



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2022

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD) No.22687 of 2021

K.Selvi

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep by its Principal Secretary to Government,
School Education Department,
Secretariat, Chennai-9

2.The Commissioner of School Education,
O/o.the Commissioner of School Education,
DPI Compound, Chennai.

3.The Chief Educational Officer,
O/o.the Chief Educational Office,
Thoothukudi,
Thoothukudi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to accommodate the petitioner as Block Resource Teacher Educator in any of the nearest vacancy available in and around the Madurai and Virudhunagar Districts by considering the petitioner's representation dated 13.11.2021 within the time frame as fixed by this Court.

For Petitioner : Mr.M.Ajmal Khan
for Mr.C.Venkatesh Kumar
for Ajmal Associates

For Respondents : Mr.V.Nirmal Kumar, GA

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, directing the second respondent to accommodate the petitioner as Block Resource Teacher Educator in any of the nearest vacancy available in and around the Madurai and Virudhunagar Districts by considering the petitioner's representation dated 13.11.2021 within the time frame as fixed by this Court.



2. Heard Mr.M.Ajmal Khan for Mr.C.Venkatesh Kumar, learned counsel appearing for the petitioner and Mr.V.Nirmal Kumar, learned Government Advocate appearing for the respondents.

3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4. The petitioner was appointed as Block Resource Teacher Educator (hereinafter referred to as "BRTE") on **(*)25.09.2008** at Block Resource Center, Sivakasi Block, Virudhunagar District through Teachers Recruitment Board. Thereafter, she was transferred to **(*)Rajapalayam** Block, Virudhunagar District on **(*)03.06.2013**. The post of Block Resource Teacher was made equivalent to the post of B.T. Assistant.

5. While so, the 1st respondent vide G.O.1D.No.556 School Education (Pa.Ka.3(2)) Department dated 09.08.2018 proposed to conduct the counseling to the BRTEs. As a matter of fact, originally, there were 6000 posts of BRTEs. However, the total numbers of available BRTEs are reduced to the tune of 3890 as against the sanctioned strength of 6285 posts. Under the above said circumstances, some BRTEs filed writ petition in W.P.(MD)No.18387 of 2018 challenging the G.O.1D.No.556 School Education (Pa.Ka.3(2)) Department dated 09.08.2018. The said writ petition came up for hearing and this Court vide order dated 23.08.2018 was pleased to grant interim order of Status Quo and the same is in force. Thereafter, 1st respondent vide his proceedings in G.O.1D.No.134 School Education (Pa.Ka.5(1)) Department dated 18.08.2021 has framed guidelines for the purpose of transfer counseling in and by which under clause 4(I)(c) it is ordered that all the posts are treated to be vacant post and it is only on that basis the transfer counseling will be held. In other words it is stated that all the BRTEs shall apply for transfer counseling.

6.The grievance of the petitioner is that while she and similarly placed persons were all working as BRTEs in the respective post, there is no justification on the part of the respondents to treat all the posts as vacant. The transfer counseling is like an enabling clause and it is for the candidates to participate in the transfer counseling as per their willingness. No one can be compelled to participate in the transfer counseling.

7.The above said G.O.Ms.No.134 dated 18.08.2021 was challenged before this Hon'ble Court by way of several writ petitions in W.P.(MD).Nos.16684 of 2021 etc. While entertaining the writ petitions on 08.10.2021, this Hon'ble Court has passed an interim order as follows:-



"14.

(i) The writ petitioners shall participate in the ensuing general transfer counselling for this academic year and without prejudice to their rights, they can exercise their option for the transferring place.

(ii) If any of the deployed BRT Educators opts for the same place, under Clause 4(1)(V) and (III)(ix) of the said Government Order, the posting orders shall be kept in abeyance insofar as the particular place is concerned (emphasis supplied)."

8. According to the petitioner, in terms of the above interim order passed by this Hon'ble Court, more than 165 BRTes who availed the benefits of interim order they had opted their transferring place without prejudice to their rights and also hold their present working place as well. Therefore, the BRTes like the petitioner who has not approached this Court and participated in the counseling, having no option to choose the place because the BRTes who approached this Court has hold two places each i.e., one is the present working place and another place opted in transfer counseling and therefore, the petitioner is not in a position to choose the place due to some of the BRTes hold two places by virtue of the interim order passed by this Court.

9. It is the case of the petitioner that due to non availability of vacancies, with no other options, the petitioner was forced to opt some other vacancy available in other districts and as such she had opted as Block Resource Center at Thoothukudi Rural, Sorispuram, Thoothukudi District during the transfer counseling held on 21.10.2021. The grievance of the petitioner is that she is living along with her husband, Mother-in-law and two children at Rajapalayam, Virudhunagar District, while so, transferring the petitioner from Virudhunagar District to faraway place of Thoothukudi District which is approximately 300 Kms to and fro far away from her present station would cause great hardship to her.

10. According to the petitioner, the following BRTes were holding two posts by virtue of interim order granted by this Court on 08.01.2021:-

S. No.	W.P. (MD) . No	Name	Present Working Place	Opted Place during Counseling
1.	18785/2021	T. Dinesh	Usilampatty Block, Madurai District.	Vembakottai Block, Virudhunagar District.

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2.	16893/2021	S. Vadivel	Chellampatty Block, Block, Madurai District.	Watrap Block, Virudhunagar District.
3.	16884/2021	A.Ayyamal	Nagapattinam District	Virudhunagar block, Virudhunagar District
4.	17206/2021	S. Kanimozhi	District Coordinator, DPO (District Project Office), Theni District.	Srivilliputhur Block, Virudhunagar District.

11.According to the petitioner, the above BRTes were neither relieved from the present working place nor joined in the opted place during counseling and therefore, the petitioner is not in a position to opt any of the above said places as both the places were hold by them, which constrained the petitioner to opt faraway place from Virudhunagar District to Thoothukudi District.

12.While so, the main writ petitions were taken up for hearing and the same were partly allowed by an order dated 24.11.2021 in which Clause 4 (1) (A) and Clause 4 (III) (ix) of the G.O.(1D). No.134 School Education Department dated 18.08.2021 in as much as giving priority to a set of BRTes has been quashed. Subsequently, the petitioner made a representation to the respondents on 20.11.2021 to accommodate her in any of the vacancies in and around Virudhunagar or Madurai District by considering her family circumstances and her health condition, which evoked no response. Hence, the Writ Petition.

13.Mr.Nirmal Kumar, learned Government Advocate appearing for the respondents has produced a copy of the communication which he received from the Chief Educational Officer, wherein, it has been stated that pursuant to the interim order passed by this Court in W.P.(MD) No.16884 of 2021, etc., dated 8.10.2021, one Dinesh, Vadivel and others have participated in the counselling and selected the places of their choice in Virudunagar District, however, they were not relieved, but still continuing in the original places and in such circumstances, the claim of the petitioner to accommodate her in Virudunagar District is not possible. He would further submit that as against the common order passed in W.P.(MD) No.16884 of 2021 etc., the Government has preferred Writ Appeals.



14.This Court paid its anxious consideration to the rival submissions made and perused the entire materials available on record.

15.Challenging the Government Order vide G.O.(1D) No.134, School Education (Pa.Ka.5)(1) Department dated 18.08.2021 in so far as Clause contained in paragraph No.4(1)(e)(h) and 4(III) (ix) issued by the 1st respondent herein, a batch of Writ Petitions in W.P.No.16884 of 2021, etc., has been filed before this Court. By common order, dated 24.11.2021, this Court disposed of the Writ Petitions by allowing the same in part and the relevant portion of the order is extracted as under:

31.From the sequence of events, it can be understandable that several transfers have been effected initially in the year 2006, however with consent and then, in the year 2014, by way of deployment, after framing the adhoc rules, which were not challenged. The deployment by transfer was initially made only on the request of the association of BRTEs that they are not having sufficient promotional opportunities. They are working as BRTEs in the same place for more than seven years. In view of the above position and the guidelines of the Hon-ble Supreme Court, this Court is not inclined to entertain these writ petitions inasmuch as conducting the transfer counselling by declaring zero vacancy.

32.Insofar as the priority clause is concerned, it appears that the Government in Clause 4(III) of G.O.(1D) No.134, School Education (Pa.Ka.5)(1) Department, dated 18.08.2021, has given certain priority categories such as widow, disabled person, etc. These classifications have been made based on their social status. Whereas, the classification in Clause 4(III)(ix), by which priority was given to those BRTEs who were deployed in the year 2014-15, is based on service condition.

33.There cannot be any priority based on a service condition and it would not stand in the eye of law. As discussed supra, transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee, holding a transferable post, does not have any vested right to be posted at a particular place. If an employee is transferred from a particular place and posted at a particular place, he / she has to comply with the same. Of course, the transfer order can be questioned on the ground of mala fide, jurisdiction, etc. But, it is a service condition. If certain BRTEs were transferred in the year 2014~15, for which, there cannot be any



preference, on par with those who were given preference based on their social condition.

34. In case of surplus Teachers among the BT Assistants, the respondents are following the principle of -last come first go-. There is a Government Order in G.O.(1D)No.217, School Education Department, dated 20.06.2019, to the effect that on deployment due to surplus, the junior~most has to be deployed as per the seniority. This is what happened in the present case. During the year 2014~15, the Department has identified 395 BRTEs as surplus in certain Districts and deployed the junior~most BRTEs to other Districts. Of this 395 BRTEs, 362 BRTEs are in service and by the impugned Government Order, they are now sought to be given preference. If the Department intends to give some concession to these 362 BRTEs, they can accommodate them as BT Assistants, like that of the 500 senior~most BRTEs who are now transferred as BT Assistants as per Clause 4 (1)(m) of the impugned Government Order, since as per the adhoc rules framed vide G.O.(Ms)No.52, School Education (C2) Department, dated 30.03.2006, the posts of BRTE and BT Assistant are inter-changeable. Instead, they are cited as a priority category, which is clearly a discrimination among the BRTEs and this classification based on service condition is not a reasonable one. Therefore, this Court is inclined to quash the impugned Government Order insofar as Clause 4(1)(V) and Clause 4 (III)(ix) is concerned, inasmuch as giving priority to a set of BRTEs.

35. Accordingly, Clause 4(1)(V) and Clause 4(III)(ix) of the impugned Government Order in G.O.(1D)No.134, School Education (Pa.Ka.5)(1) Department, dated 18.08.2021, inasmuch as giving priority to a set of BRTEs, are quashed.

36. It appears that this Court, while entertaining the writ petitions on 08.10.2021, has passed the following interim order:~

"14. ...

(i) The writ petitioners shall participate in the ensuing general transfer counselling for this academic year and without prejudice to their rights, they can exercise their option for the transferring place.

(ii) If any of the deployed BRT Educators opts for the same place, under Clause 4(1)(V) and (III)(ix) of the said Government Order, the posting orders shall be kept in abeyance insofar as the



particular place is concerned (emphasis supplied). . . .”

Since this Court has now quashed Clause 4(1)(V) and Clause 4(III)(ix) of the impugned Government Order in G.O.(1D)No.134, School Education (Pa.Ka.5)(1) Department, dated 18.08.2021, the respondents shall pass appropriate posting orders.

In the result, these writ petitions stand partly allowed. There shall be no order as to costs. Consequently, all the connected miscellaneous petitions shall stand closed.”

16.However, pursuant to the interim order passed by this Court during the pendency of the Writ Petitions, one Mr.Dinesh, Vadivel and others who were working as BRTes in Madurai and Theni Districts have opted places of their choice in Virudhunagar District. But according to the learned Government Advocate, after exercising their right of choice and selected the places of working, the said individuals have not joined to the selected places in Virudhunagar District and they are still continuing in their original places. Therefore, as on date, they are holding two posts which they are not supposed to do so and when those individuals have not joined in those places, the said posts have to be treated as vacant and thereby, the petitioner can be accommodated.

17.In the light of the above, the respondents are directed to consider the claim of the petitioner and if she is found eligible pursuant to the earlier orders passed by this Court and accommodate her in Virudhunagar District. The respondents shall pass appropriate orders in accordance with law and in the light of the orders passed by this Court, within a period of 8 weeks from the date of receipt of a copy of this order.

18.Accordingly, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CRL)

(*)Corrected as per the order of this court dated 23.02.2022 made in WP (MD).No. 22687 of 2021

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dnNote : 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.

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To

**(*)To be Substituted the order already despatched
on 16.02.2022**

1.The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai-9

2.The Commissioner of School Education,
O/o.the Commissioner of School Education,
DPI Compound, Chennai.

3.The Chief Educational Officer,
O/o.the Chief Educational Office,
Thoothukudi,Thoothukudi District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-434[F] dated 05/01/2022)
+1 CC to M/s.SPL.GP (SR-579[F] dated 06/01/2022)

W.P (MD) No.22687 of 2021
05.01.2022

NSN (CO)

TR(15.02.2022) 8P 6C

KB(23.03.2022) 8P 6C