



W.P.(MD)No.26922 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.12.2023

CORAM

THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

W.P.(MD)No.26922 of 2023

and

W.M.P.(MD)No.23137 of 2023

S.Madhavan

... Petitioner

vs.

1.The Government of Tamil Nadu,
Principal Secretary,
School Education Department,
Fort St. George,
Chennai-600 009.

2.The Director (Formally Known as Commissioner),
Tamil Nadu School Education Department,
DPI-Campus, Nungambakkam, Chennai-600 006.

3.The Joint Director (Personnel),
Tamil Nadu School Education Department,
DPI-Campus, Nungambakkam,
Chennai-600 006.

4.The Chief Educational Officer,
O/o. Chief Educational Officer, Thanjavur.

5.The District Educational Officer (Secondary),
Thanjavur Town, Thanjavur District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the record relating to the impugned order of transfer in Na.Ka.No.9810/E1/2021 dated 07.01.2022 passed by the 4th respondent and quash the same.

For Petitioner :Mr.S.Anwar Sameem
For Respondents :Mr.N.GA.Natraj
Government Advocate

ORDER

The present Writ Petition has been filed by a Deputy Inspector of School challenging an order of transfer issued by the fourth respondent transferring him as a B.T.Assistant (Science) to Government Higher Secondary School, Alakudi

2.According to the learned Counsel appearing for the Writ Petitioner, once a B.T.Assistant Teacher is appointed by transfer, as Deputy Inspector of School, thereafter, he/she cannot be reverted back to the post of B.T.Assistant. The learned Counsel for the Writ Petitioner relied upon the judgment of Hon'ble Division Bench of this Court on this issue in *O.Selvam and others vs The Commissioner of School Education and others*, in *W.A.(MD)Nos.254 and 255 of 2022*, dated



25.03.2022. Paragraph 6.5 and 6.6 is extracted as follows:

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“6.5 Thus, the reading of Rule 11 regarding Transfer and Postings as sought to be pressed into service on behalf of the State needs to be weighed vis-a-vis the mode of appointment provided under Rule 2 read with Rule 8 and it takes to a situation that a Graduate Teacher who satisfies the condition under Rule 8 can be appointed as Deputy Inspector of Schools and since the mode of appointment statutorily prescribed is by transfer, the word 'transfer' is used at the time of said appointment. The appointment of Graduate Teachers therefore on the post of Deputy Inspector of Schools, according to us, is the appointment as statutorily prescribed and the word 'transfer' used at that time is to be understood as the mode of appointment and not administrative transfer.

6.6 Having held as above, we find that, when a Deputy Inspector of Schools is attempted to be brought back as Graduate Teacher, it needs to be examined what is the mode of appointment provided for Graduate Teacher. As it is noted above, appointment of Deputy Inspector of Schools is statutorily prescribed by transfer, but the same is consciously absent in the mode of appointment of Graduate Teacher. Therefore what is statutorily not permitted, or in other words, what was interchangeable in the earlier set of Rules is consciously deleted in the subsequent statutory set of Rules, can not be read as administrative power of the State. Though the Court would be very slow to interfere in the administrative actions of the State, when it is pointed out that the said action is governed by statutory rule, in absence of that power, the impugned action of the State, according to us, was without any authority of law and was inconsistent with the notification dated 30 January 2020.”

3.The judgment of the Hon'ble Division Bench was challenged by the State before the Hon'ble Supreme Court. The Hon'ble Apex Court was placed to dismiss the SLP on 17.04.2023. Therefore, it is clear that



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once a B.T.Assistant Teacher is appointed as a Deputy Inspector of School by transfer, the question of again appointing him/her back to B.T.Assistant, is not legally permissible.

4.In view of the above said legal position, the order impugned is set aside and the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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

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R.VIJAYAKUMAR, J.

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