

(2008) 11 MAD CK 0110

In the Madras High Court

Case No : Writ Petition No. 24781 of 2008 of 2008 and M.P. No. 1 of 2008

M. Revathi

APPELLANT

Vs

The District Adi Dravidar and Tribal Welfare Officer

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Citation : (2008) 11 MAD CK 0110

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : K. Radhakrishnan, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—These writ petitions are directed against the impugned proceedings of the Respondent in each of these cases whereby the Respondent has effected posting by transfer of the Petitioners concerned based on counselling.

2. The Petitioner in W.P. No. 24781 of 2008 was initially appointed as Secondary Grade Assistant and presently working as Warden at Government Adi Dravidar Welfare College Hostel, Myladuthurai. The Respondent has transferred her under the impugned order dated 4.10.2008 based on counselling and posted as Secondary Grade Teacher in the Government Adi Dravidar Welfare Elementary School, Melachitharkadu.

3. The Petitioner in W.P. No. 24782 of 2008 was initially appointed as B.T. Teacher and presently working as Warden at Government Adi Dravidar Welfare Girls Hostel, Sirkali. Under the impugned order dated 4.10.2008 she has been transferred as Graduate Tamil Teacher and posted at Government Adi Dravidar Welfare Higher Secondary School, Kondal.

4. In W.P. No. 24783 of 2008, the Petitioner was originally appointed as Secondary Grade Assistant and presently working as B.T. Warden, Government

Adi Dravidar Welfare Boys Hostel, Tiruvenkadu and by the impugned order, the Respondent has transferred him as Graduate Teacher (History) and posted at Government Adi Dravidar Welfare Higher Secondary School, Karaimedu.

5. Likewise, in W.P. No. 24784 of 2008, the Petitioner who was originally appointed as B.T. Teacher and working as B.T. Warden, Government Adi Dravidar Welfare Boys Hostel, Kondal was transferred and posted as Graduate Teacher (Science) in the Government Adi Dravidar Welfare Higher Secondary School, Kondal.

6. In all these cases, the transfers made by the Respondent are basically against the guidelines issued by the Government for the Academic Year 2008-09 as per G.O. Ms. No. 63 ADW Department, dated 27.5.2008. It is also the case of the Petitioners in all these writ petitions that pursuant to the said Government Order dated 27.5.2008, the Director, Adi Dravidar Welfare Department has issued certain necessary orders in the form of guidelines in Na. Ka. No. Al/13158/2008, dated 3.6.2008. In the said Government Order as well as guidelines issued by the Director, it is stipulated that the transfer by counselling shall be completed by June, 2008 and a report shall be sent. It is also stipulated that if the guidelines are not followed, suitable action will be taken against the concerned District Adi Dravidar and Tribal Welfare Officers, According to the Petitioners in all these cases, the transfers have been effected in October, 2008 which is against the guidelines issued by the Director, which is, in turn, based on G.O. Ms. No. 63, ADW Department, dated 27.5.2008. Therefore, the contention of the learned Counsel for the Petitioners in all these cases is that inasmuch as the transfers are effected against the guidelines, the transfers are to be set aside. It is also made clear by the learned Counsel for the Petitioners that as per the letter of the Director as well as the Government Order, the Petitioners are prepared to be transferred again by counselling within the stipulated time.

7. On the factual position, it is clear that it is not even the case of the Petitioners that they are not liable to be transferred but the Only grievance is that the impugned transfers have been effected against the guidelines issued by the Government as well as the Director of Adi Dravidar Welfare Department. A reference to the impugned orders shows that the transfers have been effected for the Academic Year 2008-09 based on the general counselling. Peculiarly, the impugned orders of transfer referred to the G.O. Ms. No. 63, ADW Department, dated 27.5.2008 and also the letter of the Director dated 3.6.2008.

8. It is seen in the letter of the Govern-pent dated 4.4.2008 that as per G.O. Ms. No. 10, dated 7.1.1994, the transfers which are in the form of general transfers, are to be effected between 1st April and 31st May in respect of Government servants and except in cases where the transfer is for administrative reasons, the transfers should not be effected only for the reason that the Government servant is working in the particular place for three years. It is also seen that the said procedure was stopped in the year 1999 which was subsequently followed in the years 2000 to 2004. In respect of the years 2007 and 2008, apart from the

direction of the Government to follow the same procedure in respect of general transfers, certain other directions were issued for the purpose of transfer at request and in respect of cases where the husband and the wife are employed in the event of their not claiming Traveling Allowance. For the academic year 2008-09, the Government has issued G.O. Ms. No. 63, ADW Department, dated 27.5.2008 for transfer of teachers and wardens working in Adi Dravidar Welfare Schools and hostels by following the method of counselling. As per the said Government Order, the applications made by the teachers should be considered on priority basis in cases where such requests are made within the District and also in cases where the transfer is requested from one District to another. The Government Order also stipulates the condition that for the transfer at request, the priority list has to be formulated in respect of teachers who sought for transfer and on the basis of counselling the same has to be done and while making transfer, the reason for such transfer must be mentioned. It is also stated in the said Government Order that the Director of Adi Dravidar Welfare has to formulate various guidelines based on which the counselling has to be done. It is, based on the said Government Order, the Director of Adi Dravidar Welfare Department in his proceedings dated 3.6.2008 has issued various guidelines to be followed for the Academic Year 2008-09 for effecting transfer of teachers in Adi Dravidar Welfare Schools and Hostels by way of counselling. The said letter in categorical terms makes it clear that in all Districts, the counselling has to be done only on the stipulated day with transparency. By reiterating various conditions stipulated in the Government Order, it is stated in the guidelines as follows:

9. A Schedule of timings for counselling for the year 2008-09 is also mentioned of the said letter of the Director, which as follows:

It is also stated that the application received after 17.6.2008 shall not be considered in any circumstance.

10. In the light of the categorical stand of the Government as well as the Director of Adi Dravidar Welfare Department, there is no difficulty in coming to the conclusion that the present impugned orders passed by the Respondent are totally against the Government Order as well as the guidelines. In such view of the matter, the contention of the learned Government Advocate that certain teachers requested promotion and therefore the delay has occurred is not acceptable. When the Government has made it clear in a very strict manner that no transfer should be effected after June, 2008, and if any transfer is effected against the said guidelines, appropriate action would be taken against the concerned District Adi Dravidar and Tribal Welfare Officer, it is mandatory to be followed by the Respondent and in the absence of any proper excuse that is admissible as per the Government Order as well as the guidelines issued by the Director, it is not possible for this Court to accept the contention of the learned Government Advocate to the contrary.

11. The further contention of the learned Government Advocate that in these

impugned orders, the teachers are transferred only to nearby places viz., within 3, 5 or 6 kilometers radius and in one case, viz., W.P. No. 24784 of 2008, the Petitioner has been transferred from hostel to school in the same place and therefore, the Petitioners cannot have any grievance, has no meaning when such transfers are patently against the policy of the Government in having the transfer to be effected by counselling in a transparent manner subject to certain mandatory conditions.

12. In fact, in respect of certain transfers made in the earlier year, viz., 2006 on the basis of the then existing Government Order, where such transfers required the approval of the Director of Adi Dravidar Welfare Department, when a similar issue was raised, the writ petitions were ordered on the basis that the transfer orders themselves have not explained anything about the acceptable reasons. The said writ petitions, namely, W.P. Nos. 33396, 31817 and 31808 of 2006 were disposed of by this Court by order dated 18.12.2006 and the operative portion of the order is as follows:

3. In the impugned order of transfer, I find that the Respondent has referred to G.O. Ms. No. 74, dated 21.06.2006 as well as the letter dated 23.06.2006 of the Director of Adi Dravidar Welfare. Admittedly, paragraph-1 of the impugned order reads to the effect that transfer order came to be issued while examining the outcome of the counselling which admittedly was held on 18.7.2006. Therefore, when the transfer order of the Petitioner had been issued in the month of August, 2006, then it is obviously covered by the second part of paragraph-3. But, without the approval of the Director of the Adi Dravidar Welfare, the transfer could not have been effected. Since the letter of the Director of the Adi Dravidar Welfare is dated 23.6.2006, it is quite obvious that the same cannot be construed as an approval of the transfer effected on the Petitioner in the counselling held on 18.07.2006. If the transfer was to fall under the first part of paragraph-3 of the G.O., the same should be supported by prima facie conclusion of the disciplinary authority, which should have been reflected in the impugned orders of transfer. The impugned orders do not disclose that such a consideration had been made by the Respondents. Looked at from any angle, the impugned orders cannot be in consonance with the stipulation contained in G.O. Ms. No. 74 dated 21.06.2006. Therefore, while setting aside the impugned orders of transfer, it is made clear that the Respondent is at liberty to pass fresh orders of transfer in accordance with G.O. Ms. No. 74, dated 21.06.2006.

13. It is also relevant to point out that G.O. Ms. No. 74, dated 21.6.2006 which was the subject matter of consideration in the above said case relating to the academic year 2006-07 also contained a specific clause stating that the counselling should be done in two stages, one should be completed in June and another should be completed in July and in respect of other transfers, the same could be done only for the reason of promotion or any other acceptable reason. It was, considering the said G.O., the above order came to be passed.

14. As stated above, in respect of Academic Year 2008-09, G.O. Ms. No. 63 ADW

Department, dated 27.5.2008 as well as the letter of the Director dated 3.6.2008 have in clear terms prohibited any transfer being made through counselling beyond June, 2008. In view of the said categorical position, the impugned orders of transfer of the Respondent are set aside. The writ petitions stand allowed. However, it is open to the Respondents to effect such transfer for the next academic year 2009-2010 based on the Government Order and the guidelines that may be issued. No costs. Consequently, connected M. Ps. are closed.