



W.A.(MD)No.2230 of 2021 etc. batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**AND**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD)Nos.2230 to 2242 of 2021 & 699 & 1164 of 2022 & 1966 of 2023

and

C.M.P.(MD)Nos.11106 to 11108, 11110, 11113 to 11115 of 2021

and 5878 & 9107 of 2022 and 14447 & 15332 of 2023

W.A.(MD)No.2230 of 2021

M.Mariammal

... Appellant

Vs.

1.The Government of Tamil Nadu,  
Rep. by its Principal Secretary to Government, (School Education),  
Fort. St.George, Chennai-9.

2.The Commissioner of School Education,  
DPI Campus, College Road,  
Nungampakkam, Chennai-6.

3.The Joint Director (Personal),  
Department of School Education,  
DPI Campus, College Road,  
Nungampakkam, Chennai-6.

4.The Chief Educational Officer,  
Karur, Karur District.

...Respondents



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**PRAYER:** Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.(MD)No.19707 of 2021, dated 24.11.2021 on the file of this Court.

For Appellant : Mr.T.Pon Ramkumar  
For Respondents : Mr.Veera Kathiravan,  
Additional Advocate General,  
assisted by Mr.S.P.Maharajan,  
Special Government Pleader

**COMMON JUDGMENT**

(Judgment of the Court was delivered by ***S.M.SUBRAMANIAM, J.***)

We are called upon to ascertain the correctness of the order passed by the learned Single Judge in a batch of Writ Petitions dated 24.11.2021 impugned in the present intra-Court appeals instituted both by the State as well as by the writ petitioners.

2.The primary issues raised between the parties are regarding the transfer of teachers. The writ petitioners instituted the Writ proceedings mainly challenging Clauses 4(1)(உ) and 4(1)(ஏ) in G.O(1D)No.134, School Education (Pa.Ka.5)(1) Department, dated 18.08.2021.



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3. Admittedly, the Government framed transfer guidelines in respect of the teachers, working in the cadre of Block Resource Teacher Educators, which is inter-changeable with the post of B.T. Assistant. G.O.(1D)No.134, was issued as one time measurement to set right the grievances of group of junior teachers, who were posted to far of places and served for about 7 years. Aggrieved by the said one time benefit granted to a group of teachers, other teachers claiming themselves as seniors have challenged the said Government Order mainly on the ground that the concession extended to group of junior teachers is arbitrary and based on extraneous considerations. That apart, the authorities have taken into consideration the seniority fixed by the Teachers Recruitment Board instead of considering the date of appointment for fixing the seniority, so as to conduct counselling to those teachers working in the cadre of Block Resource Teacher Educators.

4. The Government Order impugned itself denotes that it is a guideline issued for the purpose of transferring the Block Resource Teacher Educators working at various places across the State of Tamil Nadu. Therefore, it is a policy decision taken by the Government in the matter of providing certain concession to



362 teachers working in the cadre of Block Resource Teacher Educators, since they were affected on account of earlier transfer orders occurred in the year 2014.

5.The learned Single Judge mainly considered the issues on the pretext that the transfer orders are affecting the service conditions of the teachers working in the cadre of Block Resource Teacher Educators. In paragraph No.33 of the judgment impugned the learned Single Judge made a finding that there cannot be any priority based on a service condition and it would not stand in the eye of law. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. However, in contrary to the said observations, the learned Single Judge made further finding that 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. Mixing up of the principles to be adopted in the matter of administrative transfer resulted in institution of these intra-Court appeals both by the State and by the writ petitioners.



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6.We are in agreement with the learned Single Judge that the order of transfer can be challenged in a Writ proceedings only if the transfer order has been issued by an incompetent authority having no jurisdiction or tainted with *mala fide* allegations. The scope of challenging the order of transfer is undoubtedly limited and the Constitutional Courts across the Country time and again reiterated that the Courts are not expected to interfere with the day to day administration of the Government departments.

7.Government servants play a significant role in running administration of our great nation. They are important constituents of the administrative set up of our nation. They are the pillars of the Government Departments on whose shoulders, the responsibility to implement the Government policies lies. Thus, the role of teachers is of paramount importance than that of the duties and responsibilities attached to the other cadres in Government service.

8.The Government employees have different work culture and responsibility as compared to their counterparts in private sectors. They are smartly paid and receiving several concessions, perquisites and incentives, but at



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the same time, they have heavy responsibility to the Government in particular and public in general. These Government employees enjoy a special status in the society and they are receiving a decent salary from the taxpayers money.

9.Thus, the administrative discipline and efficient performance of works are required at all circumstances. In the matter of transfer, administrative reasons place a dominant role. Courts in all circumstances cannot interfere with the administrative reasons. Administrative reasons cannot be defined in a narrow campus. There may be several instances of administrative reasons. The Government may have decided that a particular officer will be the best person to tackle certain issues in a particular place or post. It is the subjective satisfaction of the competent authority and therefore, the power of judicial review and its scope are undoubtedly limited.

10.Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Act No.14 of 2016) governs the powers of authorities to transfer government employees.



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11. Section 48 stipulates 'posting and transfer'. Sub-section (1) contemplates that 'a member of a service or class of service may be required to serve in any post both on the cadre of such service or class for which he is qualified'.

12. Sub-section (3) contemplates 'notwithstanding anything contained in this Act or any special rules or adhoc rules, the Government may transfer any Government servant from one revenue district to another revenue district within the State, on administrative grounds.'

13. The power of transfer conferred on the Government under Section 48 of the Act is absolute. Even sub-section (3) contemplates, on administrative grounds, the Government, notwithstanding the provisions of the Act or any special rules or adhoc rules, may issue orders of transfer on administrative grounds.

14. Let us consider the spirit of this provision. Transfers are issued on administrative grounds for efficient and effective public administration. Efficient public administration is the constitutional mandate and that being so, the Act



intended to provide an absolute power to the Government to transfer an employee from one revenue district to another revenue district on administrative grounds notwithstanding anything contained in the Act or any special rules or adhoc rules.

15.The next question arises, whether transfer gives a right to a government employee. The answer would be that transfer would not provide any right to a Government employee. Transfer is an incidental to service, more so a condition of service. When an offer of appointment has been issued by the competent authorities, the acceptance of appointment is implied that the transfers are agreed upon. Employment is a contract between the employer and employee and the transfer being incidental, the scope for challenge is in narrow campus. Thus, when there is no right in the matter of transfer and transfers are not affecting the service conditions of an employee, the entertainability of the Writ Petition itself is to be considered.

16.Transfer counselling is a policy decision extended by way of concession to the teaching staff in the Education Department. The 'concession' and 'rights' are distinguishable. Concession is a 'privilege' extended, but right is an entitlement. Thus, the concession cannot be equated with the rights. The rights can be demanded, but concession cannot be.



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17. In the present case, the Government Order, which was under challenge, is the guidelines issued for conducting transfer counselling and by way of one time measurement certain concessions were extended to 362 Block Resource Teacher Educators, who have served about 7 years in a far of place and submitted representations to the Government to consider their cases in a sympathetic manner. The Government thought fit to consider the grievances of those teachers working in a far of place for several years and accordingly, issued Government Order providing certain concessions to those teachers under transfer counselling, as one time measure.

18. Thus, it is also a policy decision taken by the Government, which cannot be interfered with by the High Court by exercising the powers of judicial review under Article 226 of Constitution of India.

19. The learned Additional Advocate General made it clear before us that none of the service conditions of the teachers are offended and more so, the transfer cannot be construed as a service condition. The seniority, promotional opportunity, salary and all other service conditions as per the rules are protected.



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20. That being the factum, we are of the considered opinion that transfer order issued through guidelines cannot be construed as a cause warranting interference by the High Court in exercise of the powers of judicial review.

21. The respective learned counsels appearing on behalf of the writ petitioners mainly contended that the authorities have exercised the power of transfer in an arbitrary manner and they have furnished the statistics regarding the transfers and postings made by the authorities.

22. The statistics provided in the matter of transfer need not be gone into by this Court as it becomes unnecessary. Once we formed an opinion that transfer is an incidental to service and more so, a condition of service, it is unnecessary to travel beyond the scope of the principles and seniority being not a consideration for transfer, statistics provided by the writ petitioners are of no avail to secure any relief as such sought for in the Writ Petitions.

23. The learned Single Judge though considered the principles of transfer by a categorical finding that transfer is an incidental to service and a condition of



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service, granted relief by stating that conditions of service of these Block Resource Teacher Educators are violated. Contradictory findings made by the learned Single Judge in the order impugned is the reason for us to arrive an inevitable conclusion that the order is not in consonance with the principles of administrative transfers with reference to the service conditions Act.

24. An employee is liable to be transferred at any place and post. Post can never be claimed as status and the post is not the choice of the employees and they are expected to serve, wherever they are posted. The guidelines, transfer policies or concessions are extended for the benefit of the employees and in the interest of administration. However, such guidelines would not confer an absolute right for an employee to seek a particular place or post. The guidelines are issued to minimize the discrepancies and therefore, such discrepancies even if noticed would not provide cause for the employees to assail the order of administrative transfers. When the employees have no right to challenge the order of transfer except on the limited grounds discussed by us in the aforementioned paragraphs, they cannot indirectly challenge the policy guidelines, which were issued for such transfers and therefore, the very basis for the challenge is untenable.



25.The interference by the High Court in the matter of administrative transfers would undoubtedly cause administrative inconvenience for the Government Departments to manage the departmental affairs. Therefore, the High Court is expected to exercise restraint in interfering with the administrative transfer orders and transfer guidelines issued in the form of transfer counselling or otherwise.

26.Number of Writ Petitions were filed challenging the constitutional validity of the transfer policy decisions and the guidelines issued by the Government. Thus, multiple intra-court Writ Appeals are filed. Since the transfer guidelines issued by the Government are upheld, the transfer orders issued consequent to the guidelines are to be validated. Therefore, the transfer orders issued pursuant to the transfer guidelines are upheld and to be implemented uniformly to all other teaching staff irrespective of the fact whether they have instituted separate Writ proceedings or Writ Appeals.

27.The learned Additional Advocate General made a submission that the Government Order was issued and concession was granted to 362 teachers working in the cadre of Block Resource Teacher Educators by considering their long services of about 7 years in a far of place and to redress their grievances.



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Such concession extended would not affect the service conditions of the other employees and therefore, the very cause set out in the Writ Petitions are untenable.

28.The service conditions of the teaching staff are not violated on account of the transfer orders passed by the competent authorities. Thus, we find no reason to confirm the relief granted by the learned Single Judge in the order impugned. Consequently, the impugned orders dated 24.11.2021 and 28.01.2022 passed in W.P.(MD) Nos.16884 of 2021 and 1499 of 2022 are quashed and the Writ Appeals filed by the State in W.A.(MD)Nos.699 and 1164 of 2022 are allowed and the impugned order dated 24.11.2021 passed in W.P.(MD)Nos.19707, 19710, 19708, 19709, 19712, 19711, 18709, 18796, 18705, 18706, 18707, 17358, 18708 and 16884 of 2021 is confirmed and the Writ Appeals filed by the writ petitioners in W.A.(MD)Nos.2230 to 2242 of 2021 and 1966 of 2023 are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**(S.M.S., J.) & (V.L.N., J.)**

**07.11.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

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To

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- 1.The Principal Secretary to Government, (School Education),  
Government of Tamil Nadu,  
Fort. St.George, Chennai-9.
- 2.The Commissioner of School Education,  
DPI Campus, College Road,  
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**S.M.SUBRAMANIAM, J.**

**AND**

**V.LAKSHMINARAYANAN, J.**

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699 & 1164 of 2022 & 1966 of 2023

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