



W.A(MD)No.171 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 27.02.2023
Delivered On: 20.03.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A(MD)No.171 of 2023
and
C.M.P(MD)Nos.2207 & 1437 of 2023

- 1.The Commissioner of School Education,
DPI Campus,
Chennai-6.
- 2.The Joint Director of Elementary Education,
DPI Campus,
Chennai-6.
- 3.The Chief Educational Officer,
Thoothukudi District.
- 4.The District Educational Officer,
Kovilpatti,
Thoothukudi District.
- 5.The Block Development Officer,
Pudur,
Thoothukudi District.

... Appellants

Vs.



W.A(MD)No.171 of 2023

... Respondent

WEB COPY

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 03.11.2022 made in W.P(MD)No.21733 of 2022 on the file of this Court ending disposal of the appeal and thus render justice.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondent : Mr.Aswin Raja Simman
for M/s.S.Rajasekar

JUDGMENT

[Judgment of the Court was delivered by **L.VICTORIA GOWRI, J.**]

The appellants have preferred this Writ Appeal against the order passed by this Court in W.P(MD)No.21733 of 2022 dated 03.11.2022.

2. The appellants in this writ appeal were the respondents and the respondent in this writ appeal was the petitioner in the writ petition before the learned Single Judge.

2/8



W.A(MD)No.171 of 2023

WEB COPY

3. Heard the rival submissions made by the learned Counsels for the appellants and the respondent carefully and perused the materials on record.

4. The respondent / writ petitioner was working as a Secondary Grade Teacher in the Panchayat Union Primary School, Seetharkulam, Karunkulam Block, Thoothukudi District. On 25.02.2022, she took part in the transfer counselling, aspired to be posted at Panchayat Union Primary School, Seetharkulam, Karungulam Block in Thoothukudi District. However, the said vacancy was allotted to one Thiru.S.Senthil, who was junior to the respondent / writ petitioner. He was transferred by giving preferential treatment under the priority category, considering that he was a widower.

5. However, the respondent / writ petitioner on receiving information from reliable sources that the said Mr.Senthil was not a widower, she lodged a complaint against Mr.Senthil for suppressing the



W.A(MD)No.171 of 2023

WEB COPY

fact that he got remarried after the death of his first wife, with a *malafide* intention to avail priority category in transfer counselling. Taking cognizance of the complaint made by the respondent / writ petitioner, an enquiry was conducted and the transfer order given to Mr.Senthil was cancelled by the third appellant / third respondent vide proceedings in Na.Ka.No.4600/E2/2021 dated 27.06.2022. Thereafter he was relieved from the said post by the order of the fifth appellant / fifth respondent dated 30.06.2022. Thereafter, the said post is remaining vacant till date. In view of the same, the respondent / writ petitioner submitted a representation for being posted in that place. Since the same was not considered, the respondent / petitioner filed W.P(MD)No.14361 of 2022 and this court by its order dated 06.07.2022, directed the fourth appellant / fourth respondent herein to pass order thereon. Complying the order of this Court in the said writ petition, the impugned order in proceedings bearing Na.Ka.No.3160/A1/2022 dated 04.08.2022 came to be passed by the fourth appellant / fourth respondent, in which the petitioner's representation dated 15.02.2022 was rejected on the ground that all the transfer proceedings in the School Education Department are being

4/8



W.A(MD)No.171 of 2023

WEB COPY

conducted only through the EMIS website. The transfer proceedings of the State of Tamil Nadu are being conducted only by the counselling through the EMIS website. Besides counselling through EMIS website, there is no procedure facilitating the Department to provide the respondent / writ petitioner with transfer in the vacancy as sought by her. On that basis, her representation was rejected. However, the learned Single Judge has held that the petitioner had taken part in the counselling that was held on 25.02.2022 with a fond hope of getting transfer to the vacancy at Seetharkulam Panchayat Union Primary School, Karunkulam Block. Had Senthil not been posted wrongfully in the said vacancy, automatically the respondent / writ petitioner would have been given posting in that place as preferred by her.

6. In view of the fact that the post is lying vacant, the learned Single Judge held in the impugned order that it is not necessary for the petitioner to wait till the next counselling, thereby setting aside the order impugned in the writ petition and directed the second appellant to issue posting to the respondent / writ petitioner in the Panchayat Union



W.A(MD)No.171 of 2023

Primary School, Seetharkulam, Karunkulam Block within the stipulated period of three weeks.

7. That apart, the normal conduct of transfer is only through the general transfer counselling vide EMIS system of the School Education Department and during counselling, transfer is always given to the priority category than the non-priority category. The respondent / writ petitioner is not in the top of the seniority list seeking transfer and there are nearly 13 candidates in the order of seniority before the respondent / writ petitioner's name.

8. Considering the serious objections raised by the learned Counsel for the appellants, this Court is of the considered view that no other candidate challenged the transfer of Mr.Senthil vitiated by *malafides* except the respondent / writ petitioner. Also considering the fact that it will take more than a year to conduct the next general counselling and the School has a total strength of only 20 students, with only one HM and that the post of Secondary Grade Teacher is lying vacant, we are of



W.A(MD)No.171 of 2023

WEB COPY

the view that no prejudice will not caused, if the respondent / writ petitioner is issued posting in the available vacancy at Panchayat Union Primary School, Seetharkulam, Karunkulam Block, Thoothukudi District till the next general transfer counselling. Thereafter, during the next general transfer counselling, it is open to the respondent / writ petitioner to participate in the counselling seeking her option to continue working in the said School.

9. With these observations, this Writ Appeal stands disposed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

(D.K.K.J.,)

(L.V.G.J.,)

20.03.2023

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



WEB COPY



W.A(MD)No.171 of 2023

D.KRISHNAKUMAR, J.
and
L.VICTORIA GOWRI, J.

Btr

Judgment made in

W.A(MD)No.171 of 2023
and
C.M.P(MD)Nos.2207 & 1437 of 2023

20.03.2023