



WA NO.2613 OF 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2026

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR**

**W.A.NO.2613 OF 2023
AND
CMP NO.22033 OF 2023**

1.The Secretary
Rep. by Government School Education
Fort St. George,
Chennai – 600 009.

2.The Joint Director (Personnel)
DPI Campus
Chennai – 600 006.

3.The Chief Educational Officer
Villupuram District.

4.The District Educational Officer
Tindivanam, Villupuram.

... Appellants

Vs.

1.V.Sumathi
2.Muthamizselvan
3.S.Josphine Mary
4.V.Vijayakumar
5.D.Shankar

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 05.02.2021 passed in W.P.No.13849 of 2020.



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For Appellants : Dr.R.Gouri
Government Counsel

For Respondents : Ms.Dakshayini Reddy
Senior Counsel
for Ms.S.Suneetha

J U D G M E N T

(Judgment of the Court was made by S.M.Subramaniam J.)

Under assail is the writ order dated 05.02.2021 passed in W.P.No.13849 of 2020. State preferred the present writ appeal under Clause 15 of Letters Patent mainly on the ground that the post of Lab Assistant is not a feeder category to the post of Junior Assistant. Both the posts carry identical scales of pay. Thus, the claim of the Lab Assistants for promotion to the post of Junior Assistant is untenable. The writ court has given a direction to consider the case of Lab Assistants for promotion to the post of Junior Assistant, which has resulted in the filing of the present writ appeal.

2.The learned Government Counsel appearing on behalf of the State would mainly contend that the duties and responsibilities attached to the posts of Lab Assistant and Junior Assistant are distinct and different. The post of Junior Assistant is falling under the Tamil Nadu Ministerial Service Rules. The Government issued G.O.Ms.No.303,



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Finance (Pay Cell) Department, dated 11.10.2017 granting identical

scales of pay to the posts of Lab Assistant and Junior Assistant.

Therefore, the post of Lab Assistant is not a feeder category for promotion to the post of Junior Assistant. These two posts are equivalent, carrying identical scales of pay. Grant of promotion from the post of Lab Assistant to the post of Junior Assistant is not contemplated under the rules. Therefore, the writ appeal is liable to be allowed.

3.The learned Senior Counsel appearing on behalf of the respondents would submit that the scales of pay for the posts of Lab Assistant and Junior Assistant are identical. However, there is no promotional avenue available to the post of Lab Assistant. In such circumstances, Rule 3(g) of the Tamil Nadu Ministerial Service Rules states that *besides direct recruitment as provided in rule 2, appointment to the categories of Junior Assistant, Junior Assistant – cum – Typist and Typist shall be made by recruitment by transfer from other services, subject to the conditions stipulated*. When there is an avenue to appoint the Lab Assistant by way of transfer of service to the post of Junior Assistant, the said concession is to be extended to the Lab Assistant in view of Rule 3(g) of the Tamil Nadu Ministerial Service Rules.



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4.This Court is of the considered view that the creation of a promotional avenue is an administrative decision to be taken by the Government. This Court, in exercise of its powers of judicial review, cannot direct the Government to create a higher post for the purpose of granting promotion. In respect of cadres where there is no promotional avenue available, scale of pay applicable to the higher posts are granted by awarding Selection Grade, Special Grade and Super Grade and that is to be construed as Scheme of promotion granted to these employees. Promotion, *per se*, cannot be claimed as a vested right.

5.Promotions are to be granted only if promotional avenues are available and applicable service rule permits. Learned Senior Counsel appearing on behalf of the respondents would rely on Rule 3(g) of the Tamil Nadu Ministerial Service Rules. However, the post of Lab Assistant is not falling under the purview of Tamil Nadu Ministerial Service Rules. Therefore, promotion by way of transfer of service cannot be claimed as a matter of right. However, it is for the Government to take a policy decision to provide promotional avenues for promotion to the post of Lab Assistant.



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6.This Court, in exercise of its powers of judicial review, cannot issue a direction to the Government to create a promotional post, as creation of posts is an administrative prerogative and the powers vested on the Government. This Court cannot run the public administration or interfere with such administration. In the absence of any rule providing for grant of promotion, by citing the rules applicable to the Tamil Nadu Ministerial Service Rules, the Lab Assistant cannot seek promotion to the post of Junior Assistant, which is also an equivalent post, carrying identical scales of pay.

7.With the above observations, the impugned order dated 05.02.2021 passed in W.P.No.13849 of 2020 is set aside and the writ appeal stands allowed. However, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

[S.M.S., J.]

[N.S., J.]

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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