



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.14271 of 2021 and

WMP(MD) No.11205 of 2021

WEB COPY

M.Anbarasu

...Petitioner

vs.

1.The State of Tamil Nadu,
Rep by its Secretary to Government,
School Education Department,
Secretariat,
Chennai.

2.The Director of School Education,
Chennai.

3.The Joint Director of School Education (Personnel),
Chennai - 6.

4.The Chief Educational Officer,
Thoothukudi District.

5.The Chief Educational Officer,
Tirunelveli District.

6.M.Rajkumar
B.T.Assistant (Tamil),
Jawahar Government High School,
Tirunelveli Town,
Tirunelveli District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the fourth respondent in his proceedings in Na.Ka.No.606/A1/2021, dated 19.03.2021 and the order passed by the third respondent in his proceedings in Na.Ka.No.019960/C5/E1/2021, dated 15.07.2021 and quash the same and direct the respondents to accept the mutual transfer applications made by the petitioner and M.Rajkumar i.e, 6th respondent herein dated 27.01.2021, so as to enable the petitioner and the 6th respondent herein, to get mutual transfer.

For Petitioner : Mr.V.Panneer Selvam
For R1 to R5 : Mr.S.Saji Bino
Special Government Pleader



O R D E R

This writ petition is filed as against the orders passed by the fourth and third respondents in Na.Ka.No.606/A1/2021, dated 19.03.2021 and in Na.Ka.No.019960/C5/E1/2021, dated 15.07.2021.

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2.The case of the petitioner is that he was appointed as B.T Assistant (Tamil) at Government Higher Secondary School, Pillayarnatham, Tirunelveli District on 17.12.2012. After separation of Revenue Villages, the above said School comes under the control of Thoothukudi District. Hence, the petitioner has given representation seeking mutual transfer to Jawahar Government High School, Tirunelveli and the sixth respondent, who is working in the above said School has also consented for the same. By the order impugned in this writ petition, request of the petitioner for transfer of mutual consent was rejected by the respondents, by referring the Government order in G.O.Ms.No.249, Finance (Budge General-I) Department, dated 21.05.2020. Hence, this petition.

3.Mr.V.Panneer Selvam, learned counsel appearing for the petitioner submits that during COVID-19 pandemic situation, the Government has passed the Government Order in G.O.Ms.No.249, Finance (Budge General-I) Department, dated 21.05.2020, wherein, the Government has taken a decision that general transfer shall be kept hold for the year 2020-2021 to minimize expenditure on transfer travel expenses. Only transfers on Administrative grounds by an authority higher to the authority normally empowered to transfer and mutual request transfers alone be allowed. Subsequent to the above Government Order, a Letter in 15157/S1/2020-1, dated 12.09.2020 has been issued by the Government, with regard to the clarification on general transfer during the year 2020 and the relevant portion is extracted as under:-

"2.The Government have issued orders/clarification with regard to general transfers during the year 2020-21 as follows:-

- i.General transfers for the year 2020-2021 shall be kept on hold to minimize expenditure on transfer travel expenses;
- ii.Transfers on administrative grounds and mutual transfers are allowed;
- iii.Request transfer is also allowed.

3.In this connection, it is stated that the general transfers are being effected only during the "transfer period" between the 1st April and the 31st May every year. During the year 2020-21, the general transfer has been kept on hold with a provision to effect transfer on administrative grounds by an authority higher than the authority normally empowered to transfer. However,



appropriate authorities have been allowed to consider mutual transfers & request transfers, subject to the condition that this shall not pave way for administrative exigencies later.

4. In the light of the clarification issued in the letter fourth cited, it is stated that the request transfer and mutual transfer shall be effected by the transferring authority himself subject to the observance of the conditions issued in this regard by the Finance Department as stated in para 2 above and the Personnel and Administrative Reforms Department in the reference 1st cited. In view of this position, I am directed to state that no further instructions need to be issued in the Personnel and Administrative Reforms Department."

4. The learned counsel for the petitioner has also brought to the notice of this Court that Government has issued certain guidelines in G.O.Ms.No.176, School Education Department, dated 17.12.2021, wherein, the Government has held as follows:-

6. In the letters fifth read above, the Commissioner of School Education has sent the proposal to frame the policy to regulate transfers and postings of Headmasters and Teachers working in Government/Panchayat Union/Municipal Primary/ Middle Schools and Government/Municipal High/Higher Secondary Schools. He has stated that, the policy proposes a comprehensive solution for teacher transfers and postings, so that every year Government Orders need not be issued and the teachers will also be well informed about the guidelines. The proposed policy, once implemented, will address among other things, the problem of perennial vacancies in certain districts like the Nilgiris, Krishnagiri, Thiruvannamalai and Villupuram. He has also stated that with the introduction of priority blocks to address the issue of teacher vacancies in hilly and remote areas in the proposed policy, the Government order first read above may be withdrawn"

5. Mr. S. Saji Bino, learned Special Government Pleader appearing for the respondents 1 to 5 submits that the transfer is condition of service and the employee is not vested with the right to work at a particular place. He further submits that in the Government Order in G.O.218, School Education [(Pa.Ka.5(1)] Department, dated 20.06.2019, certain conditions have been imposed that a pre-condition of completion of three years of service in the place is required to participate in the General



Transfer Counseling prior to 01.06.2019. The sixth respondent joined in the present School on 20.09.2019 and not completed three years of service and hence he is not eligible to be transferred.

6.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

7.The request of the petitioner is only for transfer on mutual consent. Even in Government Order G.O.Ms.No.218, School Education [(Pa.Ka.5(1)] Department, dated 20.06.2019, the transfer on mutual consent is permitted on certain conditions. Clarification has also been issued by the Secretary in his letter in 15157/S1/2020-1, dated 12.09.2020, wherein, in Clause (ii), it was clearly mentioned that transfers on administrative grounds and mutual transfers are allowed. More so, the respondents have not made out a case that mutual transfer can be made only after completion of three years of service. As rightly pointed out by the learned counsel appearing for the petitioner, in G.O.Ms.No.176, School Education Department, dated 17.12.2021, certain guidelines have also been framed.

8.In view of the above, the writ petition is allowed. The impugned order is set aside. The respondent shall consider the case of the petitioner in the light of the letter 15157/S1/2020-1, dated 12.09.2020 and also G.O.Ms.No.176, School Education Department, dated 17.12.2021. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Deputy Registrar (LA&MC)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Secretary to Government,
School Education Department,
Secretariat,
Chennai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Director of School Education,
Chennai.

3.The Joint Director of School Education (Personnel),
Chennai - 6.

4.The Chief Educational Officer,
Thoothukudi District.

5.The Chief Educational Officer,
Tirunelveli District.

+1 CC to M/s.SPL.GP (SR-3708[F] dated 02/02/2022)

ORDER MADE IN
W.P (MD) No.14271 of 2021 and
WMP (MD) No.11205 of 2021
01.02.2022

KG (CO)
GC (22.03.2022) 5P 7C