



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos.22268 & 22270 of 2021

and

WMP (MD) Nos.18818, 18819, 18842 & 18844 of 2021

1.Manimekala ... Petitioner in W.P.22268/2021
2.Sethu Lakshmi ... Petitioner in W.P.22270/2021

Vs.

- 1.Tamil Nadu Government,
Through its Secretary,
Adi Dravidar and Tribal Welfare Department,
St.George Fort, Chennai,
- 2.The Commissioner,
Adi Dravidar and Tribal Welfare Directorate,
Chepauk, Chennai - 600 005.
- 3.The District Welfare Officer,
District Adi Dravidar and Tribal Welfare Office,
Theni, Theni District. ... Respondents in both W.Ps.

COMMON PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the impugned order in R1/6461/2021 dated 08.12.2021 passed by the 2nd respondent and quash the same so far as the petitioners are concerned.

For Petitioners : Mr.B.Rajesh Saravanan
(in both WPs.)
For R1 : Mr.N.Satheesh Kumar
(in both Wps.) Addl.Govt.Pleader

COMMON ORDER

The order of transfer issued in the interest of the students Education passed in proceedings dated 08.12.2021, is under challenge in the present writ petitions.



2. The petitioners are working as Secondary Grade Teachers at Government Adi Dravidar Welfare Primary School at Ammachiyapuram Village, Theni District. The petitioners are working in the said school from 18.03.2011 and 25.01.2014 respectively and completed around 10 years of service. The first respondent while conducting inspection identified the surplus teachers, based on the teachers students ratio in accordance with the Government policy. After identifying the surplus teachers, the transfers are issued, transferring the surplus teachers to other school wherever the vacancies available. The order impugned also states that the transfer is issued in the interest of education of the students studying in the school. In the impugned order, 7 teachers were transferred on the said ground of students interest. The petitioners are transferred from Ammachiyapuram Village, Theni District to Tiruvadavur, Madurai District and from Ammachiyapuram Village, Theni District to Ilayankudi, Sivagangai District respectively.

3. The learned counsel for the petitioners mainly contended that the guidelines issued by the Government in G.O.Ms.No.25, Adi Dravidar and Tribal Welfare Department, dated 08.02.2021 has not been followed. In the present case, the juniors to the petitioners were retained in the said District viz., Theni District and the petitioners, who are seniors, are transferred to Madurai and Sivagangai Districts respectively. Therefore, the respondents have violated the Government Orders and also the consequential Circular issued by the Director, Adi Dravidar and Tribal Welfare Department, in proceedings dated 24.07.2018. It is further contended that the petitioners are posted in school boys hostel warden and as per the instructions, the women wardens are to be posted in women hostel. On these grounds, the order of transfer is to be set aside.

4. The learned Additional Government Pleader appearing on behalf of the respondents objected the contentions raised by the petitioners by stating that the Government issued general instructions for identification of surplus teachers and to fill up the vacant posts. The instructions are given generally to the Authorities and such instructions cannot provide any exemptions from transfers. Transfers are issued on administrative grounds and also considering the interest of the students. In the impugned order itself it has been stated that the order of transfer has been issued in the interest of the education of the students. Therefore, there is no infirmity as such and considering the administrative exigencies and other issues, the authorities have transferred and furthermore, the petitioners are transferred from Theni District to Madurai and Sivagangai Districts, which are adjacent and thus, the writ petitions are to be rejected.

5. This Court has to examine the scope of interference by the High Court in the matter of administrative transfer. Section 48 of



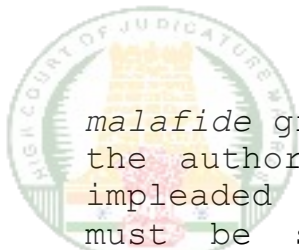
the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 stipulates postings and transfers. Sub Section 1 states that "A member of a service or class of service may be required to serve in any posts borne on the cadre of such service or class for which he is qualified." Sub Section 3 states that "Notwithstanding anything contained in this Act or in any special rules or ad-hoc rules, the Government may, transfer any Government servant from one revenue district to another revenue district within the State, on administrative grounds."

6. Therefore, the Act contemplates, a member of a service may be required to serve in any posts borne on the cadre of such service. Sub Section (3) clarifies that notwithstanding anything contained in the Act any special rules or ad-hoc rules, the Government may, transfer any Government servant from one district to another district on administrative grounds. The Act prevail over the Rules and it is needless to state that the Government instructions or guidelines are for the authorities to follow a procedure and such procedure would not confer any service right on the employees. Such procedures are issued for the administrative convenience and similarly various administrative procedures in dealing with files are issued. All such guidelines and instructions are only for the purpose of convenience and to maintain an effective administration. Such guidelines or instructions given would not confer any absolute right for an employee, as such guidelines or instructions cannot be construed as violation of service conditions.

7. Apart from this, when the Act contemplates that a member of a service or class of service may be required to serve in any posts and Sub Section (3) clarifies that even in the presence of the special rules or ad-hoc rules, the State can transfer an employee from one district to another district on administrative grounds, all other instructions or ad-hoc rules or otherwise cannot override the provisions of the Act, which will prevail over in the matter of postings and transfers.

8. Transfer is an incidental to service, more so, a condition of service. By transferring an employee from one place to another place or one post to another post, the service conditions are not violated. Certain inconvenience of a Government servant cannot be a ground to set aside the transfer. No doubt, certain transfers effected may cause certain personal inconvenience to the Government employees, however, the public interest will prevail over and in the interest of public administration, the Government servants are expected to work wherever they are posted.

9. Public interest and the efficiencies of public administration is of paramount importance. Thus, the transfer can never be claimed as a right. An order of transfer cannot provide a cause for filing a writ petition. However, a cause may arise only if an order of transfer is passed without jurisdiction or on



malafide grounds. Even in case of rising an allegation of *malafides*, the authority against whom such an allegation is raised must be impleaded as a party in the writ proceedings and the allegations must be sufficient enough to hold that there is a *malafide* intention, which is established. Therefore, mere allegation of *malafide* is not enough and the administrative action cannot be taken as *malafides*. The standard of proof required to establish the *malafides* under general principles of law is to be followed while arriving a conclusion that such an order of transfer is issued on *malafide* grounds. Further, if any transfer orders are passed, in order to accommodate the surplus teachers, such transfers are no way connected with the seniority of the employees.

10. Seniority of an employee in a particular post / place no role in the matter of administrative transfers or transfers made on the ground of surplus. Seniority is unconnected with transfer and posting. It is not necessary that the transfer orders are to be effected based on the seniority. Identification of the surplus employees are one aspect of the matter, transferring an employee on administrative ground or considering the educational interests of the students are other matters, which cannot be compared at no circumstances. Thus seniority play no role in the matter of transfer and posting.

11. The Government then and there and periodically issued instructions / guidelines and more so, in every counselling certain instructions are issued based on change in circumstances or otherwise. Such instructions / guidelines cannot override the power of transfer and posting by the authorities, which is conferred under Section 48 of the Act, which will prevail over. Therefore, the original power conferred under the Act for transfer of an employee by a competent authority will alone prevail over all other instructions. In other words, the instructions / guidelines issued cannot run counter to the original power conferred on the authority to transfer an employee under Section 48 of the Act. Therefore, the instructions and guidelines remain only as a procedures for the administrative convenience and such administrative convenience would not confer any right on the employee to claim transfer on the basis of the seniority or otherwise.

12. This Court would like to emphasis that when transfer itself is not a right of an employee and incidental to service, the circular / instructions cannot provide right to an employee. Therefore, based on the mere circulars and instructions, which are issued for administrative convenience and even in such cases, if at all there is any inconvenience or otherwise, High Court cannot exercise the power of judicial review in such matters, more specifically, in transfers and postings. High Court cannot grant relief on misplaced sympathy.



13. High Court cannot interfere with the day-to-day administration of the Government Departments. The executive are the best persons to decide, which employee is to be posted in which place in the interest of administration and in the public interest. In the event of unnecessary interference by the High Court in transfers and postings, no doubt, the executives will not be in a position to run the public administration in an effective manner. That is the reason why, the Constitutional Courts across the country repeatedly emphasized that the transfers can be interfered only on limited grounds and administrative transfers would not provide any right on the employee to seek a particular post or place as a matter of choice.

14. This being the principles to be followed routine interference in transfer and posting of Government employee by the High Court is undoubtedly undesirable. Only on exceptional circumstances, as stated above, a Writ may be entertained, but not otherwise.

15. In the present case, the petitioners state that their juniors were retained in the same District and the petitioners, being the seniors, transferred to other Districts. Such a claim cannot be entertained, as the order of transfer itself states that the seniority will not be affected even in case of transfer of an employee from one District to another District. When the seniority for promotion is protected, the said seniority cannot have any implication in respect of transfers and postings.

16. Accordingly, this Court has no hesitation in forming an opinion that the petitioner has not established any right for the purpose of interference and consequently, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MPK

To

1.The Secretary,
Tamil Nadu Government,
Adi Dravidar and Tribal Welfare Department,
St.George Fort, Chennai,



2.The Commissioner,
Adi Dravidar and Tribal Welfare Directorate,
Chepauk, Chennai - 600 005.

3.The District Welfare Officer,
District Adi Dravidar and Tribal Welfare Office,
Theni, Theni District.

+1 CC to M/s.SPL GP (SR-7412[F] dated 21/02/2022)

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18.02.2022

RJ(CO)

TR(02.03.2022) 6P 5C