



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.4150 of 2022

W.M.P (MD) .No.3563 of 2022

K.Vengadesh

... Petitioner

Vs.

1. The Commissioner of School Education,
College Road, Nungampakkam,
Chennai.
2. The Director of Elementary Education,
DPI Campus, College Road,
Nungampakkam, Chennai 600006.
3. The Chief Educational Officer
Chief Educational Office,
Thoothukudi,
Thoothukudi District
4. The District Educational Officer,
Kovilpatti Educational District,
Kovilpatti, Thoothukudi District
5. The Block Educational Officer
Pudhur Educational Block, Pudhur,
Kovilpatti Education District,
Thoothukudi District.

... Respondents

Prayer:-Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Ceritorari, calling for the records pertaining to the impugned made in Na.Ka.No.4600/E2/2021 dated 05.02.2022 on the file of the 3rd respondent and to quash the same as illegal and arbitrary.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.G.V.Vairam Santhosh

Additional Government Pleader

**O R D E R**

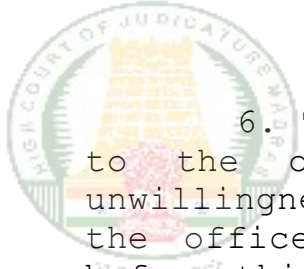
The order of transfer dated 05.02.2022, transferring the petitioner from Maniyakaranpatti Panchayat Union Middle School to Mettilpatti Panchayat Union Middle School within the same block namely Pudur Block, is under challenge in the present Writ Petition.

2. The petitioner states that he is working as B.T.Assistant [Science] in Panchayat Union Middle School, Maniyakaranpatti and he was transferred to Pudhur Union on 17.06.2009. He was further promoted as B.T.Assistant [Science] on 29.07.2019 and at present, he is serving in the said School for about 10 years.

3. The learned counsel appearing for the petitioner mainly contended that the counselling for transfer for the year 2021-22 from Union to Union was conducted in the office of the third respondent on 05.02.2022 afternoon. The petitioner participated in the counselling. The petitioner states that he opted his unwillingness as there was no suitable place available to him. The petitioner states that he put his signature by mentioning his unwillingness in the counselling Register maintained by the respondent Nos.3 to 5. While so, the fifth respondent served the order impugned transferring him from Maniyakaranpatti to Mettilpatti. Thus, the petitioner is constrained to move the present Writ Petition.

4. The learned counsel appearing for the petitioner states that the petitioner has opted for Panchayat Union Middle School, Maniyakaranpatti. However, the petitioner has not given any willingness. Contrarily, he expressed his unwillingness in the Register, while putting signature. It is further contended that the respondents have erroneously issued the impugned order by stating that the petitioner has opted his willingness to work at Mettilpatti. In view of the irregularity in the counselling, the order impugned is to be set aside.

5. The learned Additional Government Pleader produced the documents to establish that in the final list, the petitioner opted Mettilpatti. However, in the Register, while going out from the office of the third respondent, he has marked his unwillingness. In other words, it is contended that after opting his willingness, he has written his unwillingness in the Register, while going out from the office of the third respondent without informing the Authorities concerned.



6. The Register was maintained for entering of the teachers to the office of the third respondent and the entry of unwillingness was entered by the petitioner while going out from the office of the third respondent. The Register was produced before this Court. The Register reveals that the entire recordings are made by one Official. In Serial Nos.1 to 14, the handwriting regarding the name and details of the teachers is written by one person. The teachers have signed in the Register. However, they are not allowed to write any remarks in the Register. In respect of two teachers, unwillingness was recorded by the officials and in respect of the petitioner's name, unwillingness is written by a different person, but not by the official, who has recorded the name and particulars of the other teachers. The signature of the petitioner and unwillingness written in the Register shows that it was written by using the same pen. However, in respect of all other entries, it is visibly clear that it is written by some other pen and by same person. In view of distinction regarding unwillingness by the petitioner, this Court is able to draw a difference that in the case of the petitioner, the Authorities have not entered his unwillingness in the Register. Therefore, the statement of the petitioner cannot be trusted upon.

7. The Authorities are bound to be vigilant in maintaining such Register. If at all any manipulations or while going out from the counselling, the teachers have entered their remarks without the permission of the Authorities concerned, all appropriate actions including disciplinary actions are to be initiated. The teachers are directed to put their signature while entering into the counselling premises/office of the third respondent. Other entries are made by the officials in the Register. Thus, if any such remarks are made by the teachers without the permission or otherwise by the Competent Authorities, the same is a misconduct and actions are to be initiated.

8. As far as the transfer is concerned, transfer is an incidental to service, more so, a condition of service. Counselling itself is a concession and cannot be an absolute right. Place or post can never be claimed as a matter of right by the employees. The petitioner is transferred from Maniyakaranpatti to Mettilpatti which is 10 kms away. The transfer would not affect the normal life of the petitioner. Further, the petitioner has continued in the present place for about 10 years. Under these circumstances, the Court cannot interfere with such transfer issued based on the counselling procedures.

9. 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.



10. 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.

11. 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.

12. 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.

13. 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.



14. 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.

15. 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.

16. 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.

17. 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.

18. In view of the facts and circumstances established, the petitioner has no right to claim a particular place or post. Accordingly, the Writ Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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/ /2022

Sub Assistant Registrar(CS)

To

1. The Commissioner of School Education,
College Road, Nungampakkam,
Chennai.
2. The Director of Elementary Education,
DPI Campus, College Road,
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Chief Educational Office,
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Kovilpatti Educational District,
Kovilpatti, Thoothukudi District

5. The Block Educational Officer
Pudhur Educational Block, Pudhur,
Kovilpatti Education District,
Thoothukudi District.

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate
(SR-12074[F] dated 15/03/2022)

+1 CC to M/s.SPL GOVERNMENT PLEADER
(SR-12169[F] dated 15/03/2022)

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SP/11/05/2022/7P/8C