

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.05.2007

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.Nos.18143 to 18145 of 2007

&

M.P.Nos.1 to 3 of 2007

N.Ekambaram . . Petitioner in W.P.No.18143/2007

L.Govindarajulu . . Petitioner in W.P.No.18144/2007

G.Kaliaperumal . . Petitioner in W.P.No.18145/2007

Vs.

The District Adi Dravidar
and Tribal Welfare Officer,
Villupuram. . . Respondent in all the petitions

W.P.No.18143 of 2007

Writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari and mandamus to call for the records of the respondent made in Na.Ka.M3/19576/06 dated 30.04.2007 and quash the said order and consequently direct the respondent to give the posting to the petitioner as Head Master, G.T.R. Middle School Pauchery, Sankarapuram Taluk, Villupuram District, in terms of the order dated 18.12.2006 passed in W.P.No.31808 of 2006 and upheld in W.A.No.540 of 2007 dated 04.04.2007.

W.P.No.18144 of 2007

Writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari and mandamus to call for the records of the respondent made in Na.Ka.M3/19576/06 dated 30.04.2007 and quash the said order and consequently direct the respondent to give posting to the petitioner as Head Master, G.T.R. Middle School, Parankinatham, Sankarapuram Taluk, Villupuram District in terms of the order dated 18.12.2006 passed in W.P.No.33396 of 2006 and as upheld in W.A.No.539 of 2007 dated 04.04.2007.

W.P.No.18145 of 2007

Writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari and mandamus to call for the records of the respondent made in Na.Ka.M3/19576/06 dated 30.04.2007 and quash the said order, consequently direct the respondents to give posting to the petitioner as Head Master, G.T.R Middle School, Kottaputtur, Villupuram District in terms of the order dated 18.12.2006 passed in W.P.No.31817 of 2006 and as upheld in W.A.No.541 of 2007 dated 04.04.2007.

For petitioners: Mr.M.Kalyanasundaram Senior Counsel for
Mr.K.Radhakrishnan

For Respondent : Mrs.Bhavani Subbarayan
Government Advocate

This Order will govern W.P.Nos.31808, 33396 and 31817 of 2006 as all the three writ petitions involve similar issues. By consent of parties, the writ petitions themselves are taken up for final disposal.

The Court upon hearing the arguments advanced on both sides and after perusing the records passes the following common order.

COMMON ORDER

The petitioner in W.P.No.18143/2007 while functioning as the Head Master of Government G.T.R.Middle School, Pauchery, Sankarapuram Taluk, Villupuram District was transferred by the respondent herein by an order dated 29.08.2006 and posted as Head Master of the Government A.D.W. Middle School, Erambakkam. The said order was passed without obtaining prior permission of the Director, Adi Dravidar Welfare, Chennai-5 in accordance with G.O.Ms.No.74 A.D.W. dated 21.06.2006 for effecting transfers on administrative ground and not in accordance with the counselling. Hence the same was challenged in W.P.No.31808 of 2006.

2. Similarly, the petitioner in W.P.No.18144/2007 while functioning as the Head Master of Government G.T.R.Middle School, Parankinatham, Sankarapuram Taluk, Villupuram District was transferred by the respondent herein by an order dated 29.08.2006 and posted as Head Master, Government A.D.W. Middle School, Madam. The order was passed not during the counselling session. Nor was the same passed in accordance with G.O.Ms.No.74 A.D.W. Dated 21.06.2006 which requires the prior permission of the Director, Adi Dravidar Welfare, Chennai-5. Hence the same was challenged in W.P.No.33396/2006.

3. Likewise, the petitioner in W.P.No.18145/2007 while functioning as Head Master of Government G.T.R. Middle School, Kattapputhur Taluk, Villupuram District was transferred by the respondent herein by an order

dated 29.08.2006 and posted as Head Master, Government A.D.W.Middle School Ka.Bazar. The order was passed not during the counselling session. Nor was the same passed in accordance with G.O.Ms.No.74 A.D.W. Dated 21.06.2006 which requires the prior permission of the Director, Adi Dravidar Welfare, Chennai-5. Hence the same was challenged in a writ petition namely W.P.No.31817/2006.

4. All the above said three writ petitions were disposed of by a common order dated 18.12.2006 by which the orders of transfer impugned in the said writ petitions had been quashed as the condition stipulated in Paragraph 4(i)(3) in G.O.Ms.No.74 A.D.W. Dated 21.06.2006 had not been complied with. However, in the said common order this Court had observed that the respondent was at liberty to pass fresh orders of transfer in accordance with G.O.Ms.No.74 A.D.W. Dated 21.06.2006. Challenging the said common order, writ appeals W.A.Nos.539 to 541 of 2007 were filed and the same were dismissed on 04.04.2007 confirming the common order of the learned Single Judge. The Court also recorded the statement of the counsel for the respondents therein (the present writ petitioners) that they were willing to go on transfer for the academic year starting on 01.06.2007 as per the counselling to be conducted for that purpose. But instead of waiting for the ensuing counselling session to be held in June 2007, the respondent herein seems to have passed the present impugned orders dated 30.04.2007 once again transferring the petitioners herein not accordance with counselling. This time also the respondent has committed the very same mistake by passing the orders of transfer without obtaining prior permission of the Director, Adi Dravidar Welfare, Chennai-5. Hence the present writ petitions.

5. The learned Government Advocate, Mrs.Bhavani Subbarayan representing the respondent, without disputing the contentions of the petitioners that the orders of transfer impugned in these writ petitions are vitiated because of the absence of prior permission of the Director, Adi Dravidar Welfare, Chennai-5, would simply contend that in view of the fact that the counselling session is scheduled to be held in the month of June 2007 in which the petitioners are liable to be transferred from the places where from they have been transferred by the impugned orders; that their request for posting at a place of their option would be considered in the counselling session and that in order to see that the administration is not hindered, the writ petitions may be disposed of by making such observation.

6. Per contra, the learned Senior Counsel for the petitioner would contend that the very attitude of the respondent in passing orders similar to those quashed by this Court in the earlier proceedings would show the bias and malafide on the part of the respondent herein and that since the very question involved in this case has already been answered against the respondent by this Court, the challenge made to the impugned orders in the present writ petitions should be upheld.

7. For the sake of convenience the relevant part of G.O.Ms.No.74 A.D.W. Dated 21.06.2006 is extracted here under;

Para 4(i) (3);-

"நிர்வாகக் காரணங்களுக்காக மேற்கொள்ளப்படும் மாறுதல்களில், பகார்கள் உரிய அதிகாரமுள்ள அலுவலரால் விசாரிக்கப்பட்டு ஒழுங்கு நடவடிக்கை மேற்கொண்டு அடிப்படை முகாந்திரம் இருந்தால் மட்டுமே மாறுதல் செய்யப்படவேண்டும். சம்பந்தபட்ட கோப்பில் இது சாபான விவரம் பதிவு செய்யப்பட வேண்டும். இம்மாறுதலும் பொது மாறுதல்களுடனே செய்யப்படவேண்டும். பொது/மாறுதல்களுக்குப்பின் நிர்வாகக் காரணங்களுக்காக கண்டிப்பாக மாறுதல் செய்ய வேண்டிய தூழ்நிலை இருந்தால் உரிய முன்மொழிவுகள் இயக்குநருக்கு அனுப்பப்பட்டு இயக்குநரின் அனுமதி பெற்றபின் மாறுதல் வழங்களாம். இத்தகைய மாறுதல்கள் மற்றவர்களுக்கு பாதிப்ப, இல்லாத வகையில் இருக்கவேண்டும்."

8. This Court, applying the test enshrined in the above said Government Order to the orders impugned in these writ petitions comes to the conclusion that the contentions made on behalf of the petitioners have to be countenanced and the challenge made to the impugned orders of transfer should be upheld.

9. While holding that the said contention raised by the learned Senior Counsel for the petitioner has got to be countenanced, this Court wants to express its displeasure regarding the manner in which the respondent has dealt with the matter in passing orders similar to those quashed in the earlier proceedings, disregarding the orders of this Court.

10. In the result, the writ petitions are allowed and the impugned orders are quashed. The respondent is directed to restore the petitioners to the respective places from which they have been transferred by the impugned orders set aside in this common order within a period of one week from the date of receipt of a copy of this order. Further the respondent is directed to make arrangements for the payment of salary to the petitioners for the period upto the date on which they are restored to their original place. The petitioners are also permitted to produce a copy of this order to the respondent for compliance. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

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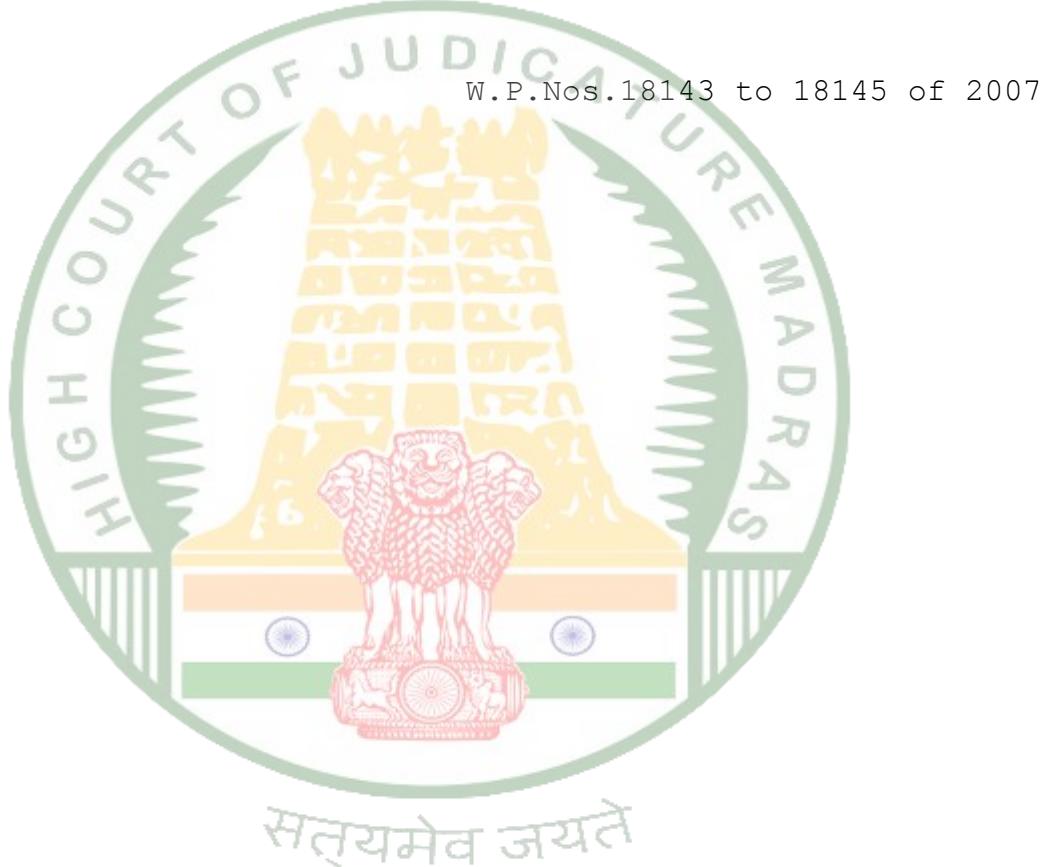
Sub Asst.Registrar

jikr

To

The District Adi Dravidar
and Tribal Welfare Officer,
Villupuram.

3 cc To Mr.K.Radhakrishnan, Advocate, SR.30979 to 30981.
1 cc To The Government Pleader, SR.31073.



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