



WP.(MD).Nos.27908 of 2023, batch

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.01.2024

PRONOUNCED ON : 10.04.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.27908, 28620, 28655, 28709, 28710, 28711, 28712, 28713, 28714, 28715, 28723, 28736, 28737, 28738, 28739, 28740, 28770, 28771, 28772, 28773, 28774, 28775, 28776, 28777, 28778, 28779, 28780, 28781, 28782, 28783, 28784, 28785, 28786, 28787, 28788, 28789, 28790, 28791, 28792, 28793, 28794, 28795, 28796 and 29050 of 2023

and

W.M.P.(MD)Nos.25093, 24008, 24010, 24011, 24686, 24687, 24728, 24729, 24754, 24755, 24756, 24745, 24746, 24747, 24748, 24750, 24751, 24757, 24760, 24761, 24762, 24763, 24766, 24767, 24768, 24775, 24777, 24780, 24781, 24782, 24783, 24785, 24786, 24787, 24788, 24801, 24800, 24802, 24803, 24804, 24805, 24806, 24807, 24808, 24809, 24810, 24811, 24812, 24813, 24814, 24815, 24816, 24817, 24818, 24819, 24820, 24821, 24822, 24823, 24824, 24825, 24826, 24827, 24828, 24829, 24830, 24831, 24832, 24833, 24834, 24835, 24836, 24837, 24838, 24840, 24842, 24844, 24847, 24848, 24850, 24851, 24855, 24857, 24859, 24860, 24861, 24862, 24863, 24864, 25094, 25095, 25283, 25367, 25370, 25379, 25380, 25959, 25974, 25975, 25979, 25980, 25985, 25998, 26160, 26161, 26164 and 26168 of 2023



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W.P.(MD)No.27908 of 2023:-

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V.Luciana Margret Mary

... Petitioner

Vs.

1.The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat,
Chennai – 600 009.

2.The State Project Director,
Samagra Shiksha,
D.P.I.Campus, Nungampakkam,
Chennai-600 006.

3.The Director of School Education,
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai – 600 006.

4.The Joint Director of School Education (Personnel),
EVK Sampath Maaligai, DPI Campus,
College Road, Nungampakkam,
Chennai – 600 006.

5.The Chief Educational Officer,
O/o, the Chief Educational Officer,
Madurai District,
Madurai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified / Mandamus, calling for the records relating to the impugned order vide ந.க.எண்.41779/சீ4/இ1/2021

2/20



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நாள் : 18.11.2023 passed by the third respondent and the consequential impugned order vide ந.க.எண்.281/அ1/2021 நாள் : 18.11.2023 passed by the fifth respondent and quash the same so far as the petitioner is concerned and consequently directing the respondents to permit the petitioner to continue to work in Melur Block Resource Centre, Madurai District.

For Petitioners	: Mr.M.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates : Mr.D.Shanmugaraja Sethupathy
For Respondents	: Mr.P.Veera Kathiravan Additional Advocate General Assisted by Mr.N.Ramesh Arumugam Government Advocate Mr.G.Suryananth, Additional Government Pleader

COMMON ORDER

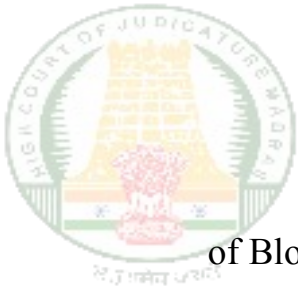
All the Writ Petitions in this batch have been filed challenging the order passed by the Director of School Education, Chennai, thereby relieving the petitioners from the respective posts and consequential order passed by the Chief Educational Officers, Madurai District and Dindigul District respectively thereby transferring and posting the petitioners in the respective posts in the respective Schools.



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2.The petitioners were initially appointed as Block Resource Teacher Educators (hereinafter called as “BRTE”) through Teachers Recruitment Board. The post of BRTE was created under Sarva Shiksha Abiyan Scheme. The purpose and object of the said scheme is to improve the teaching skills of the Teachers. It also includes monitoring the teaching methodology of the Government and Aided Schools upto the level of eight Standard. The Government of Tamil Nadu, vide G.O.Ms.No.16, School Education (Q2) Department dated 05.02.2002 approved the recruitment of BRTE for the year 2002-2003. At the time of commencement of the said Scheme, the entire expenditure was borne by the Central Government. Under G.O.Ms.No.94, School Education Department dated 01.07.2002, a total number of 6285 posts of Block Resource Teachers were sanctioned. By virtue of G.O.Ms.No.52, School Education (C2) Department dated 30.03.2006, the General and Special Rules applicable to the posts of BT Assistants were also made applicable to Block Resource Teachers. The said G.O., is fully in force and the same has not been challenged so far. Up to the recruitment year of 2010, a total strength of 6285 posts were filled up. However, no recruitment in respect



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of Block Resource Teachers took place after the year 2010.

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3.While so, the first respondent, vide G.O.1D.No.134, School Education (Pa.Ka.5(1)) Department dated 18.08.2021 had framed guidelines for the purpose of transfer counselling in BRTes, which was scheduled to be held on 20.09.2021. In the said G.O., Clause 4(I)(c), mandates that all the posts should be treated as vacant posts and only on that basis, transfer counselling should be held. As per Clause 4(I)(m) of the said Government order, it is mandated that all the BRTes working in various places should be treated as 0% and on the basis of seniority regardless of their willingness, they can be posted by way of transfer through a counselling process. Particularly in Clause 4(I)(V), the preference is directed to be given to 362 BRTes who have participated in the deployment counselling held for the year 2014-2015 on their own consent. Generally preference would be given to the candidates who were deployed on account of the administrative reasons and the same is not applicable to the persons who participated in the counselling as per their own accord.



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4. Normally when the transfer counselling is conducted, the person whoever participated in the counselling in the earlier year, will not be permitted to participate as they have already got transferred in the transfer counselling. Likewise, the candidates who have participated in the deployment at their own will is also not required to be given any kind of preference and the same would deprive the right of other candidates. Under such circumstances, contending that all the candidates should be treated as equal and there is absolutely no reason to give preference to the candidates who participated in the deployment counselling during 2014-2015, challenging the impugned Clause 4(I)(V) and Clause 4(III) (ix) as illegal, several Writ Petitions came to be filed before this Court. A batch of Writ Petitions in W.P.(MD)No.16884 of 2021, batch came to be filed before this Court and this Court by its interim order dated 08.10.2021, passed the following directions:-

“(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 in so far 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.”

5. Another batch of writ petition in W.P.(MD)No.16310 of 2021 filed before this Court came to be dismissed by an order dated 24.11.2021. The interim order passed by this Court directed the respondents that, if the writ petitioners and the deployed group of BRT are opting for same place then the posting order shall be kept in abeyance. In so far as the particular place is concerned, the respondents without giving opportunity to the petitioners to opt for the place which



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was already opted by the group of deployed 362 BRTEs, directed the writ petitioners herein to participate in the said transfer counselling as scheduled on 20.09.2021 to opt for the other places chosen other than by the deployed 362 BRTEs. Accordingly, the writ petitioners participated in the counseling and left with no other option, opted for Block Resource Centers, which were shown in the counselling schedule. Even after that the respondents without relieving the petitioners from those Block Resource Centers where they had been serving before the date of counseling allowed them to continue in the erstwhile Block Resource Centers for the past more than two years from the date of counselling. However, in the meanwhile, another batch of case in W.P.(MD)No.16884 of 2021, etc by an order dated 24.11.2021, was partly allowed and the relevant portion of the same is extracted as follows:-

“35.Accordingly, Clause 4(1)(V) 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:~



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'14. ...

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(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)(V) and (III)(ix) of the said 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)(V) 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."

6.Though the aforesaid order has been passed by this Court in a batch of 115 Writ Petitions, of which Writ Appeal was preferred only as against the Writ Petitions in W.P.(MD)No.16884 of 2021, 19707 of 2021, 1499 of 2022 and 29050 of 2023 before the Hon'ble Division Bench of this Court in W.A.(MD)Nos.2230 to 2242 of 2021, 699 and 1164 of 2022 and 1966 of 2023. The Hon'ble Division Bench of this Court by order dated 07.11.2023 has set aside the order passed by the learned Single



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Judge in the aforesaid W.P.(MD)Nos.16884 of 2021 and 1499 of 2022

and the relevant portion of the same is extracted as follows:-

“4.The Government Order impugned itself denotes that it is a guideline issued for the purpose of transferring the Block Resource Teacher Educators working at various places across the State of Tamil Nadu. Therefore, it is a policy decision taken by the Government in the matter of providing certain concession to 362 teachers working in the cadre of Block Resource Teacher Educators, since they were affected on account of earlier transfer orders occurred in the year 2014.

15.The next question arises, whether transfer gives a right to a government employee. The answer would be that transfer would not provide any right to a Government employee. Transfer is an incidental to service, more so a condition of service. When an offer of appointment has been issued by the competent authorities, the acceptance of appointment is implied that the transfers are agreed upon. Employment is a contract between the employer and employee and the transfer being incidental, the scope for challenge is in narrow campus. Thus, when there is no right in the matter of transfer and transfers are not affecting the service conditions of an employee, the entertainability of the Writ Petition itself is to be considered.

16.Transfer counselling is a policy decision extended by



way of concession to the teaching staff in the Education Department. The -concession- and -rights- are distinguishable. Concession is a -privilege- extended, but right is an entitlement. Thus, the concession cannot be equated with the rights. The rights can be demanded, but concession cannot be.

17.In the present case, the Government Order, which was under challenge, is the guidelines issued for conducting transfer counselling and by way of one time measurement certain concessions were extended to 362 Block Resource Teacher Educators, who have served about 7 years in a far of place and submitted representations to the Government to consider their cases in a sympathetic manner. The Government thought fit to consider the grievances of those teachers working in a far of place for several years and accordingly, issued Government Order providing certain concessions to those teachers under transfer counselling, as one time measure.

18.Thus, it is also a policy decision taken by the Government, which cannot be interfered with by the High Court by exercising the powers of judicial review under Article 226 of Constitution of India.

20.That being the factum, we are of the considered opinion that transfer order issued through guidelines cannot be construed as a cause warranting interference by the High



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Court in exercise of the powers of judicial review.

24. An employee is liable to be transferred at any place and post. Post can never be claimed as status and the post is not the choice of the employees and they are expected to serve, wherever they are posted. The guidelines, transfer policies or concessions are extended for the benefit of the employees and in the interest of administration. However, such guidelines would not confer an absolute right for an employee to seek a particular place or post. The guidelines are issued to minimize the discrepancies and therefore, such discrepancies even if noticed would not provide cause for the employees to assail the order of administrative transfers. When the employees have no right to challenge the order of transfer except on the limited grounds discussed by us in the aforementioned paragraphs, they cannot indirectly challenge the policy guidelines, which were issued for such transfers and therefore, the very basis for the challenge is untenable.”

7. The aforesaid judgment of the Hon'ble Division Bench was also confirmed by the Hon'ble Apex Court of India in SLP.Nos.27383 to 27384 of 2023 by an order dated 05.01.2024, thereby, dismissing all the SLP petitions.



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8. In view of the same, this Court is of the considered view that the Hon'ble Division Bench has categorically held that G.O.ID.No.134 School Education Department dated 18.08.2021 with all its Clauses in entirety is a policy decision taken by the Government, in which as a one time measure certain concessions were extended to 362 BRTEs, who have served about seven years in far way places, who had submitted representations to the Government to consider their case for transfer in a sympathetic manner. Accordingly the Government thought it fit to ventilate the grievance of those Teachers working in far way places for several years providing certain concessions to them.

9. Fully fortified by the aforesaid judgment, considering the fact that the said G.O. has been upheld by the Hon'ble Division Bench of this Court and the Hon'ble Apex Court of India in its entirety. The impugned orders in these batch of Writ Petitions cannot be interfered with. The respondents have not preferred any appeal as against the order passed by the learned Single Judge in the Writ Petitions filed by these writ petitioners except the writ petition in W.P.(MD)No.29050 of 2023. All the writ petitioners together claimed that they were not heard before the



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Hon'ble Division Bench in the said Writ Appeal in W.A.(MD)No.699 of 2023. Pursuant to the order of the Hon'ble Division Bench dated 07.11.2023, the writ petitioners here in this batch were relieved from their respective Block Resource Centers where they have been serving as Block Resource Teacher Educators by the proceedings of the Director of School Education, Chennai vide separate relieving orders impugned in all these Writ Petitions issued in the month of November 2023. Following which, the consequential orders were also passed by the respective Chief Educational Officers of the respective districts, thereby transferring and posting the writ petitioners herein in the respective posts as opted by the writ petitioners herein during the transfer counselling which was conducted on 20.09.2021. Challenging the aforesaid impugned relieving and transfer orders, all these Writ Petitions came to be filed by the writ petitioners, contending that the Hon'ble Division Bench was pleased to allow the Writ Appeal by order dated 07.11.2023 setting aside the order passed by the Hon'ble Single Judge in W.P. (MD)No.16884 of 2021 dated 24.11.2021 alone and that the Writ Petitions filed by the writ petitioners has not been challenged so far.



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10.The learned counsel for the petitioners contended that the aforesaid judgment will not bind the writ petitioners herein and the same will apply only to the respective writ petitioner in W.P.(MD)Nos.16884 of 2021 and 1499 of 2022. It was further submitted on behalf of the writ petitioners that the Hon'ble Division Bench has not given any specific direction to relieve the petitioners from the existing place, while so the third respondent has issued the impugned proceedings to relieve all the BRTs who have been continuing in the same place after the counseling conducted in the year 2021. Categorically contending that the impugned orders passed on the basis of the order of the Hon'ble Division Bench shall not hold good, as far as the writ petitioners are concerned, the learned counsel for the writ petitioners vehemently contended to allow the writ petitions by setting aside the impugned relieving orders and transfer orders and sought for conducting fresh counselling.

11.The legality of the transfer guidelines framed by the Government in respect of the Teachers working in the cadre of Block Resource Teacher Educators, which is interchangeable with the post of BT Assistant vide G.O.1D.No.134 dated 18.08.2021 has been tested



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finally before the Hon'ble Division Bench of this Court in W.P.(MD)No. 2230 of 2021, etc batch. Observing that the guidelines, transfer policies or concessions are extended for the benefit of the employees and in the interest of administration, the Hon'ble Division Bench categorically held that the transfer guidelines would not confer an absolute right for an employee to seek a particular place or post. Further the Hon'ble Division Bench reiterated that the guidelines are issued to minimize the discrepancies and therefore, such discrepancies even if noticed would not provide cause for the employees to assail the order of administrative transfers.

12.Having upheld the impugned G.O.1D.No.134 dated 18.08.2021, the Hon'ble Division Bench has categorically held that the transfer orders issued consequent to the guidelines has to be validated. That apart the Hon'ble Division Bench has made it clear that the transfer orders issued pursuant to the transfer guidelines have to be implemented uniformly to all the teaching staffs irrespective of the fact whether they have instituted separate writ proceedings or writ appeals. Such a categorical observation would characterize the aforesaid judgment of the Hon'ble Division Bench



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as a judgment in rem. The aforesaid judgment of the Hon'ble Division Bench is said to be in rem, since the same has adjudicated upon testing the legality of the impugned G.O.1D.No.134, thereby deciding that the impugned guidelines of transfer for BRTes will never take away the right, status, conditions of service of the BRTes and has concluded that the said G.O., is a policy decision of the Government to extend certain concession as a privilege to a category of 362 Block Resource Teacher Educators, who have served about seven years in faraway places. Since the said judgment is a solemn declaration as to the fact that the impugned G.O., will not take away the status, rights or conditions of service of the writ petitioners or any other BRTes, the same would be binding on all the BRTs and hence the same is a judgment in rem. The contention of the petitioners that the judgment of the Hon'ble Division Bench is only a judgment in personnum and the same will not bind the writ petitioners is hereby negated.

13.I am of the considered view that the said judgment of the Hon'ble Division Bench would squarely cover the case of the petitioners as well. In view of the same, the petitioners are permitted to continue in



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their respective post till 30.04.2024 and thereafter, join in the transferred place on or before 07.06.2024. Accordingly, these Writ Petitions are disposed of. Consequently, connected miscellaneous petitions are closed.

There shall be no order as to costs.

10.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

- 1.The Principal Secretary to Government,
Department of School Education,
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The State Project Director,
Samagra Shiksha,
D.P.I.Campus, Nungampakkam,
Chennai-600 006.
- 3.The Director of School Education,
EVK Sampath Maaligai, DPI Campus,
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- 5.The Chief Educational Officer,
O/o, the Chief Educational Officer,
Madurai District,
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L.VICTORIA GOWRI, J.

Mrn

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10.04.2024