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W.P. No. 26748 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

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

**W.P. No. 26748 of 2022
and
W.M.P. No. 25804 of 2022
and
W.M.P. No. 6384 of 2023**

R.Jayanthi

... Petitioner

-VS-

1. The District Collector
Dharmapuri District
Dharmapuri
2. The Commissioner
Dharmapuri Panchayat Union
Dharmapuri
3. Mrs.Rajeswari
Organiser-Mid-Day-Meals
(Nutrition Programme)
Panchayat Union Primary
Vee.JeePalayam
Dharmapuri Panchayat union
Dharmapuri.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the



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records relating to the impugned order dated 21.09.2022 Ref. No. Na.Ka.18319/2020/X1 passed by the First Respondent and quash the same and consequently direct the respondent authorities to permit the petitioner to continue her duty in Athiyaman Boys Secondary School Dharmapuri.

For Petitioner : Mr. R.Ramesh Raja

For Respondents : Mrs. R.Anitha (R1)
Special Government Pleader

Mr. T.Chezhiyan (R2)
Additional Government Pleader

ORDER

Heard Mr. R.Ramesh Raja, Learned Counsel for the Petitioner and Mrs. R.Anitha, Learned Special Government Pleader appearing for the First Respondent and Mr. T.Chezhiyan, Learned Additional Government Pleader appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is working as Noon Meal Organiser has been transferred from Muthukoundan Kottai Panchayat Union Middle School, Dharmapuri to Athiyamman Boys Higher Secondary School, Dharmapuri by



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Proceedings in Na. Ka. No. 18319/2020/X1 dated 21.09.2022 passed by the First Respondent, which is impeached in this Writ Petition.

3. Though this Court at the time of admission on 10.10.2022 had granted an order of interim stay passed in W.M.P. No. 25804 of 2022 in W.P. No. 26748 of 2022, it is informed that the Petitioner had reported to duty on that day at the transferred place.

4. The legal position relating to the scope of interference of the Court on transfers in public employment under Article 226 of the Constitution is 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



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holding a transferable post has no vested right to remain posted at a place or the 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



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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 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,



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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 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, in the absence of *mala fides* or violations of statutory provisions, it is possible for



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this Court to entertain this Writ Petition challenging the order of transfer.

However, it is incumbent upon the concerned authorities to examine the representation that may be made by the Petitioner to re-consider the order of transfer with reference to applicable guidelines for transfer issued by the Government of Tamil Nadu and after affording an opportunity of personal hearing to her, pass reasoned order dealing with each of the contentions raised on merits and in accordance with law expeditiously and in any event, within a period of 15 days from the date of its receipt.

5. In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

20.04.2023

Maya

Index: Yes/No

Neutral Citation : Yes/No

Note: Issue order copy by 27.07.2023.

To

1. The District Collector
Dharmapuri District
Dharmapuri
2. The Commissioner
Dharmapuri Panchayat Union
Dharmapuri



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P.D. AUDIKESAVALU, J.

Maya

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