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W.P.(MD)NO.27240 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.27240 of 2022 and
W.M.P.(MD)No.21378 of 2022

S.Parameswaran,
Grade III Librarian,
Branch Library,
Genguvatpatty – 625 203,
Theni District.

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St. George,
Chennai – 600 009.
2. The Director of Public Libraries,
Directorate of Public Libraries,
No.737/1, Anna Salai,
Chennai – 600 002.
3. K.Elambahavath,I.A.S.,
Director of Public Libraries(F.A.C.),
Directorate of Public Libraries,
No.737/1, Anna Salai,
Chennai – 600 002.
(R-3 is deleted from the array of parties
vide order dated 01.12.2022)



4. The Secretary / District Library Officer,
O/o.Local Library Authority,
Uzhavarsanthai Road,
Theni – 625 531.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order of the 2nd respondent in Na.Ka.No. 788/A1/ 2021, dated 27.09.2022 and quash the same as illegal in so far as it relates to the petitioner is concerned.

For Petitioner : Mr.N.Marimuthu,
for M/s.M.Mahaboob Athiff.

For R-1, R-2
& R-4 : Mr.N.Satheesh Kumar,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner challenges the impugned order whereby the Director of Public Libraries, Chennai, had promoted and transferred as many as 34 persons from the post of Grade III Librarians to the post of Grade II Librarians. The petitioner challenges the impugned proceedings only as far as he is concerned.



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3. The learned counsel appearing for the petitioner first contended that the second respondent will not have the jurisdiction to pass the impugned order. According to him, it is only the fourth respondent who has the power. His argument is anchored on the premise that at present only district level seniority is maintained and that therefore, the state cannot be considered as a single unit for the proposed effecting promotion or transfer. I am unable to accept this contention.

4. The learned Additional Government Pleader appearing for the respondents submitted that this issue is no longer *res integra* and that the very same contention earlier raised was rejected by a learned Judge of this Court vide order dated 15.02.2021 in W.P.(MD)Nos.4111 of 2006 etc. Dehors the said decision, I fail to understand as to how the head of the department can be denuded of the power to effect transfer of the staff working under him.

5. But the case on hand may not turn on that basis. The petitioner does not want to be promoted as Grade II Librarian. The petitioner's counsel drew my attention to the WhatsApp message sent by him on the date of counselling (ie.) on 27.09.2022. The learned Additional



Government Pleader states that the counselling was held only on 27.09.2022 through Google Meet and that on the same date, the impugned proceedings were issued.

6. The petitioner's counsel categorically states that the petitioner had expressed his unwillingness to be promoted. This version of the petitioner is probablised by the WhatsApp message sent on the same date. I have no difficulty to come to the conclusion that the petitioner wants to continue as Grade III Librarian. The petitioner has been transferred to the Branch Library, Nilakottai, Dindigul, only consequent to his promotion as Grade II Librarian. When the employee does not want to get promotion, it is not open to the employer to compulsorily promote him. I hold that an employee is at liberty to forego promotion. In this view of the matter, the impugned proceedings are set aside as far as the petitioner is concerned. Since the transfer was only consequent to the promotion of the petitioner, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.04.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

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Chennai – 600 009.
2. The Director of Public Libraries,
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G.R.SWAMINATHAN,J.

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