

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.1335 & 1336 of 2012

N.Kumaran ... Petitioner in W.P.No.1335 of 2012
S.Thirumalai ... Petitioner in W.P.No.1336 of 2012

vs.

- 1.The Additional Chief Secretary to Government,
School Education Department,
Secretariat, Chennai 600 009.
- 2.The Principal Secretary/State Project Director,
Sarva Shiksha Abhiyan (SSA),
D.P.I.Complex, College Road,
Chennai 600 006.
- 3.The Director of School Education,
D.P.I.Complex, College Road,
Chennai 600 006.
- 4.The Director of Primary Education,
D.P.I.Complex, College Road,
Chennai 600 006.
- 5.The Chief Educational Officer,
Vellore, Vellore District. ... Respondents in both W.Ps.

Writ Petition No.1335 of 2012 filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondents to include the post of Part Time Instructor in Weaving for recruitment under Part Time Instructor of Work Education in G.O.Ms.No.177, School Education (C2) Department dated 11.11.2011 and consequently appoint the Petitioner as Part Time Instructor in Weaving based on the said G.O. with attendant benefits.

Writ Petition No.1336 of 2012 filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondents to include the post of Part Time Instructor in Agriculture for recruitment under Part Time Instructor of Work Education in G.O.Ms.No.177, School Education (C2) Department dated 11.11.2011 and consequently appoint the petitioner as Part Time Instructor in Agriculture based on the said G.O. with attendant benefits.

For Petitioner in both W.Ps. :Mr.K.Mohanamurali

For Respondents in both W.Ps. :Mrs.P.Kavitha,
Government Advocate

COMMON ORDER

Petitioners have come up with these Writ Petitions seeking a direction to the Respondents to include the post of Part Time Instructor in Weaving and Agriculture, respectively, for recruitment under Part Time Instructor of Work Education in G.O.Ms.No.177, School Education (C2) Department dated 11.11.2011, and consequently appoint them as Part Time Instructor in Weaving and Agriculture, respectively, based on the said Government Order with attendant benefits.

2. When the matter was taken up for hearing, learned Government Advocate appearing for the Respondents, placing reliance on G.O.(Ms) No.177, School Education (C2) Department, dated 11.11.2011, submitted that, the issue in question is squarely covered by an order dated 06.09.2012 passed by this Court in W.P.(MD) No.722 of 2012. For better appreciation, relevant paragraphs of the said judgment are extracted hereunder:

"16. The G.O.(Ms)No.177 School Education (C2) Department, dated 11.11.2011, on which reliance has been placed, itself shows that no post of Agriculture Instructor was advertised or sanctioned by the Project Approval Board. The petitioners, therefore, can have no grievance to non-inclusion of Agriculture in the advertisement. The petitioners also cannot have any grievance for not being called for interview, as they are not holding the qualification for the posts advertised by the Government.

18. This contention of the learned Counsel for the petitioners, is again misconceived. The petitioners have not been disqualified for being appointed as Part Time Instructors to allege discrimination. The petitioners were found ineligible to compete for this selection for want of vacancies in Agriculture. As and when the vacancies in Agriculture are advertised, the petitioners will be entitled to compete for the posts, where candidates with other qualifications in the Art and Music will not be eligible.

19. It is the settled law that equality cannot be claimed by inequality. The petitioners on the basis of having the qualification of T.T.C in Agriculture, cannot claim discrimination for appointment as Drawing Instructor with those who hold T.T.C in Drawing as they form a separate class.

20. This Court, in exercise of writ jurisdiction, cannot issue any direction to the respondents to create a particular post or to exclude a particular post, as it is the prerogative of the State Government to sanction and fill up the posts as per the requirements. The Courts have no role to play in this process.

21. The writ petition therefore not only lacks merit but is totally misconceived.

22. No merit. Dismissed."

3. In the light of the said decision, this Court is of the view that, no direction can be issued to the Respondents to create a particular post or to exclude a particular post, as it is the prerogative of the State Government to sanction and fill up the posts as per the requirements.

4. Accordingly, these Writ Petitions are dismissed, as they are devoid of merits. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

(aeb/jas)

To:

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5.The Chief Educational Officer,
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Common Order in
W.P.Nos.1335 & 1336 of 2012

VS (CO)
CB(30/09/2020)



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