

A.Ganaselvam. Vs. the District Educational Officer, Vellore District. and ors.

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Court : Chennai

Decided On : Apr-24-2012

Judge : K.Chandru, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.No.16227 of 2008 and M.P.Nos.1 and 3 of 2008

Appellant : A.Ganaselvam.

Respondent : The District Educational Officer, Vellore District. and ors.

Advocate for Def. : Mr.P.Sanjay Gandhi; Mr.Fr.A.Xavier Arulraj; Ms.A.Arul Mary, Adv.

Advocate for Pet/Ap. : Mr.A.Amalraj, Adv.

Judgement :

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the entire records of the proceedings in orally transferring the petitioner from Thanipadi to Alapakkam on 7.6.2005 and the subsequent proceedings in Na.Ka.No.5752/A2/2005, dated 24.11.2005 of the first respondent and the proceedings Na.Ka.No.1412/A1/2008, dated 7.5.2008 of the second respondent and quash the same and consequently to direct the third respondent to absorb the petitioner herein in their School Christ Jothi R.C.M. Middle School (Aided School) S.Andapapatti, Thanipadi (P)

Chengam (Via), Thiruvannamalai district with due seniority and consequential benefits.

K.CHANDRU, J.

ORDER

1. The petitioner in this writ petition initially prayed for setting aside the order dated 24.11.2005 passed by the first respondent, i.e., District Educational Officer, Vellore and proceedings of the second respondent, i.e., District Educational Officer, Thiruvannamalai, dated 7.5.2008 and after setting aside the same, sought for a direction to the third respondent Manager of R.C.M.Middle School, Bishops House, Thanipadi Su.Andapattu, Chengam Taluk, Thiruvannamalai District to absorb her in their school known as Christ Jothi R.C.M.Middle School, S.Andapapatti with due seniority.

2.In the writ petition, notice of motion was ordered on 9.7.2008. In the application for interim stay in M.P.No.3 of 2008, no orders were passed. In the application for interim direction to accommodate the petitioner in the Christ Jothi R.C.M. Middle School in M.P.No.2 of 2008, this court found that there was no prima facie case for the grant of the interim direction and hence dismissed the interim direction application on 30.7.2009. The petitioner also filed an amendment application in M.P.No.4 of 2008. That amendment application was ordered on 13.10.2008. Subsequent to the amendment of prayer, a challenge was made to the oral order of transfer from Thanipadi to Alapakkam on 07.06.2005. The petitioner also filed an application in M.P.No.1 of 2009 seeking to implead the District Elementary Educational Officer, Vellore as a party sixth respondent. That application was ordered on 29.04.2009.

3.By the amendment of the prayer, the so-called oral transfer from Thanipadi to Alapakkam R.C.M. Middle School came to be challenged after a period of four years from the date of the order. Dr.Fr.Xavier Arulraj, appearing for the third respondent had seriously disputed the stand of the petitioner regarding the oral order of transfer. On the other hand, the learned counsel had produced an order of transfer dated 3.6.2005 passed by the third respondent transferring the petitioner

and it reads as follows :

The Manager of RCM Schools, Vellore is pleased to accord transfer of the following teachers employed in RCM Schools as detailed below at their request.

Name of the teacher and the Name of the School where the School where working transfer is effected and the vacancy.

Mrs.A.Gnanaselvam, Sec.Gr.Transferred to RCM Middle

Christhu Jyothi RCM Middle School,School, Alapakkam vice

S.Andapattu,Mrs.J.Punitha,Sec.Gr.

Thanipady,transferred.

T.V.Malai. Dt.

The above teacher is relieved on the afternoon of 07.06.2005, with instructions to join the new school on the forenoon of 08.06.2005 without fail.

The last pay certificate shall be issued at the time of relief itself by the Correspondent of the School, concerned to avoid hardships in getting salary in the New School.

Manager, RCM Schools,

Vellore-632 001.

(Emphasis added)

4.Therefore, the petitioner's contention that she was orally transferred on 7.6.2005 cannot be accepted. On the other hand, the order of transfer itself shows that it was done on her own request which fact cannot be disputed. Pursuant to the said order, she had also joined the school, to which she was transferred and was drawing her salary. Since the school is an aided minority school, the salary is paid by the State Government and without proper paper work, no salary would have been given to the petitioner in the new school at Alapakkam. After receiving the

salary for several years, she cannot come forward to file the writ petition in the year 2008 and thereafter, amend the prayer by a subsequent application. In fact, subsequent to the joining the school at Alapakkam, it now transpires that the petitioner's post became surplus. Hence under the re-deployment scheme, she was transferred from Alapakkam School in Kaveripakkam Panchayat Union to Sri Krishna Vidhyalaya Aided Middle School at Ranipet, Walaja East Panchayat Union, (the fourth respondent) by an order dated 24.11.2005. The transfer was made due to the staff strength fixation made pursuant to G.O.Ms.No.525, School Education Department, dated 29.12.1997. The petitioner also joined in the 4th respondent school and at present, she is working in that school. It was thereafter, she started sending representations to get back to the old school at Thanipadi. When her request failed, she filed the writ petition and also made amendment to the original prayer.

5.It is also brought to the notice of the court that the petitioner did not have any grievance when she was transferred to Alapakkam school coming within the control of the third respondent. Even after she was transferred to the new school, i.e., fourth respondent's school, she did not make any grievance. But for the reasons best known, she made representations to go to the old school. In fact, one such representation sent to the third respondent was produced in the new typed set filed by the third respondent at pages 51 and 52, wherein she had only stated that she was finding it difficult to work in the fourth respondent school where she has been working from 09.12.2005 and wanted the third respondent to consider re-posting her to the old school where she has sufficient seniority.

6.The counsel for the petitioner though made several other submissions, it is unnecessary to refer to those submissions which are not germane to the issue on hand. It is suffice to state that substantial contention was that there is no ground for transferring the petitioner from Thanipadi school to Alapakkam. Reliance was also placed upon a Full bench judgment of this court in *The Correspondent, Malankara Syrian Catholic School, Marthandam, Kanyakumari District Vs. J.Rabinson Jacob and others* reported in 1998 III MLJ 595. In that case, the Full Bench held that even an aided minority school has no inherent power to transfer a teacher in the different unit established and administered by them. But at the same

time, it was held that nothing precluded a teacher from entering into a contract with the management agreeing to be transferred.

7.Countering the same, Dr.Fr.Xavier Arulraj had referred to the appointment order produced by the petitioner herself dated 20.1.1993, wherein it was stipulated that a teacher is liable for transfer within the Diocesan RCM Schools.

8.Even assuming that there was no clause for transfer and that the petitioner never agreed to go to the new school at Alapakkam in the year 2005, but having joined the school and was drawing her salary in that school for a period of three years, the petitioner cannot turn back and challenge the order of transfer at this point of time. In this context, it is necessary to refer to a judgment of a division bench of this court in R.Gothandaraman and 3 others Vs. The Chief Educational Officer, Dindigul and others reported in 1992 (2) L.W. 280 = 1992 Writ L.R. 529 (D.B.) and in that judgment, it was observed as follows :

To put in other words, those transfers were in breach of the statutory contracts. The petitioners acquiesced in such breach obviously because it suited them. When the position is being sought to be reversed, they raise a voice of complaint because they find it inconvenient. It is possible to view the impugned orders of transfer as reversing and rectifying the breach of the statutory contracts, and viewed from this angle, we cannot strike down the present orders of transfer, impugned in the writ petitions. On this short ground, the writ petition is liable to be rejected.

9.After going to the school at Alapakam, if her post has become surplus due to reduction in students' strength, the natural consequence will be re-deployment to an another needy school. It was also happened in the case of the petitioner. In fact, re-deployment of surplus teachers is a scheme invented by the State Government due to job security given to teachers, so that teachers who became surplus will not be thrown out of employment. Their employment is guaranteed by deploying them to some other needy school. But, the petitioner in order to contend that there was a vacancy available in her old school at Thanipadi, made an allegation against the fifth respondent, Manager of RCM Middle School by making him as a party in his individual capacity. The allegation was that even though there

was vacancy available, it was filled up by some other person who was close to the then Manager.

10.In the additional counter affidavit filed by the third respondent, these allegations were denied by the deponent Rev.Ft.C.Dayalaraj vide affidavit, dated 19.12.2008. In paragraph 8, it was averred as follows :

8.I humbly submit that this respondent assumed office as the Manager of R.C.M.Schools, only on 01.06.2006 after the petitioner had been deployed on 24.11.2005. But the petitioner is making allegations against this respondent, as if he had some personal aversion towards her and that he had personally benefited by the vacancy that arose, due to her transfer from Thannipadi, by appointing the 5th respondent. Neither was this respondent manager at that point of time, nor is the 5th respondent related to him.

11.The 5th respondent has filed a counter affidavit, dated Nil (December, 2008) and in paragraphs 6 and 7, it was averred as follows :

6....The proceedings of the DEEO dated 07.05.2008 clearly states the circumstances leading to the said deployment. Fr.Dayalraj was not the manager for R.C. Schools, Vellore at the time of the said transfer on 07.05.2008. There was another priest by name Fr.Francis Xavier, who was the manager at the time and the said manager and the 5th respondent, who was appointed in the place of the petitioner in Thanipadi, are not relatives, as averred by the petitioner.

7.....Her transfer from Thanipadi to Allappakkam and Alapakkam to Ranipet has been duly approved by the competent authorities and she has been drawing salary without any objection for the reasons best known to herself. She wants to come back to the 3rd respondent management choosing her convenience and the time of her own choice and for that reason she is abusing the process of law. There is no other reason for filing this frivolous writ petition. There is no illegality in the said order of transfer or the deployment.

12.In the counter affidavit filed by the impleaded sixth respondent, dated 21.01.2010, in paragraph 4 it was averred as follows:

4.It is submitted that, this respondent has not played any role in transferring the petitioner from Thanipadi to Alapakkam. The petitioner joined at Alapakkam on 8.6.2005. The transfer was done by Manager, R.C.M. Schools of Andapattu. As per G.O.Ms.No.525 dated 29.12.1997 staff strength fixation will be done every year i.e., on 1st August 2006 by this respondent. When staff fixation for the year 2005-2006 done by this respondent, this respondent found that there is a surplus teacher in the schools i.e the petitioner because she is the junior most in terms of station seniority.

13.In the light of these facts, it is not a fit case where any relief can be granted to the petitioner. Hence the writ petition is misconceived and bereft of legal reasons. Accordingly, the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.

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