



W.A. (MD) No. 327 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 11.03.2024

PRONOUNCED ON : 20 .03.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.A(MD).No.327 of 2024
and C.M.P(MD).No.3043 of 2024

1.The Commissioner of School Education
E.V.K.Sampath Maaligai, DPI Campus
College Road, Nungambakkam
Chennai 600 006

2.The Director of School Education
E.V.K.Sampath Maaligai, DPI Campus
College Road, Nungambakkam
Chennai 600 006

3.The Joint Director of School Education(Personnel)
E.V.K.Sampath Maaligai, DPI Campus
College Road, Nungambakkam
Chennai 600 006

4.The Chief Educational Officer
Office of the Chief Educational Officer
Thiruchirappalli District
Thiruchirappalli



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5. The Chief Educational Officer
Office of the Chief Educational Officer
Thiruvarur District
Thiruvarur

....Appellants/Respondent Nos.1 to 5

Vs

K.Ravi

....Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P(MD).No.22851 of 2021 dated 23.12.2021 and allow the writ appeal.

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

For Respondent : Mr.M.Jerin Mathew

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The respondents 1 to 5 in the writ petition are the appellants herein. The respondent herein had filed the writ petition seeking a mandamus to provide priority to him in the general counselling to be conducted for transfer of B.T.Assistant in view of the order passed in W.P.(MD).No.16310 of 2021 dated 24.11.2021 by considering his representation dated 16.12.2021.



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2.The writ Court after observing that the writ petitioner is a similarly placed person to those of the writ petitioners in W.P(MD).No.16310 of 2021 had proceeded to allow the writ petition. Challenging the same, the present writ appeal has been filed.

(A). Facts leading to the filing of this writ appeal are as follows:

3.The petitioner herein was selected through Teachers Recruitment Board in the year 2005-2006 and appointed as Block Resource Teacher Educator (Mathematics) by the third appellant herein vide his proceedings dated 14.07.2006. As per terms of appointment, Block Resource Teacher Education (BRTE) would be posted as B.T.Assistant after completion of the scheme and therefore, both the posts are equivalent and inter-changeable.

4.The Government had issued G.O(Ms).No.158, School Education (C2) Department, dated 07.09.2006 wherein 500 Block Resource Teacher Educators who are willing to be transferred as Graduate Assistant in various Government Schools were transferred. Under G.O(1D).No.257, School Education (C2)Department, dated 04.07.2012, somemore BRTE Teachers were transferred and posted as B.T.Assistants. Balance BRTE Teachers were permitted to



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continue under the scheme. Under G.O.(1D).No.652, School Education (Pa.Ka.3)(2) Department dated 31.10.2017, 350 BRTE Teachers on their willingness were transferred and posted as B.T.Assistant. In all the above said Government Orders, options were given to BRTE Teachers by getting transfer/convert as B.T.Assistant.

5.The Government had issued G.O(1D).No.134, School Education (Pa.Ka.5)(1) Department dated 18.08.2021 framing guidelines for conducting transfer counselling and also for converting BRTE Teachers to Government High School and Higher Secondary School. As per the said Government Order, the senior most BRTE Teachers were proposed to be transferred to Government Schools for the academic year 2021-2022 as B.T.Assistants. As per the said Government Order, no option is given to those BRTE Teachers and they have to compulsorily opt to be transferred/converted as B.T.Assistants. This Government Order came to be challenged in W.P(MD).No.16310 of 2021 and Batch Cases.

6.The learned Single Judge by an order dated 24.11.2021 after considering the submissions made on either side, had dismissed the writ



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petition. At the time of disposal of the writ petition, it was represented by BRTE Teachers that in view of the interim order passed by this Court on 14.09.2021, they had participated in the counselling, but no orders have been issued in view of the pendency of the writ petition. At that relevant point of time, the learned Additional Advocate General had pointed out that the counselling for B.T.Assistant Teacher is yet to commence and these BRTE Teachers are at liberty to participate. Otherwise, they can also participate in the general counselling and if they have participated in the general counselling, they would be given priority at the time of general counselling. This submission was recorded by the writ Court and the writ petitions were dismissed.

7.Challenging the order passed by the writ Court in W.P(MD).No.16310 of 2021 and Batch Cases, dated 24.11.2021, W.A(MD).Nos.2230 to 2242 of 2021 and Batch Cases were filed. The Hon'ble Division Bench was pleased to dismiss those writ appeals on 07.11.2023. The present writ petition has been filed on 18.12.2021 contending that the petitioner being BRTE Teacher had participated in the counselling held on 15.09.2021 and he was transferred to Koothanallur Government Boys Higher Secondary School, Thiruvavarur District. Since the said transferred place is very far away, the petitioner had sent a



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representation on 16.12.2021 seeking to provide priority in pursuance of the order passed in W.P(MD).No.16310 of 2021 and Batch Cases, dated 22.11.2021. The petitioner has sought parity on par with the petitioners in the above referred writ petition and claimed concession offered by the learned Additional Advocate General for granting priority to such kind of BRTE Teachers.

8.The writ Court after considering the submissions made on either side, had observed that though the petitioner herein was not a party to W.P(MD).No.16310 of 2021 and Batch Cases, yet he is also a similarly placed person as that of those writ petitioners in W.P(MD).No.16310 of 2021. The writ Court had further found that the petitioner is therefore entitled for a preference during the general counselling. The writ Court had further found that the statement of the learned Additional Advocate General is the statement of the Government and is binding on all the similarly placed persons.

9.Based upon the above said observations, the writ Court had allowed the writ petition and had directed the authorities to provide priority to the writ petitioner in the general counselling to be conducted for transfer of



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B.T.Assistant. This order is under challenge in the present writ appeal by the State.

(B). Submissions of the learned counsel appearing on either side:

10.The learned Special Government Pleader appearing for the appellants herein had contended that the writ petitioner had not challenged G.O.(1D).No. 134, School Education (Pa.Ka.5)(1) Department, dated 18.08.2021 and the petitioner had participated in the counselling and he had chosen a place of his choice. The concession that was offered by submission of the learned Additional Advocate General is only for those writ petitioners who had challenged the said Government Order and who were not issued with transfer order. He had further contended that the petitioner though was instructed to participate in the general counselling for B.T.Assistant, he had expressed his unwillingness. However, suppressing the same, the writ petitioner had filed contempt petition in Contempt Petition(MD).No.1757 of 2022. In view of the said contempt proceedings, an order was passed on 13.01.2023, deputing the writ petitioner from Koothanallur in Thiruvarur District to another School in Unaiyur, Trichy District. Recording the said order, the contempt petition was closed on 03.03.2023.



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11. The learned Special Government Pleader had further contended that the similar writ petitions are likely to be filed by others, who were not petitioners in W.P(MD).No.16310 of 2021 and Batch Cases. Hence, he prayed for allowing the writ appeal.

12. Per contra, the learned counsel appearing for the respondent had contended that when a statement has been made by the learned Additional Advocate General granting concession to certain BRTE Teachers for granting priority to them in general counselling, the same is applicable to all those similarly placed teachers and it cannot be restricted to the petitioners of those writ petitions alone. That apart, the order impugned in the writ appeal has already been complied with by the authorities on 13.01.2023 and thereafter, the present writ appeal has been filed on 07.02.2023. Hence, he contended that there are no merits in the writ appeal and the writ appeal may be dismissed.

13. We have carefully considered the submissions made on either side and perused the material records.

(C). Discussion:

14. The petitioner had filed the present writ petition primarily on the



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ground that he is a similarly placed person to those of the writ petitioners in W.P(MD).No.16310 of 2021 and Batch Cases and therefore, he had sought parity on par with them as per order of this Court in the above said writ petition dated 24.11.2021. A perusal of the order of the writ Court in W.P(MD).No.16310 of 2021 reveals that some of the BRTE Teachers have filed the writ petition challenging two Clauses in G.O(1D).No.134, School Education (Pa.Ka.5)(1) Department dated 18.08.2021. As per those two Clauses, all the BRTE posts were treated as vacant and those teachers were directed to be transferred and converted as B.T.Assistant irrespective of their willingness. It is pertinent to point out that the petitioner has not chosen to challenge the said Government Order.

15.While W.P(MD).No.16310 of 2021 was entertained, an interim order was granted on 14.09.2021 wherein the Chief Educational Officer was directed not to pass final orders in counselling insofar as the petitioners are concerned. This Court had further clarified that the interim order is applicable only to the petitioners who have filed the writ petitions.

16.Pursuant to the interim order of this Court, the writ petitioners in



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W.P(MD).Nos.16310 of 2021 had participated in the counselling, but they were not issued with the transfer order in view of pendency of the writ petition.

Therefore, the learned Additional Advocate General had made a submission that those BRTE Teachers who had participated in the counselling and who were not issued with transfer order would be given priority, if they participate in the forthcoming B.T.Assistant counselling or general transfer counselling. Therefore, it is clear that the concession/undertaking submitted by the learned Additional Advocate General is restricted to the writ petitioners in W.P(MD).No.16310 of 2021 and Batch Cases who were not able to get transfer order despite participating in the said counselling.

17.In the present case, the petitioner is not a party to W.P(MD).No.16310 of 2021. Therefore, he cannot take advantage of the interim order dated 14.09.2021. Further, the petitioner had participated in the counselling held on 15.09.2021 and transfer order has also been issued to him. That apart, the said concession would be available only to those who participated in the next B.T.Assistant transfer counselling or general counselling. It is brought to the notice of the Court that when the petitioner was called for, to participate in the said counselling, he has expressed his unwillingness in writing.



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18. The order in W.P(MD).No.16310 of 2021 has been passed on 24.11.2021. The petitioner had chosen to file the present writ petition only on 18.12.2021. Therefore, it is clear that the petitioner is a fence-sitter and he cannot seek the benefit as that of the petitioners in W.P(MD).No.16310 of 2021. Therefore, viewed from any angle, the petitioner cannot call himself to be a similarly placed person and seek parity on par with those of the petitioners in WP(MD).No.16310 of 2021. Hence, the finding of the writ Court that the petitioner is a similarly placed person and he is entitled to the concession offered by the learned Additional Advocate General relating to the granting of priority in transfer counselling is not legally sustainable.

19. The writ Court has passed the order on 23.12.2021. In compliance with the order of the writ Court, the petitioner has been deputed from Thiruvarur District to Trichy District under an order dated 13.01.2023. The present writ appeal has been filed by the State only on 07.02.2023. The writ petitioner is working in the present station for more than a year. The writ petitioner is at liberty to participate in the next transfer counselling, if he is otherwise eligible to participate. Considering the above said events that are



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subsequent to the disposal of the writ petition, we are not inclined to interfere in the order passed by the writ Court.

20. In view of the above said deliberations, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.) (R.V.J.)
20.03.2024

Index :yes
Internet :yes
NCC :Yes/No

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**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

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Pre-delivery Judgment made in

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