



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos.3623 & 3624 of 2022

G.Senthil ... Petitioner
in W.P(MD) .No.3623 of 2022

V.Lenin ... Petitioner
in W.P(MD) .No.3624 of 2022

Vs.

1.The Director of Elementary Education,
Directorate of Elementary Education,
Chennai-600 006.

2.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Theni.

3.The District Educational Officer,
O/o.The Chief Educational Officer,
Theni,
Theni District.

... Respondents
in both petitions

Common Prayer: Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.No.756/T1/2021 dated 15.02.2022 on the file of the respondent No.1 and quash the same as illegal to the extent of skipping the counselling for B.T.Assistants in Elementary Education from one union to another union within the district and proceeding with the counselling for B.T. Assistants from one district to another and consequently to direct the Respondents to conduct the counselling for transfer of B.T.Assistants from one union to another union within the district prior to conducting the transfer counselling for B.T. Assistants in Elementary Education from one district to another district within the time stipulated by this Hon'ble Court deem fit and proper.

In Both Cases

For Petitioner : Mr.S.Louis
For Respondent : Mr.N.GA.Nataraj
Government Advocate



C O M M O N O R D E R

The order dated 15.02.2022 issued by the first respondent in the matter of announcing the revised date of counselling for general transfer and posting of Secondary Grade Teacher is under challenge in the present Writ Petitions.

2. The grievance of the writ petitioners is that earlier counselling scheduled on 05.02.2022 was not conducted without any valid reason by the Authorities and now they have issued the revised letter announcing the different dates, thereby abandoning the counselling facility from one Union to another Union within the District. The circular issued by the first respondent is curtailing the right of the petitioners to participate in the process of counselling and they are unable to get the place or post of their choice.

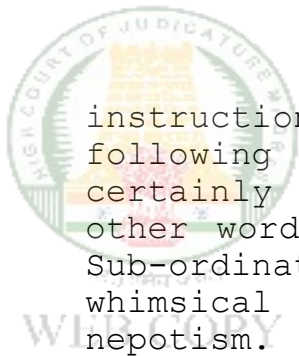
3. The learned Government Advocate appearing for the respondents furnished the copy of the proceedings of the first respondent stating that the High Court of Madras Principal Bench passed an interim order of stay in W.P.Nos.1258, 1264 and 1272 of 2022 and in view of the interim order, the Head of the Department issued a Circular to stop the counselling.

4. This Court is of the considered opinion that counselling is a concession/facility provided to the teachers. Concession would not confer any service right so as to claim place or post as a matter of choice. In this regard, the relevant provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 are to be considered.

5. Section 48 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 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.

6. 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.

7. Concessions and facilities are provided only for the purpose of efficient public administration and not for providing

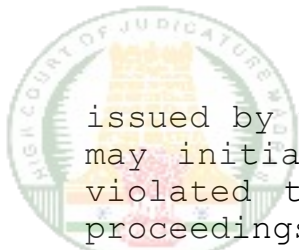


instructions and guidelines are issued by the Government for following uniformity in the matter of extending the concession and certainly not to confer any right on the Government employees. In other words, in the absence of any instructions / guidelines, the Sub-ordinate Authorities may be exercised 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.

8. A distinction is to be drawn in between the service rights and the concession extended to the Government servants. A service right is a 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.

9. 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.

10. 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.

11. 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 choice.

12. 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.

13. This apart, in the present case, the petitioner has not even participated in the counselling as it was not conducted. Conducting of counselling is an administrative affair and the teacher may not get any right for claiming such counselling which is a concession. Further, some other writ petitions are pending before the Principal Seat questioning the validity of the Circular issued by the Head of the Department. This being the factum, the petitioner



has not established a cause for the purpose of adjudication, in view of the fact that the counselling was not conducted and the postponement of the counselling on account of certain reasons cannot be a ground to institute a writ proceedings. In the event of entertaining such writ petition, the High Court is unnecessarily interfering with the day-to-day administration of the Government Department which is not within the scope of power of judicial power conferred under Article 226 of the Constitution of India.

14. Accordingly, the Writ Petitions stand dismissed. No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ssb

To

1.The Director of Elementary Education,
Directorate of Elementary Education,
Chennai-600 006.

2.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Theni.

3.The District Educational Officer,
O/o.The Chief Educational Officer,
Theni,
Theni District.

+2 CC to M/s.S.LOUIS, Advocate (SR-8663[F] dated 25/02/2022)

+1 CC to M/s.SPL GP (SR-8974 & 8976[F] dated 28/02/2022)

W.P.(MD) No.3623 & 3624 of 2022

25.02.2022

SVS(CO)

GC(08.03.2022) 5P 7C