



W.P.No.27658 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.27658 of 2015 and
M.P.No.2 of 2015

V.Elango

... Petitioner

Vs

1.The Director

Elementary Education Department,
College Road,
Chennai 600 006.

2.The District Elementary Educational Officer,
Dharmapuri District,
Dharmapuri.

3.The Assistant Elementary Educational Officer,
Harur Panchayat Union,
Harur,
Dharmapuri District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned orders made in Na.Ka.No.1845/2000/A3 dated 31.10.2000 passed by the second respondent herein and its consequential entry made in the service register of the petitioner at page no. 33 on 28.11.2000 by the third respondent herein and quash the same ,



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consequently directing the respondents to re-fix the seniority of the petitioner herein by including service rendered by him from 13.06.1990 to 08.11.2000 and promote him as Middle School Headmaster with all service benefits.

For Petitioner : Mr.M.Jothimanian

For Respondents : Mr.R.Neelakandan,
Additional Advocate General
assisted by
M/s.E.Ranganayaki,
Additional Government Pleader.

ORDER

The writ petition has been filed challenging the order of the second respondent dated 31.10.2000 in Na.Ka.No.1845/2000/A3 and the consequential entry made in Service Register of the petitioner at page 33 on 28.11.2000 by the third respondent and further a consequential direction to re-fix the seniority by including the service rendered by him from 13.06.1990 to 08.11.2000 and promote him as Middle School Headmaster with all service benefits.

2. It is the case of the petitioner that he was appointed as Second Grade Teacher on 11.08.1996 at Harur Panchayat Union and was subsequently transferred to Pappireddipatti Panchayat Union on



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13.06.1990 based on the voluntary request made by him. Thereafter, the petitioner was transferred back from Pappireddipatti Panchayat Union to Harur Panchayat Union on 08.11.2000 by the order of the third respondent, as a general transfer without any request from the petitioner. Pursuant to which, the seniority list was prepared by the third respondent in the year 2005, which did not include the name of the petitioner.

3. It is the grievance of the petitioner that as if any transfer is made at the request of the individual, an undertaking should be obtained from them before effecting the transfer, as per G.O.Ms.No.1475 dated 24.07.1973. However, even when the petitioner has not made any such request, the impugned order of the second respondent dated 31.10.2000 was passed in cyclostyle format, recording as the transfer was made at the voluntary request of the petitioner and the same was never communicated to him. Instead, he was only served with the order of transfer dated 08.11.2000 intimating that he was transferred from Pappireddipatti Panchayat Union to Harur Panchayat Union.

4. As the petitioner was under the bonafide impression that the transfer from Pappireddipatti Panchayat Union to Harur Panchayat Union



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was a general transfer, he got himself relieved from Pappireddipatti Panchayat Union and subsequently joined in Harur Panchayat Union.

Later, when the seniority list was issued by the third respondent on 01.01.2004, the same was challenged by the petitioner in W.P.No.10342 of 2005, which came to be dismissed on 05.02.2008. Further, the writ appeal filed by the petitioner in W.A.No.306 of 2009 was also dismissed on 06.09.2010. In addition to that, the petitioner had also filed a Special Leave Petition before the Hon'ble Supreme Court in S.L.P.(C).No.2119 of 2015, which came to be dismissed on 08.07.2015. Before the Hon'ble Supreme Court, the petitioner has taken the stand that the second transfer, which was effected on 31.10.2000, was a general transfer, resulting in a erroneous entry in his Service Register. The Hon'ble Supreme Court while dismissing the S.L.P.(C).No.2119 of 2015 had left open to the petitioner to work out his remedy in the manner known to law.

5. Pursuant to the above circumstances, the petitioner had instituted the present writ petition, challenging both the impugned order of the second respondent and the entry made in his Service Register.



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6. The learned counsel for the petitioner would contend that the first transfer, effected on 13.06.1990, was admittedly made at the voluntary request of the petitioner and therefore, the petitioner had foregone his seniority for the period which he was served in Harur Panchayat Union and was placed at the bottom of the seniority list in that Pappireddipatti Panchayat Union. However, the second transfer, effected on 08.11.2000 by transferring the petitioner from Pappireddipatti Panchayat Union to Harur Panchayat Union, was categorized as a general transfer and was not made at the request of the petitioner. Therefore, the petitioner is entitled to have the benefit of the service rendered at Pappireddipatti Panchayat Union counted towards his seniority in Harur Panchayat Union.

7. In this regard, the learned counsel for the petitioner by relying on G.O.Ms.No.1475 Rural, Development and Local Administrative Department dated 24.07.1973 submitted that if at all the transfer has been made at the request of the petitioner, it is incumbent on the part of the respondents to obtain a written undertaking from the concerned teacher, indicating their willingness to be placed at the junior-most position following the transfer. Admittedly, no such undertaking of the petitioner



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was available with the respondents and since the order of the second respondent was never served upon him, it cannot be concluded that the second transfer was effected at his voluntary request. Therefore, the impugned order, including the entry made in the Service Register, is unsustainable and the learned counsel for the petitioner seeks indulgence of this Court.

8. Per contra, the learned Additional Advocate General appearing for the respondents argued that even though it was incumbent on the respondents to obtain a written undertaking from the concerned teacher, for the second transfer of the petitioner from Pappireddipatti Panchayat Union to Harur Panchayat Union on 09.11.2000, the impugned order dated 31.10.2000 clearly states that the transfer was effected only at the voluntary request of the petitioner. Further, the order has been sent to the petitioner through the concerned school Headmaster, as stated in the impugned order. He would further contend that the petitioner had, in fact, received the order of transfer and subsequently got himself relieved in accordance with the impugned order. The proceeding of the second respondent dated 31.10.2000 has clearly recorded willingness and therefore, the petitioner cannot plead ignorance of the order passed by



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the second respondent and the petitioner's attempt to claim benefit after having availed himself of a voluntary transfer is unjustified.

9. It is the further contention of the learned Additional Advocate General that since both transfers were based on voluntary requests, the petitioner cannot claim the benefit of counting the service he rendered in Pappireddipatti Panchayat Union when he was transferred to another Panchayat Union at his own request. He further submit that normally a period of five days will be provided for the concerned teacher to join the requested place of voluntary transfer. In this case, since a period of five days was given to the petitioner to report to the transferred place, it can be clearly understood that the second transfer from Pappireddipatti Panchayat Union to Harur Panchayat Union dated 08.11.2000 was also effected at the voluntary request of the petitioner. Moreover, since this order was issued as early as on 2000 and the concerned entry has been made in the Service Record, the present writ petition filed by the petitioner, at this length of time, cannot be considered and the learned Additional Advocate General seeks the dismissal of the writ petition on these grounds.



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10. Heard the rival submissions of both sides and perused the material available on record.

11. The facts are not disputed that the petitioner was appointed as Senior Grade Teacher on 11.08.1986 at Harur Panchayat Union. Subsequently, at his voluntary request, he was transferred to Pappireddipatti Panchayat Union on 13.06.1990. It is brought to the notice of this Court that when a teacher requests a voluntary transfer to the Union, they are placed at the bottom of the seniority list at the transferred place. As such, since the petitioner was transferred voluntarily from Harur Panchayat Union to Pappireddipatti Panchayat Union on 13.06.1990, he lost his seniority regarding the service rendered in Harur Panchayat Union from 11.08.1986 to 13.06.1990 and was placed at the bottom of the seniority list in Pappireddipatti Panchayat Union.

12. After joining Pappireddipatti Panchayat Union and serving there, the petitioner was served with an order of transfer from the third respondent dated 08.11.2000, by which the petitioner was transferred from Pappireddipatti Panchayat Union to Harur Panchayat Union. It is the case of the petitioner that this order of transfer a general transfer for



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administrative reasons and not based on any request made by him.

Thereafter, when the seniority list was prepared by the second respondent, in respect of Harur Panchayat Union, the service rendered by the petitioner from 11.08.1986 was not included. Thereby, the petitioner had challenged the same in W.P.No.10342 of 2005. The claim of the petitioner came to be dismissed and the writ appeal filed in W.A.No.306 of 2009 was dismissed on 06.09.2010. The petitioner's claim was dismissed primarily on the ground as he sought seniority from 11.08.1986, when his transfer to Pappireddipatti Panchayat Union on 13.06.1990 was based on a voluntary request. The petitioner subsequently had preferred a Special Leave Petition before the Hon'ble Supreme Court in S.L.P.(C).No.2119 of 2015. The Hon'ble Supreme Court, by order dated 08.07.2015, while dismissing the S.L.P. had passed the following order:

“Mr.S.Thananjayan, learned counsel appearing for the petitioner makes a statement that though the second transfer of the petitioner was not on his own request but the fact has been wrongly recorded in the service register.

We are not concerned with the said grievance of the petitioner in these proceedings. We are, therefore, not inclined to entertain this special leave petition, which is dismissed.

However, it is open to the petitioner to work out any other



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remedy available in law.”

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13. Since the petitioner disputed the second transfer from Pappireddipatti Panchayat Union to Harur Panchayat Union, he was granted liberty to workout his remedies by contesting the same in a manner known to law.

14. Only pursuant to all the above proceedings, the petitioner has filed the above writ petition challenging the impugned order passed by the second respondent and consequential entry made in the Service Register. The crux of the issue in this writ petition is whether the transfer order issued to the petitioner by transferring him from Pappireddipatti Panchayat Union to Harur Panchayat Union, constitutes a general transfer or was made based on a voluntary request by the petitioner.

15. In this regard, it will be useful to refer to G.O.Ms.No.1475 Rural Development and Local Administrative Department dated 24.07.1973, which outlines the relevant provisions regarding transfers to other unions. The relevant portions are extracted hereunder:

“2. Transfer of teacher from on panchayat union to another union:

Section 62 of the Panchayat Act on service conditions to



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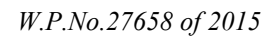
transfer any officer or servant of a Panchayat union council of service of another panchayat union council of municipalities concerned. The provision of Rule 1, in paragraph 36 provides that the transfer may be permitted subject to the terms and conditions as may be agreed to by the Panchayat Union Councils, it is therefore, open to the Panchayat union councils to take the teachers of the other panchayat union to agree to the condition of the seniority in the new place to the juniors. Most among probationers of the union to which he is transferred without affecting the persons already working in the Panchayat Union to which the teacher is being transferred. It is however seen that in practice the panchayat union council concerned do not specify the seniority of the teacher to be transferred with the result that the question is left undecided. The Government therefore direct that the following principles be adopted in the matter of transfer of teachers from one Panchayat Union to another :-

- a) When a teacher is transferred from Panchayat Union to another Panchayat union, at his/her request, the teachers transferred should take the last rank in the Panchayat Union to which he or she is transferred. The transfer should be effected after ensuring that the teacher is fully aware of the consequences of such transfer. The Panchayat Unions concerned should get an undertaking from the teachers to the effect that he or she is willing to take the junior most place in the Panchayat Union to which he or she is transferred.*
- b) In the case of transfer from one Panchayat union to*



another made on administrative grounds, the seniority of the teachers concerned should be determined with reference to the date of his or her first regular appointment in the particular grade irrespective of the date on which the transfer is effected on administrative grounds.”

16. As per the above Government Order, a teacher may be transferred from one Panchayat Union to another either through a general transfer on administrative grounds or based on a voluntary request made by the teacher. If the transfer is made at the voluntary request of the concerned teacher, the respondents are duty-bound, as per the cited Government Order, to ensure that the teacher is fully aware of the consequences. Further, they must obtain an undertaking from the teacher indicating their willingness to accept the junior-most position in the Panchayat Union to which they are transferred. This provision makes it very clear that the teachers who have accumulated years of service will forfeit that service period and lose their seniority when accepting a voluntary transfer. Therefore, it is incumbent on the respondents to obtain an undertaking from the concerned teacher before effecting any such transfer based on a voluntary request. On the other hand, if a transfer is effected on administrative grounds, the teacher will not lose



included.

Harur Panchayat Union.

to produce the relevant files and the letter incorporating the undertaking



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obtained from the petitioner requesting the voluntary transfer from Pappireddipatti Panchayat Union to Harur Panchayat Union indicating that he was willing to forego his seniority. Further, the respondents were directed to produce any proof to show that the impugned order dated 31.10.2000 was served on the petitioner.

19. The learned Additional Advocate General had produced the file and fairly submitted that no such undertaking obtained from the petitioner is available in the records of the second respondent. On perusal of the files also indicates that there is no proof of the impugned order dated 31.10.2000 being served on the petitioner. In such circumstances, an adverse inference has to be drawn that only the order of transfer dated 08.11.2000 was served on the petitioner, which merely indicates that he was transferred from Pappireddipatti Panchayat Union to Harur Panchayat Union. In the absence of any material, either in the form of an undertaking as contemplated under G.O.Ms.No.1475 dated 24.07.1973 or any proof of service of the order dated 31.10.2000 by the second respondent, it can only be concluded that the transfer was an administrative one. When once this Court comes to the conclusion that the petitioner was transferred from Pappireddipatti Panchayat Union to



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Harur Panchayat Union on 08.11.2000 only due to administrative grounds, then the period of service of the petitioner in the earlier place ought to be included for counting seniority.

20. Insofar as the submission of the learned Additional Advocate General that since the reference made in the transfer order dated 08.11.2000 refers to the order of the second respondent dated 31.10.2000 the petitioner was aware of the nature of transfer cannot be accepted as the same does not indicate that the order of transfer was issued based on any voluntary request made by the petitioner, especially when the order dated 31.10.2000 was not served on the petitioner. Further, for any transfer, whether general or voluntary, a minimum period is typically granted to the concerned teacher or employee to enable them to join at the transferred place. In the present case, only since a period of five days was granted to the petitioner to get himself relieved from Pappireddipatti Panchayat Union and join in Harur Panchayat Union, it cannot be construed as an indication of a voluntary transfer. Therefore, the submission of the learned Additional Advocate General in this regard also cannot be accepted.



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21. In view of the above deliberations, the writ petition stands allowed and the impugned order of the second respondent along with consequential entry made in the Service Register regarding the transfer on voluntary request is quashed. As a sequel, the respondents are directed to:

i. Treat the transfer of the petitioner from Pappireddipatti Panchayat Union to Harur Panchayat Union as having been made on administrative grounds.

ii. Include the services rendered by the petitioner in Pappireddipatti Panchayat Union from 13.06.1990 to 08.11.2000 along with service rendered in Harur Panchayat Union from 09.11.2003 and grant all consequential benefits.

iii. Such exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

22. No costs. Consequently, connected miscellaneous petition is closed.

22.10.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

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To

- 1.The Director
Elementary Education Department,
College Road,
Chennai 600 006.
- 2.The District Elementary Educational Officer,
Dharmapuri District,
Dharmapuri.
- 3.The Assistant Elementary Educational Officer,
Harur Panchayat Union,
Harur,
Dharmapuri District.



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G.ARUL MURUGAN, J.

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