



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2022

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.22444 of 2021
& WMP(MD)No.18973 of 2021

K.Jayakumar

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by the Secretary,
Department of Higher Education,
Fort St George, Chennai-600 009

2.The Director of Collegiate Education,
College Road, Chennai-600 006

3.The Joint Director of Collegiate Education,
Madurai Region, Palam Station Road,
Madurai-625 002

4.The Secretary,
The American College,
Madurai-625 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent Joint Director of Collegiate Education in O.Mu.No.10475/u1/2020 dated 30.11.2021, quash the same and further direct the respondents 2 & 3 herein to approve forthwith the promotion of the petitioner as Junior Assistant in the 4th respondent's college and disburse the grant-in-aid towards his salaries w.e.f., 01.05.2020 with all attendant benefits.

For Petitioner : M/s.S.A.Amala
For Respondent : Mr.PT.Thiraviam, GA

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to



the impugned proceedings issued by the third respondent Joint Director of Collegiate Education in O.Mu.No.10475/u1/2020 dated 30.11.2021, quash the same and further direct the respondents 2 & 3 herein to approve forthwith the promotion of the petitioner as Junior Assistant in the 4th respondent's college and disburse the grant-in-aid towards his salaries w.e.f., 01.05.2020 with all attendant benefits.

2. Heard Ms.A.Amala, learned counsel appearing for the petitioner and Mr.P.T.Thiraviam, learned Government Advocate appearing for the respondents.

3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4. According to the petitioner, he was initially appointed as the Marker in the sanctioned post on 4.12.1997 in the 4th respondent college and later, he was promoted to the post of Lab Assistant on 01.09.2005 and also as Junior Assistant with effect from 01.05.2020. On 16.11.2020, the 4th respondent College sent a proposal to the 3rd respondent, seeking approval and disbursement of grant-in-aid towards his salary. By proceedings dated 30.11.2021 impugned in the Writ Petition, the 3rd respondent returned the proposal citing Government Letter dated 14.08.2013 as well as the proceedings of the Director of Collegiate Education, dated 18.09.2013, that the question of promoting Lab Assistant to the post of Junior Assistant does not arise inasmuch as the scale of pay of both cadres are equal. Challenging the impugned proceedings of the 3rd respondent, the present Writ Petition has been filed by the petitioner.

5.The learned counsel appearing for the petitioner while reiterating the averments made in the affidavit filed in support of the Writ Petition, submits that virtually, there is no parity of pay sanctioned by the Government between the posts of Lab Assistant to that of Junior Assistant and the 4th respondent college has been filling up the vacancies in the cadre of Junior Assistant and unless, the Lab Assistants are promoted to the post of Junior Assistant, they cannot be further promoted to higher cadres and as such, the petitioner has been promoted to the post of Junior Assistant and therefore, taking note of the same, the 3rd respondent ought not to have returned the proposal. The learned counsel further submits that the issue involved in the present Writ Petition has been squarely covered by a decision of this Court in W.A.(MD) No.114 of 2020 vide order dated 25.03.2021, wherein, a Division Bench of this Court, has held as under:

4.The learned counsel appearing for respondent No.1 in W.A.(MD)No.9 of 2020 placing reliance upon G.O.Ms.No.11, Education Department, dated 04.01.1989, submitted that recruitment by transfer is permissible from Lab Assistant to Junior Assistant. Secondly, it

<https://hcservices.ecourts.gov.in/hcservices> submitted that the post of Junior Assistant is a



feeder category to the post of Assistant and thereafter, Superintendent. However, the post of Lab Assistant is not a feeder category. The incumbents are languishing in the post of Lab Assistant for decades. Therefore, in any case, no prejudice would be caused.

WEB COPY

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."

6. The learned Government Advocate who takes notice for the respondents fairly submits that the issue involved in the present Writ Petition has been covered by the decision cited supra and there is no impediment for consideration of the claim of the petitioner since the post of Lab Assistant is not a feeder category to the post of Junior Assistant.

7. In view of the submissions made by both learned counsel and having regard to the decision of a Division Bench of this Court, this Court feels it appropriate to direct the 3rd respondent to reconsider the matter afresh in the light of the decision of the Division Bench of this Court in W.A.(MD) No.114 of 2020 dated



8. Accordingly, the Writ Petition is allowed and the impugned proceedings dated 30.11.2021 of the 3rd respondent is set aside. The 3rd respondent is directed to reconsider the matter afresh as regards the approval of the appointment of the petitioner in the light of the decision of the Division Bench of this Court in W.A.(MD) No.114 of 2020 dated 25.03.2021 and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Crl.Side)

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

dn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary,
State of Tamil Nadu,
Department of Higher Education,
Fort St George, Chennai-600 009

2.The Director of Collegiate Education,
College Road, Chennai-600 006

3.The Joint Director of Collegiate Education,
Madurai Region, Palam Station Road,
Madurai-625 002

4.The Secretary,
The American College,
Madurai-625 002.

+1 CC to M/s.A.AMALA, Advocate (SR-875[F] dated 07/01/2022)

+1 CC to M/s.SPL.GP (SR-974[F] dated 10/01/2022)

W.P (MD) No.22444 of 2021
07.01.2022

MK/18.03.2022/4P/7C