

(2002) 12 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 10070 of 1996 and W.M.P. No. 13249 of 1996

S. Daisy Rani

APPELLANT

Vs

The Chairman, TELC Education Board and The
Correspondent, Bishop Heuman Memorial High School

RESPONDENT

Date of Decision : 18-12-2002

Acts Referred:

Citation : (2002) 12 MAD CK 0015

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : K. Suguna, for the Appellant; N. Devarajan, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The writ petitioner, a B.T. Assistant, employed in the 2nd respondent School, has come before this Court praying for

the issue of a writ of certiorari calling for the records relating to the order of the first respondent dated 20.6.96 issued in C.R. No. 138/276/96 and

quash the same.

2. Heard Ms. K. Suguna, learned counsel for the petitioner and Mr. N. Devarajan, learned counsel appearing for the respondents.

3. The petitioner was initially appointed as temporary B.T. Assistant in the 2nd respondent aided school, which is governed by the provisions of

The Tamil Nadu Private Schools Regulation Act. It is asserted that the 2nd respondent is not a corporate body. The petitioner is working in the

same school since 1987 and by the impugned order she has been transferred to Pudukottai and the same is being challenged in this writ petition as

violative of the provisions of The Tamil Nadu Private Schools Regulation Act and

the Rules, without jurisdiction, mala fide and that the teachers are not liable to be transferred from one school to another school as their independent schools.

4. It is also contended that even assuming that the teachers working in the TELC school are bound by the rules framed by the TELC Board, the competent authority is only the Church Council and not the Chairman and, therefore, the order of transfer is without jurisdiction. It is further contended that the petitioner is the senior-most and fully qualified for being promoted to the post of Headmistress in the 2nd respondent school and if she is to be transferred, she will be denied of the opportunity of promotion, besides the transfer of the petitioner from Trichy to Pudukottai will result in dislocation in the family and will cause hardship.

5. A counter has been filed on behalf of the respondents by the first respondent. According to the first respondent, the Tamil Egangelical Lutheran Church, has established and is running innumerable educational institutions throughout Tamil Nadu. It has established six High Schools and 164 Primary and Middle Schools apart from two Teacher Training Institutions and a College. The schools are recognised schools and receiving grant.

In all 1600 teaching staff are working. All the educational institutions are coming under the corporate management of TELC. The petitioner was appointed as B.T. Assistant by order dated 15.2.1990 with a condition that she is liable for transfer to any other TELC school and, therefore, the writ petition is liable to be dismissed. The agreement between the petitioner and the school Management also provides for transfer. The 2nd respondent is under the Corporate Management of TELC. For administrative reasons, the petitioner is transferred by the competent authority.

6. It is incorrect to contend that the respondents have no power to transfer teachers from one school to another. It has been the practice and it has been prevalent from the year 1919 onwards and teachers are being transferred from one school to another school and the same has been countersigned and approved by the educational authorities in the State. The impugned order is not contrary to the Tamil Nadu Private Schools Regulation Act, 1978. The 2nd respondent school is a corporate body and the allegation to the contra is denied as incorrect.

7. The first respondent has passed orders of transfer, which is well within his

authority and jurisdiction. The allegations of mala fides are denied and there is no basis at all for such allegations. There is no prima facie case. The allegations of mala fide are bald, fictitious and without any truth. The Church Council is administering the entire TELC and the petitioner is not being penalised as sought to be suggested by her. The 2nd respondent school is not an individual unit as sought to be suggested. The 2nd respondent is under the Corporate Management of TELC Schools. The Church Council is administering the schools through the Education Board.

8. The post of Headmaster is a selection post and as and when vacancy arises, the selection will be held by calling for applications from among the existing eligible teachers and the petitioner's seniority is well protected. According to the respondents, only one seniority is maintained for all the schools administered by the TELC and the date of appointment is the main criteria, for placement in the seniority list. The impugned order of transfer is not punitive. The respondents state that no teacher, who is junior to the petitioner has been promoted to the post of Headmaster of Headmistress. The inconvenience or dislocation suggested by the petitioner is not a ground to resist the transfer, nor on such grounds the order of transfer is liable to be interfered. The petitioner has been transferred as against a permanent post, which is vacant. Therefore, no prejudice at all will be caused. The petitioner's seniority is maintained, besides pay.

9. It is stated that during the year in question, in all about 52 female teachers, who happened to be the wife of pastors working in various schools have been shifted when the pastor is shifted from one pastorate to another pastorate periodically. The periodical transfer of teachers are imminent and the respondents have also furnished the list of teachers, who have been shifted.

10. Both the parties filed their respective typed sets in support of their contention. The points that arise for consideration in this writ petition are :-

- i) Whether the writ petitioner is liable to be transferred ?
- ii) Whether the order of transfer is liable to be quashed on any one or more of the grounds set out in the affidavit filed in support of the writ petitions ?

Both the points could be considered together.

11. The petitioner was appointed as a B.T. Assistant by order of appointment dated 15.2.90, which provides for transfer of the petitioner to any one of the schools established by TELC. The material portion of the appointment order reads thus :-

APPOINTMENT ORDER

Sub : Secondary/Higher Secondary Education Re-arrangement of Staff. 1989-1990 - Appointment-Orders-Issued.

Red : Proceedings of the Secondary Education Committee/Executive Committee dated 6.6.1999.

The Education Board, TELC, is pleased to appoint Thiru/Tmt./Selvi S. Daisy Rani, B.Sc., B. Ed., Science B.T. Assistant on probation/temporary

for one year w.e.f. 15.2.1990 in the TELC High/Higher Secondary/Teacher Training School at Tranquebar House, Trichy of pastorate in the

place of employed post and he/she is liable for transfer to any one of the schools in the TELC.

12. The appointment order also provides that the teacher has to execute the agreement in the prescribed form by the TELC Board. Concedingly,

the petitioner has executed the agreement, but the agreement, according to Mr. Devarajan, could not be produced as it is not traceable or lost

during a period when there were certain dispute with respect to the Management of TELC. But it is fairly stated that the standard form of

agreement prescribed by the TELC provides for transfer and the petitioner has signed such standard form agreeing for transfer from one TELC

school to another school. The TELC school staff regulation also provides for transfer. It is the specific stand of the respondent that every year

number of teachers employed in the 164 schools are being transferred for administrative reasons or when their spouse is subjected to transfer from

one pastorate to another pastorate. The respondent has filed an annexure to the counter affidavit setting out the details of transfers effected.

13. The petitioner has also produced a copy of the appointment order dated 25.6.1987. A perusal of the appointment order dated 25.6.1987

would show that the petitioner is governed by the rules relating to Elementary/Secondary/Higher Secondary schools by the department and the

management. The rules relating to the TELC school management provides for transfer of teacher from one school to another school.

14. That apart, the proceedings of appointment dated 28.5.90 produced by the petitioner would show that she has been re-appointed as a

teaching staff member as per the resolution of the Secondary Education Committee by the Education Department of the TELC. The said

appointment order also provides for rearrangement. In other words, the petitioner is liable for transfer to any of the schools under the TELC

Education Board. The relevant portion reads thus :-

Re-arrangement - He/She is liable for transfer to any of the School under the Education Board of the TELC.

Agreement - The agreement shall be executed between the Employer (Education Board Chairman TELC) and the Employee in triplicate in the

presence of the School Correspondent and the Headmaster. Required copies of the Agreement will be made available to the Correspondent soon.

One copy of the Agreement should be returned to the Education Board Chairman, one copy to the incumbent and another copy to be retained

with the school records.

15. The above would show that the very appointment of the petitioner as well as the terms of agreement provides for transfer of the petitioner from

one TELC to another TELC school. It is the specific stand of the respondent that a common seniority is maintained for all the TELC schools and

the date of appointment or entry into the cadre is the criteria for seniority. It is also the specific stand that in case when a vacancy arises in the post

of Headmaster, all the senior-most teachers are called for and, thereafter, by a selection process among the seniors, a selection is made and

promotion is made. These are not being disputed or being denied by the petitioner. The respondents assert that it is a corporate management and,

therefore, it could transfer the teacher from one school to another school. Annual transfer is prevalent in TELC schools as set out in the counter

affidavit since 1919 and it is only in accordance with that the petitioner and other teachers are being transferred. The Education authorities have

issued directions with respect to the transfer of teachers by the management to identical institutions like TELC and the said authorities have also

approved the transfers. That apart, by a transfer none of the petitioner's right is affected nor she loses her seniority. As already pointed out the

rules of the Education Board also provides for transfer and the first respondent is

competent to issue orders based upon the resolution of the Board.

16. Ms. Suguna, learned counsel for the petitioner relied upon the judgment of the Full Bench of this Court in CORRESPONDENT,

MALANKARA SYRIAN CATHOLIC SCHOOL, MARTHANDAM VS. J. RABINSON JACOB & OTHERS reported in 1998 4 LLN

804. The learned counsel for the petitioner relied upon a portion of the judgment, while the learned counsel for the respondents-management also relied upon the very same judgment. The Full Bench in the said pronouncement held that either expressly or impliedly the transfer has to be provided for by the statute or by the contract or must be inherent in the nature of contract or subject matter or the circumstances leading to the conclusion that the parties by necessary implication have intended it. The Full Bench in this respect, held thus :-

28. As observed earlier, the transfer cannot be termed, absolutely as an incident of service when it is neither specifically provided for nor prohibited under the rules and regulations or conditions of service applicable to the teachers and others in a private school. It is only in particular circumstances in the facts and circumstances of each case it can be inferred to be an incident of service.

29. The question referred to the Full Bench are to be answered on the facts and circumstances of the case as emerge and noticed earlier to the effect that where there was no contract of service providing for transfer rather the letter of appointment which is the magna carta of terms of contract conferred a right on the employee to be transferred to another unit of a school only on a condition that if the one seeking transfer opts to become the junior-most in the new unit. The schools have been treated as separate units. Recognition and affiliation are given to the school, not to the management. Separate seniority list is maintained in each individual school and admittedly there is no common seniority list. Grant-in-aid is provided to each school as a unit and not to the Society. Society is at liberty to establish new schools and one joining in one unit cannot assume at the time of appointment that the society is likely to set up another unit in a different place nor there is any just expectation that he is likely to be transferred to the new unit. Thus, the dichotomy of the terms and conditions and

the basic principle of freedom to enter into contract and sanctity attached to the contract with right to rewrite the contract and read into the terms the right to transfer merely because it is reasonable to do so and putting the meaning to the words differently what they clearly and expressly provide for cannot be termed as an incident of service in order to determine the surrounding circumstances as referred to above and other relevant factors will be taken into consideration whether it is an incident of service or not. Transfer has either expressly or impliedly to be provided for by the statute or by the contract or must be inherent in the nature of contract or subject-matter or the circumstances leading to the conclusion that the parties by necessity implication have intended it." .

17. While applying the dicta of the Full Bench, this Court holds that on the facts it has been established by the respondents that the petitioner's appointment is subject to transfer as seen from the very appointment order, very agreement, transfer being prevalent and as per the Regulations of the TELC Board has been stipulated by the respondents and agreed to by the petitioner. Therefore, the transfer is one of the conditions of service, which the petitioner has voluntarily accepted. The usage in the TELC schools is also admitted and the TELC Schools Regulation also provides for transfer. In the circumstances, the contentions advanced by the petitioner cannot be sustained.

18. As regards the mala fides, no case has been made out nor there is any specific averment against anyone to hold that the transfer is vitiated by mala fides. This is not a fit case where this Court would be justified in interfering with the order of transfer. The order of transfer has been passed by the competent authority as seen from the proceedings.

19. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.