



W.P(MD)Nos.23669, 24052, 24399, 24759 &
24822 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 23.11.2023
DELIVERED ON : 11.01.2024**

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)Nos.23669, 24052, 24399, 24759 & 24822 of 2023
and

W.M.P(MD)Nos.19840, 20201 to 20203, 20590 to 20592, 20951 to 20953,
21008 to 21010 of 2023

W.P(MD)No.23669 of 2023:

1.M.Abdul Kalam Azad

2.P.Meenakshi

3.N.A.Apsara Banu

4.S.Gunaseelan

5.M.Stella

6.C.Pasuvathy

7.N.Malikai Karuppu

8.P.Yasotha

9.B.Alagesan

10.R.Thanalakshmi

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11.P.Sebastian Jayaraj

12.M.Sivasubramaniam

13.R.Suresh Kumar

14.S.John Suresh

15.P.Sivakumar

16.S.Vijayakumar

17.M.Arumugam

18.M.Chithik Fathima

19.P.Senthil Kumar

20.S.Lakshmi

21.S.Karthi

... Petitioners

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Secretariat, Chennai-9.

2.The Director of School Education,
Directorate of School Education,
DPI Compound, Chennai.

3.The Joint Director (Personnel),
Directorate of School Education,
DPI Compound, Chennai.

... Respondents

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W.P(MD)Nos.23669, 24052, 24399, 24759 &
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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to conduct transfer counselling for the BRTE's in terms of G.O(1D)No.134 School Education Department, dated 18.08.2021 before conducting deployment counselling for surplus B.T Assistants by virtue of proceedings of the second respondent in Na.Ka.No.056641/C4/E1/2023, dated 19.09.2023 by considering the petitioners' representation, dated 24.09.2023.

For Petitioners : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.Veera. Kathiravan
Additional Advocate General
Assisted by
Mr.V.Om Prakash
Government Advocate

W.P(MD)No.24052 of 2023:

K.Selvi

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Principal Secretary to Government
(School Education),
Fort St. George, Chennai-9.

2.The Director of School Education,
DPI Campus, College Road, Nungampakkam,
Chennai-6.

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3.The Joint Director (Personal),
Department of School Education,
DPI Campus, College Road,
Nungampakkam, Chennai-6.

4.The Chief Educational Officer,
Tuticorin, Tuticorin District.

... Respondents

W.P(MD)No.24399 of 2023:

1.K.Varatharaj

2.J.Chitra

3.V.Loratta

... Petitioners

Vs.

1.The Government of Tamil Nadu,
Represented by its Principal Secretary to Government
(School Education),
Fort St. George, Chennai-9.

2.The Director of School Education,
DPI Campus, College Road, Nungampakkam,
Chennai-6.

3.The Joint Director (Personal),
Department of School Education,
DPI Campus, College Road,
Nungampakkam, Chennai-6.

4.The Chief Educational Officer,
Karur, Karur District.



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5.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

... Respondents

W.P(MD)No.24759 of 2023:

1.T.Raja

2.V.Rajeswari

3.R.Manoharan

4.S.Kavitha

5.M.Periyasamy

6.K.Senthilkumaran

7.A.Panchavarnam

... Petitioners

Vs.

1.The Government of Tamil Nadu,
Represented by its Principal Secretary to Government
(School Education),
Fort St. George, Chennai-9.

2.The Director of School Education,
DPI Campus, College Road, Nungampakkam,
Chennai-6.

3.The Joint Director (Personal),
Department of School Education,
DPI Campus, College Road,
Nungampakkam, Chennai-6.



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4.The Chief Educational Officer,
Pudukottai, Pudukottai District.

5.The Chief Educational Officer,
Karur, Karur District.

... Respondents

W.P(MD)No.24822 of 2023:

1.B.Valarmathi

2.A.Maheswari

3.N.Baskaran

... Petitioners

Vs.

1.The Government of Tamil Nadu,
Represented by its Principal Secretary to Government
(School Education),
Fort St. George, Chennai-9.

2.The Director of School Education,
DPI Campus, College Road, Nungampakkam,
Chennai-6.

3.The Joint Director (Personal),
Department of School Education,
DPI Campus, College Road,
Nungampakkam, Chennai-6.

4.The Chief Educational Officer,
Tiruchirappalli, Tiruchirappalli District.

5.The Chief Educational Officer,
Karur, Karur District.

... Respondents

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Prayer in W.P(MD)Nos.24052, 24399, 24759 & 24822 of 2023: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to in Na.Ka.No.056641/C4/E1/2023, dated 19.09.2023 of the second respondent herein and quash the same and consequently direct the respondents herein to conduct fresh counselling for the BRTE's by implementing the order, dated 24.11.2021 in W.P(MD)No.16884 of 2021 this Court and order, dated 28.01.2022 in W.P(MD)No.1499 of 2022.

W.P(MD)Nos.24052, 24399, 24759 & 24822 of 2023:

For Petitioners : Mr.T.Ponramkumar

For Respondents : Mr.Veera. Kathiravan
Additional Advocate General
Assisted by
Mr.V.Om Prakash
Government Advocate

COMMON ORDER

All these writ petitions have been filed by Block Resource Teacher Educators (BRTE) challenging redeployment counselling notification issued by the Director of School Education, Chennai and seeking a direction to the official respondents to conduct fresh counselling for Block Resource Teacher Educators. Since the issues involved in all these writ petitions are

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common in nature, they are tagged together and a common order is passed.

2. Prayers in the writ petitions are as follows:

(i) W.P(MD)No.23669 of 2023 has been filed for issuance of a Writ of Mandamus, directing the respondents to conduct transfer counselling for the BRTE's in terms of G.O(1D)No.134 School Education Department, dated 18.08.2021 before conducting deployment counselling for surplus B.T Assistants by virtue of proceedings of the second respondent in Na.Ka.No. 056641/C4/E1/2023, dated 19.09.2023 by considering the petitioners' representation, dated 24.09.2023.

(ii) W.P(MD)Nos.24052, 24399, 24759 & 24822 of 2023 have been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to in Na.Ka.No.056641/C4/E1/2023, dated 19.09.2023 of the second respondent herein and quash the same and consequently direct the respondents herein to conduct fresh counselling for the BRTE's by implementing the order, dated 24.11.2021 in W.P(MD)No.16884 of 2021 this Court and order, dated 28.01.2022 in W.P(MD)No.1499 of 2022.



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3. Facts leading to the filing of the present writ petitions are as follows:

(i) The petitioners herein were appointed as Block Resource Teacher Educators between 2007 and 2010. The said post was created under a Sarva Shiksha Abhiyan Scheme, a Central Government Scheme introduced in the year 2002-2003. Government of Tamil Nadu issued a G.O(Ms)No.94, School Education Department, dated 01.07.2002 sanctioning 6285 posts of Block Resource Teacher Educators. By virtue of G.O(Ms)No.52, School Education (C2) Department, dated 30.03.2006, the General and Special Rules applicable to the post of B.T Assistants were made applicable to the post of Block Resource Teachers.

(ii) Though around 6285 posts of BRTE Teachers were appointed, due to retirement, resignation, promotion, conversion etc., the strength of BRTE has come down to around 4500 Teachers. The Government had issued G.O(1D)No.556, School Education [Pa.Ka.3(2)] Department, dated 09.08.2018 proposing to conduct counselling to redeploy BRTEs. Some of the BRTEs filed W.P(MD)Nos.18387 to 18391 of 2018 challenging the above said Government order and an order of *status quo* was granted by this



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Court on 23.08.2018.

(iii) The Government of Tamil Nadu had issued G.O(ID)No.134, School Education [Pa.Ka.5(1)] Department, dated 18.08.2021 framing guidelines for the purpose of transfer counselling of BRTE Teachers. As per the said Government order, all the BRTE vacancies in the State of Tamil Nadu were declared to be vacant posts and hence, all of them were mandated to appear for transfer counselling. Further, priority was granted to 362 BRTE Teachers, who were redeployed to far away places in the counselling held in the academic year 2014-2015. Challenging the said Government order several writ petitions came to be filed. This Court in a batch of writ petitions in W.P(MD)Nos.16868 of 2021 etc., by an order, dated 08.10.2021 had granted interim orders, which is extracted as follows:

"(i) The writ petitioners shall participate in the ensuing general transfer counselling for this academic year and without prejudice to their rights, they can exercise their option for the transferring place.

(ii) If any of the deployed BRT Educators opts for the same place, under Clause 4(1)(a) and (III) (ix) of the said Government Order, the posting orders shall be kept in



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abeyance insofar as the particular place is concerned.

(iii) The submission made by the learned Additional Advocate General with regard to the seniority list that the Department has decided to revise the seniority of the candidates as per the existing Government Orders is hereby recorded.

(iv) The petitioners shall make application before the respective Educational Authority stating that without prejudice to their right, they are participating in the transfer counselling.

(v) It is made clear that the above interim order is applicable only to the present writ petitioners.

(vi) It is open to the respondents to proceed with the general transfer counselling, if there is no other legal impediment."

(iv) Pursuant to the interim orders of this Court, all the BRTE Teachers had participated in the counselling, that was held on 21.10.2021 and had opted the places of their choice. The 362 candidates in whose favour priority was granted in the Government order had also participated in the said counselling. As per the interim order, in case if a particular place is chosen by a priority candidate as well as by a non-priority candidate, this



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Court has directed the posting orders to be kept in abeyance insofar as that particular place is concerned. The interim order further clarified that this order would be applicable only for the petitioners therein.

(v) After hearing both the parties, final orders were passed in the above batch of writ petitions on 24.11.2021. Paragraph Nos.35 and 36 of the said final order are extracted as follows:

"35. Accordingly, Clause 4(1) (௭) and Clause 4 (III) (ix) of the impugned Government Order in G.O(1D)No.134, School Education (Pa.Ka.5) (1) Department, dated 18.08.2021, inasmuch as giving priority to a set of BRTes, are quashed.

36. It appears that this Court, while entertaining the writ petitions on 08.10.2021, has passed the following interim order:-

"14.

(i) The writ petitioners shall participate in the ensuing general transfer counselling for this academic year and without prejudice to their rights, they can exercise their option for the transferring place.

(ii) If any of the deployed BRT Educators opts for the same place, under Clause 4(1) (௭) and (III) (ix) of the said



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Government Order, the posting orders shall be kept in
abeyance insofar as the particular place is concerned
(emphasis supplied). ..."

*Since this Court has now quashed Clause 4(1) (௭) and Clause
4 (III) (ix) of the impugned Government Order in G.O(1D)No.
134, School Education (Pa.Ka.5) (1) Department, dated
18.08.2021, the respondents shall pass appropriate posting
orders."*

(vi) A perusal of the above said final order would indicate that the Clause in which zero vacancy was declared and the Clause in which priority was granted to 362 candidates was quashed. In cases, where the posting orders were kept in abeyance in view of the interim orders, the writ Court had directed the authorities to pass appropriate posting orders.

(vii) The order of the writ Court was put to challenge by third parties in a batch of writ appeals in W.A(MD)Nos.2230 to 2242 of 2021 etc. The Hon'ble Division Bench of this Court was pleased to allow the writ appeals on 07.11.2023 upholding the validity of G.O(1D)No.134, dated 18.08.2021 in its entirety. The Hon'ble Division Bench of this Court was pleased to uphold the transfer orders and further directed the authorities to implement the transfer guidelines uniformly to all other teaching staff irrespective of



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the fact whether they have instituted separate writ proceedings or writ appeals. Therefore, it is clear that the Government order relating to transfer guidelines was upheld in entirety and it was made applicable to all the Teachers whether they had approached the Court or not.

(viii) On 19.09.2023, the Director of School Education had issued proceedings for conducting redeployment counselling for the surplus B.T Assistant Teachers, who are working in Government / Local Body Schools in the vacancies of BRTE Teachers. This proceeding is under challenge in some of the writ petitions. In other writ petitions, a Mandamus is being sought for, to conduct fresh counselling for BRTE Teachers by implementing the order, dated 24.11.2021 in W.P(MD)No.16884 of 2021 and the order of this Court, dated 28.01.2022 in W.P(MD)No.1499 of 2022.

4. Contentions of the learned Counsels appearing for the petitioners are as follows:

(i) The learned Senior Counsel appearing for some of the writ petitioners had contended that it is an admitted fact that BRTE posts are equivalent to B.T Assistant Post and therefore, they are interchangeable.



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Hence, they have no objection whatsoever for redeploying the surplus B.T Assistant Teachers in BRTE vacancies. However, their only request is to conduct the counselling for BRTE vacancies for the BRTE Teachers first and thereafter, they should conduct the redeployment counselling for B.T Assistants.

(ii) The learned Senior Counsel had contended that in view of the interim orders passed by this Court on 08.10.2021, the priority BRTE Teachers had chosen a particular place but they were not issued with posting orders. Hence, they were holding on to their existing place as well as the transferred place. Therefore, the other non-priority BRTE Teachers were not able to choose a place, which is nearer to their native place. They were forced to choose a place, which is far away.

(iii) In view of the above said facts, the transfer counselling was not conducted strictly as per the G.O(Ms)No.134, dated 18.08.2021. Therefore, the present request is to conduct transfer counselling strictly as per the said Government order. In case, if B.T Assistants are redeployed in BRTE vacancies, later the non-priority BRTE Teachers would not be in a position to choose the place of their choice. Hence, their request is only to conduct



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the counselling for BRTE Teachers ahead of redeployment counselling for surplus B.T Assistants.

(iv) The learned Counsel appearing for the petitioners have challenged the redeployment notification for surplus B.T Assistants only on the ground that if any counselling is conducted prior to accommodating non-priority BRTE Teachers, that would cause great prejudice to them. Hence, they prayed for allowing the writ petitions.

5. Contentions of the learned Additional Advocate General appearing for the respondents are as follows:

(i) The petitioners herein have not challenged G.O(Ms)No.134, dated 18.08.2021. They have not even filed an appeal as against the order of the writ Court. These petitioners have participated in the transfer counselling which was conducted as per the G.O(Ms)No.134 and they have chosen a place of their choice in October 2021. Therefore, the petitioners herein cannot have any grievance for non conducting of transfer counselling for BRTE Teachers in the year 2023.



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(ii) The petitioners have not expressed any grievance over the choosing of places in the counselling held in October 2021. Only when redeployment counselling notification was issued for surplus B.T Assistants, the present writ petitions have been filed. The writ petitioners have no cause of action whatsoever to challenge the redeployment counselling, which is proposed to be held for B.T Assistants.

(iii) There are 725 surplus B.T Assistant Teachers and the State is incurring around Rupees 4 Crores per month as salary to those Teachers without extracting any work from them. Therefore, in order to save the Government exchequer, the surplus B.T Assistant Teachers have to be immediately redeployed to the vacant BRTE Teacher posts.

(iv) The present writ petitioners are already working as BRTE Teachers in the place chosen by them by participating in the transfer counselling held in October 2021. They are not going to be disturbed. The proposed redeployment counselling for B.T Assistants is only to fill up the BRTE posts, which are already vacant. Therefore, the petitioners have no cause of action to challenge the redeployment notification for B.T Assistant Teachers.



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(v) The redeployment of surplus B.T Assistant Teachers has been taken on administrative grounds in order to save the Government exchequer. Without disturbing the BRTE Teachers, only in the vacancies that are already available in BRTE post, the surplus B.T Assistants are going to redeployed. Therefore, the petitioners cannot challenge the administrative decision of the State Government. That apart, on one side, B.T Assistant Teachers are surplus in some Schools and BRTE vacancies are available in some other Schools, which has caused great prejudice to the student community. Hence, he prayed for dismissal of the writ petitions.

6. I have carefully considered the submissions made on either side and perused the materials available on record.

Discussion:

7. A careful consideration of the submissions made on either side would clearly reveal that non-priority BRTE Teachers are seeking to conduct a fresh transfer counselling as per G.O(Ms)No.134, dated 18.08.2021 ahead of redeployment counselling meant for surplus B.T



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Assistant Teachers. The redeployment counselling notification issued by the authorities on 19.09.2023 for redeploying B.T Assistant Teachers in the vacancies of BRTE Teachers is being questioned only on the ground that such a redeployment would take away the opportunity of the non-priority BRTE Teachers in choosing a place of their choice.

8. As pointed out by the Hon'ble Division Bench of this Court in a batch of writ appeals in W.A(MD)Nos.2230 to 2242 of 2021etc., dated 07.11.2023, transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. A transfer order can be questioned only on the ground of *mala fide* or jurisdiction. In the matter of transfer, administrative reasons play a dominant role. As per Section 48 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the power to transfer a Government servant is absolute including a transfer from one revenue District to another revenue District on administrative grounds. The Hon'ble Division Bench has further pointed out that in the matter of transfers, there is no right vested upon an employee unless such a transfer affects his service conditions. Only in such



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circumstances, a writ petition could be entertained. In the present case, the BRTE Teachers are seeking to quash a notification issued for redeployment of surplus B.T Assistant Teachers in BRTE vacancies, which are already available. Therefore, it is clear that the redeployment of B.T Assistants in the BRTE vacancies would in noway affect the service condition of the BRTE Teachers. That apart, the petitioners are seeking a Mandamus as against the State to conduct a fresh counselling as per G.O(Ms)No.134, dated 18.08.2021 in the light of two orders of this Court.

9. This Court is not inclined to accept anyone of the prayers for the following reasons:

(i) Some of the BRTE Teachers had challenged G.O(Ms)No.134, dated 18.08.2021 in a batch of writ petitions. This Court by an interim order, dated 08.10.2021 had permitted the writ petitioners to participate in the counselling without prejudice to their right and they can exercise their option in choosing the place of their choice. In cases, where the priority Teachers and the non-priority Teachers make a claim for particular post, the posting orders were directed to be kept in abeyance. It was further clarified



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that the interim orders will be applicable only to the writ petitioners. The authorities were directed to proceed with the general counselling. It is an admitted fact that the petitioners herein have not challenged G.O(Ms)No. 134, dated 18.08.2021. Had they challenged the said Government order, they could have exercised their option to a place of their choice and blocked the said place. After the Division Bench has upheld G.O(Ms)No.134 in its entirety, the writ petitioners would have got stranded in their original place in which they were working before participating in the transfer counselling. Only in such cases, the petitioners could seek a fresh transfer counselling for them on the ground that they were not able to pick the places of their choice in the counselling held in October 2021. The petitioners herein have accepted the priority granted to some of the BRTE Teachers and participated in the transfer counselling. They have chosen the place of their choice and joined the said places in October 2021. Therefore, the request made by the petitioners to conduct a fresh counselling again as per G.O(Ms)No.134, dated 18.08.2021 is not maintainable.

(ii) The petitioners herein have already participated in the transfer counselling held in October 2021, which was conducted as per G.O(Ms)No.



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134, dated 18.08.2021 and have chosen the places of their choice.

Therefore, the request made by the petitioners for re-conducting a counselling within a period of two years again is not legally sustainable.

(iii) When the petitioners have chosen a place of their choice after participating in a transfer counselling without any objection, they will not be eligible to participate in another transfer counselling unless they complete a period of three years in the transferred post. The petitioners having participated in the counselling held in October 2021, would become eligible to participate in the general transfer counselling only after October 2024.

(iv) It is the contention of the petitioners that in the transfer counselling held in October 2021, they were not able to choose the place of their choice in view of priority granted to BRTE Teachers and the said Teachers were holding back the working place as well as the transferred place. The petitioners have never expressed such a grievance for the past two years until redeployment notification was issued for surplus B.T Assistants posts. Therefore, it is clear that the petitioners did not have any grievance over the places that they have chosen in the transfer counselling



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held in October 2021.

(v) It has been clarified by the respondents that the surplus B.T Assistants are going to be redeployed only in Vacant BRTE posts. Therefore, the posts that are held by the writ petitioners are not going to be disturbed. It is also not the case of the petitioners that these 725 vacancies arose only after the orders of the Hon'ble Division Bench. In fact the notification for redeployment of surplus B.T Assistants has been issued on 19.09.2023 and the order in a batch of writ appeal in W.A(MD)Nos.2230 to 2242 of 2021 etc., has been pronounced only on 07.11.2023. Only after the Division Bench orders, transfer orders (which were kept in abeyance) would have been issued to the priority BRTE candidates. Therefore, it is clear that these 725 BRTE vacancies were available even when the petitioners had participated in transfer counselling in October 2021. The petitioners, having not exercised their choice to these places at the relevant point of time, cannot now make a complaint that they were not able to choose their places of their choice.

(vi) Since the petitioners have not completed three years in the transferred place, they would not be entitled to participate in any general



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transfer counselling, even if it is held today. Therefore, the petitioners cannot find fault with the authorities for conducting redeployment counselling for surplus B.T Assistant Teachers for filling up vacant BRTE posts.

(vii) On one hand, there are surplus B.T Assistant Teachers in various Government / Local body Schools, whose services are wasted having a huge impact over the Government exchequer to a tune of about 4 Crores per month. On the other hand, in several Schools due to vacancies in BRTE posts, the students are suffering. Therefore, it is not proper on the part of BRTE Teachers in restraining the authorities from filling up BRTE posts.

(viii) The petitioners have neither challenged G.O(Ms)No.134 nor chosen a place in conflict with the place chosen by priority candidates. Therefore, the petitioners have no legal right to seek for a fresh transfer counselling as per G.O(Ms)No.134.

(ix) The petitioners have further prayed to implement the orders of this Court, dated 24.11.2021 in a batch of writ petitions in W.P(MD)Nos. 16884 of 2021 etc. The order, dated 24.11.2021 in W.P(MD)Nos.16884 of 2021 etc., is the final order passed by this Court, wherein two clauses in



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G.O(Ms)No.134, dated 18.08.2021 were put to challenge. The writ Court was pleased to partly allow the writ petition striking down those two Clauses. However, the order of the writ Court has been reversed by the Hon'ble Division Bench of this Court in a batch of writ appeals in W.A(MD)Nos.2230 to 2242 of 2021 etc., dated 07.11.2023. Therefore, the petitioners cannot seek to implement the order of this Court, dated 24.11.2021 in a batch of writ petitions in W.P(MD)Nos.16884 of 2021 etc.

(x) The petitioners have further prayed that the order of this Court, dated 28.01.2022 made in W.P(MD)No.1499 of 2022 may be implemented. A perusal of the said order indicates that the said order has been passed by the writ Court relying upon the order, dated 24.11.2021 made in W.P(MD)Nos.16884 of 2021 etc. Since the order in W.P(MD)Nos.16884 of 2021 etc., has already been reversed by the Hon'ble Division Bench of this Court on 07.11.2023, the order in W.P(MD)No.1499 of 2022, dated 28.01.2022 cannot be implemented.



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Conclusion:

10. In view of the above said deliberations, there are no merits in these writ petitions. Hence, all the writ petitions stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

11.01.2024

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

To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Secretariat, Chennai-9.

2.The Director of School Education,
Directorate of School Education,
DPI Compound, Chennai.

3.The Joint Director (Personnel),
Directorate of School Education,
DPI Compound, Chennai.

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- 4.The Chief Educational Officer,
Tuticorin, Tuticorin District.
- 5.The Chief Educational Officer,
Karur, Karur District.
- 6.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 7.The Chief Educational Officer,
Pudukottai, Pudukottai District.



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Order made in
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