



W.A.No.4150 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

CORAM:

THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.No.4150 of 2019

and

C.M.P.No.25858 of 2019

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
School Education Department,
Secretariat, Chennai -9

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

...Appellants/Respondents

Vs.

K.Kanakka Devar

...Respondents/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against
the order dated 28.08.2017 made in W.P.No.27341 of 2005.

For Appellants : Mr.G.Nanmaran
Special Government Pleader

For Respondent : Mr.A.Rajaram



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J U D G M E N T

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(Judgment was made by **R.SUBRAMANIAN, J.**)

The Government is on appeal aggrieved by the order of the writ Court granting the relief of Certiorarified Mandamus and quashing the proceedings of the 1st respondent dated 12.04.2005 and directing the petitioners to regularize the services of the respondent in the category of laboratory Assistant. The respondent was appointed as a Lab Attender on 01.12.1972 and the said post was later re-designated as Lab Assistant. His services were regularized from the date of his initial appointment and probation was also declared on 10.01.1975. Since it was found that there were no Service Rules for the post of Lab assistant, the petitioner was transferred and posted as a record clerk which carried the same scale of pay. Thereafter in 1978, the petitioner was promoted as a Audio visual assistant but was reverted as a Record clerk, on 27.02.1980, for want of vacancy. Thereafter rules were framed for the post of Lab Assistant on 30.10.1981. While framing the rules, unfortunately for the respondent the post of record clerk which he was holding was made the feeder post for the post of Lab Assistant. The respondent therefore made various representations to the



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authorities seeking to rectify the injustice that has been caused to him because he was asked to work as a Record clerk though it carried the same scale of pay as a lab assistant. This request was rejected leading to the writ petition.

2. The respondent heavily relied upon the fact that 33 similarly placed persons who continued to work as Lab Assistant were given the benefit and were given promotions from the post of Lab assistant. Though the representation made by the petitioner on 06.08.2002, it remained unconsidered for nearly three years and only after this Court passed an order in WP No.3535 of 2005, the authorities chose to reject the representation leading to the instant writ petition.

3. The writ Court had held that the anomaly that has been created because of the fact that a post which held the same scale of pay being made a post in the feeder category by way of subsequent rules has to be cured by the State and the petitioner should be given the benefit treating him as a Lab Assistant right through, since he was appointed to that post



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and was functioning as such and he was transferred to the post of Record clerk only because of absence of Rules. Though Mr.Nanmaran, learned Special Government Pleader would contend that the petitioner was working as a record clerk when the rules were put in place and therefore, he cannot demand that he should be treated as a Lab Assistant from the date anterior to the date on which the rules were put in place, as rightly pointed out by the writ Court, the petitioner cannot be blamed for the said situation. It is a man made situation created because of the action of the authorities in appointing the petitioner as a Lab Assistant and re-designating him as a Lab assistant and regularizing his services with effect from the date of the initial appointment as a Lab Assistant. All these having been done without there being rules, for the post of Lab Assistant cannot be termed as a mistake on the part of the respondent. If at all it is a mistake on the part of the authorities. The respondent cannot be penalised for such mistake. We therefore do not find any room for interference with the order of the writ Court and the Writ appeal fails and it is accordingly dismissed. It is stated that the respondent has gone on voluntary retirement and the authorities will calculate the benefits that he would be entitled to if he has worked as a



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lab assistant right through and pay the difference if any within a period of twelve weeks from the date of receipt of a copy of this order.

Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (K.G.T., J.)
15.02.2023

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Index : Yes

Internet : No

Neutral Citation : Yes

Non-Speaking order

To

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