



W.A.(MD)No.728 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.728 of 2024
and
C.M.P.(MD)No.5506 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,
O/o.the Chief Educational Officer,
Virudhunagar District, Virudhunagar.

... Appellants

vs

M.Premila Jini

...Respondent



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 23.12.2021 passed in W.P(MD)No.22825 of 2021.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader
For Respondent : Mr.M.Jerin Mathew

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

The Writ Appeal is filed challenging the order, dated 23.12.2021 passed in W.P.(MD)No.22852 of 2021. In fact, it is a common order passed in a batch of Writ Petitions, whereby, the Writ Court had extended the benefit granted to similarly placed persons, as that of the petitioners in W.P(MD)No.16310 of 2021 and batch and held that the Writ Petitioner is also entitled for preference during general counselling.

2.The respondent herein was selected through a competitive examination conducted by the Teachers Recruitment Board in the year 2005-06 and was appointed as Block Resource Teacher Educator (Chemistry) by the third appellant through his proceedings, dated



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14.07.2006 and she was posted at Reddiarchathiram Block Resource Centre in Dindigul and subsequently, transferred to Agastheeswaram Block Resource Centre in Kanyakumari District.

3.The first appellant had issued G.O.(Ms)No.16, School Education (Q2) Department, dated 05.02.2002, whereby, the third appellant was nominated as Nodal Agency for recruiting Block Resource Teacher Educators and the appointment for these posts were made through this Government order. The Government also issued G.O.(Ms)No.158, School Education (C2) Department, dated 07.09.2006, wherein, 500 Block Resource Teacher Educators, who expressed their willingness to be transferred as B.T.Assistant in various Government Schools, were transferred. Again by G.O(1D)No.257, School Education (C2) Department, dated 04.07.2012, some more Block Resource Teacher Educators were transferred and posted as B.T.Assistants and the balance Teachers were permitted to continue under the scheme. Later, again G.O.(1D)No.652, School Education (Pa.Ka.3)(2) Department, dated 31.10.2017 was issued, whereby, 350 Block Resource Teacher Educators, on expressing their willingness, were transferred and posted as B.T.Assistants. As such, all



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these transfers were made based on the options exercised by the Block Resource Teacher Educators for getting transfer or convert as B.T.Assistants.

4.Later, the Government had issued G.O.(1D)No.134, School Education (Pa.Ka.5)(1) Department, dated 18.08.2021, framed certain guidelines for conducting transfer counselling and also conversion of Block Resource Teacher Educators as B.T.Assistants to the High School or Higher Secondary School. However, 500 senior most Block Resource Teachers were transferred and posted as B.T.Assistants without calling for their option/willingness. When Writ Petitions in W.P.(MD)No.16310 of 2021 and batch were filed challenging such transfer, the same came to be dismissed and the Court had recorded the submission made by the learned Additional Advocate General that those persons, who had been transferred through the impugned order, can opt for general counselling and they would be given priority, if such persons are not inclined to take any place, which is available in that transfer counselling.



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5.It could be seen that challenging the order passed in the batch of Writ Petitions passed in W.P.(MD)No.16310 of 2021 and batch, Writ Appeals in W.A.(MD)Nos.2230 to 2242 of 2021 were filed, which was ultimately dismissed by the Division Bench on 07.11.2023. The respondent had preferred the above Writ Petition on 18.12.2021 and in the meantime, she had participated in the counselling on 15.09.2021 and she was transferred to Padanthanl Government Higher Secondary School, Virudhunagar District. Since the transferred place is situated far away, which is 200 km away from the residential place and she had to travel 400 km to reach home even in the week end and two sons are studying 7th and 2nd standard, she had made a representation on 20.11.2021 to give priority in the general counselling, based on the orders passed in W.P(MD)No.16310 of 2021 and batch, dated 24.11.2021 passed in respect of the similarly placed persons.

6.Even though the respondent herein was not a party to the batch of Writ Petitions, the Writ Court after considering the submissions had observed that when the learned Additional Advocate General had submitted that persons transferred will be given priority in the general counselling to



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be conducted. When the petitioner herein also had been transferred as B.T.Assistant without getting her option or willingness, she is also entitled to get the benefits covered under the order by getting priority in general counselling, as given to the similarly placed person. Assailing the said order, the State has preferred the present appeal.

7.The learned Additional Government Pleader appearing for the appellants argued that when the respondent has not challenged the orders passed by the Government transferring her as B.T.Assistant and she was not a party to the Writ Petitions filed by other persons and she is only a fence sitter, she can never have the benefit of the order passed in the Writ Petitions, which came to be filed challenging the transfer order and therefore, she is not a similarly placed person. The learned Additional Government Pleader further contended that in fact even though the Writ Appeal preferred by the State was dismissed on 20.03.2024, the Division Bench had held that the other persons covered under the common order is not a similarly placed person, as he was only a fence sitter. But, however, the relief was extended to him based on the other factual aspects contained therein. The learned Additional Government Pleader, therefore, contended



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that the order of the learned Judge extending the benefit to the respondent, which will not be applicable based on the submissions made by the learned Additional Advocate General in the Writ Petition, wherein, the transfer orders were challenged, cannot be extended to the respondent herein and therefore, sought for interference of the order passed by the learned Judge.

8.The learned Counsel for the respondent argued that the common order in the Writ Petitions had been passed as early as on 24.11.2021 and in fact, batch of Writ Appeals preferred as against those orders have also been dismissed by the Division Bench on 07.11.2023 and also by taking note of the same, another Division Bench of this Court recently by order, dated 20.03.2024 in W.A.(MD)No.327 of 2024 has dismissed the appeal and therefore, submitted that no interference is required, when the appellants have also complied with the direction passed in respect of all the persons covered under the order.

9.Heard the learned Counsels on either side and perused the materials available on record.



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10. Admittedly, the respondent herein was appointed as Block Resource Teacher Educator (Chemistry) in the year 2005-06 by the third appellant by proceedings, dated 14.07.2006 and the Government had issued G.O(1D)No.134, School Education (Pa.Ka.5)(1) Department, dated 18.08.2021, whereby, 500 senior most Block Resource Teacher Educator have been converted and transferred as B.T.Assistant without calling for their option/willingness. It could be seen that the respondent herein had not challenged the order, but a set of persons have challenged the order issued in G.O(1D)No.134, School Education (Pa.Ka.5)(1) Department, dated 18.08.2021, in a batch of Writ Petitions in W.P.(MD)No.16310 of 2021 and batch. When the Writ Petition was pending in view of the interim order passed, even though the persons, who had not challenged the order, but are participated in the counselling, no transfer orders were issued in view of the pendency of those Writ Petitions and when the Writ Petitions were ultimately dismissed by recording the submissions made by the learned Additional Advocate General that those Block Resource Teacher Educator, who had participated in the counselling, are not issued with transfer order and they would be given priority, if they participated in the general transfer counselling.



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11. When a Writ Appeal in W.A(MD)No.327 of 2024 was filed by the State challenging the common order, dated 23.12.2021, passed in W.P(MD)No.22846 of 2021. The Hon'ble Division Bench was pleased to pass the following order:

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

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



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

12. In view of the orders already passed in the connected Writ Appeal filed as against the very same common order, we are also not inclined to interfere with the order passed by the Writ Court. The respondent is at liberty to participate in the next transfer counselling, if she is otherwise eligible to participate. With these observations, this Writ Appeal fails and accordingly, dismissed. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**[R.S.K., J] & [G.A.M., J]
23.04.2024**

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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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Judgment made in
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