



W.P.No.33299 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.33299 of 2016
and
W.M.P.No.28771 of 2016

1.V.B.Kumaraswamy

2.R.R.Sujanya

...Petitioners

Vs

1.The Government of Tamil Nadu,
Rep. by its Deputy Secretary to Govt.,
Higher Education Department,
Fort St. George, Chennai - 600009.

2.The Director of Collegiate Education,
College Road, Chennai - 600006.

3.The Regional Joint Director of
Collegiate Education,
Saidapet, Chennai - 600015.

4.The Secretary,
Dwaraka Doss Goverdhan Doss
Vaisnav College,
No.833, Periyar E.V.R. Salai,
Arumbakkam, Chennai - 600106.

...Respondents



W.P.No.33299 of 2016

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the 3rd respondent pursuant to his proceedings made in O.Mu.No.01243/Ee/2014, dated 12.12.2014, followed by the common proceedings of the 1st respondent made in Letter No.646/G2/2013-1, dated 14.08.2013, besides the said later proceedings of the 1st respondent along with similar nature of concomitant proceedings if any insofar as the petitioners are concerned and quash the same as null and void, illegal and invalid, and consequently directing the 4th respondent to forward a proposal recommending the names of the petitioners as per the order of seniority before the 3rd respondent, the competent authority for approval with further direction, directing the 3rd respondent to approve the names of the petitioners as 'Junior Assistants' as per order of seniority with all other attendant benefits with effect from the respective dates of vacancies.

For Petitioners : Mr.A.Amal Raj

For R1 to R3 : Mr.K.H.Ravikumar,
Government Advocate

For R4 : Mr.K.Shakespeare



W.P.No.33299 of 2016

WEB COPY

ORDER

Heard Mr.A.Amal Raj, learned counsel for the petitioners, Mr.K.H.Ravikumar, learned Government Advocate for the respondents 1 to 3 and Mr.K.Shakespeare, learned counsel for the fourth respondent.

2. Both the petitioners herein are employed as Laboratory Assistants in the fourth respondent College. The Government, in G.O.Ms.No.11, Education Department, dated 04.01.1989, had examined the proposal of the Director of Collegiate Education and ordered that irrespective of the scales of pay, the post of Junior Assistant in a Private College shall be filled up from the persons workings in various other categories, including the post of Laboratory Assistant on seniority basis, as per Rule 4(i) of the Tamil Nadu Private Colleges (Regulations) Rules, 1976, as amended. In accordance with the aforesaid Government Order, the petitioners herein were promoted to the post of Junior Assistant from the post of Laboratory Assistant on 02.09.2013 and 05.11.2013 respectively. When the College had sought for approval of the petitioners' promotion to the post of Junior Assistant, the same came to be rejected through the impugned order dated 12.12.2014, predominantly on the



W.P.No.33299 of 2016

ground that since the scale of pay of both the Laboratory Assistant and Junior Assistant are one and the same, such a promotion is impermissible, in view of Government letter No.646/G2/2013-1, dated 14.08.2013. This rejection order is put under challenge in the present writ petition.

3. The impugned order is liable to be struck down on the main ground that when the Government Order in G.O.Ms.No.11, dated 04.01.1989, provides for promotion to the post of Junior Assistant from the post of Laboratory Assistant, irrespective of the scales of pay which the employees have been receiving, such an order cannot be diluted through a letter of the Government. In other words, a clarification letter cannot supersede or overwrite a Government Order. On this main ground, the impugned order is liable to be quashed.

4. This apart, the very same issue has come up for consideration before this Court, as to whether approval of appointments to the post of Junior Assistant can be rejected on the ground that both the posts carry the same scale of pay, in view of the Government letter dated 14.08.2013,



W.P.No.33299 of 2016

WEB COPY

in the case of ***G.Angamuthu Vs. The State of Tamil Nadu, Higher Education (G2) Department and others*** passed in ***W.P.(MD) No.12783 of 2017, dated 19.12.2018***. In the said case, reliance was placed on two other decisions of this Court in this regard and ultimately, it was held that the Government letter dated 14.08.2013 and yet another letter dated 18.09.2013 will not have a statutory force, so as to bar promotion of a Lab Assistant to the post of Junior Assistant in a Private College. The relevant portion of the order reads as follows:-

"2.Mr.H.Mohamed Imran, learned counsel appearing for the petitioner would contend that the letters relied upon by the respondents cannot govern the case of the petitioner since his services are governed the Tamil Nadu Private Colleges (Regulation) Act, 1976. The Government letters are applicable only to the persons working under the Tamil Nadu Ministerial Services. In support of his contention, the learned counsel relied upon the Judgment of the learned Single Judge of this Court reported in 2002 (3) CTC 336-(S.Mohamood Basha Vs. The Director of Collegiate Education), wherein, a learned Single Judge had held that the Tamil Nadu Private Colleges Regulation Act is a self contained



W.P.No.33299 of 2016

code. The Tamil Nadu State and Subordinate Service Rules will not have any statutory force insofar as the persons employed in the private colleges are concerned.

*3.The said judgment was followed by another learned Single Judge of this Court in **W.P.(MD).No.5583 of 2010-(T.Nirmala Devi Vs. The District Elementary Educational Officer and others)**. It is also contended by the learned counsel appearing for the petitioner that the above judgment has also been confirmed by the Division Bench of this Court in **W.A.(MD).No.1013 of 2017**.*

4.In view of the same, the letters dated 14.08.2013 and 18.09.2013 cannot be considered as having statutory force, so as to bar promotion of Lab Assistant working in Private Colleges as Junior Assistants. Unless, it is shown that the promotion is not within the sanctioned strength of the institution, the authorities cannot deny the approval."

5. Thus, the present impugned order, rejecting the proposal of the fourth respondent College for approval of appointment of the petitioners herein, cannot be sustained, in the light of the above findings.



W.P.No.33299 of 2016

WEB COPY

6. In the result, the impugned order dated 12.12.2014 is quashed. Consequently, the fourth respondent College is granted liberty to submit a proposal to the second respondent herein, seeking for approval of the appointments of both the petitioners herein for the post of Junior Assistant and on receipt of such a proposal, the second respondent herein shall forthwith pass orders, approving their appointments with effect from the date of their original appointment, i.e., from 02.09.2013 insofar as the first petitioner namely V.B.Kumaraswamy is concerned and from 05.11.2013 insofar as the second petitioner namely R.Sujanya is concerned. Such orders shall be passed atleast within a period of four weeks from the date of receipt of the fourth respondent's proposal.

7. The writ petition stands thus allowed. No costs. Consequently, connected miscellaneous petition is closed.

10.01.2023

Index: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order

hvk



WEB COPY



W.P.No.33299 of 2016

M.S.RAMESH,J.

hvk

To

- 1.The Deputy Secretary to Government,
Higher Education Department,
Fort St. George, Chennai - 600009.
- 2.The Director of Collegiate Education,
College Road, Chennai - 600006.
- 3.The Regional Joint Director of
Collegiate Education,
Saidapet, Chennai - 600015.
- 4.The Secretary,
Dwaraka Doss Goverdhan Doss
Vaisnav College,
No.833, Periyar E.V.R. Salai,
Arumbakkam, Chennai - 600106.

W.P.No.33299 of 2016

10.01.2023