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W.P. No. 11625 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 11625 of 2023
and
W.M.P. Nos. 11530 and 11531 of 2023**

Dr. S.Vaheetha Ghousia

... Petitioner

-VS-

1. The State of Tamilnadu
Rep. by its Principal Secretary to Government
Department of Higher Education
Fort St. George
Chennai – 600009.

2. The Director of Collegiate Education
Directorate of Collegiate Education
IASE Campus, No.577
Anna Salai, Saidapet
Chennai – 600015.

3. The Principal
Government Arts College
Udhagamandalam
Nilagiri District.

4. M.Easwaramurthy

... Respondents



W.P. No. 11625 of 2023

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order of the Second Respondent in Na.Ka. No. 01/D/2022, dated 31.03.2023, transferred the Petitioner from Government Arts College Ooty to Government Arts and Science College, Thirumangalam, Madurai and quash the same Ooty.

For Petitioner : Mr. S.Sathia Chandran
For Respondents : Mrs. R.Anitha (R1 to R3)
Special Government Pleader

ORDER

Heard Mr. S.Sathia Chandran, Learned Counsel for the Petitioner and Mrs. R.Anitha, Learned Special Government Pleader appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is working as Head of the Department and Associate Professor in Government Arts College, Udthagamandalam, Nilgiris District, has been transferred to Government Arts and Science College, Thirumangalam, Madurai District by proceedings in Na. Ka. No. 01/D/2022 dated 31.03.2023 issued by the Second Respondent, which is assailed in this Writ Petition.



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3. The primordial contention of the Learned Counsel for the Petitioner is that though it has been stated in the impugned order that the transfer has been effected for administrative reasons, it is not in accordance with the guidelines for transfer of College Teachers for the academic year 2022-23 in G.O. Ms. No. 245 Higher Education Department dated 08.11.2022 issued by the Government of Tamil Nadu.

4. The legal position relating to the scope of interference of the Court on transfers in public employment under Article 226 of the Constitution has been well settled as reflected in the following extracts from the rulings of the Hon'ble Supreme Court of India:-

(i) ***Mrs. Shilpi Bose -vs- State of Bihar*** [(1992) SCC (L&S) 127]:

“ In our opinion, the Courts should not interfere with transfer orders which are made in public interest and for administrative reason unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at a place or the



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other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead the affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day to day transfer orders passed by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest.”

(ii) ***Union of India -vs- S.L.Abbas*** [(1994) SCC (L&S) 230]:

“ Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the



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subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however, does not confer upon the Government employee a legally enforceable right.”

(iii) ***State of Punjab -vs- Joginder Singh Dhatt*** [(1994) SCC (L&S) 230]:

“ This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of a public servant from one place to another. It is entirely for the employer to decide when, where and what point of time a public servant is to be transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the



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Constitution of India in a matter where, on the face of it, no injustice was caused.”

(iv) ***Abani Kanta Ray -vs- State of Orissa*** [(1996) SCC (L&S) 175]:

“ It is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly vitiated by mala fides or infraction of any professed norm or principle governing the transfer.”

Having due regard to the aforesaid dictum laid down in the binding decisions, the guidelines for transfer for the college Teachers for the academic year 2022-23 in G.O. Ms. No. 245 Higher Education Department dated 08.11.2022 issued by the Government of Tamil Nadu, relied by the Learned Counsel for the Petitioner, which does not have any force of law, cannot be enforced. However, it is asserted by the Learned Counsel for the Petitioner that when the said Governmental Order has been issued in the exercise of the executive power of the State Government under Article 162 of the Constitution, it would have to be treated as having the force of law relying on the decision of the Division Bench of this Court in ***M.Ragavan -vs- Revenue Divisional Officer*** (Order dated 24.07.2017 in W.P. No. 8140 of 2017) where it has been observed as follows:-



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“10. That apart, in order that the Executive instructions have the force of statutory Rules, it is to be exhibited that they were issued either under the authority showered under the State Government by some statute or under some provision of the Constitution, as per decision of Hon'ble Supreme Court **G.J.Fernandez -vs- State of Mysore** reported in AIR 1967 SC Page 1753.

11. In short, Article 162 of the Constitution requires that where the State has power to make Laws, it can issue executive instruction as per decision **Kamala Godera -vs- State of Rajasthan** reported in AIR 2000 Rajasthan 130. Although the State Legislation has the power to make a Law relating to a subject, the executive action by the appropriate Government is not rendered invalid just because there is no Legislation to support such action, as per decision of Hon'ble Supreme Court **Naraindas -vs- State of Madhya Pradesh** in AIR 1974 SC Page 1232.”

The said decision merely highlights that executive instructions could be issued



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by the State Government exercising the powers under Article 162 of the Constitution when there is no legislation on that subject or to fill up the gaps in any legislation without any inconsistency with statutory provisions. This cannot, by stretch of imagination, amount to equating executive instructions as having the force of law.

5. Another ruling of the Division Bench of this Court in ***Tamil Nadu Agricultural University -vs- Dr. R.Agila*** (Order dated 30.06.2022 in W.A. No. 1498 of 2021 etc., batch) while upholding the order of Single Judge in ***Dr. Rajaskar -vs- Government of Tamil Nadu*** (Order dated 25.03.2021 in W.P. No. 10411 of 2020 etc., batch), cited by Learned Counsel for the Petitioner, intends to implement the measures taken by the State Government during the COVID Pandemic under the relevant Governmental Order, but it cannot be construed as enabling the Court to deviate from the authoritative pronouncements holding the field.

6. Though there are certain averments in the affidavit filed in support of the Writ Petition relating to events that had taken place involving the conduct of the



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Petitioner in the College of the Third Respondent, the same do not appear to have any relevance so as to invalidate the impugned order of transfer as suffering from any *malafides*. In such circumstances, it is not possible to entertain the Writ Petition challenging the impugned order of transfer, but it would not preclude the Petitioner from making any representation before the concerned authority to re-consider the order of transfer in terms of G.O. Ms. No. 245 Higher Education Department dated 08.11.2022 issued by the Government of Tamil Nadu.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed.
No costs.

26.04.2023

Maya

Index: Yes/No

Neutral Citation : Yes/No

Note: Issue order copy by 16.06.2023.

To

1. The Principal Secretary to Government of Tamilnadu
Department of Higher Education

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