

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2020
Pronounced on : 05.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.13849 of 2020 and
W.M.P.Nos.17212 to 17215 of 2020

1.V.Sumathi

2.Muthamilselvan

3.S.Josphine Mary

4.V.Vijayakumar

5.D.Sankar

...Petitioners

-Vs-

1.The Secetary,
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.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent proceedings in Na.Ka.4793/A3/2020 dated 24.07.2020 and the consequential order of the fourth respondent in Na.Ka.2114/A1/2020 dated 06.08.2020 and quash the said proceedings and consequently, direct the respondents to include the names of the petitioners for appointment to the post of Junior Assistant by taking into consideration the fact that the petitioners' substantive

appointment to the post of Office Assistants and there is no further promotion from the post of Lab Assistant in accordance with Rule 3(g) of the Tamil Nadu Ministerial Services.

For Petitioners : Mrs.Dakshayani Reddy

For Respondents : Mr.C.Munusamy, SGP(Education)

O R D E R

This writ petition has been filed to call for the records of the third respondent proceedings in Na.Ka.4793/A3/2020 dated 24.07.2020 and the consequential order of the fourth respondent in Na.Ka.2114/A1/2020 dated 06.08.2020 and quash the said proceedings and consequently, direct the respondents to include the names of the petitioners for appointment to the post of Junior Assistant by taking into consideration the fact that the petitioners' substantive appointment to the post of Office Assistants and there is no further promotion from the post of Lab Assistant in accordance with Rule 3(g) of the Tamil Nadu Ministerial Services.

2. The petitioners herein were originally appointed to the post of Office Assistant on various dates during the year 2007-10. After serving for some time, all of them were promoted as Lab Assistant in the year 2013-15 and as on date they have been working as Lab Assistant in the School Education Department.

3. Originally, the post of Office Assistant was a feeder category for promotion to the post of Record Clerk or Lab Assistant and further promotion avenue is the post of Junior Assistant in the Tamil Nadu Ministerial Service. The Government has issued G.O.Ms.No.15 dated 21.02.2002 by amending the then existing Tamil Nadu Ministerial Services vide rule 3(g) whereby 20% of the post of Junior Assistant was directed to be filled up recruitment by transfer from persons in service other than the Tamil Nadu Ministerial Services who are in categories having no promotional post or even after more than one promotion would still be in a category carrying scale of pay less than that of Junior Assistant.

4. As far as these petitioners were concerned, they were eligible for promotion to the post of Junior Assistant against 20% quota, since the post of Lab Assistant did not have any further avenue of promotion and the pay scale applicable to the Lab Assistant was lower than the pay scale applicable to the post of Junior Assistant. Subsequently, the Government issued G.O.Ms.No.303 dated 11.10.2017, whereby the posts of Lab Assistant and the Junior Assistant were placed in the same level with Rs.19,500/- as Basic Pay. After the Government Order was

implemented, the posts of Lab Assistant and the Junior Assistant carried the same pay scale.

5. The grievance of the petitioners herein is that in view of the same pay scale being made applicable to them as that of the Junior Assistant from 2017, these petitioners were sought to be excluded from being considered for promotion to the post of Junior Assistant by citing the rule position. According to these petitioners, even after the parity in pay scale introduced in the year 2017, the post of Lab Assistant continued to be included in the panel for recruitment by transfer to the post of Junior Assistant in terms of the amendment to Rule 3(g) of the Tamil Nadu Ministerial Service Rules. However, presently citing the amendment, these petitioners have been denied inclusion and consideration for further promotion to the post of Junior Assistant. According to these petitioners, they have no further avenue of promotion at all and they would have to languish in the same post till their retirement, if the only door to the promotion is shut.

6. The petitioners herein therefore approached the authority concerned seeking consideration of their promotion as Junior Assistant, notwithstanding the parity in the pay scale. However the authorities have issued proceedings viz., that in view of the parity in the pay scale as between the two posts, the Government has been approached for clarification and they would be informed whether they would be considered for promotion or not on such clarification from the competent authority. Challenging the proceedings dated 24.07.2020, the petitioners are before this Court.

7. Mrs.Dakshayani Reddy, learned counsel for the petitioners would submit that the intention of the recruitment rules was very clear that the persons who have no promotional opportunities and even after more than one promotion, they would have to be considered for promotion to the post of Junior Assistant by transfer of service. Unfortunately, by conferring the benefit of the same pay scale as applicable to the post of Junior Assistant to the post of Lab Assistant, the career progression of these petitioners has been denied. While conferring some benefit in the matter of emoluments on one hand and taking away the larger benefit of growth in the official hierarchy is irrational and unreasonable.

8. The learned counsel would also submit that the rules must be harmoniously read and the decision must be taken by the Government to consider the petitioners for promotion to the post of Junior Assistant despite their being paid the same pay scale, otherwise the legitimate expectation of career progression of these petitioners would stand negated till their retirement.

9. Upon notice, Mr.C.Munusamy, learned Special Government Pleader entered appearance and filed a detailed counter affidavit. In the counter affidavit, the amendment which was brought in 2017 has been reiterated and in addition to that, the counter affidavit in paragraph No.8 it is stated as under:-

"8. It is further respectfully submitted that the prior to the revision of pay scales on the recommendations of the 7th Pay Commission, the scale of the Lab Assistant is lesser than the scale of pay of the Junior Assistant. At that time, the post of Lab Assistant was the feeder category for promotion to the post of Junior Assistant. After the introduction of new scales of pay to the employees of Tamil Nadu Government with effect from 01.01.2016, the scales of pay of the above two categories are one and the same. Therefore, the order of the Government is necessary to appoint the Lab. Assistants as Junior Assistant by transfer of post. Hence, necessary clarification of the Government is sought for and it is still pending. Moreover, it is respectfully submitted that as and when orders are received from the Government in this regard, further action will be taken up by the respondents. It is not feasible to proceed further while pending receipt of clarification of the Government."

The above averments in the counter affidavit would show that the Government has been approached for clarification and whenever the orders are received from the Government, the action will be taken by the respondents, accordingly.

10. The learned Special Government Pleader would submit that as on date in view of the amendment to the relevant rule, these petitioners cannot be considered for the subject promotion. But, if the Government clarifies the position in their favour, the same will be acted upon, at once.

11. This Court has considered the arguments of the learned counsel for the petitioners and the learned Special Government Pleader for the respondents. The issue that calls for adjudication before this Court is rather peculiar one for the reason that though these petitioners have been compensated in terms of the emoluments by bringing them on par with the Junior Assistants in the matter of pay scale, yet, on the other hand, the effect of such action of the respondents in 2017, has resulted in negation of the right of the petitioners for their legitimate career advancement.

12. The rules which were amended in 2002 by providing a percentage of quota for transfer of persons from other service to the ministerial service in the matter of promotional prospects of the Lab Assistants, the administration could not have possibly foreseen the present development, namely bringing the pay scale on par as between the Lab Assistants and Junior Assistants. However, in the light of the above development, the authority should not lose sight of the fact that the amendment to the rule was necessitated to provide promotional avenue to the post of Lab Assistant, as without such amendment, the post would have become dead end post.

13. As submitted by the learned counsel for the petitioners that the post of Lab Assistant does not have any other avenue of promotion except to the post of Junior Assistant and from Junior Assistant, further career advancement is possible in the administrative hierarchy. If promotion to the post of Junior Assistant is denied, it means that the career advancement of the petitioners would come to an abrupt halt permanently till their retirement. Such adverse scenario does not augur well for good administration as right to have reasonable and proper promotional opportunity, is a fundamental right within the administrative framework and no category of employees could be denied the legitimate career progression in Public Service and allow them to stagnate at a particular level undermining their efficiency and expectations.

14. Needless to mention that in the absence of avenues for career growth would not sub serve efficient administration as the same would demotivate any employee from discharging the duties to his\her full potential. In any case, the doctrine of legitimate expectation is one of the recognized principles in service jurisprudence which is to be applied in any given case, whenever such legitimate expectation is sought to be negated.

15. It is useful to refer to the relevant provisions of the rule which read as under:

"9.By recruitment by transfer from any other service.

(g) 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 following conditions, namely:-

(i) Persons in services, other than the Tamil Nadu Ministerial Service, who are in categories having no promotional opportunities or even after more than one promotion in the respective service would still be in a category carrying scale of pay lower than that of Junior Assistant or Junior Assistant cum-Typist or Typist alone shall be considered for appointment by recruitment by transfer as Junior Assistant or Junior Assistant-cum-Typist or Typist in the Tamil Nadu Ministerial Service, subject to the possession of the prescribed qualifications for direct recruitment."

16. As far as the case on hand is concerned, the above rule has a rider that in consideration of promotion to the post of Junior Assistant, the post should carry a lower pay than that of Junior Assistant. But what ultimately falls for consideration before this Court is whether an employee carrying the same pay scale as that of the pay scale applicable to the promotional post, can he/she be denied promotion at all in his/her entire career in terms of the spirit of the rule and object behind the amendment of 2002. In order to give thrust to the object and the spirit of the rule providing a promotional opportunity to the dead end post of Lab Assistant, merely because of change of pay scale, cannot be allowed to take away a valuable right to promotion during the long career span of an employee.

17. In the said circumstances, the Government has to fairly consider the claim of the petitioners and issue necessary clarification towards consideration of the claim of these petitioners for promotion to the post of Junior Assistant or to take suitable action for tweaking the rule in order to remove the so called impediment as reflected in the rule or as it perceived in respect of the petitioners' category. In the counter affidavit, it has been clearly stated that the Government has not taken any steps in issuing any clarification as on date. This Court in the fitness of things, would therefore have to issue suitable direction to the Government for issuing necessary clarification, towards redressal of the legitimate grievance of the petitioners/Lab Assistants.

18. In the above circumstances, this writ petition is disposed of with a direction to the first respondent to issue necessary clarification or to initiate any action for inclusion of the post of Lab Assistant for promotion to the post of Junior Assistant, notwithstanding the parity of pay scales as applicable to both the posts in order to subserve the spirit of the rule for which it was amended in 2002.

19. This Court trust that the Government would take into consideration, the observation of this Court herein and would initiate action in this regard, atleast on an equitable consideration.

20. The first respondent is directed to issue appropriate clarification or order clearing the air of uncertainty in the subject matter, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

gsk
To

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.

+1 CC to Mr. Dakshayani Reddy, Advocate sr 6830.
+1 CC to Government Pleader sr 6790.

PM(CO)
SP(25/02/2021)

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