



W.P.(MD)No.22912 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22912 of 2022

and

W.M.P(MD)Nos.17029 & 17030 of 2022

M.Thavamani

... Petitioner

Vs

1.The Commissioner of School Education,
EVK Sampath Maaligai,
DPI Campus,
College Road,
Nungampakkam,
Chennai – 600 006.

2.The Joint Director of School Education (Personnel),
EVK Sampath Maaligai,
DPI Campus,
College Road,
Nungampakkam,
Chennai – 600 006.

3.The Chief Educational Officer,
Office of the Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings vide Na.Ka.No.7488/A1/2022 dated



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26.09.2022 issued by the third respondent and quash the same and consequently forbearing the respondents from effecting compulsory transfer by treating the petitioner's present post as vacant in pursuance of the impugned proceeding.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for the respondents.

2. With the consent of counsel on either side, the writ petition is taken up for final disposal at the admission stage itself. The writ petitioner was appointed as Junior Assistant in the Education Department on 31.05.2013. He was initially posted in Salem District. Subsequently he was posted in Virudhunagar District. He was working in Government Higher Secondary School, Kurunthamadam, Virudhunagar District since 04.09.2014. The petitioner challenges the impugned proceedings dated 26.09.2022 issued by the third respondent which provides for transfer counseling today.

3. The contention of the petitioner is that those who have served in a given place for more than three years are liable to be compulsorily transferred. The petitioner is working as Junior Assistant in a particular School in



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Virudhunagar since 04.09.2015. By virtue of the impugned proceedings, he will definitely be facing transfer as his present posting has been shown vacant in the counselling.

4. The primary contention advanced by the learned counsel appearing for the writ petitioner is that the impugned proceedings dated 26.09.2022 invoked the proceedings dated 24.09.2022 issued by the Joint Director of School Education (Personnel), Chennai. He also points out that the primary order which the impugned proceedings are anchored, do not provide for compulsory transfer of non-teaching staff who have served in a given place for more than three years. The learned counsel even while reiterating all the contentions set out in the affidavit filed in support of the writ petition would urge that the third respondent appears to have misread the proceedings dated 24.09.2022 issued by the second respondent. The learned counsel drew my attention to similar proceedings issued in July 2019 which clarified that the Junior Assistants and Assistants will not be covered by the order providing for compulsory transfer. The learned counsel appearing for the petitioner called upon this Court to quash the impugned proceedings.

5. The learned Special Government Pleader submitted that the third respondent had rightly understood the proceedings issued by the second respondent and only thereafter passed the impugned order. He pointed out that



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the proceedings dated 24.09.2022 is all encompassing and includes all the ministerial staff. It does not make a distinction between teaching staff and non-teaching staff. In any event, the second respondent had issued clarificatory proceedings dated 28.09.2022 which clearly states that even non-teaching staff working for more than three years in a given place will have to be transferred. He called for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record.

7. The writ petitioner has questioned only the proceedings issued by the third respondent. He has not questioned the proceedings issued by the second respondent. The proceedings issued by the second respondent on 24.09.2022, is comprehensive and includes all the ministerial staff working in a given place / office. In any event, the subsequent clarification issued on 28.09.2022 cannot leave any manner of doubt. The writ petitioner is a Government servant. He has been serving in a given place for more than nine years. It is well settled that transfer is an incident of service. Therefore, the petitioner cannot insist or demand that he should not be disturbed. It is not as if the Department has targetted the petitioner. The Department has only undertaken a general counselling which contemplates transfer of employees who have served in a given place or office for more than three years. The object of such counselling



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is only to ensure better administration and to tone up the administrative machinery. No interference is called for. This writ petition is dismissed.

8. Even though I have sustained the stand of the learned Special Government Pleader and the policy of the Department, I must remark that effecting transfer in the middle of the academic year may cause hardship to the individual employee. It is quite possible that the employee's child may be studying in a School. If the employee is transferred to a distant place, then he may have to maintain two establishments which may really cause further difficulties. If the writ petitioner is going to be transferred to a very far off place, the authorities can defer implementation till the end of the academic year. These thoughts are passing through my mind and I hope this will be taken note of. Consequently, connected miscellaneous petitions are closed. No costs.

29.09.2022

Index : Yes / No

Internet : Yes/ No

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To

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Chennai – 600 006.



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G.R.SWAMINATHAN, J.

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- 2.The Joint Director of School Education (Personnel),
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