

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 28.09.2016)

DATED : 03.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.Nos.34718 & 35615 of 2015

and

M.P.Nos.1 & 2 in W.P.No.34718 of 2015

and

M.P.Nos.1 & 2 of 2015 in W.P.No.35615 of 2015

A.Idayaselvam ... Petitioner in W.P.No.34718 of 2015
S.Kannan ... Petitioner in W.P.No.35615 of 2015

Vs.

- 1.The Government of Tamil Nadu
rep. by Secretary,
Education Department,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
DPI Complex, Nungambakkam,
Chennai. ... Respondents 1 & 2 in both WPs
- 3.The Chief Educational Officer,
Salem. ... 3rd Respondent in WP.35615/2015

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in connection with the proceedings in G.O.(IT). No.348, School Education (S.E.2(2) Department, dated 25.09.2015 and to quash the same and consequently, to direct the respondents to grant the opportunity of getting transfer to all the Vocational Instructors without any discriminations based upon the mode of appointment and the Groups of Subject which the Vocational Instructors handle in High Secondary Education, by passing a fresh order.

For Petitioner : Mrs.T.Ananthi
For respondents : Mr.S.Gunasekaran, AGP

COMMON ORDER

These writ petitions have been filed by the petitioners, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the file of the 1st respondent in connection with his proceedings in G.O.(IT).No.348, School Education (S.E.2(2) Department, dated 25.09.2015 and to quash the same and consequently, to direct the respondents to grant the opportunity of getting transfer to all the Vocational Instructors without any discriminations based upon the mode of appointment and the Groups of Subject which the Vocational Instructors handle in High Secondary Education.

2.Since the issue involved in these writ petitions are one and the same, these writ petitions are disposed of by way of the common order. For the sake of convenience, the petitioner in W.P.No.34718 of 2015 hereinafter will be referred to as 1st petitioner and the petitioner in W.P.No.35615 of 2015 will be referred to as 2nd petitioner.

3.The brief facts, which are necessary to decide the issue invoved in these writ petitions, are as follows:-

3-1.The 1st petitioner (petitioner in W.P.No.34718/2015 viz..A.Idayaselvan) was appointed as Engineering Vocational Instructor, by the Headmaster of the Government Higher Secondary School, Mettur Dam, Salem District on 05.11.1986 and his appointment was approved by the Chief Educational Officer and his service was regularised with effect from 16.10.1992 by the Joint Director of School Education. He is working in the said post till date, without any promotional chance and opportunity for transfer.

3-2.The 2nd petitioner (petitioner in W.P.No.35615/2015 viz., S.Kannan), was appointed as Computer Science Vocational Instructor (full time), on 22.07.1988, in Government Higher Secondary School, Dasanaickenpatti, Salem. His service was regularised with effect from 16.10.1992, as per G.O.967, Education, dated 16.10.1992, by the Joint Director of (Higher) School, Education, vide his proceedings dated 31.05.2007. He is working in the said post till date, without any promotional chance and opportunity for transfer.

3-3.It is stated by the petitioners that originally during the period 1979-2008, all the Instructors were appointed directly by Headmaster/CEO and approved subsequently by CEO and then, regularised by the 2nd respondent with effect from 1986-1992 respectively. Then, by the year 2009, the Vocational Instructors especially Agriculture and Computer Instructors were recruited by Teachers Recruitment Board (TRB). There are nearly

2500 permanent regular posts of Vocational Instructors in all the Groups, throughout the State of Tamil Nadu, out of which, the appointment of 900 Vocational Instructors was made by Teachers Recruitment Board by the year 2009. Thereafter, there is no fresh appointments or filling up of any vacancies in the post of Vocational Instructor.

3-4. Further, the Agricultural Instructors were recruited directly in two spells i.e., 100 instructors during 2009, and 2010 instructors during 2009. Nearly 900 Computer instructors were recruited through TRB as per G.O.No.187, Education Department, dated 04.10.2006. These 1200 Instructors alone were given the privilege of transfers, by way of impugned G.O.(IT).No.348, School Education Department, dated 25.09.2015; whereas others who are seniors like the petitioners, are left without any transfer opportunity.

3-5. It is further stated by the petitioners that irrespective of the mode of appointment, either direct or through TRB, the nature of work involved is one and the same. The Rules governing both the appointees are one and the same. There is no specific Rules framed for TRB recruits and as such, there is no need to show any privilege in case of transfers. Hence, the petitioners have come forward with the present writ petitions, challenging the G.O.(IT).No.348, School Education Department, dated 25.09.2015.

4. When the matter was taken up for consideration, the learned counsel appearing for the petitioners would contend that the impugned Government Order in G.O.(IT).No.348, School Education Department, dated 25.09.2015, is unjustifiable, unreasonable, discriminatory and not based on any norms; hence, the same is liable to be set aside.

5. Per contra, the learned Additional Government Pleader, by filing a detailed counter, would contend that initially, only part-time Vocational Instructors were appointed. Most of the Vocational Instructors were appointed as single part-time Vocational Instructors and some of them were appointed, due to students' strength and other factors, as Double part-time Technical Instructors. Orders were subsequently issued for the opening of vocational courses in Higher Secondary Schools. Sanction was accorded among others to the creation of posts of part-time Vocational Instructors at the rate of 2 for each Vocational course. These Vocational Instructors were appointed as Single Part-time Vocational Instructors and Double Part-time Vocational Instructors. Representations had been received time and again from the Vocational part-time Instructors for regulation of their services. Thereafter, orders were issued vide G.O.Ms.No.712, Education Dept, dated 28.05.1990, bringing 800 fully qualified Double Part-time Vocational Instructors

under regular scale of pay with effect from 01.04.1990. Orders were issued vide G.O.Ms.No.967, Education Dept, dated 16.10.1992, bringing the remaining 587 fully qualified Double Part-time Vocational Instructors into regular scale of pay. Subsequently, those part-time Vocational Instructors, who were not fully qualified, were subjected to undergo due training courses and were later absorbed into regularized services. Moreover, these Vocational Instructors were appointed by the Heads of the Higher Secondary Schools themselves, including government and local body institutions, as it was felt that the Headmasters would be in a better position to analyze the talents of such Instructors without delay. The Headmasters were instructed to follow the criteria laid down for these part-time appointments strictly and they had to inform Chief Educational Officers concerned for the issue of formal orders.

6.It is further contended by the learned Additional Government Pleader that the petitioners herein were appointed by the aforementioned mode of appointment as Vocational Instructors in the year 1988 and their services were regularized with effect from 16.10.1992 vide G.O.Ms.No.967, Education Department, dated 16.10.1992 and by the Join Director, Higher Secondary, School Educational Proceedings dated 31.05.2007. The mode of appointment through which the petitioners got appointment was entirely different from that of the Vocational Instructors in the subjects of Computer Science and Agriculture, who got recruited either by Teachers Recruitment Board or by direct appointment. Though the Vocational Instructors like the petitioners handle similar responsibilities as that of Computer Instructors/Agriculture Instructors, who got appointed either by Teacher Recruitment Board or by direct recruitment and as such, these two categories of instructors cannot be considered on par with each other as their modes of appointment are radically different from each other. The learned Additional Government Pleader submitted that there is no discrimination on the part of the respondents; thus, he sought for dismissal of the writ petitions.

7.Heard both sides and perused the materials available on record.

8.It is the main grievance of the petitioners that the Instructors, who were recruited through TRB directly, alone were given the privilege of transfers, by way of impugned Government Order in G.O.(IT).No.348, School Education Department, dated 25.09.2015; whereas others who are seniors like the petitioners, are left without any transfer opportunity. Though the nature of works involved is one and the same, and the Rules governing both the appointees are one and the same, there is no need to

show any privilege in case of transfers alone; hence, there is discrimination on the part of the respondents.

9. But, as contended by the learned Additional Government Pleader, when the modes of appointment are radically different from each other, though the Vocational Instructors like the petitioners handle similar responsibilities as that of Computer Instructors/Agriculture Instructors, who got appointed either by Teacher Recruitment Board or by direct recruitment, these two categories of instructors cannot be considered on par with each other. Therefore, I do not find any discrimination on the part of the respondents. Moreover, the petitioners have failed to make out any legal ground to quash the impugned Government Order, except simply stating that there is discrimination on the part of the respondents. Under such circumstances, I am not inclined to entertain the writ petitions and the writ petitions are liable to be dismissed.

10. In fine, the writ petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Secretary,
Government of Tamil Nadu
Education Department,
Fort St. George, Chennai-600 009.

2. The Director of School Education,
DPI Complex, Nungambakkam,
Chennai.

3.The Chief Educational Officer,
Salem.

+2cc to Mr.T. Aananthi, Advocate, S.R.No.62774 & 62775

EV(CO)
md(23/11/2016)

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