



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.9949 of 2017

and

W.M.P. (MD)Nos.7619 and 7620 of 2017

WEB COPY

J.Sandhya

... Petitioner

vs.

1.The Director,
Collegiate Education,
Office of the Collegiate Education,
Chennai.

2.The Joint Director,
Officer of the Collegiate Education,
Tirunelveli Region,
Palayamkottai, Tirunelveli.

3.The Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam Road, Chennai.

4.The Joint Commissioner/Executive Officer,
Hindu Religious and Charitable Endowment Board,
Susindram, Kanyakumari District.

5.The Principal,
Sri Devikumari Womens' College,
Kulithurai-629 163, Kanyakumari District.

6.The Secretary,
College Committee,
Head Office of the College Secretary,
Sri Devikumari Womens' College,
Kulithurai at Susindram,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.52085/F2/2015, dated 23.12.2016 passed by the first respondent and quash the same as illegal and consequently to direct the respondents to transfer the petitioner from Lab Assistant post to the Junior Assistant/Typist/Store Keeper post in the fifth respondent college.



WEB COPY

For Petitioner : Mr.F.X.Eugene
For R-1 and R-2 : M.Linga Durai
Government Advocate
For R-4 : Mr.M.Saravanan
For R-3 and R-5 : No appearance

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent, dated 23.12.2016, and to direct the first respondent to transfer the petitioner from the post of Lab Assistant to Junior Assistant/Typist/Store Keeper post in the fifth respondent College.

2.Heard Mr.F.X.Eugene, learned Counsel for the petitioner, Mr.M.Linga Durai, learned Government Advocate appearing for the respondents 1 and 2 and Mr.M.Saravanan, learned Counsel for the fourth respondent.

3.The petitioner's father died while he was working as a Night Watchman in the fifth respondent College, which is an aided non minority College. Since the petitioner's father died while in service, the petitioner was given appointment as Lab Assistant on compassionate ground. Though the petitioner had plus two qualification, it is stated by the petitioner that he has passed B.Sc, Maths in 2001. Earlier, there was some problem for the petitioner even to get into the post of Lab Assistant or Junior Assistant and the petitioner obtained an order from this Court. By order, dated 13.11.2006, this Court directed the sixth respondent to appoint the petitioner as Junior Assistant/Lab Assistant on compassionate ground. Later the petitioner was appointed as Lab Assistant in the fifth respondent College.

4.It is admitted before this Court that any person appointed as Lab Assistant will stagnate in the same post till his retirement, as there is no promotional avenue. However, the post of Junior Assistant, which is recognized as a post in the same cadre, carries an advantage, because of promotional avenues. Nearly, after ten years of service, the petitioner finds that there is vacancy in the post of Junior Assistant in the same College and submitted a representation to the sixth respondent on 01.10.2015 to transfer the petitioner from the post of Lab Assistant to the post of Junior Assistant. Since no action was taken by the respondents, the petitioner approached this Court



disposed of by this Court with a direction to the respondents to consider the representation of the petitioner, dated 01.10.2015. Thereafter, the representation was rejected by the respondents vide impugned order dated 23.12.2016, relying upon a clarification issued by the Government letter, dated 23.12.2016. Challenging the same, the present Writ Petition is filed.

5.The learned Counsel appearing for the petitioner submitted that there is no legal impediment for transferring the petitioner from the post of Lab Assistant to the post of Junior Assistant, especially when there is vacancy in the post of Junior Assistant as on date. The learned Counsel then submitted that in several Colleges, depending upon the availability of vacancy in the post of Junior Assistant, persons in the post of Lab Assistant, are being transferred to the post of Junior Assistant as a matter of practice and that therefore, the impugned order is in violation of Article 14 of Constitution of India. The learned Counsel for the petitioner further submitted that the impugned order based on the letter of Government is arbitrary and misconceived. The Government letter referred to in the impugned order only states that a Lab Assistant, who is drawing the same salary of Junior Assistant, can not be given promotion by transfer. It is also submitted that the Government ought to have taken a decision regarding the transfer of persons from the post of Lab Assistant to the post of Junior Assistant based on the seniority and availability of vacancy.

6.The learned Counsel for the petitioner relied upon a judgment of this Court wherein, the order of learned Single Judge of this Court allowing the Writ Petition in a similar situation, was upheld by the Honourable Divisional Bench of this Court in Writ Appeal W.A.(MD)No.114 of 2020, by order dated 25.03.2021. The relevant portion of the judgement passed by the Divisional Bench is extracted below for convenience:

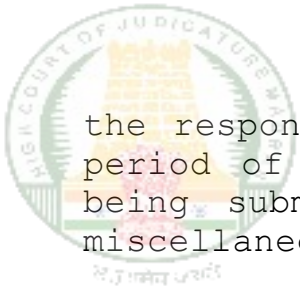
"5.We find force in the submissions made by the learned counsel appearing for the respondents. As per G.O.Ms.No.11, Education Department, dated 04.01.1989, the recruitment by transfer can be made from the post of Lab Assistant to the post of Junior Assistant. Though it has been misconstrued as that of promotion from the post of Lab Assistant to the post of Junior Assistant, inasmuch as there is no loss of revenue to the appellants, such recruitment by transfer cannot be objected to, after all, both the posts are drawing the same scale of pay, which certainly benefits the persons, who moved from the post of Lab Assistant to the post of Junior Assistant.



6.Right to be considered for promotion cannot be denied, though it is not a vested right. The proceedings relied upon by the appellants are meant for Specific Service Rules namely, the Tamil Nadu Private Colleges (Regulation) Act, 1976 and therefore, it cannot be applied in the case on hand. Even otherwise, as observed by us, the facts would clearly establish that no prejudice is caused. To put it differently, the Management can very well fill the post of Junior Assistant. If the post is filled otherwise, the appellants would have given sanction/permission. Admittedly, the posts are also vacant. Therefore, looking from any perspective, we do not find any reason to interfere with the order of the learned Single Judge. Accordingly, these Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed ."

7.This Court, having regard to the view expressed by the Honourable Divisional Bench of this Court above referred to, has to follow the same. Further, it is admitted before this Court that the post of Junior Assistant carries service benefits, whereas, no promotional avenue is available to the post of Lab Assistant. Hence, it will be a tendency of every person, who is employed as Lab Assistant, to seek transfer to the post of Junior Assistant to have promotional opportunity. It is high time for the Government to frame appropriate rules or issue direction, so as to avoid inter se disputes, regarding appointment of Junior Assistant by transfer of Lab Assistant with due consideration to the length of service and seniority of persons. It is admitted that no prejudice is likely to be caused to the respondents, if the petitioner is transferred from the post of Lab Assistant to the post of Junior Assistant. It is not brought to the notice of this Court that any other senior is available in the post of Lab Assistant. It is now stated before this Court that only one post of Lab Assistant is sanctioned to the College and that the petitioner is in service for nearly twelve years now in the same post. It is also admitted that there is a vacancy in the post of Junior Assistant in the same College. Therefore, this Court has no hesitation to hold that the petitioner's request for transfer is well justified and the Writ Petition can be allowed.

8.Accordingly, the Writ Petition is allowed. The impugned order passed by the first respondent, dated 23.12.2016 is quashed. The fourth respondent is directed to transfer the petitioner from the post of Lab Assistant to the post of Junior Assistant. This exercise shall be undertaken by the fourth respondent within a period of four weeks from the date of receipt of a copy of this order, the transfer being effected by the fourth respondent,



the respondents 1 and 2 shall also approve the transfer within a period of four weeks from the date of receipt of such proposal being submitted to them. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

tmg/cmr

To

- 1.The Director,
Collegiate Education,
Office of the Collegiate Education,
Chennai.
- 2.The Joint Director,
Officer of the Collegiate Education,
Tirunelveli Region,
Palayamkottai, Tirunelveli.
- 3.The Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam Road, Chennai.
- 4.The Joint Commissioner/Executive Officer,
Hindu Religious and Charitable Endowment Board,
Susindram, Kanyakumari District.
- 5.The Principal,
Sri Devikumari Womens' College,
Kulithurai-629 163, Kanyakumari District.

+1 CC to M/s.SPL.GP (SR-30348[F] dated 27/09/2021)

+1 CC to M/s.M.SARAVANAN, Advocate (SR-30285[F] dated 27/09/2021)

+1 CC to M/s.F.X.EUGENE, Advocate (SR-30295[F] dated 27/09/2021)

W.P. (MD)No.9949 of 2017

24.09.2021

RK (18/10/2021) 5P 9C

<https://hcservices.ecourts.gov.in/hcservices/>