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W.P.No.17106 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.17106 of 2023

and

W.M.P.No.16276 of 2023

E.Mariappan

... Petitioner

Vs.

1.The Director,
Tribal Welfare Department,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The District Adi Dravidar and
Tribal Welfare Officer,
Tribal Welfare Department,
The Nilgiris.

3.The Headmaster,
Government Tribal Residential School,
Higher Secondary School,
Kargudi, Gudalur Taluk,
The Nilgiris District.

4.Kausalya

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Na.Ka.No.Pa.Ma.No.A1/9181/2022 dated 19.05.2023 and consequential order of the 3rd respondent in Na.Ka.47/2021 dated



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22.05.2023, quash the same and consequently, direct the respondents to continue the seniority of the petitioner as if he had joined duty only on 25.11.2021 in the forenoon and permit the petitioner to continue in his present station.

For Petitioner : Ms.Dakshayini Reddy
Senior Counsel
for M/s.S.Suneetha

For R1 to R3 : Mr.P.Baladhandayutham
Special Government Pleader

For R4 : Mr.V.V.Sathya

ORDER

This writ petition has been filed challenging the order of the 1st respondent, dated 19.05.2023, cancelling the transfer order granted in favour of the petitioner dated 19.09.2022, and also the consequential relieving order of the 3rd respondent, dated 22.05.2023.

2.It is the case of the petitioner that he was originally appointed as B.T.Assistant with effect from 09.02.2009 in The Nilgiris District. Thereafter, he participated in the promotion counselling which was conducted in the year 2021 and accordingly, the petitioner was promoted to the post of P.G.Assistant and posted to the Government Higher



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Secondary School at Arunoothumalai, Salem District from The Nilgiris

District, vide proceedings of the 1st respondent, dated 24.11.2021. It is the contention of the petitioner that, in the said proceedings, there is no indication of joining time. The posting orders have been issued on 24.11.2021, and subsequently, the petitioner was relieved on 25.11.2021 and he immediately proceeded to the new Station and joined in the new Station on the same day.

3.While so, the petitioner took part in the transfer counselling in the year 2022 and the petitioner was granted transfer from Arunoothumalai, Salem District, to his native District, i.e., The Nilgiris District, vide proceedings of the 1st respondent, dated 19.09.2022. However, it is the grievance of the petitioner that the 4th respondent has given a complaint to the 1st respondent, alleging that the petitioner has obtained the favourable transfer order dated 19.09.2022 by giving the wrong time of joining in the new Station at Arunoothumalai, as if the petitioner has joined in the Forenoon on 25.11.2021. Thereafter, after enquiry, a Show Cause Notice has been issued to the petitioner, to which the petitioner has submitted his explanation. Even thereafter, the impugned order has been passed on 19.05.2023, cancelling the transfer



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order dated 19.09.2022 and consequentially, relieving orders have also been passed on 22.05.2023. Challenging the same, the present writ petition has been filed.

4.A counter affidavit has been filed by the 1st respondent. In the counter affidavit, it is the stand of the 1st respondent that, as per Rule 17(3) of the Fundamental Rules, a Government servant will begin to draw the pay and allowances attached to his tenure of a post with effect from the date on which he assumes the duties of that post if the charge is transferred before noon of that date, and if the charge is transferred afternoon, he commences to draw them from the following day. Further, it is the stand of the respondents that it is not mandatory to mention the joining time in the promotion order. It is further stated that the promotions are given based on the service seniority, whereas, the teacher's transfer through General Transfer Counselling is being given based on the Station Seniority, that is the date of joining in the current post or current Station, and when the date of joining is same, the Date of Birth would be considered. As per G.O.(D) No.131, Adi Dravidar and Tribal Welfare (ADW 7) Department, dated 30.06.2022, online General Transfer Counselling was conducted on 19.09.2022 for all the teachers working in Tribal Welfare Department



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based on the priority guidelines stated in Para No.5 of the said Government Order. The petitioner and the 4th respondent applied for transfer to the same Station, i.e., Karkudi at The Nilgiris District. Based on the date of joining in the current Station as given by the petitioner, transfer was given to the petitioner to Government Tribal Residential Higher Secondary School, Karkudi in The Nilgiris District, vide proceedings dated 19.09.2022. After coming to know that the petitioner has given wrong date of joining, enquiry was conducted and it was found that the petitioner had joined the current Station, i.e., Arunoothumalai, Salem District, only in the Afternoon on 25.11.2021. Hence, the order of transfer granted to the petitioner was cancelled vide the impugned order.

5.Learned Senior Counsel appearing for the petitioner would mainly submit that promotions were given, both to the petitioner as well as the 4th respondent on 24.11.2021 and subsequently, both of them were relieved only on the next day, i.e., in the Forenoon of 25.11.2021 at 10.30 a.m., and immediately, they joined in their respective new Stations on the same day. The learned Senior Counsel further contended that there is no joining time, whatsoever, mentioned in the promotion orders and therefore, the question of restricting the joining time as Forenoon or Afternoon does



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not arise at all. It is the further contention of the learned Senior Counsel that, if the impugned order is sustained, it will not only affect the very seniority of the petitioner but also other aspects. According to the learned Senior Counsel, as per Rule 106 of Fundamental Rules, the petitioner ought to have been given joining time of one day to join his new Station and the same has to be considered as duty as per the definition of “duty” under Rule 9(6) of the Fundamental Rules. However, without considering the above aspects, the impugned orders have been passed. Therefore, the learned Senior Counsel submitted that the impugned orders are liable to be quashed.

6.Mr.P.Baladhandayutham, learned Special Government Pleader, appearing for the respondents 1 to 3, submitted that the petitioner has given wrong details as if he had joined duty in the new Station at Salem in the Forenoon of 25.11.2021 and participated in the General Transfer Counselling. Whereas, on enquiry, it was found that the petitioner had joined the new Station only in the Afternoon of 25.11.2021. It is the contention of the learned Special Government Pleader that, only based on the wrong details given by the petitioner, the petitioner's case for transfer has been considered and he was transferred to Karkudi in The



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Nilgiris District, vide proceedings dated 19.09.2022. It is his further contention that, as per Rule 17(3) of Fundamental Rules, if the time of joining is after noon, it will be normally taken as next day. Had the petitioner given the correct joining time, the petitioner's case would have not been considered and only the 4th respondent's case would have been considered for transfer to Karkudi in The Nilgiris District. Therefore, only after making an enquiry, the impugned order has been passed, cancelling the transfer order dated 19.09.2022 in favour of the petitioner, and posting the petitioner to Government Higher Secondary School, Kariyakovilvalavu in Salem District, in the existing vacancy. Hence, the learned Special Government Pleader submitted that the same does not warrant any interference.

7.The 4th respondent has also filed her counter affidavit and Mr.V.V.Sathya, learned counsel appearing for the 4th respondent, made his submissions in line with that of the learned Special Government Pleader.

8.Heard the learned counsel for all the parties and perused the entire materials available on record.



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9.It is not in dispute that the petitioner and the 4th respondent were promoted to the post of P.G.Assistant and were posted to other Districts from The Nilgiris District by order dated 24.11.2021. It is also not in dispute that the relieving orders were issued to both of them on 25.11.2021 in the morning at 10.30 a.m. It is seen that the petitioner was posted to Arunoothumalai in Salem District, whereas, the 4th respondent was posted to Hasanur in Erode District. It is admitted by both sides that the petitioner as well the 4th respondent were relieved only in the Forenoon of 25.11.2021 and according to them, they joined in their respective new Stations in the Forenoon on the same day. Based on the same, they were allowed to participate in the General Transfer Counselling and the petitioner's case was considered and he was given transfer to The Nilgiris District, vide proceedings dated 19.09.2022. Thereafter, it appears that on the basis of the objections raised by the 4th respondent, enquiry was conducted and thereafter, the impugned order came to be passed. According to the 4th respondent, the petitioner could not have joined in the Forenoon of 25.11.2021 at the new Station in Salem District, however, according to the 4th respondent, she joined the School at Hasanur, Erode District, in the Forenoon of 25.11.2021 itself. Therefore, it is the contention of the 4th respondent that she alone would be entitled for



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transfer to Karkudi in The Nilgiris District, however, on the contrary, the petitioner, by providing wrong details as if he had joined in the Forenoon of 25.11.2021, has obtained the transfer to Karkudi in The Nilgiris District, in the General Transfer Counselling.

10.It is relevant to note that, in the promotion and posting order dated 24.11.2021, there is no whisper, whatsoever, about the joining time. Both of them have been transferred to neighbouring Districts. Rule 106 of the Fundamental Rules reads as follows :

“106.Rules regulating the joining time admissible in each of the cases mentioned in rule 105 and specifying the places and stations to which clause (c) of that rule shall apply with due regard to the time required for actual transit and for the organisation of domestic establishment are given in the Instructions below:

Instructions under Rule 106.

1.“Not more than one day is allowed to a Government servant in order to join a new post when the appointment to such post does not necessarily involve a change of residence from one station to another. If a holiday or a series of holidays including Saturday and Sunday follows the date of relief, it may be excluded for the purpose of calculation of one day joining time. No joining



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time is admissible in cases where the change of post does not involve an actual change of office.''.

*[G.O. Ms. No. 118, Personnel and Administrative Reforms (FR.IV) Department, dated 3rd July 2000.]
(w.e.f. 12th February 1990)*

2.In cases involving a change of station, the joining time allowed to a Government servant is subject to a maximum of 30 days. Six days are allowed for preparation and, in addition, a period to cover the actual journey calculated as follows:-

(a) For that portion of the journey which he travels or might travel—

One day for each

Kilometres.

<i>By railway</i>	<i>400</i>
<i>By ocean steamer ..</i>	<i>320</i>
<i>By river steamer or by motor</i>	<i>130</i>
<i>or steam launch ..</i>	<i>or any longer time</i>
<i>By motor vehicle or horse</i>	<i>130</i>
<i>drawn conveyance ..</i>	<i>actually occupied in the journey</i>
<i>In any other way ..</i>	<i>25</i>

[aa] For that portion of journey which he travels by aircraft, only actual time occupied in the journey.



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(b) For any fractional portion of any distance prescribed in clause (a), an extra day is allowed.

(c) When part of the journey is by steamer, the limit of six days for preparation may be extended to cover any period unavoidably spent in awaiting the departure of the steamer.

(d) Travel by road not exceeding 8 kilometres to or from a railway station at the beginning or end of a journey does not count for joining time.

(e) All holidays including Saturdays and Sundays will count as days for the purpose of calculation in this rule.

Provided that when the days on which a Government servant's joining time begins or immediately following the day on which his joining time expires is a holiday or one of series of holidays including Saturdays and Sundays, then those holidays may be prefixed or affixed or suffixed to joining time and those holidays do not count as days for purpose of calculation in this rule but they are to be included in the maximum period of 30 days; ... ”

As per the above Rule, if the distance is covered by Motor Vehicle, for each 130 km, normally, one day joining time is to be given and the same can be increased based on the distance. Fundamental Rule 107 makes it clear that a Government servant's joining time shall be regarded as on duty and shall be entitled to be paid. Similarly, Rule 9 of the Fundamental



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Rules states that “duty” includes joining time.

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11.In view of the above Rules, when the petitioner and the 4th respondent have been admittedly relieved only in the Forenoon of 25.11.2021 and when there is no joining time specifically indicated in their relieving orders, now, the respondents cannot restrict their joining time as Forenoon or Afternoon. Admittedly, both of them were not posted to the same place, but to different Districts, i.e., one to Erode and another to Salem, however, they have been relieved only in the Forenoon on the same day, i.e., on 25.11.2021. When such being the position, without specifically indicating the joining time in the posting orders and without even taking into account the one day as joining time as contemplated under Fundamental Rule 106, now restricting the joining time as Forenoon or Afternoon cannot be sustained in the eye of law and moreover, it may lead to serious consequences like affecting the seniority of the persons. Hence, the impugned orders are liable to be quashed.

12.Accordingly, the impugned orders are quashed and as a sequel, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.



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Speaking order / Nonspeaking order

To

- 1.The Director,
Tribal Welfare Department,
Ezhilagam, Chepauk,
Chennai – 600 005.
- 2.The District Adi Dravidar and
Tribal Welfare Officer,
Tribal Welfare Department,
The Nilgiris.
- 3.The Headmaster,
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