

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NOS.9960 TO 9964 OF 2012

P.Senthilkumar ... Petitioner in W.P.No.9960 of 2012
M.Ashok Metha ... Petitioner in W.P.No.9961 of 2012
T.Magesh ... Petitioner in W.P.No.9962 of 2012
C.Sangeetha Kavitha ... Petitioner in W.P.No.9963 of 2012
S.Kabaleeswaran ... Petitioner in W.P.No.9964 of 2012

vs.

1. The Secretary to Government,
Education Department,
Fort St. George, Chennai - 9.
2. The Principal Secretary/State Project Director,
Sarva Siksha Abhiyan,
Chennai - 6.
3. The Director of School Education,
Chennai - 6.
4. The District Educational Officer,
Vellore District.
5. The Chief Educational Officer,
Vellore District.
6. The Elementary Education Officer,
Vellore District.
7. Sampanki ... Respondents in all W.Ps.

(R7 Impleaded as per order dated 28.09.2012 in MPS 2 & 3/12 in W.P.Nos 9239 to 9241, 9258, 9260, 9960 to 9964, 10021 to 10025, 9266 to 9269, 9659 to 9663, 9426 to 9430, 9994, 9995, 9270 to 9273, 8993 to 8997, 8908 to 8911/2012)

Prayer:-

W.P.Nos.9960, 9961, 9962 & 9964 of 2012:-

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records of the 5th respondent, who issued appointment order to the list of candidates for Selection of 1293 Part-time Instructors in Vellore District to the Government Schools for Std. VI to VIII under Sarva Shiksha Abhiyan in G.O.Ms.No.177 dated 11.11.2011 and quash the same and direct the 5th respondent to appoint the Petitioners as part-time Instructors in Vellore District.

(Prayer Amended as per Court order dated 04.03.2013 in M.P.Nos.4 to 4/12 in W.P.Nos.9920 to 9923/12, 9239 to 9241/12, 9258 to 9260/12, 10021 to 10025/12, 9266 to 9269/12, 9659 to 9663/12, 9426 to 9430/12, 9994 & 9995/12, 9270 to 9273/12, 8993 to 8997/12, 8908 to 8911/12 and 9960 to 9964/12).

Prayer in WP.No.9963 of 2012:-

The Petitioner prays that this Hon'ble Court may be pleased to issue a Writ of Declaration or any other writ or order or direction in the nature of wirt declaring the selection of 16549 Part Time instructors to the Government Schools for Std. VI to VIII under Sarva Shiksha Abhiyan as null and void and ultra vires of G.O.Ms.No.177 School Education Department dated 11.11.2011 and direct the respondents 2 to 6 to carry out the selection in accordance to the G.O.Ms.177, School Education Department dated 11.11.2011 and publish results District wise in the order of marks scored.

For Petitioner in all W.Ps. : Mr.M.Selvam

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

COMMON ORDER

Petitioners have come up with the present Writ Petitions challenging the impugned order passed by the 5th Respondent as regards issuance of appointment order to the list of candidates for selection of 1293 Part-time Instructors in Vellore District to the Government Schools for Std. VI to VIII under Sarva Shiksha Abhiyan Scheme in G.O.Ms.No.177 dated 11.11.2011 and for a consequential direction to the 5th Respondent to appoint them as Part-time Instructors in Vellore District.

2. When the Writ Petitions were 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(CS IV)

//True Copy//

Sub Assistant Registrar

(aeb/jas)

To:

1. The Secretary to Government,
Education Department,
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W.P.Nos.9960 to 9964 of 2012

JP & SS(CO's)
CS/09/12/2020