

(2014) 06 MAD CK 0074

In the Madras High Court

Case No : W.P. No. 27403 of 2013 and M.P. Nos. 1 to 3 of 2013

V. Vaiyanan

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0074

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

D. Hariparanthaman, J.—Heard both sides.

2. The petitioner was selected as B.T. Assistant (Science) at Madukoor Boys Government Higher Secondary School, Thanjavur District. When a counseling took place in the year 2011, the petitioner was transferred to Kadalkudi Government Higher Secondary School, Tuticorin District.

3. From 01.01.2012 onwards, the petitioner came within the zone of consideration for promotion to the post of P.G. Assistant (Biology) and he was placed at Serial No.53, as he possessed the requisite qualification for the post of P.G. Assistant (Biology).

4. During 2012-2013, the Government upgraded 100 High Schools as Higher Secondary Schools. Though four schools were upgraded in Tirunelveli District, three vacancies relating to those schools were not shown in the counseling when the counseling took place for filling the post of P.G. Assistant (Biology). In these circumstances, the petitioner opted for Government Higher Secondary School, T.M.Kottai, Ramanathapuram District.

5. The grievance of the petitioner is that if the three vacancies that existed when the counseling took place were notified he could have been posted at Tirunelveli District in one among those three vacancies. Hence, he filed W.P. (MD) No. 9676

of 2012 to accommodate him at Government Higher Secondary School, Suthamalli, Tirunelveli District. While admitting the said writ petition, interim injunction was granted in favour of the writ petitioner. However, the authorities filled the post of P.G. Assistant (Biology) in Government Higher Secondary School, Suthamalli before the grant of injunction. But the candidate who did not even apply for transfer was able to obtain the posting at Government Higher Secondary School at Suthamalli. The writ petition is still pending.

6. While so, the petitioner has filed another writ petition in W.P. (MD) No. 12682 of 202 challenging the order of transfer of candidate who was accommodated as P.G. Assistant (Biology) in Government Higher Secondary School at Suthamalli. The said writ petition was dismissed on 04.10.2012 on the ground that there is no vested right for the petitioner to seek transfer to a particular post.

7. Challenging the aforesaid order, the petitioner filed writ appeal in W.A. (MD) No. 283 of 2013. The writ appeal was disposed of on 28.03.2013 holding that the counseling which was the subject matter in issue, was not held in a transparent manner and the authorities appointed persons who did not even participate in the counseling. After holding so, the Division Bench directed the authorities to conduct transfer counseling in a transparent manner and also consider the case of the petitioner as per rules. The story of the petitioner does not end there but his agony continues. The authorities seem to act arbitrarily and in whimsical manner to accommodate the persons of their choice. That is when another counseling took place on 20.07.2013 and 22.07.2013, the post lying vacant for P.G. Assistant (Biology), P.G. Assistant (Physics), P.G. Assistant (Mathematics) and P.G. Assistant (Chemistry) were not notified though there existed vacancies. We are concerned with the vacancy as far as P.G. Assistant (Biology) is concerned. There was a vacancy in Government Higher Secondary School at Ramanujam Pudur, Thoothukudi District but the said vacancy was not notified. Without notifying the same, the fifth respondent was accommodated in the said vacancy. In these circumstances, the petitioner has filed this present writ petition seeking to quash the order of the third respondent transferring the fifth respondent to the Government Higher Secondary School, Ramanujam Pudur, Thoothukudi District and for a direction to the fourth respondent to conduct fresh counseling for the post of P.G. Assistant (Biology) in the aforesaid place.

8. A counter affidavit is filed by the second respondent. In fact, the counter affidavit has not met any of the aforesaid points raised in the writ petition.

9. At this juncture, it is relevant to extract the following passage at paragraph No. 7 of the order in W.A. No. 283 of 2013 dated 28.03.2013:

In the background of the above fact, we feel that the contention raised by the appellant/writ petitioner as to the lack of transparency, is justified. However, considering the fact that the academic year is coming to an end and that it is open to the appellant herein to appeal in the current year's counseling to the respondents herein for transfer to a place of his choice subject to the availability,

except for pointing out that the order passed by the first respondent had not taken note of the actual state of affairs, we do not think, we should interfere with the order of the learned Single Judge. Leaving aside the fact as to the appellant's right to ask for posting in a place of his choice subject to availability in the notification to that end, we hold that it is open to the appellant herein to participate in the counseling in the ensuing academic year. We direct the first respondent herein show transparency in the matter of indicating the place where there are vacancies, so that the candidates do not have any grievance in exercising their choice for placement.

10. In spite of the aforesaid direction, the transfer and posting are not done in a transparent manner and these things are done in a secret manner. The very purpose of counseling is to ensure that transfer or promotion shall be done in a transparent manner and the teacher should not have the grievance that the juniors are transferred or promoted unduly. But the situation has not changed much as the aforesaid narration has demonstrated the sorry state of affairs. Though the petitioner was successful in the writ appeal, he was not granted the relief, since the academic year came to end and he was directed to participate in the next counseling. The next counseling on 20.07.2013 22.07.2013 did not take place in a transparent manner in my view.

11. At this juncture, the learned counsel for the petitioner has fairly stated that the fifth respondent has already joined at Government Higher Secondary School at Ramanujam Pudur, Thoothukudi District and the fifth respondent need not be disturbed. He further submitted that the next counseling for transfer is scheduled to take place from 24.06.2014 onwards and the petitioner applied to participate in the said counseling and if he is permitted to participate in the said counseling, he will be satisfied. Learned counsel for the petitioner has prayed for a direction to the respondent authorities to consider the claim of the petitioner for transfer to the post of P.G. Assistant (Biology) in accordance with law by conducting the counseling in a transparent manner.

12. In view of the above limited prayer sought for, the writ petition is disposed of directing the respondents 2 and 3 to conduct counseling that is scheduled to be taken place from 24.06.2014 onwards in a transparent manner. No costs. The connected miscellaneous petitions are closed.