



W.P.(MD).No.5937 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).No.5937 of 2022

and

W.M.P.(MD).Nos.4668 and 9412 of 2022

M.Marimuthu

... Petitioner

Vs.

1.State of Tamil Nadu,
Represented by its Additional Chief
Secretary to the Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George,
Chennai – 9.

2.The Commissioner of Adi Dravidar Welfare,
Ezhilagam,
Chennai – 5.

3.S.Madhumathi I.A.S.,
The Commissioner of Adi Dravidar Welfare,
Ezhilagam,
Chennai – 5.

4.The District Adi Dravidar and Tribal Welfare Officer,
O/o. the District Adi Dravidar and Tribal Welfare Office,
Tirunelveli District.

...Respondents

1/7



W.P.(MD).No.5937 of 2022

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Na.Ka.No.O1/37368/2021 dated 01.02.2022 on the file of the Respondent No.2 insofar as the petitioner is concerned and quash the same as illegal.

For Petitioner : Mr.Aswin Rajasimman
for T.Lajapathi Roy

For R-1, R-2 and R-4 : Mr.G.Suriyananth,
Additional Government Pleader

ORDER

Though the petitioner herein was transferred pursuant to the transfer counselling, the respondents herein had passed the impugned order, dated 01.02.2022, cancelling the order of transfer.

2. In the same impugned order, apart from the petitioner, one more employee, namely, Mr.S.Chandrakumaravel's transfer was also cancelled. When the co-employee, S.Chandrakumaravel, had challenged the order of



W.P.(MD).No.5937 of 2022

cancellation before this Court in W.P.(MD).No.2980 of 2022, the same was dismissed on 15.02.2022. Challenging the order of dismissal, he had preferred a Writ Appeal before this Court in W.A.(MD).No.177 of 2022 and by an order, dated, 21.06.2022, the Writ Appeal came to be allowed in the following manner:

“11.Having regard to the fact that the post of warden and teacher is inter-changeable, this Court is unable to find any real object behind conducting counselling exclusively for teachers and thereafter, counselling exclusively for persons, who want change of position from teacher to warden or vice versa. One of the object behind the transfer policy by counselling as per G.O.Ms.No. 162, Adi Dravidar and Tribal Welfare Department, dated 16.11.2021 is transparency and this Court cannot allow/permit self serving interpretation without any rational nexus to the object that is sought to be achieved by the policy guidelines and instructions vide Government Order dated 16.11.2021.

12.The learned Additional Advocate General is unable to point out any clause in the G.O., to support his argument that counselling on 29.12.2022 is not for petitioner/appellant, who is a teacher seeking transfer to another place as a teacher. Hence,



W.P.(MD).No.5937 of 2022

the impugned order holding that the appellant is not eligible to participate in the counselling on 22.01.2022 and his request was wrongly considered cannot be accepted. This Court finds no element of fraud or misrepresentation on the part of the appellant, while participating in the second counselling for transfer to the post of teacher in another place.

13.From the two circulars/communications dated 28.12.2022 and 12.01.2022, this Court is unable to find any specific instruction or direction prohibiting such transfers considering the request of the appellant. Absolutely no mala fide intention or misrepresentation can be attributed to the appellant's participation in second counselling and this Court is unable to find any reasonable nexus to disqualify the appellant to participate in the second counselling, when we examine the Government guidelines and instructions vide G.O.Ms.No.102 dated 16.11.2021. The communication of the second respondent does not disqualify by specific reasons and there is no prohibition for the appellant to apply for counselling seeking transfer as a teacher to another place to work as teacher in some other place. The learned single Judge, while dismissing the writ petition, has not considered the eligibility of the appellant to participate in the second counselling seeking



transfer to accept teaching position in a different place, after completing 9 years in the same station. Except the second communication, no other executive orders of the Government is produced before this Court. It is to be noted that from the Government Order vide G.O.Ms.No.162, dated 16.11.2021, this Court is unable to find any object that is sought to be achieved by interpreting the two communications, as it was projected by the learned Additional Advocate General. This Court find no clue from the Government order vide G.O.Ms.No. 162, dated 16.11.2021 to sustain the argument of the learned Additional Advocate General. When the appellant was transferred pursuant to his participation in the second counselling and transfer order was signed by the second respondent and subsequently permitted to join in the transferred place, the appellant will be put to serious prejudice, if the transfer is recalled. For the reasons stated in the order impugned in the writ petition, this Court is unable to sustain the order of the learned Single Judge. The impugned order challenged in the writ petition is quashed.

14. With the above observations, this Writ Appeal stands allowed. No costs. Consequently, connected civil miscellaneous petition is closed.”



W.P.(MD).No.5937 of 2022

3. Since the order impugned in the present Writ Petition is the same as that of the order impugned in W.A.(MD).No.177 of 2022, the petitioner herein is also entitled to succeed. Accordingly, the impugned order, dated 01.02.2022, on the file of the second respondent, insofar as the petitioner is concerned, is quashed.

4. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30.06.2022

Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Additional Chief Secretary to the Government,
State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai – 9.
- 2.The Commissioner of Adi Dravidar Welfare,
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- 3.The District Adi Dravidar and Tribal Welfare Officer,
O/o. the District Adi Dravidar and Tribal Welfare Office,
Tirunelveli District.

6/7



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W.P.(MD).No.5937 of 2022

M.S.RAMESH, J.

Lm

W.P.(MD).No.5937 of 2022

30.06.2022