

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.27323 OF 2013

AND

M.P. NO. 2 OF 2013

R.Theivakumar

.. Petitioner

- Vs -

1. Union of India
rep. By the Secretary
Ministry of Human Resource Development
Shastri Bhawan, New Delhi 110 001.
2. The State of Tamil Nadu
rep. By The Prl. Secretary to
Govt., Dept. of School Education
Fort St. George, Secretariat
Chennai 600 009.
3. The Director of School Education
Directorate of School Education
DPI Campus, College Road
Chennai 600 006.
4. The Joint Director (Personnal)
Directorate of School Education
DPI Campus, College Road
Chennai 600 006.
5. The Deputy Director
inclusive Education of the Disabled
at Secondary Stage
Directorate of School Education
DPI Campus, College Road
Chennai 600 006.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned notification No.NIL dated NIL issued by the 3rd respondent in 2nd respondent's website www.dse.tn.gov.in/pdfs/coordinatoriedss.pdf calling for application to fill up the post of the

Coordinator Inclusive Education of the Disabled at Secondary Stage Scheme and all further proceedings including interview dated 5.8.2013 and quash the same and consequently direct the respondents 3 to 5 to comply with the Government Order No.313 dated 24.12.2012 issued by the 2nd respondent to fill up the post of Co-ordinator, Inclusive Education of the Disabled at Secondary Stage Scheme.

For Petitioner : Mr. Sakthivel, for M/s. J.Sivanandaraj
For Respondents: Mr. G.Karthikeyan for R-1
Mr. S.Suresh Kumar, GA for RR-2 to 5

ORDER

It is the case of the petitioner that he has completed Master's Degree in Psychology in July, 2011 in First Class and working as a Physiotherapist at Trichy Block under Sarve Siksha Abiyan organised to impart education for specially disabled children. The above scheme was introduced by the 1st respondent and is being implemented under the supervision and control of the Ministry of Human Resource Development for imparting education to specially disable children as Inclusive Education of the Disabled at Secondary Stage (IEDSS).

2. It is the further case of the petitioner that in pursuance to the implementation of the said scheme of the 1st respondent, G.O. No.313 dated 24.12.2012 was issued by the 2nd respondent to the 3rd respondent to fill up the post of Co-ordinator IEDSS Scheme by issuing advertisement and calling for applications and selecting candidates by constituting a State Level Expert Committee.

3. Pursuant to the said Government Order, on the recommendation of the 3rd respondent, the 2nd respondent vide G.O. Ms. No.313, School Education (E2) Department, dated 24.12.2012, constituted the State Level Expert Committee. It is the grievance of the petitioner that instead of issuing advertisement, the 3rd respondent issued the impugned notification on its website www.dse.tn.gov.in/pdfs/coordinatoriedss.pdf. It is the further case of the petitioner that the salary for the said post has also been incorrectly mentioned in the said notification. It is the averment of the petitioner that the impugned notification is illegal, cryptic and bereft of several details and apparently is perfunctory in nature.

4. It is the further case of the petitioner that in response to the above notification, call letters were sent to certain individuals calling them for personal interview before the State Level Expert Committee on 5.8.2013. Further, it is averred that on the day of the personal interview, there was no

quorum as provided in the above Government Order, personal interview was conducted to fill up the candidates for the said post. It is the further case of the petitioner that he came to know about the said selection process and the impugned notification only on 28.9.13 and the act of the 3rd respondent in not advertising the post had deprived the petitioner of the opportunity to partake in the selection process and the issuance of the impugned notification in the website has deprived many candidates including the petitioner from partaking in the selection process, which is in violation of the Constitutional provisions and, therefore, the impugned order is liable to be set aside.

5. Learned counsel appearing for the petitioner submits that the selection process is arbitrary and illegal, inasmuch as the notification is in violation of G.O. Ms. No.313 as the same has not been advertised as codified in the above Government Order, which had deprived the petitioner from partaking in the selection process. The non-advertising of the notification in the newspapers is against the provisions contained in the Government Order and mere publication of the notification in the website is arbitrary and illegal as the publication of notification in the website cannot be deemed to be a publication as mandated under the above Government Order.

6. Per contra, learned Government Advocate appearing for respondents 2 to 5 submits that the alleged impugned notification is not a notification in its spirit, as could be seen from the document filed in the typed set by the petitioner. The said document clearly reveal that it is only an instruction to the candidates along with the format of the application, which needs to be downloaded by the candidates, filled up and submitted to the respondents for further process. It is the earnest submission of the learned Government Advocate that the contention of the petitioner that even if the above instructions to the candidates should be deemed to be a notification and the same has not been put out in the public domain, the said contention is wholly unreasonable, as the alleged notification has been put up on the website by the 3rd respondent, which is a public domain. It is the further submission of the learned Government Advocate that wide publicity was given in the media and newspapers in all the 20 districts, where the said posts were sought to be filled up and even one candidate had applied from the district from which the petitioner was hailing. Therefore, the contention of the petitioner that the notification was not published in the newspapers is unsustainable. It is the further submission of the respondent that it is for the petitioner to keep himself abreast of the developments by browsing the public domain to know about the requirements arising in various establishments and the

shortfalls on the part of the petitioner cannot be put against the respondents by claiming that publication was not given in the newspapers, which is per se incorrect.

7. It is the further contention of the learned Government Advocate that the other contention relating to non-availability of proper quorum has not been established by the petitioner on the basis of any material and mere assertion without any proof thereof cannot be put against the respondents. It is the vehement submission of the learned Government Advocate that all the members of the State Level Expert Committee were present on the day of the interview and had, in fact, interviewed all the candidates and, therefore, the mere allegation of the petitioner without any substantive material is liable to be rejected outright. It is the further contention of the learned Government Advocate that even according to the petitioner, the interview is alleged to have been held on 5.8.13 and in such a circumstance, the course open to the petitioner is to challenge the said selection process and alleging procedural violation, when there is none and the said allegations not being substantiated by materials, the present petition deserves to be dismissed.

8. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. A perusal of the materials available on record categorically reveal that the alleged notification, which is stated by the petitioner to be a notification, viewed from any angle, could never be termed to be a notification in the real sense. The said document reveals that what is published in the website is only instructions to candidates along with the copy of the application, which needs to be downloaded, filled and to be sent to the respondents for further processing. It is the categorical case of the respondents that in consonance with G.O. No.313, wide publicity was given in newspapers and media with regard to the said post and the notification was published in the newspapers in twenty districts where the posts were sought to be filled up. In the said backdrop of the categorical denial by the respondents, no material has been placed by the petitioner to dispute the said stand of the respondents other than mere oral assertion. Further, it is to be pointed out that the information published in the website, which is for all purposes, a public domain, as everyone can access the said website, clearly reveals that it is not a notification, but it is only instructions to the candidates. That being the case of the respondents, the claim of the petitioner that notification was published only in the website and not by way of advertisements in the newspapers as mandated in G.O. No.313

deserves to be rejected.

10. Further, the counter reveals that of the five members, three members of the State Level Expert Committee conducted the interview and have selected the candidates. Such being the case, the contention of the petitioner that there was no quorum also deserves to be rejected. It is not out of context to point out that even the affidavit of the petitioner reveals that he had reliably learnt that there was no quorum, but no material has been placed before this Court to show the reliability of the said information. In the absence of any material, this Court is of the considered view that the accusation of the petitioner that there was no quorum is devoid of merits.

11. Further, it is to be pointed out that the interview was held on 5.8.13 and the petitioner has come to know about the conduct of the interview much after, only on 28.9.13, almost about two months after the conduct of the interview. In such circumstance, the petitioner should have come before this Court questioning the selection process and not merely questioning the non-publishing of the notification in the newspapers, which allegation of the petitioner also is without any material.

12. For all the reasons aforesaid, this Court is of the considered view that the writ petition lacks merit and, accordingly, the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

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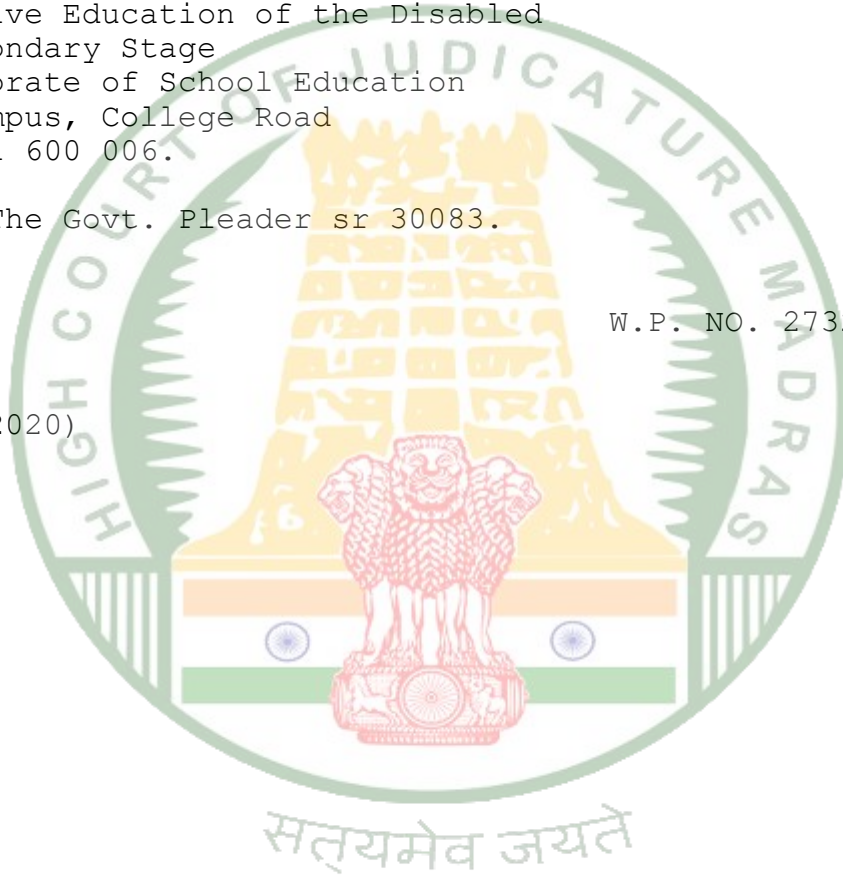
To

1. The Secretary to Government
Ministry of Human Resource Development
Government of India
Shastri Bhawan, New Delhi 110 001.
2. The Principal Secretary to
Govt., Dept. of School Education
Government of Tamil Nadu
Fort St. George, Secretariat
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at Secondary Stage
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- +1 CC to The Govt. Pleader sr 30083.

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SP(20/10/2020)



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