



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) No. 3283 of 2022

and

W.M.P. (MD) Nos. 2883 and 2884 of 2022

G. Lawrence Gnana Durai,
Secondary Grade Teacher,
Panchayat Union Primary School,
Kasinathapuram, Alangulam Range,
Tenkasi District.

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Principal Secretary
to Government (School Education),
Fort St. George,
Chennai - 600 009.
2. The Commissioner of School Education,
DPI Campus, College Road,
Nungampakkam, Chennai - 600 006.
3. The Director of Elementary Education,
DPI Campus, College Road,
Nungampakkam, Chennai - 600 006.
4. The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.
5. The Chief Educational Officer,
Tenkasi,
Tenkasi District.
6. The District Educational Officer,
Sankarankovil,
Tenkasi District.
7. The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.



8. The Block Educational Officer,
Alangulam,
Tenkasi District.

9. The Block Educational Officer,
Pappakudi,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents 3 to 9 herein to implement the proceedings in Na.Ka.No.25154/A1/E2/2022 dated 22.01.2022 of the second respondent herein and conduct the combined transfer counselling by merging Tirunelveli and Tenkasi Districts for the posts of Secondary Grade Teachers on 25.02.2022 or any other subsequent dates.

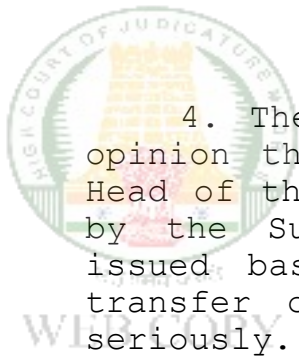
For Petitioner : Mr.T.Pon Ramkumar
For Respondents : Mr.N.Ga.Nataraj
Government Advocate

O R D E R

The Writ of Mandamus has been instituted to direct the respondents 3 to 9 to implement the proceedings dated 22.01.2022 issued by the second respondent / Commissioner of School Education and conduct the combined transfer counselling by merging Tirunelveli and Tenkasi Districts for the posts of Secondary Grade Teachers on 25.02.2022 or any other subsequent dates.

2. The petitioner was appointed as Secondary Grade Teacher in the Panchayat Union Primary School, Vethiyarvettu, Jeyankondam Union, Ariyalur District. He was transferred on 03.08.2010 to Pappakudi Union, Tirunelveli District. The grievances of the writ petitioner is that the instructions issued by the second respondent / Commissioner of School Education in letter dated 22.01.2022 regarding the conduct of transfer counselling has been violated intentionally by the Subordinate Authorities. Thus, the petitioner is unable to get the transfer and posting of his choice in accordance with the seniority. Therefore, the petitioner is constrained to move the present Writ Petition.

3. The learned counsel appearing for the writ petitioner contended that several instructions are issued by the Commissioner of School Education based on the Government Order issued in G.O. (Ms).No.176, School Education [SE5(1)] Department, dated 17.12.2021. All such instructions are flouted by the Subordinate Authorities and they are conducting transfer counselling at their whims and fancies, thereby causing heartburn issues amongst the teachers, who are all opting the place of their choices.



4. The learned counsel appearing for the petitioner is of an opinion that when certain specific instructions are given by the Head of the Department, such instructions are bound to be followed by the Subordinate Authorities. Further, such instructions are issued based on the Government Order passed in the matter of transfer counselling and thus, the violations are to be viewed seriously.

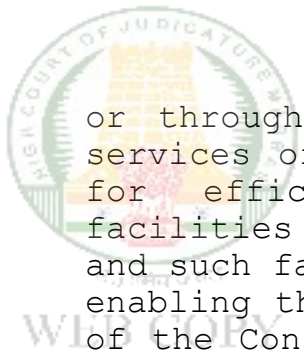
5. This Court is of the considered opinion that the rights of the petitioner regarding posting and transfer of his choice is to be first considered and secondly, disobedience of the instructions of the higher officials is to be considered.

6. With reference to the above two issues, it is relevant to consider Section 48 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which contemplates posting and transfer. Sub-section (1) states 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.

7. Thus, the power of transfer and posting conferred under the Act on the Government is an absolute one. Any guidelines or instructions cannot supersede the provisions of the Act. The guidelines or instructions are issued only for the administrative convenience and to provide certain concessions to the Government employees. Such concession or choice provided to the employees can never be construed as a legal right for the purpose of instituting a writ proceedings under Article 226 of the Constitution of India.

8. Concessions and facilities are provided only for the purpose of efficient public administration and not for providing absolute right in the matter of transfers. Therefore, the instructions and guidelines are issued by the Government for following uniformity in the matter of extending the concession and certainly not to confer any right on the Government employees. In other words, in the absence of any instructions / guidelines, the Sub-ordinate Authorities may be exercised their powers in a whimsical manner and on some occasions, based on favouritism and nepotism. Therefore, the instructions and guidelines for transfer and posting are certainly necessary for the purpose of maintaining the consistency and uniformity. However, such instructions or guidelines would not confer any legal rights for the Government servant to seek a place or post as a matter of choice.

9. A distinction is to be drawn in between the service rights and the concession extended to the Government servants. A service right is a legal right which is conferred under the provisions of the Act

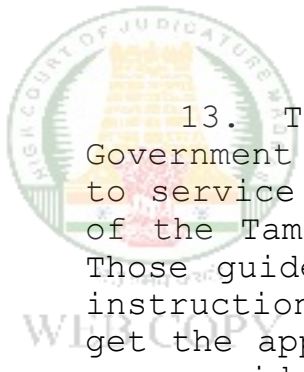


or through the Government Orders in the matter of governing the services of the employees. However, while taking certain decisions for efficient and effective public administration, certain facilities and concessions are extended to the Government employees and such facilities or concessions would not provide a service right enabling the employees to approach the High Court under Article 226 of the Constitution of India. Thus, the distinction is to be drawn in between the service rights and the concessions / facilities provided.

10. The Hon'ble Supreme Court of India consistently took decisions that the instructions / guidelines provided in the matter of transfer for effective administration would not confer any right on the employees. However, the order of transfer can be challenged on the ground of lack of jurisdiction or malafide. No doubt, if any transfer is issued on malafide ground, then the Court can interfere. If it is issued by the incompetent authority having no jurisdiction, then also, appropriate relief can be granted. But, in all other circumstances, the transfer *per se* would not confer any right on the Government servants.

11. The facilities / concessions provided by way of transfer counselling is being taken as a cause for the purpose of filing Writ Petitions. Several Writ Petitions are filed in respect of transfer counselling. In the event of interference by the High Court, it would be difficult for the public administration to issue transfer and posting to the employees. The seniority plays no role in the matter of administrative transfers. Therefore, in all circumstances, the authorities are bound to exercise the power of transfers judiciously and for efficient public administration. The transfers cannot be issued on extraneous considerations. Even in the case where the Subordinate Authorities violated certain instructions, the employees may submit a complaint before the higher authorities against the wrong implementation of the instructions issued by the Head of the Department and the Head of the Department may initiate appropriate action against the authorities, who have violated the instructions including the departmental disciplinary proceedings. Contrarily, the High Court cannot interfere with such day-to-day administration of the Government Departments. The power of judicial review need not be extended for the purpose of interfering with the day-to-day administration of the Government Department.

12. The power of judicial review under Article 226 of the Constitution of India to the High Court is to ensure the process through which a decision is taken by the Competent Authority in consonance with the statute or not, but not the decision itself. Therefore, such administrative decision taken in the matter of concession / facilities would not be construed as a cause for the purpose of entertaining the Writ Petition nor would confer the right on the Government employee to seek the place or post as a matter of



13. Therefore, this Court is of an opinion that certain Government orders in the matter of promotion, seniority or relating to service conditions were issued in consonance with the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act. Those guidelines get an approval of statutory force and all other instructions issued in the matter of transfer and posting would not get the approval of statutory enforceability. Such instructions are mere guidelines for the purpose of Subordinate Authorities to implement the instructions given by the Higher Authorities and violation of such instructions may provide circumstances for an employee to submit a complaint against the Authority for initiation of action, but certainly not the Writ Petition for the High Court to interfere and adjudicate the disputes in such matters. Thus, the distinctions are to be drawn by the Court in such matters, where service rights, concessions and facilities are provided to the Government employees. In the absence of drawing such distinction, every such Government Order will be taken as a cause for the purpose of filing the Writ Petition and the High Court cannot interfere in such matters regarding the routine administration of the Government and such interference is absolutely not contemplated to exercise the power of judicial review under Article 226 of the Constitution of India.

14. This being the principles to be followed, in the present case, the grievances of the writ petitioner as stated is that the instructions issued by the Commissioner of School Education has not been followed by the authorities. In this regard, it is left open to the petitioner to submit a complaint to the Head of the Department who in turn may look into and if any favoritism and nepotism are found, appropriate disciplinary actions can be initiated against the Sub-ordinate officials who have committed such illegality.

15. The first respondent Government may take a note of all these principles to be followed in the matter of transfer and posting and the concessions / facilities must be clearly demarcated in the Government order for the purpose of regulating the transfer and posting and to avoid unnecessary litigations before the High Court in such matter of transfer and posting.

16. Accordingly, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

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to Government (School Education),
The Government of Tamil Nadu,
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+1 CC to M/s.T.PONRAMKUMAR, Advocate (SR-7321[F] dated 21/02/2022)

+1 CC to M/s.SPL GP (SR-7745[F] dated 22/02/2022)

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SK(CO)
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