



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.04.2022
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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Orders Reserved On 05.04.2022	Orders Pronounced On 13.04.2022
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W.P. (MD) No.21155 of 2021
and
W.M.P. (MD) Nos.17725 & 17726 of 2021

A.Nagarathinam .. Petitioner

-vs-

1. The State of Tamil Nadu,
Rep., by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George, Chennai - 600 009.

2. The Commissioner,
Directorate of School Education,
DPI Campus, College Road, Chennai - 600 006.

3. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.

4. Mymoon Begam,
B.T. Assistant (English),
Government High School,
Rosmiyapuram - 627 109,
Valliyoor, Tirunelveli District.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order issued by the 3rd respondent in Na.Ka.No.7620/A2/2018 dated 12.08.2021 and to quash the same and consequently directing the respondents 1 to 3 to allow the petitioner to continue to work in the post of B.T. Assistant (English) in Rosmiyapuram Government High School based on Station Seniority.

For Petitioner : Mr.G.Sankaran
For RR1 to 3 : Mr.G.V.Vairam Santhosh,
Additional Government Pleader
For R4 : No appearance

O R D E R

The order dated 12.08.2021 rejecting the claim of the writ petitioner for retaining her in the present place as B.T. Assistant (English) in Rosmiyapuram Government High School, Tirunelveli is under challenge in the present writ petition.

2. The petitioner was appointed as B.T. Assistant (English) in Elementary Education and was subsequently transferred and posted as B.T. Assistant (English) in Panchayat Union Middle School, Rosmiyapuram, Tirunelveli District on 14.08.2012. On upgradation of the School as High School, the petitioner submitted an option for absorption. Accordingly, the petitioner was absorbed in the High School by stating that she will be given seniority from the date of absorption into the High School in the School Education Department. The petitioner states that she was absorbed with effect from 18.07.2017, which was entered in her service records. Therefore, she is senior to the 4th respondent, Mrs.Mymoon Begam. When the petitioner is a senior in the cadre of B.T. Assistant (English), treating her as surplus Teacher and transferring her to another school is not in accordance with the Government Order.

3. The writ petitioner earlier filed W.P.(MD) No.14284 of 2018 challenging the deployment order dated 19.06.2018 by which, the petitioner was transferred to Parappadi Government Higher Secondary School. This Court passed final orders directing the petitioner to give a representation to the 3rd respondent, who in turn was directed to consider the same within a period of three months. Pursuant to the said direction, the present impugned order dated 12.08.2021 has been passed.

4. The learned counsel for the petitioner mainly contended that the date of absorption of the petitioner as B.T. Assistant (English), that is, 18.07.2017 is to be taken into consideration for the purpose of considering the seniority of the petitioner. If the said date is taken into account, then the petitioner is senior to the 4th respondent and accordingly, the decision of the authorities treating the writ petitioner as surplus teacher is untenable.

5. The learned Additional Government Pleader objected the contentions of the petitioner by stating that the petitioner is not senior to the 4th respondent. The writ petitioner was absorbed in the High School by order dated 04.08.2017 vide proceedings in Na.Ka.No.2067/A4/2017 as per the conditions stipulated in G.O.Ms.No.209, School Education Department, dated 08.05.1997 to the effect that the teacher absorbed will be the junior most in the transferred unit. The petitioner was working in the erstwhile Panchayat Union Middle School, Rosmiyapuram and on her written acceptance that she will be the junior most in the upgraded high school as on the date of her absorption into the upgraded school, she was absorbed in the High School. In view of the orders, the



petitioner will be considered as junior most as on the date of the orders of the Director of School Education, i.e., on 04.08.2017 as per her written agreement whereas the 4th respondent was working in the School Education Department and has joined in the school on 28.07.2017. Hence, the petitioner is junior to the 4th respondent as on the date of station seniority. Therefore, the petitioner was deployed to Government Higher Secondary School, Parappadi as per proceedings dated 19.06.2018 in view of the fact that the Government Higher Secondary School, Parappadi was in urgent need of one B.T. Assistant (English) Teacher as per the subject requirement of the school. However, the petitioner was permitted to continue in the same school based on the interim order dated 14.07.2018 passed in W.P.(MD) No.14284 of 2018.

6. With reference to the sanctioned post as per the report, the 3rd respondent in the counter affidavit has stated elaborately as follows:-

"3. ... the Panchayat Union Middle School Rosmiyapuram was upgraded as High School as per G.O.Ms.No.174 School Education (A.Ka.E.1) dated 14.07.2017. The following staff working in the erstwhile Middle School were absorbed along with their posts as per proceedings dated 04.08.2017 vide Na.Ka.No.2067/A1/2017 of the Director of School Education Chennai.

1. B.T. Assistant (English) 1
2. B.T. Assistant (Maths) 1
3. B.T. Assistant (Science) 1

Total : 3 B.T. Assistants

Further the five B.T. posts were sanctioned to the school according to the above Government Order. Accordingly, the following posts are available in the school.

1. B.T. Assistant (Tamil) 1
2. B.T. Assistants (English) 2
3. B.T. Assistants (Maths) 2
4. B.T. Assistants (Science) 2
5. B.T. Assistants (Soc Science) 1

otal : 8 B.T. Assistants

The petitioner was absorbed as B.T. Assistant in the Government High School as B.T. Assistant (English).

4. It is submitted that according to the staff fixation to the above school based on the strength of the students as on 01.08.2017, the following posts were identified as surplus.

1. B.T. Assistant (English) 1
2. B.T. Assistant (Maths) 1



3. B.T. Assistant (Science) 1

Further the strength of the student is as follows:-

	As on 01.08.2019	As on 01.08.2020
VI Standard	24	23
VII	21	28
VIII	26	29
IX	23	20
X	24	29
Total	118	129

Accordingly the school is eligible for 7 B.T. Assistants according to the number of periods eligible and one post of B.T. Assistant (English) is rendered as surplus. In the B.T. Assistant (English) posts the petitioner and the 4th respondent are working."

7. Regarding the consideration of the representation of the petitioner, pursuant to the orders passed by this Court in W.P.(MD) No.14284 of 2018, the 3rd respondent has considered the strength of the Government Higher Secondary School, Parappadi and has stated that the school is eligible for 13 B.T. Assistants (English). As of now, there are only 12 teachers posted in the school and they are detailed below:-

B.T. Assistants	Tamil	2
B.T. Assistants	English	2
B.T. Assistants	Maths	3
B.T. Assistants	Science	3
B.T. Assistants	Soc Science	2
Total		12

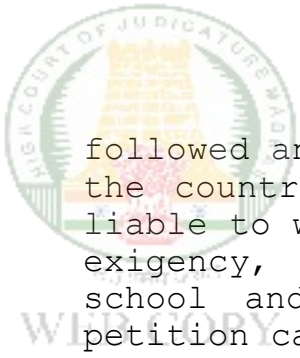
8. In view of the urgent need of the school, the petitioner was transferred to the above Government Higher Secondary School, Parappadi. Therefore, the writ petition is to be rejected.

9. This Court is of the considered opinion that the main ground raised by the petitioner is that she was absorbed in the school on 18.07.2017. However, the Director of School Education issued an order of absorption only in proceedings dated 04.08.2017. The proceedings dated 04.08.2017 reveal that the teachers were absorbed in the upgraded schools based on their written consent. It was further made clear that the date of absorption will be taken into consideration and they will be placed as junior most in the said unit. However, the proceedings of the Head Master states that based on the Government Order, upgrading the school i.e., 18.07.2017 onwards, the teachers were absorbed. Therefore, it is to be noted that the Head Master has fixed the date of absorption based on the Government Order passed upgrading the school. However, the Director of School Education has passed an order only on 04.08.2017. With reference to the fixation of seniority, the same is not an issue in



the present writ petition. However, *prima facie* it is found that the competent authority, Chief Educational Officer and the Director of School Education passed an order of absorption on 04.08.2017. The Government Order issued in G.O.Ms.No.174, School Education Department dated 18.07.2017 is relating to the upgradation of the school and not relating to the absorption of teachers. Therefore, the date of absorption of the teachers would be relevant for the purpose of fixation of seniority. The Head Master has erroneously given absorption with effect from the date of Government Order issued in G.O.Ms.No.174, the date from which the school was upgraded. However, the actual date of absorption came into effect only on issuance of orders by the competent authority.

10. In the present case, the Director of School Education and the Chief Educational Officer absorbed the employees vide proceedings dated 04.08.2017 and the said date would be the relevant date for the purpose of considering the date of absorption. If at all the authorities have absorbed retrospectively with effect from the date of the Government Order, then the position would be different. But in the present case, it is not established that the absorption was made by the authorities retrospectively with effect from the date of the Government Order issued in G.O.Ms.No.174, dated 18.07.2017. Thus, the claim of the petitioner cannot be accepted. Beyond all these aspects, the petitioner is deployed to work in another school on need basis. Mere deployment would not confer any right. Transfer, posting and deployments are made based on certain guidelines. Even in case, a senior teacher is deployed to another school on need basis or on the ground of administrative exigencies, such teachers cannot claim any right, as such deployment would not infringe the service rights of the employees. If the service conditions are not violated, the petitioner has no locus to institute the writ petition. When there is no alteration of service conditions due to the deployment to another school, this Court is of an opinion that mere deployment cannot be construed as cause for the purpose of filing writ petition and the teachers are bound to work wherever they are posted in the interest of students and in the interest of the administration of education system in the State of Tamil Nadu. Therefore, such writ petitions filed questioning the deployment cannot be ordinarily interfered with by the Courts. The power of judicial review under Article 226 of the Constitution of India need not be exercised in such circumstances, where the employees are unable to establish infringement of right or violation of service conditions by the competent authorities of the Department. Mere re-deployment, transfer and posting would not confer any right, as they are incidental to service and condition of service. No writ needs to be entertained and High Court cannot conduct roving enquiry in respect of such deployment and transfer and posting. A writ against such orders may be entertained only if such orders are tainted with *mala fides* or issued by an incompetent authority or otherwise. These being the principles to be



followed and precedent laid down by the constitutional courts across the country, this Court is of the opinion that the petitioner is liable to work in the deployment place in view of the administrative exigency, as B.T. Assistant (English) is required in a particular school and the relief as such sought for in the present writ petition cannot be granted.

11. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George, Chennai - 600 009.

2. The Commissioner,
Directorate of School Education,
DPI Campus, College Road, Chennai - 600 006.

3. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.

+1 CC to M/s.SPL.GP. (SR-19005[F] dated 18/04/2022)

W.P. (MD) No.21155 of 2021
13.04.2022

KMV(CO)
KB(22.04.2022) 6P 5C