

(2009) 01 MAD CK 0053

In the Madras High Court

Case No : Writ Appeal No's. 69 to 72 of 2009 and M.P. No. 1 of 2009 in W.A. No. 69 of 2009 and M.P. No's. 1 and 2 in W.A. No's. 70 to 72 of 2009

The District Adi Dravidar and Tribal Welfare Officer

APPELLANT

Vs

M. Revathi, K. Thamizharasim, C.M. Masilamani and I. Santhanasami

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Citation : (2009) 4 MLJ 749

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;V. Dhanapalan, J

Bench : Division Bench

Advocate : Raja Kalifulla, Govt. Pleader, for the Appellant; M. Kalyana Sundaram for K. Radhakrishnan, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. In all these cases, as common question is involved and common order dated 25.11.2008 passed by the learned single Judge in W.P. Nos.

24781 to 24784 of 2008, is under challenge, they were heard together and disposed of by this common judgment.

2. The contesting respondents were Secondary Grade Assistant(s)/Teacher(s) and were posted as Warden/Matron in different School Hostels. All

of them completed three years of service and were transferred by proceedings dated 4.10.2008. The proceedings of transfer were challenged by

the respondents-writ petitioners in their respective Writ Petitions on the ground that the transfer proceedings were against the guidelines issued in

G.O.(Ms). No. 63, Adi Dravidar and Tribal Welfare (ADW-7) Department, dated 27.5.2008. The learned single Judge, having noticed that the

respondents-writ petitioners were transferred during the midst of the session, set aside the transfer proceedings with liberty to the appellant-State

to transfer them in the next session, which starts in May-June 2009.

3. While the learned Government Pleader appearing for the appellant-State submitted that the decision of transferring the respondents-writ

petitioners, was taken after proper counselling in the months of May-June 2008, learned Senior Counsel appearing on behalf of the contesting

respondents-writ petitioners submitted that G.O.(Ms). No. 63, Adi Dravidar and Tribal Welfare (ADW-7) Department, dated 27.5.2008, was

binding on the authorities and they ought not to have transferred the respondents-writ petitioners in the midst of the session. According to the

learned Senior Counsel appearing for the respondents-writ petitioners, the said G.O. mandates that no transfer should be made during the midst of

the session.

4. We have heard the learned Counsel appearing for the appellant-State and the respondents-writ petitioners.

5. It is not in dispute that G.O.(Ms). No. 63, Adi Dravidar and Tribal Welfare (ADW-7) Department, dated 27.5.2008, is merely the guidelines to

regulate the transfers and postings. That was issued with a view to safeguard the interest of the students in the Schools/Hostels. It was not made for

the advantage of the Teachers to continue at one place and in administrative exigencies, it is always open for the authorities to transfer any Teacher,

including the Teachers posted as Warden/Matron at any time even during the midst of the session.

6. Learned Government Pleader appearing on behalf of the appellant-State has brought to the notice of the Court that the decision to transfer was

taken after counselling in May-June 2008, i.e. during the months when such decision was taken. If that be so, mere issuance of the proceedings of

transfer after few months will not render the proceedings of transfer illegal.

7. It is settled law that the transfer is an exigency of service. Normally, no Court of Law should entertain such orders/proceedings of transfer,

which are issued in the exigencies of service, except in cases where they are issued without jurisdiction or because of mala-fide at the instance of

one or other individual, that too, if it is shown and proved before Court by impleading the individual(s) as respondent(s) to the case(s).

8. In this connection, one may also refer to the decision of the Supreme Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and

others, , wherein, the Supreme Court held as follows:

4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the

transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable

post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders

issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or

orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If

the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete

chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the

transfer orders.

9. In view of the observations of the Supreme Court and our findings as above, we cannot uphold the impugned common order dated 25.11.2008

passed by the learned single Judge in W.P. Nos. 24781 to 24784 of 2008 and accordingly set aside the same.

10. However, we give one opportunity to the respondents-writ petitioners to give their option for posting as Teacher(s) in one or other School,

and if such application is filed within a week, the competent authority may consider the same and then find out whether they can accommodate

them.

11. The Writ Appeals are allowed with the aforesaid observations. No costs. The Miscellaneous Petitions are closed.