



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.06.2022**

CORAM:

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

W.P. (MD) No. 9273 of 2022

and W.M.P. (MD) Nos. 6654 & 6655 of 2022

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C.Nagendran

... Petitioner

/vs./

1.The Joint Director (Higher Secondary)

Directorate of School Education,
DPI Compound, College Road,
Chennai - 9.

2.The Chief Educational Officer,
O/o. the Chief Educational Office,
Trichy, Trichy District.

3.The District Educational Officer,
O/o. the District Educational Office,
Musiri, Trichy District.

4.The Headmaster,
Government Higher Secondary School,
Uppliapuram, Trichy District.

5.The Headmaster,
Government Girls Higher Secondary School,
Thuraiyur,
Trichy District.

... 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 transfer order passed by the 2nd respondent in his proceedings in ந.க.எண்.06240/ஈ1/2016 dated 23.03.2022 and consequential relieving order passed by the 4th respondent in his proceedings in ந.க.எண்.611/2021-22 dated 24.03.2022 (served to the petitioner on 30.04.2022) and quash the same as illegal and consequentially to direct the second respondent to revert the petitioner as P.G.Assistant (Commerce) in the 5th respondent school (parent school).

For Petitioner

: Mr.M.Ajmalkhan,
Senior Counsel for
M/s.Ajmal Associates

For Respondents

: Mr.A,Kannan,
Additional Government Pleader.



ORDER

The petitioner herein, who was working as P.G. Assistant (Commerce) in the fifth respondent school was transferred to the fourth respondent school in the year 2019 on deputation. Subsequently, through the impugned proceedings dated 23.03.2022, the petitioner was transferred to the Government Boys Higher Secondary School, Thottiyam, Trichy District. The order of transfer is under challenge in the present writ petition.

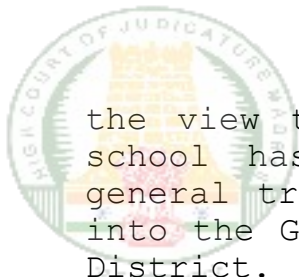
2. The learned Senior Counsel appearing for the petitioner raised two grounds challenging the order of transfer. Firstly, he would submit that the transfer order is punitive in nature which is impermissible in law. Secondly, he pointed out the averments in the transfer order in which reference is made to a complaint given in the year 2016 and a preliminary enquiry conducted thereafter in 2016, based on which, the present transfer order is made after about three years and therefore, the very basis for transfer, suffers from illegality, in view of the inordinate delay.

3. The learned Additional Government Pleader appearing for the respondents placed reliance on the counter affidavit and submitted that the complaint against the petitioner was very serious in nature, since he is employed in a girls school and hence, the transfer is imminent owing to the welfare of the students.

4. The Hon'ble Supreme Court in the case of **Somesh Tiwari Vs. Union of India and others** reported in (2009) 2 SCC 595 has held that the order of transfer is indisputably an administrative order and therefore, a transfer cannot be made on the basis of irrelevant grounds like allegations of complaint against the employee.

5. In the instant case, the transfer order is made only on the allegations made by a political party functionary, as well as certain alleged section of the public, based on which, the District Educational Officer had conducted a preliminary enquiry and submitted his report on 20.10.2016. If the ratio laid down in **Somesh Tiwari case** (supra) is applied to the present facts and circumstances of the case, the transfer order requires to be found fault with.

6. This apart, I do not find any justification on the part of the respondents in quoting a complaint, which was made in the year 2016, as a reason for deputing the petitioner in the year 2019. If the respondents were really concerned on the welfare of the girls students, they ought to have been taken immediate action pursuant to the preliminary report passed in 2016. On the other hand, they are chosen to wait for more than three years and thereafter, deputed him to the other school, on the basis of an alleged complaint. This delay does not justify their action taken. In this background, the respondents while considering the petitioner's re-transfer, were of



the view that since the petitioner's original post in the parent school has now been filled up through another Teacher through general transfer counselling, they have now chosen to transfer him into the Government Boys Higher Secondary School, Thottiyam, Trichy District.

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7. At this juncture, the learned Senior Counsel appearing for the petitioner submitted that there is one more vacancy for the post of P.G. Assistant (Commerce), which submission is also ratified by the learned Additional Government Pleader. Hence, there cannot be any impediment for the respondents to transfer the petitioner back to his parent school viz., fifth respondent school.

8. In the light of the above findings, the impugned transfer order dated 23.03.2022 passed by the fourth respondent is quashed. Consequently, there shall be a direction to the second respondent to pass appropriate order posting the petitioner to the fifth respondent school as P.G. Assistant (Commerce) in the available vacancy, atleast within the period of one week from the date of receipt of a copy of this order.

9. This Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

vsm

To

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+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-26888[F] dated
20/06/2022)

+1 CC to M/s.SPL.GP (SR-26736[F] dated 20/06/2022)

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MGJ(27.06.2022) 4P 8C