



W.P.(MD).Nos.31079 to 31082 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.31079 to 31082 of 2023
and W.M.P(MD)Nos.26637, 26638, 26640 to 26644, 26646 of 2023,
558, 559, 655, 1366 & 1369 of 2024

In W.P(MD)No.31079 of 2023

R.Saranya

... Petitioner

Vs

1. The Commissioner,
Most Backward Class and Reclamation Department,
Ezhilagam, Chennai . 600 005.
2. The Joint Director,
O/o.Joint Director of Kallar Reclamation,
Madurai . 625 020.
3. The Headmaster,
Government Kallar Higher Secondary School,
Kamupillai Chatram,
Pachamalaiyankottai Post,
Nilakkottai Taluk, Dindigul District.
4. The Headmaster,
Government Kallar Middle School,
G.Thummalapatti, Periyakulam Zone,
Dindigul District.

... Respondents



W.P.(MD).Nos.31079 to 31082 of 2023

In W.P(MD)No.31080 of 2023

C.Jagadeesan

... Petitioner

Vs

1. The Commissioner,
Most Backward Class and Reclamation Department,
Ezhilagam, Chennai . 600 005.
2. The Joint Director,
O/o.Joint Director of Kallar Reclamation,
Madurai . 625 020.
3. The Warden,
Government Kallar Boys Hostel,
Vellaimalaipatti,
Madurai District.
4. The Headmaster,
Government Kallar Middle School,
K.Perumalpatti, Madurai District

... Respondents

In W.P(MD)No.31081 of 2023

V.Palanivelrajan

... Petitioner

Vs

1. The Commissioner,
Most Backward Class and Reclamation Department,
Ezhilagam, Chennai . 600 005.
2. The Joint Director,
O/o.Joint Director of Kallar Reclamation,
Madurai . 625 020.
3. The Headmaster,
Government Kallar Primary School,
Cahkkilipatti, Chekkanurani Zone,
Madurai District.



W.P.(MD).Nos.31079 to 31082 of 2023

4. The Headmaster,
Government Kallar Primary School,
Kuttilnayakkanpatti, Dindigul Zone,
Dindigul District.

... Respondents

In W.P(MD)No.31082 of 2023

R.Kodiswari

... Petitioner

Vs

1. The Commissioner,
Most Backward Class and Reclamation Department,
Ezhilagam, Chennai . 600 005.
2. The Joint Director,
O/o.Joint Director of Kallar Reclamation,
Madurai . 625 020.
3. The Warden,
Government Kallar Girls Hostel,
Usilampatti,
Theni District.
4. The Headmaster,
Government Kallar Higher Secondary School,
Nattamangalam, Madurai District.

... Respondents

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the 2nd respondent vide his proceedings in Na.Ka.No.H3/9285/2023, Na.Ka.No.H10/38291/2022, Na.Ka.No.H2/9284/2023, Na.Ka.No.H10/38291/2022, respectively, dated 19.12.2023 and quash the same as illegal.



W.P.(MD).Nos.31079 to 31082 of 2023

For Petitioner : Mr.Ajmal Khan, Senior Counsel

For Respondents : Mr.P.Veerakathiravan
Additional Advocate General
Assisted by
Mr.R.Ragavendran,
Government Advocate

COMMON ORDER

The present writ petitions have been filed challenging the impugned order of the 2nd respondent, dated 19.12.2023.

2.Four writ petitions have been filed by the B.T Assistants working in various Government Kallar Higher Secondary Schools managed by the Most Backward Class and Reclamation Department. All the writ petitioners were appointed on 01.12.2014 in various Government Kallar Higher Secondary Schools. Thereafter, in various dates from March to June 2023, these petitioners were transferred to the respective third respondent Schools in the respective writ petitions. Having effected those transfers and having allowed the petitioners to join in the transferred place, unexpectedly vide impugned orders, dated 19.12.2023, those transfers were cancelled by the proceedings of the second respondent. Challenging the said cancellation of transfers, these writ petitions came to be filed.



W.P.(MD).Nos.31079 to 31082 of 2023

WEB COPY

3.The learned Senior Counsel appearing for the petitioners submitted that the impugned orders of cancellation of transfer has been challenged by the respective petitioners mainly on the ground of violation of principles of natural justice, as they were not put on notice prior to the impugned orders. Apart from cancelling the transfer order in the middle of the academic year, the same is also not in the interest of the students.

(ii).He further submitted that as far as the writ petitioner Mrs. Saranya is concerned, the transfer was effected by the second respondent only on her request by considering that she is having 11 months baby. If she is transferred to the fourth respondent School again, it will be difficult for her to make arrangements for her accommodation.

(iii).Apart from his submission that the impugned orders came to be passed violating the principles of natural justice, the learned Senior Counsel attacked the impugned orders stating that the reasons assigned in the impugned orders are factually incorrect. The orders of transfer were passed contrary to G.O.(D).No.21. However, the factum that the said transfer was not informed to the first respondent is only an irregularity, for which, the entire transfer orders need not be cancelled. There is no bar to effect transfer always on an administrative exigency. However, if the same is cancelled, necessarily the



W.P.(MD).Nos.31079 to 31082 of 2023

petitioners need to have been put on notice. The order of cancellation has been issued by the second respondent for unfound reasons maliciously. That apart, the impugned cancellation of transfer came to be passed in the midst of the academic year and the same has not been passed by the appropriate authority. On the basis of his arguments, he pressed for allowing the writ petitions.

4.While so, one N.Meenalochani, Headmaster of Government Kallar Primary School, Melaurappanur, Chekkarunani Range, Madurai District has filed an impleading petition in W.M.P(MD) No.655 of 2024 in W.P(MD) No.31081 of 2023. The learned counsel Mr.Dilipkumar, appearing for the impleading petitioner submitted that the Government guidelines governing transfer counselling mandates that the opportunity for request transfer should be given by following the seniority and by adopting due procedure of law. However, the writ petitioner in W.P(MD) No.31081 of 2023 procured a transfer to Chaklipatti Village, Kallar Reclamation and Primary School. The said transfer has been granted by the Joint Director one Mr. Ponkumar, in violation of all statutory mandates, guidelines, Rule of law and procedures. Similar orders had been passed in respect of other teachers also by the very same Joint Director. Thereafter, the Government has initiated



W.P.(MD).Nos.31079 to 31082 of 2023

appropriate disciplinary action as against the said erring Joint Director Mr. Ponkumar and now he is visited with disciplinary proceedings by the issuance of charge memo for serious misconduct under Rule 17(b) of Tamil Nadu Civil Services Discipline and Appeal Rules. Following which, fraudulent transfer orders similar to the one granted to the writ petitioners came to be cancelled and the impugned orders are one among them. If a proper general transfer counselling has been conducted by way of seniority, the impleading petitioner would have opted and joined in Chaklipatti School, which is nearer to her residence. However, her opportunity has been defeated by the fraudulent transfer obtained by the writ petitioner Mr. Palanivel Rajan.

(ii) The learned counsel for the impleading petitioner contended that fraud vitiated all solemn acts. A perpetrator of fraud cannot allege a violation of natural justice principle. An undue advantage gained by the petitioners by marching over other teachers placed in seniority over them by extraneous means cannot abuse the legal process to retain the unlawfully gained advantage, for which, the impleading petitioner's counsel pressed for dismissing all the four writ petitions.



W.P.(MD).Nos.31079 to 31082 of 2023

WEB COPY

5.However, observing the fact that in the matter of administrative transfers and the cancellation of the same, allowing the impleading petition will not serve any purpose. Hence, recording the arguments made by the inpleading petitioner, this Court is inclined to dismiss the impleading petition.

6.Per contra, the second respondent filed separate petitions to vacate the interim stay already granted by the order of this Court on 21.12.2023 in all the four writ petitions.

7.(i).The learned Additional Advocate General appearing for the second respondent submitted that the very purpose of general transfer counselling for the teachers working in Government Primary/ Middle/ High/ Higher Secondary Schools is to safeguard the welfare of the teachers community, which would be convened in a transparent manner. He further stated that the Government of Tamil Nadu issued guidelines/norms for general transfer counselling for teachers from time to time, for every academic year. In such a way, G.O(D)Nos. 21 and 55 of Backward Classes, Most Backward Classes and Minorities Welfare Department, dated 29.3.2022 and 14.07.2023 respectively came to be issued along with the guidelines / norms for the general



W.P.(MD).Nos.31079 to 31082 of 2023

transfer counselling for the academic years 2021-2022 and 2023-2024 respectively. The general condition of the said Government orders categorically mention that all the vacancies that have arisen due to retirement, promotion, resignation, death, transfer and creation of new posts are to be filled up only through general transfer counselling. However, the former Joint Director of Kallar Reclamation, without adhering to the specific guidelines given in the aforesaid two Government orders had filled the vacancies on the request of the writ petitioners.

(ii).In terms of G.O(D) No. 21 and 55, it is categorically submitted by the learned Additional Advocate General that based on the information furnished in the applications requesting transfer, an appropriate priority list has to be prepared and based on the same alone, the general transfer counselling has to be done. The said Government orders have also specified 11 priority categories for conducting counselling, when more than one person is seeking transfer to a particular place and post. That apart, the said Government orders categorically mandate that if on administrative exigency, any transfer is effected prior to general transfer counselling, the reason for the same should be informed to the Commissioner/first respondent in these cases. But the former Joint Director of the Kallar Reclamation, Madurai, while passing the earlier



W.P.(MD).Nos.31079 to 31082 of 2023

orders of transfer by mentioning it as administrative exigency has not informed the first respondent assigning the reasons for such transfers. Even a copy of those orders were not marked to the first respondent. Had it been informed or the copy of earlier orders marked to the first respondent Commissioner, he would have immediately directed the then Joint Director to cancel the said orders in view of the fact that all those orders were against the norms of general transfer counselling and also for the reason that no administrative exigency was actually involved. That apart, many offers from seniors seeking request transfer were pending with the Commissionerate. It was also noted that even in a single teacher School without substitute, the existing incumbent came to be transferred, thereby, affecting the education of the students studying in the single teacher School.

(iii).The learned Additional Advocate General further contended that the right of the seniors awaiting for general transfer counselling would be seriously deprived by the transfers effected by the former Joint Director of Kallar Reclamation, Madurai. Following which, the first respondent has visited the former Joint Director of Kallar Reclamation, Madurai with a charge memo, dated 15.09.2023 under Rule 17(b) of the Tamil Nadu Civil Services



Discipline and Appeal Rules containing 15 charges, of which, the first five charges relate to illegal transfers effected.

(iv).The learned Additional Advocate General proceeded to submit in W.M.P(MD) No.558 of 2024 that

“12.... the sum and substance of those charges are that (i) after he took charge as Joint Director, passed orders transferring 36 teachers, as against the Rules / norms given for General Transfer counseling and without adopting the Teachers - Students ratio; (ii) that without permitting the Assistants dealing files relating to Transfer, the Superintendent and Personal Assistant, to deal with the files, passed orders of transfer by entrusting the said work to a Lab Assistant, who came on deputation; (iii) without mentioning the reason for exigency / urgency, as required under Government orders; (iv) not informing the orders of transfer to the 1st Respondent / Commissioner, as mandated in G.O.(D) Nos. 21 as well as 55; and (v) after receiving applications from the Teachers concerned, requesting transfer, he has issued orders of transfer, mentioning therein as for the interest of administration”

(v).The learned Additional Advocate General further vehemently contended that the Government has received complaints from various quarters that without following the guidelines/norms prescribed in G.O(D) Nos.21 as well as 55, the former Joint Director of Kallar Reclamation, Madurai have received request transfer applications from certain teachers and passed the transfer orders on the guise of administrative exigency on extraneous



W.P.(MD).Nos.31079 to 31082 of 2023

considerations. In view of the same, the learned Additional Advocate General pressed for dismissal of the writ petitions.

8.For the sake of convenience, the details of all the writ petitioners, whose transfers came to be cancelled by the second respondent vide impugned orders, dated 19.12.2023 is tabulated as follows.

Sl.No.	Writ Petition No/Name of the Writ petitioner	Date and place of 1 st appointment	Date and Place of transfer	Date of Cancellation of transfer
1	W.P.(MD)31079/2023- R.Saranya - B.T.Assistant (Maths)	01.12.2014 G.Thummalapatti	17.06.2023, Kamupillai Chatram	19.12.2023
2	W.P.(MD)31080/2023- C.Jagadeesan -B.T.Warden	01.12.2014 Keeripatti	05.03.2023, Vellaimalaipatti	19.12.2023
3	W.P.(MD)31081/2023- Palanivelrajan- Headmaster B.T.Assistant (Maths)	01.12.2014 Kuttilnayakkanpatti	09.06.2023, Chakkilipatti	19.12.2023
4	W.P.(MD)31082/2023- R.Kodiswari- B.T.Assistant (English)	01.12.2014 Nattamangalam	15.03.2023, Usilampatti	19.12.2023

9.Relying upon Rule 3 of the Special Rules for the Tamil Nadu Backward Classes and Most Backward Classes Welfare Service, the learned Senior Counsel appearing for the petitioners submitted that the Director of the Most Backward Classes and Denotified Communities, Chennai is the



W.P.(MD).Nos.31079 to 31082 of 2023

appointing authority under the first respondent Department. Drawing my attention to Rule 8 of the aforesaid rule, he insisted that the transfer and postings of officers of Clause 1, 2 and 3 shall be made by the Director of Most Backward Classes and Denotified Communities, Chennai. The post of Headmaster and Headmistresses and Teachers in academic subjects and Teachers in languages(Tamil) falls under the Clause 1 and Clause 2 category respectively in reference to Rule 6B(i) as notified in the annexure of the aforesaid Rules. On the basis of the said Rules, the learned Senior Counsel categorically contended that the transfer of the Clause 1 and Clause 2 officers that is the Headmaster and BT Assistants should obviously be made by the Director of the Most Backward Classes.

10.Further relying upon the special rule for the Tamil Nadu backward classes welfare subordinate service, the learned Senior Counsel submitted that for the category of Headmasters and Headmistresses of secondary Schools, teachers in secondary Schools with degree in teaching and Headmaster / Headmistress of middle School with degree in teaching, appointing authority is the Special Deputy Collector, ie., the Joint Director. However, as far as postings and transfers are concerned, if the postings and



W.P.(MD).Nos.31079 to 31082 of 2023

transfers of a member of service is within the same jurisdiction that shall be made by the appointing authority concerned. If the transfers from one jurisdiction to another jurisdiction is effected, the same has to be made by the Director of backward classes Chennai.

11.Further relying upon G.O(D) No. 21, Clause 6(ix), the learned Senior Counsel submitted that transfers can duly be effected on administrative exigency and the negligence on the part of the second respondent for not informing the same to the first respondent can only be seen as a irregularity.

12.Having heard the learned Senior Counsel for the petitioner, the learned Additional Advocate General for the respondents and the learned counsel for the impleading petitioner and having carefully perused the available materials on records, this Court proceeded to test the validity of the impugned orders of cancellation of transfers, dated 19.12.2023.

13.The available materials on record would reveal that all the four writ petitions have stemmed up from the various transfers effected by the former Director of Kallar reclamation on administrative exigencies, without



W.P.(MD).Nos.31079 to 31082 of 2023

following the mandates of the relevant Government orders and available guidelines. Of more than 36 illegal transfers effected by the former Joint Director of Kallar reclamation, these writ petitioners were also transferred. Only after the receipt of compliants from various quarters and only after elaborate enquiry and only after issuance of charge memo under Rule 17(b) of the Tamil Nadu Civil Services Discipline and Appeal Rules as against the former Joint Director on 15.09.2023, all the illegal transfer orders effected by him on the ground of administrative exigency came to be cancelled vide impugned orders, dated 19.12.2023.

14.The learned Senior Counsel for the petitioner vehemently submitted that the impugned orders of cancellation were passed without following the principles of natural justice and on that basis, they have to be set aside. If the said contention is accepted by this court, it would amount to revival of the illegal orders of transfer effected on the ground of administrative exigency without informing to the first respondent by the former Joint Director of Kallar Reclamation. When the transfer orders passed by the former Joint Director of Kallar Reclamation has been decided by the first respondent as the one vitiated by fraud, the same are illegal and void *abinitio*. I am of the



W.P.(MD).Nos.31079 to 31082 of 2023

considered view that there is no illegality in the impugned orders passed by the second respondent.

15.The learned Additional Advocate General relied upon the case of ***R.V. Thevar Memorial Girls High School, Cholapuram Vs The Director of School education reported in 2002(04)CTC 129***, in which, the Division Bench of this court has dealt with the case of illegal termination and the portion relevant to the facts and circumstances of this case is extracted as follows.

“Even if the said orders had been passed without following the principles of natural justice, we are not inclined to interfere with the said order, as the 1st respondent has passed the said orders in accordance with law, and if we interfere with the said orders, it amounts to revival of illegal orders of termination passed by the appellant management.”

16.I have no hesitation to hold that the various orders of transfers obtained by the respective writ petitioners, which came to be cancelled vide impugned cancellation orders, dated 19.12.2023 are certainly vitiated by fraud. Hence, the principles of natural justice are not required to be complied with and it is not necessary for the second respondent to put the petitioners on notice before the impugned cancellation orders, dated 19.12.2023 came to be passed.



W.P.(MD).Nos.31079 to 31082 of 2023

It is the considered view of this Court that, a Government Servant has no vested right to remain posted at a place of his / her choice nor can he / she insist that he / she must be posted at one place or the other. Transfer of an employee is not only an incident inherent in terms of appointment, but also, implicit as an essential condition of service in the absence of any specific indication to the contrary.

17. In the *lis* in hand, the transfers of the petitioners came to be effected by the former Joint Director of Kallar Reclamation on extraneous consideration. It is the considered view of this Court that the Kallar Reclamation Department cannot function, if the petitioners and other teachers are allowed to flout the mandates of general transfer counselling, the relevant Government orders, Rules and Regulations. Since the order of transfer of the petitioners, dated 17.6.2023, 09.06.2023 and 15.03.2023 have been proved to be an outcome of the malafide exercise of power by the former Joint Director of the Kallar Reclamation violating the statutory provisions mandated for transfers, this Court is not inclined to interfere with the sequential impugned orders of cancellation of transfer.



W.P.(MD).Nos.31079 to 31082 of 2023

WEB COPY

18. With such observations, the writ petitions fail and are duly dismissed. However, during the pendency of these writ petitions, the Government has commenced general counselling for transfer, since the petitioners had approached this Court, they have not applied for participation in the general counselling. Since now the writ petitions are dismissed, the petitioners are at liberty to participate in the general transfer counselling, which is likely to be held at the earliest in terms of seniority of the respective petitioners. It is made clear that the respondents shall not curtail the petitioners from attending the ensuing general transfer counselling. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

26.02.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

PNM

To

1. The Commissioner,
Most Backward Class and Reclamation Department,
Ezhilagam, Chennai . 600 005.
2. The Joint Director,
O/o. Joint Director of Kallar Reclamation,
Madurai . 625 020.



W.P.(MD).Nos.31079 to 31082 of 2023

3. The Headmaster,
Government Kallar Higher Secondary School,
Kamupillai Chatram, Pachamalaiyankottai Post,
Nilakkottai Taluk, Dindigul District.
4. The Headmaster,
Government Kallar Middle School,
G.Thummalapatti, Periyakulam Zone,
Dindigul District.
5. The Warden,
Government Kallar Boys Hostel,
Vellaimalaipatti,
Madurai District.
6. The Headmaster,
Government Kallar Middle School,
K.Perumalpatti, Madurai District
7. The Headmaster,
Government Kallar Primary School,
Cahkkilipatti, Chekkanurani Zone,
Madurai District.
8. The Headmaster,
Government Kallar Primary School,
Kuttilnayakkanpatti, Dindigul Zone,
Dindigul District.
9. The Warden,
Government Kallar Girls Hostel,
Usilampatti,
Theni District.
10. The Headmaster,
Government Kallar Higher Secondary School,
Nattamangalam, Madurai District.



WEB COPY



W.P.(MD).Nos.31079 to 31082 of 2023

L.VICTORIA GOWRI, J.

PNM

**COMMON ORDER IN
W.P.(MD).Nos.31079 to 31082 of 2023
and W.M.P(MD)Nos.26637, 26638, 26640 to 26644,
26646 of 2023, 558, 559, 655, 1366 & 1369 of 2024**

26.02.2024