on that, the learned counsel for the petitioner states that as per the Government Order issued in G.O.Ms.No.176, School Educational (SE5(1)) Department dated 17.12.2021, the spouse employed cases are to be considered for transfer within the radius of 30 kms. Thus, the order of rejection is not in consonance with the Government Order.

4. The learned Government Advocate appearing on behalf of the respondents made a submission that even as per the impugned order, the Authorities have verified the actual distance through the satellite map which shows that the distance between two places where the petitioner and the husband of the petitioner are working is 18.07 kms. Therefore, they have not violated the Government Orders. Thus, the writ petition is to be rejected.

5. Public servants are claiming transfer as a matter of right, despite the fact that the Government issued instructions/guidelines providing certain concessions and facilities to accommodate them for efficient public administration. Even the Government order issued in G.O.Ms.No.176, stipulates that "the priority to be followed". Thus, it is only priority which would not confer any right so as to claim any infringement of the service conditions. In priority category, the instruction provides that "if both husband and wife are employed and the distance between the places of their employment is more than or outside a 30 km radius, their case will be considered under spouse quota and they will be treated as living in two different places". Thus, the Government order stipulates that their case will be considered, when there is



availability of post and by considering the administrative exigencies. Mere preference or priority granted in certain guidelines cannot be construed as a right or violation of such instructions/guidelines providing concession would not provide a cause for filing a writ petition. Certain concessions or priority or facilities are granted to the employees. Therefore, the same cannot be a ground for seeking an order of direction from the High Court to transfer an employee within the radius of 30 kms or otherwise. Even, in the present case, as per the impugned order, the respondents have measured the distance through satellite map and found that the distance is only about 18.07 kms.

6. Certain personal grievance of the petitioner cannot be considered by the High Court in a writ proceedings. No relief of such nature can be considered on misplaced sympathy. In the event of granting such relief on misplaced sympathy, the High Court is equally bound to consider the plight of other employees, who are similarly placed. Whenever a relief is granted, the Courts are bound to take into consideration the possibility of arising grievances of other set of employees. A balancing approach in this regard is certainly warranted. However, it is not as if the High Court can grant priority to accommodate the employee in a particular post or decide the day-to-day administration of the Department in a writ proceedings.

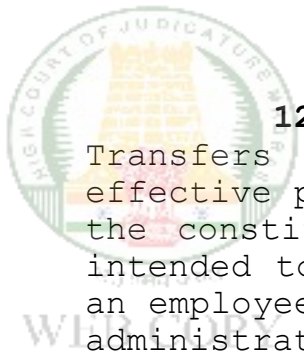
7. The principles governing the transfers are to be considered by this Court, at the first instance.

8. The Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Act No.14 of 2016) governs the powers of the Authorities to transfer the Government employees.

9. Section 48 of the said Act stipulates 'posting and transfer'. Sub-section (1) contemplates that 'a member of a service or class of service may be required to serve in any post both on the cadre of such service or class for which he is qualified'.

10. Sub-section (3) contemplates 'notwithstanding anything contained in this Act or 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.'

11. The power of transfer conferred on the Government under Section 48 of the said Act is absolute. Even sub-section (3) of Section 48 contemplates, on administrative grounds, the Government, notwithstanding the provisions of the Act or any special rules or adhoc rules, may issue orders of transfer on administrative grounds.



12. Let us consider the spirit of this provision. Transfers are issued on administrative grounds for efficient and effective public administration. Efficient public administration is the constitutional mandate and under those circumstances, the act intended to provide an absolute power to the Government to transfer an employee from one revenue district to another revenue district on administrative grounds notwithstanding anything contained in the act or any special rules or adhoc rules.

13. Thus, this Court is of the considered opinion that day-to-day administration of the Government vests with the executives. The day-to-day administration are to be effectively monitored and regulated by the competent Authorities. Courts are not expected to interfere with the day-to-day administration of the Government Departments. No doubt, on exceptional circumstances, the Courts can entertain writ petitions, where an order of transfer is under challenge on certain limited grounds. If any order of transfer has been passed without jurisdiction or allegations of *mala fide* are raised or in certain exceptional circumstances, where materials are available to establish that the transfer is punitive, then the Courts can interfere, in order to mitigate the exceptional circumstances advanced. However, the scope of interference is undoubtedly limited and in the event of frequent interference by the Constitutional Courts in the matter of administrative transfer, the executives may not be in a position to run the administration in a smooth manner.

14. Large number of writ petitions are filed challenging the orders of transfer and posting and in the event of granting interim orders, the litigants are taking undue advantage of such interim orders and continuing in the same post for several years, depriving the rights of the other similarly placed employees from getting an opportunity to work in a particular post or place. Thus, interference by the High Court in the routine administration of the Government Departments may cause inconvenience and also deprive the other employees to get opportunity to work in a particular post and place. Thus, consideration of all mitigating factors and the rights of the employees on transfer with reference to the Act and service conditions are all paramount important for deciding the scope of writ petitions challenging the orders of transfer and posting. This exactly is the reason, the Constitutional Courts across the country, ruled that High Courts cannot interfere with the day-to-day administration of the Government Departments, thereby depriving the competent Authorities from exercising their lawful power conferred under the Act and Service Rules for the purpose of maintenance of an efficient and effective public administration, which is the constitutional mandate.



15. As far as the Education Department in the State of Tamil Nadu is concerned, large number of writ petitions are filed merely based on certain Government Instructions / Guidelines / Orders. The statutory enforceability and the very spirit of the statute regarding service conditions plays a pivotal role in forming an opinion with reference to certain concessions, facilities granted in the form of Instructions / Guidelines. High Court had experienced that based on certain erroneous Government Orders, financial benefits were granted to the Teachers and based on such Government Orders, batches of writ petitions were filed and huge financial implications were created for the State exchequer unnecessarily and more specifically, on erroneous basis. The Courts are correcting those errors and mistakes then and there. However, the irregularities prevailing in the Education Department are to be seriously looked into and the erring higher officials are to be prosecuted for the financial loss and the administrative inconveniences caused to the Department. Thus, the Education Department is expected to be more cautious, while issuing orders conferring certain concessions or facilities or granting monetary benefits. Inconsistencies on the part of the subordinate officials are creating anomaly, which provide unnecessary scope for the Teachers to file writ petitions and get the benefits. The Teacher Associations are also playing a major role for such irregularities. The active and passive collusion of the higher officials in such matters cannot be overruled. Therefore, frequent vigilance enquiry, verification of asset details of the higher officials and their family members are also to be done by the Department periodically and the information about the corrupt activities of the officials must be properly investigated and enquired into by the Department with the assistance of the Vigilance and Anti Corruption Department.

16. Undoubtedly, the Government is allocating a considerable amount of funds for the improvement of the Government Schools across the State and paying a fair and decent salary to the Teachers and employees in the Government Schools. But, the question arises whether the Teachers in the Government Schools in majority are imparting competitive education to the students, who hail from poor and middle class. No doubt, these Teachers are well-qualified and appointed to teach the students in the Government Schools. But, unfortunately, the students, who studied in the Government Schools are not coming out with an expected level of standard on par with the students coming out from their counterparts studying in the Private Schools. Thus, the Government has to review the duties and responsibilities performed by the Teachers in the Government Schools, scrutinize the reasons for their slackness and ensure that they impart education on par with the Private Schools and the Government School students come out fairly with high standard of knowledge, good conduct etc.



17. Teaching is a noble profession. Teachers are most respected persons and enjoy a special status in the Society. Thus, they are expected to maintain good conduct both inside and outside the Schools and impart education with best of their knowledge and ability and contribute for the development of our Nation. Youth of this country are the backbone of our great Nation. Unless we create a students community, which would contribute for the development of our great Nation, we are miserably failing in our constitutional duty to protect the noble principles of equality and social justice. Thus, molding the students, though rests on the parents and Teachers in Schools, the Teachers play a major role as the students are spending more time in the Educational Institutions. Unfortunately, what is prevailing in our Society is that these Teachers are largely indulging in taking private tuition classes, doing business or part-time employment etc. The misconducts and offences, in this regard, must be stopped forthwith by all concerned.

18. Rule 8 of the Tamil Nadu Government Servants Conduct Rules, 1973 prohibits private trade or employment by the Government servants. Rule 8(1)(a) stipulates that *"No Government servant shall except with the previous sanction of the Government, engage himself directly or indirectly in any trade or business or undertake any employment"*.

19. Rule 8[1][aa] contemplates that *"Notwithstanding anything contained in Clause (a), no Government servant shall undertake any part-time employment"*.

20. Rule 20 of the Conduct Rules provides Integrity and devotion to duty. Sub-Rule (1) stipulates that *"Every member of the Service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service"*. Sub-Rule (2) enumerates that *"every member of the Service shall take all possible steps to ensure integrity and devotion to duty by all Government servants for the time being under his control and authority "*.

21. The Conduct Rules, referred above, unambiguously stipulates that private trade, employment, part-time employment etc., are impermissible and amounts to misconduct. Thus, in the event of any complaint or information from the parents of the students or general public or from any person, the Authority competent is bound to initiate disciplinary proceedings against such Teachers by invoking the provisions of Discipline and Appeal Rules. It is needless to state that such actions are to be initiated in respect of the Teachers, who all are working in Private Aided Schools and receiving Government salary. The Teachers, who all are receiving Government salary and working in Aided Schools are also responsible and accountable to the public at large.



22. Now, it becomes a fantasy for the teaching community to take tuition classes for remuneration and doing other businesses as the Teachers are getting more holidays and considerable length of free time for doing such businesses. The working days and hours of the Educational Institutions are far less than that of the working hours and working days of the other Government Departments. Therefore, these Teachers are getting an opportunity to indulge in commission of such misconducts detrimental to the Educational Institutions and thereby, a corrupt mind is developed amongst the Teachers. These part-time employment out of tuition classes and business amongst the Teachers are spreading like cancer as they develop greediness for the purpose of earning more money. In the event of allowing such misconducts, undoubtedly, the Government cannot expect better performance of the duties and devotion to duty from the Teachers. These misconducts are to be viewed seriously both in the interest of the students and in the interest of the education system in general.

23. Molding the children will create a good and happy family. Happy family system would constitute a vibrant Nation. Thus, molding of the conduct and character, concentration on education during childhood days are more vital and more so, the constitutional mandate requires the State to create opportunity for better education to our children, which can never be compromised.

24. In many countries across the globe, the Government Schools are considered as best Educational Institutions. But, even after spending huge funds for the development of the Government Institutions in our State, we are unable to create a competitive atmosphere in Government Schools on par with the Private Institutions. The situation must be changed as the tax payer's money are spent in huge for the development of the Educational Institutions across the State. Thus, the Education Department is answerable and accountable for the public in respect of the money spent for these Institutions. Therefore, consistent and swift actions are required and several corrective measures are imminent.

25. The teaching community is concentrating to satisfy their self-needs, thereby neutralizing the duties and responsibilities. They are fighting only for their rights. Courts across the country have rendered enough Judgments and provided wider interpretations conferring rights on the citizen in accordance with the Indian Constitution. But, time has come now for the Courts for emphasis the duties to be performed by these Teachers and citizen in general. Rights and duties are corresponding. When a Teacher claims a right, equally the performance of duties is to be emphasised. But, the trend is that the duties are not considered as



important. Such a mind-set at no circumstances, is tolerable. Even for transfer to a nearby place, these Teachers are approaching High Court, get an order of stay and continuing years together, without even considering their duties and responsibilities.

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26. Another important reason for such deterioration in the Education System in the State of Tamil Nadu is the activities of many Teachers Associations across the State. They are interfering and involving in manipulation of departmental affairs. These Associations are hand in glove with the higher officials and with politicians and indulging in corrupt activities to achieve their goals. They are actively indulging in such illegal, irregular and corrupt activities to do favours for their members under the umbrella of protection of the Teachers' rights. Therefore, the activities of these Associations are to be monitored by the State as they are registered and recognized by the State.

27. The Government, more specifically Education Department, is duty bound to monitor the activities and functions of these Teachers Associations across the State and initiate all appropriate steps then and there to ensure that they function within the parameters and in consonances with the Act and Service Rules and the Law in general. The office bearers of the Teacher Associations or any employees of the Association are not exempted from performing their official duties and responsibilities. The prevailing situation is certainly not conducive for the better functioning of the Government Educational Institutions. Thus, the activities of the Teachers' Associations as to whether they are involving in any private business, trade, corrupt activities, influencing the higher officials etc., are to be monitored periodically and all appropriate actions are to be initiated under the relevant statutes and rules.

28. As far as the present case is concerned, the order impugned states that the transfer is issued within 30 kms. Thus, the writ petitioner cannot dispute the satellite measurement taken by the Authorities based on the website.

29. Considering the fact that frequent writ petitions are filed on such transfers and postings on flimsy grounds and in respect of postings and transfers, this Court has considered various aspects. In many such writ petitions by taking undue advantage of the interim orders, the employees are staying in the same place for several years, which would be detrimental to the public administration. Abuse of judicial process at no circumstances could be tolerated. Constitutional Courts are duty bound to ensure that the spirit and perspective of the Constitution and its principles are honoured and protected. Therefore, the Constitutional Courts are expected to rise on the occasion and mold the reliefs in order



to protect the constitutional philosophy and ethos. This exactly is the reason the Apex Court ruled that molding of the reliefs under Article 226 of the Constitution of India is warranted in such circumstances where the Courts form an opinion in respect of certain facts and circumstances.

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30. Under these circumstances, this Court suo motu impleads the Principal Secretary to Government, School Education Department, Fort St.George, Chennai-600 009, as fourth respondent and the Commissioner of School Education, College Road, Chennai-600 006 as fifth respondent, for the purpose of implementation of the orders passed in this writ petition. Mr.N.Ga.Nataraj, learned Government Advocate, takes notice for the newly impleaded respondents.

31. In view of the facts and circumstances and the principles considered above, this Court is inclined to pass the following orders:

- (i) The relief as such sought for in this writ petition stands rejected.
- (ii) The fourth respondent / Principal Secretary to Government is directed to constitute special teams for every districts to conduct inspections, collect informations, complaints, evidences etc., regarding the allegation of teachers involving in private business, accepting part-time employment, running tuition centres, taking private tuition in residence or otherwise, which all are in violation of the Tamil Nadu Government Servants Conduct Rules, 1973 and initiate all appropriate disciplinary proceedings against all such Teachers by following the procedures as contemplated under the Service Rules.
- (iii) The fourth respondent is directed to provide common telephone numbers / mobile numbers / whatsapp numbers enabling the parents, students, general public to provide information / complaints regarding illegalities, irregularities, misconducts by the Teachers both inside and outside the Schools. The telephone numbers / mobile numbers / whatsapp numbers must be legibly displayed in all Education Department Offices and Government Schools and Government Aided Schools enabling the citizen to register the complaints / information to the Department.
- (iv) The fourth respondent is directed to issue necessary Circular / Instructions / Guidelines to all the subordinate officials of the Education Department to periodically assess the work



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performance and teaching pattern and the quality of education imparted by the Teachers to the students and accordingly, initiate appropriate review and corrective measures for the improvement of the Educational Institutions across the State of Tamil Nadu. In the event of any lapse, negligence or dereliction of duty or willful disobedience or otherwise in imparting education and performance at the prescribed level by the Teachers, then all appropriate actions are to be initiated by the concerned competent Authorities. Equally, the fourth respondent and the Head of the Department shall monitor the activities of the District Level Authorities and in the event of any such lapse or dereliction or negligence or otherwise, initiate appropriate actions.

- (v) The fourth respondent is directed to issue Instructions / Circular / Guidelines to consistently monitor the conduct of the Teachers both inside and outside the Schools with reference to the Tamil Nadu Government Servants Conduct Rules, 1973 and in the event of in any indifferent behaviour or misbehaviour or otherwise, appropriate actions are to be initiated to safeguard the interest of the students studying in Government Schools. In such circumstances, administrative transfer orders are to be issued in the interest of the students as well as the Department in general.
- (vi) The fourth respondent is directed to collect information, complaints, materials regarding activities of the recognized / registered Teachers Associations across the State and verify their functioning and other activities with reference to the statutes and rules in force and in the event of any illegality or irregularity is identified, all appropriate actions are to be initiated against all such Associations and office bearers in accordance with law and by following the procedures as contemplated.
- (vii) The respondents are directed to file compliance report in four weeks.

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



33. List the matter for reporting compliance before this Court on 04.04.2022.

Sd/-

Assistant Registrar (CS III)

// True Copy //

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Sub Assistant Registrar(CS)

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To:

- 1.The Chief Educational Officer,
Panagal Building,
Thanjavur Town,
Thanjavur District.
- 2.The District Educational Officer,
Office of the District Educational Officer,
Kumbakonam, Thanjavur District.
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- 4.The Principal Secretary to Government,
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- 5.The Commissioner of School Education,
College Road,
Chennai-600 006.

Copy to:

The Section Officer,Writ Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.VADIVEL, Advocate (SR-8488[F] dated 24/02/2022)

+1 CC to M/s.SPL GP (SR-8094[F] dated 23/02/2022)

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MGJ(11.03.2022) 11P 9C



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