



W.P.(MD).No.17161 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.17161 of 2023

and

W.M.P(MD)Nos.14355 & 16630 of 2023

D.Balakumaran

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai-600 009.
- 2.The Director of School Education,
DPI Campus,
Chennai-600 006.
- 3.The Chief Educational Officer,
Theni.
- 4.The District Educational Officer (Secondary),
Theni,
Theni District.
- 5.The Head Master,
Government Higher Secondary School,
Thamaraikulam,
Theni District-625 605.

... Respondents



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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 of the 3rd respondent in Na.Ka.no.4687/A1/2020, dated 03.04.2023 and consequential order of the 5th respondent in Na.Ka.No.32/2023, dated 30.04.2023 and quash the same as illegal and consequently, directing the respondents to continue the petitioner in the post of Junior Assistant with all service and monetary benefits.

For Petitioner : Mr.V.Thirumal

For R1 – R4 : Mr.N.Ramesh Arumugam
Government Advocate

For R5 : No Appearance

ORDER

The present writ petition has been filed to call for the records of the 3rd respondent in Na.Ka.no.4687/A1/ 2020 dated 03.04.2023 and consequential order of the 5th respondent in Na.Ka.no.32/2023, dated 30.04.2023 and quash the same as illegal and consequently, directing the respondents to continue the petitioner in the post of Junior Assistant with all service and monetary benefits.

2. The petitioner was originally appointed as Office Assistant on 29.10.1997. His service was regularized by the District Educational Officer,



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Uthamapalayam on 27.01.1999 with effect from 07.11.1997. The petitioner's probation was declared vide order of the District Educational Officer, Uthamapalayam, dated 04.01.2000. Subsequently, he was promoted to the post of Record Clerk by the proceedings of the District Educational Officer, Uthamapalayam on 10.03.2012. Thereafter, he was regularized in the post of Record Clerk with effect from 18.05.2012 by the proceedings of the District Educational Officer, Uthamapalayam on 25.06.2013, following which he was promoted to the post of Lab Assistant by the proceedings of District Educational Officer, Uthamapalayam, dated 30.10.2013 with effect from 15.03.2013. The petitioner was regularized in the post of Lab Assistant by the proceedings of the District Educational Officer, Uthamapalayam on 06.05.2016 with effect from 30.10.2013. Thereafter he was promoted to the post of Junior Assistant vide proceedings of the DEO, Uthamapalayam, dated 25.10.2016 and was posted in the Government Higher Secondary School, Highways, Theni District. His post of Junior Assistant was regularized with effect from 27.10.2016 by the proceedings of DEO, Uthamapalayam, dated 24.11.2017. The petitioner had completed DOM training conducted by the 3rd respondent. He also completed other trainings and completed his probation period in the post of Junior Assistant. On that basis, the 3rd respondent sent a representation



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in December 2000 to the Deputy Director of School Education, Chennai for relaxation of rule and to pass necessary order regarding the completion of the petitioner's probation. While so, the 3rd respondent on 03.04.2023 passed the impugned order of cancellation of the petitioner's appointment for the post of Junior Assistant and reverted him back to the post of Lab Assistant. In furtherance to the same, the 5th respondent vide proceedings, dated 30.04.2023 passed a consequential order relieving the petitioner from the post of Junior Assistant on 30.04.2023 without any prior notice or calling for explanation from the petitioner. Assailing the same, this writ petition came to be filed.

3. The 3rd respondent has filed a counter and the learned Government Advocate appearing for the respondents submitted that the petitioner was initially appointed as Office Assistant and later, promoted as Lab Assistant by way of recruitment by transfer. He was thereafter posted as Junior Assistant under Tamil Nadu Ministerial service on 02.06.2016. The proposals for annual increment made by the petitioner was submitted and it was ascertained that the posting of the writ petitioner as Junior Assistant from the post of Lab Assistant was against the rules and hence, the process of declaring the probation was stopped. The appointment order of the petitioner as Junior Assistant from the



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post of Lab Assistant is against the rules and accordingly, directions were given to revert him back to the earlier post of Lab Assistant by an order, dated 07.02.2023. It was also communicated to the Chief Educational Officer, Theni by the proceedings of the Joint Director of School Education (Personnel) Department, Chennai. Previously the post of Lab Assistant did not have any promotional avenue and further, the post of Lab Assistant had lesser pay than that of the Junior Assistant and hence, candidates working as Lab Assistants were posted as Junior Assistant in terms of Rule 3 (g) of the Tamil Nadu Ministerial Service Rules. However, vide G.O.Ms.No.63, Finance Department, dated 26.02.2011, both the posts were brought under the same scale of pay and hence, one post can be posted as against the other. Only on the basis of the mandates of the said G.O.Ms.No.63, dated 26.02.2011, the petitioner's promotion to the post of Junior Assistant was reverted back to the post of Lab Assistant. The said reversion was based on the Government Letter of Principal Secretary of the School Education Department bearing letter no. 18932/Pa.Ka.No.4 (2) /2020, dated 07.02.2023. The said letter was issued only after the orders passed in W.P.No.13849 of 2020, dated 05.02.2021. However, it is brought to the notice of the Court that pursuant to the impugned orders, the petitioner had joined the reverted post of Lab Assistant and for the past 4



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months, he was serving as Lab Assistant and he is drawing a salary of Lab Assistant with effect from 30.04.2023. Since there is no difference on scale of pay between the Junior Assistant and Lab Assistant pursuant to the issuance of G.O.Ms.No.63, the learned Government Advocate pressed for dismissal of the writ petition.

4. Though the learned Government Advocate claimed that letter no. 18932/Pa.Ka.No.4 (2) /2020, dated 07.02.2023 of the Principal Secretary of the School Education Department which was based on the order passed by this Court in W.P.No.13849 of 2020, dated 05.02.2021, a perusal of the same do not reveal the same and nowhere the order passed by this Court in the aforesaid writ petition has been referred. That apart, subsequent letter was with respect to the case of one M.Malaichamy who had been reverted to the post of Lab Assistant from the post of Junior Assistant. A perusal of the relevant portion of the order passed by this Court in W.P.No.13849 of 2020, dated 05.02.2021 reveal a difference picture and the relevant portion of which is extracted as follows:

“18. In the above circumstances, this writ petition is disposed of with a direction to the first respondent to issue



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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.....”

5. Following this order, this Court in another case in W.P.No.2033 of 2023, dated 25.01.2023 passed favourable orders to the writ petitioner therein and the relevant portion of which is extracted as follows:

“8. There is no dispute with regard to the fact that the petitioner, who was holding the post of Lab Assistant was subsequently promoted and posted as Junior Assistant with effect from 22.08.2014. Such an order was passed by the District Educational Officer through proceedings dated 22.08.2014. There



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is also no dispute with regard to the fact that the petitioner was also working/discharging his duties as Junior Assistant for nearly ten years. If the third respondent wanted to cancel the appointment of the petitioner to the post of Junior Assistant, the minimum that was required on the part of the third respondent is that the petitioner should have been put on notice and the explanation of the petitioner should have been called for. The third respondent has taken a stand as if there is no difference in the scale of pay between the posts of Junior Assistant and Lab Assistant. However, the petitioner has taken a stand that the pay scale is different for both these posts and insofar as the pay scale of Junior Assistant, it is 5200-20200 + GP 2000 and whereas the pay scale for Lab Assistant is 5200-20200 + GP 1900. Therefore, according to the petitioner, the impugned order passed by the third respondent has virtually reverted the petitioner back to the post of Lab Assistant. Such an indication is also available in the order passed by this Court in W.P.No.13849 of 2020, dated 05.03.2021.

9. Learned Senior Counsel appearing on behalf of the petitioner urged this Court to go into grounds on which the third respondent has passed the order by relying upon Rule 3(g)(i) of the Tamil Nadu Ministerial Service Rules.

10. It is not necessary for this Court to undertake such an exercise at this juncture. There is some indication given by this Court in the earlier order passed in W.P.No.13849 of 2020.



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Hence, if a fresh notice is issued by the third respondent calling for explanation, it is always open to the petitioner to rely upon the earlier order passed by this Court.

11. In the light of the above discussion, this Court has absolutely no hesitation to interfere with the order passed by the third respondent and the consequential order passed by the fifth respondent since these orders have been passed in violation of principles of natural justice and these orders have civil consequences against the petitioner.

12. Accordingly, the impugned proceedings of the third respondent in Na.Ka.No.1006/A1/2020 dated 12.01.2023 and the consequential order passed by the fifth respondent in Na.Ka.No. 31/2023 dated 21.01.2023 are hereby set aside. If the third respondent wants to initiate any fresh proceedings against the petitioner in this regard, it is left open to the third respondent to do so by issuing a fresh notice to the petitioner and calling for explanation from the petitioner and consider the explanation and thereafter pass orders in accordance with law.”

6. The learned counsel for the petitioner drew my attention to the order passed by the Chief Educational Officer, Thiruvannamalai, dated 25.05.2023 with respect to reversion of one candidate, namely K.Venkatraman from the post of Junior Assistant to Lab Assistant on the guise that both the post are fixed with identical scale of pay, in which the order passed by this Court in



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W.P.No.2033 of 2023 has been followed and the petitioner in the aforesaid writ petition has been permitted to continue in the post of Junior Assistant from where he was reverted as Lab Assistant. However, in the nature and circumstances of this case, no doubt, the petitioner has been reverted from the post of Junior Assistant without notice and an opportunity of being heard been given, which is nothing but a clear case of violation of principles of natural justice.

7. In view of the same, this Court has no hesitation to quash the impugned orders, dated 03.04.2023 and 30.04.2023 and thereafter, direct the 3rd respondent to initiate fresh proceedings against the petitioner in this regard by issuing a fresh notice to the petitioner and calling upon explanation from the petitioner, consider the same and thereafter, pass orders in accordance with law.

8. With the above said observations, this Writ Petition stands allowed.
No costs. Consequently, connected Miscellaneous Petitions are closed.

21.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

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School Education Department,
Secretariat,
Chennai-600 009.
- 2.The Director of School Education,
DPI Campus,
Chennai-600 006.
- 3.The Chief Educational Officer,
Theni.
- 4.The District Educational Officer (Secondary),
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L.VICTORIA GOWRI, J.

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