



W.P.(MD).Nos.1712, 1713, 1714, 1715 of 2015
and 3420, 3421, 3422, 3423 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.1712, 1713, 1714, 1715 of 2015

and

3420, 3421, 3422, 3423 of 2016

and

W.M.P.(MD).Nos.3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 3022,

3023, 3024, 3025 of 2016,

4474, 4475, 4476, 4477 of 2016,

3462, 3464, 3465, 3467 of 2018

M.P.(MD).Nos.2, 2, 2 of 2015

W.P.(MD).No.1712 of 2015:

C.Thavamani

... Petitioner

Vs.

1.The Director of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.

2.The Joint Director of Collegiate Education,
Madurai Region,
Madurai – 625 020.

3.The Secretary and Correspondent,
Pasumpon Muthuramalinga Thevar College,
Usilampatti – 625 532,
Madurai District.

... 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, calling for the records relating to the Impugned Proceedings issued by the second respondent herein in O.Mu.No.9861/E3/2014 dated 22.01.2015, quash the same and further direct the second respondent herein to approve forthwith the promotion of petitioner as Junior Assistant from 01.09.2012 in the third respondent college with salary and other attendant benefits.

(In all Writ Petitions):

For Petitioner : Mr.E.V.N.Siva

For R-1 and R-2 : Mr.V.Omprakash,
Government Advocate.

For R-3 : No Appearance

COMMON ORDER

The Writ Petition in W.P.(MD).No.1712 to 1715 of 2015 are filed to quash the order dated 22.01.2015 with a consequential direction to approve forthwith the promotion of petitioners as Junior Assistant and for various other posts from the respective date in the third respondent college with salary and other attendant benefits.



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2. The petitioner C.Thavamani in W.P.(MD).No.1712 of 2015 was initially appointed as Marker on 04.12.1997, then promoted as Record Clerk, then as Laboratory Assistant and the same was approved by the respondents. Then the petitioner was promoted on 01.09.2019 as Junior Assistant in the retirement vacancy which became vacant on 31.08.2012 due to retirement of incumbent R.Stephenraj, but the respondents refused to approval the appointment, hence the present writ petition. The petitioner C.Ravichandran in W.P.(MD).No.1713 of 2015 was initially appointed as Gardener on 12.10.1994, then promoted as Library Assistant, then as Laboratory Assistant and the same was approved by the respondents. Then the petitioner was promoted on 01.01.2013 as Junior Assistant in the retirement vacancy which became vacant on 31.12.2012 due to retirement of incumbent O.Deivendran, but the respondents refused to approval the appointment, hence the present writ petition. The petitioner R.Vimal in W.P.(MD).No.1714 of 2015 was initially appointed as Laboratory Assistant on 22.06.2011 and the same was approved by the respondents. Then the petitioner was promoted as Junior Assistant on 17.03.2013 in the retirement vacancy which became vacant on 16.03.2013 due to retirement of incumbent M.Prema, but the respondents refused to approval the appointment, hence the present writ petition. The petitioner P.Kannan in



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W.P.(MD).No.1715 of 2015 was initially appointed as Laboratory Assistant on 10.08.2009 and the same was approved by the respondents. Then the petitioner was promoted as Store Keeper on 11.10.2012 in the death vacancy which became vacant on 10.10.2012 due to the death of incumbent K.Jeyalakshmi, but the respondents refused to approval the appointment, hence the present writ petition.

3. The Writ Petition in W.P.(MD).Nos.3420 to 3422 of 2016 are filed to quash the order dated 27.01.2016 with a consequential direction to the respondents not to disturb the petitioners present employment as Junior Assistants/Store Keeper in the Pasumpon Muthuramalinga Thevar College, Usilampatti, Madurai District.

4. The third respondent College is a Private Aided College. Previously, all the writ petitioners were appointed as Marker/Gardener/Laboratory Assistants etc. In the College, sanctioned post of three Junior Assistants / one Store Keeper posts became vacant on various dates on account of the retirement / death of the previous incumbents. The third respondent College promoted the petitioners as Junior Assistant/ Store Keeper with effect from the dates stated



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supra. The petitioners were discharging their duties in the newly promoted post.

The College submitted a proposal to approve the promotion of the petitioner on 17.12.2014. The second respondent refused to grant approval vide proceedings dated 22.01.2015 stating that as per the proceedings issued by the Deputy Secretary in letter dated 14.08.2013 and the letter by the first respondent proceedings dated 18.09.2013, promotion by way of transfer cannot be made from the post of Laboratory Assistants / Library Assistants to Junior Assistants/ Store Keeper, since the pay are identical.

5. The contention of the petitioners is that the second respondent herein cannot refuse approval by placing reliance on the proceedings issued by the Deputy Secretary and the first respondent, since the said letter / circular are not applicable to the persons working in Private Aided Colleges. The Act that is governing the Private Aided colleges is the Tamil Nadu Private Colleges (Regulation) Act and Rules. The promotion of the teaching and non-teaching staffs in the Private Aided Colleges are dealt with under Rule 11 (4) (i) by Tamil Nadu Private Colleges (Regulation) Act and Rules. The said Rule states promotion to non-teaching staffs working in private aided Colleges can be made on seniority who is having requisite qualification. Therefore, the



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petitioner submits that denying approval of promotion by the respondents is beyond the scope of the regulation stated in the Private Schools Regulation Act.

6. The respondents have filed a counter stating that the salary of Junior Assistant / Typist are equal to the post of Lab Assistant. Hence, the promotion by transfer from the post of Lab Assistant to the Junior Assistant cannot be granted. Moreover, under G.O.Ms.No.43, Personnel and Administrative Reforms (Per.B) Department dated 15.02.1994, the revised guidelines had been issued in respect of appointment to the post of Junior Assistant / Junior Assistant – cum – Typists / Typist by recruitment by transfer from other services and in the said G.O, it has been categorically stated these posts are placed on par and carrying same salary. Hence, the promotion cannot be granted. The respondents also relied on G.O.Ms.No.63, Finance (Pay Cell) Department dated 26.02.2011. In the said Government Order, the pay scale has been fixed. Therefore, the petitioners claim of promotion cannot be accepted and approval cannot be granted.

7. Heard Mr.E.V.N.Siva, learned counsel for the petitioner and Mr.V.Omprakash, learned Government Advocate, for the respondents and perused the material on records.



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8. The first contention of the petitioner is that the government has passed G.O.Ms.No.11 Education Department dated 04.01.1989, wherein the Government has directed that irrespective of the scales of pay, the posts of Junior Assistant in a Private College should be filled up from the persons working in the categories of Record Clerk, Library Attenders, Laboratory Assistants, Museum Keepers, Herbarium Keepers and Mechanics. Following the said G.O. the Director of Collegiate Education has issued a proceeding in K.Dis.No.98743/Ye.4/90 dated 27.03.2001, wherein it is stated that in G.O.Ms.No.11 irrespective of scales of pay to the post of Junior Assistant in the Private College should be filled up by the persons who are working in the categories of Record Clerks, Library Assistants, Laboratory Assistants, Museum Keepers, Herbarium Keepers and Mechanics in similar time scales of pay in the same College on seniority basis as per Rule 11 (4) (I) of the Tamil Nadu Private Colleges (Regulation) Rules. The said proceedings further states seniority should be taken from the date of appointment. It also states that sweeper, gardener, peon is carrying lesser pay and hence they are feeder categories. When the said G.O. and the proceedings categorically allowed for promotion to Junior Assistant post from Lab Assistant post, denying approval is against the said G.O.



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9. It is seen that the respondents had relied on G.O.Ms.No.43 dated 15.02.1994 and declined to grant approval. On perusal of the G.O. it is seen that in Tamil Nadu Ministerial Service for the appointment to the post of Junior Assistant / Typist by recruitment by transfer, revised guidelines were issued. It is settled principles that the Tamil Nadu Subordinate Service Rules, the Tamil Nadu Government Servants (Conditions of Service) Act and the Ministerial Service Rules which are applicable only to the Government servants and are not applicable to the private Schools or Colleges. The private aided colleges are government by the Tamil Nadu Private Colleges Regulation Act and Rules and in the said Act and Rules there is no bar to promote the person from Lab Assistant/Library Assistant to Junior Assistant even though they carry equal pay scales.

10. Moreover, it is seen that the persons working in Lab Assistants, Record Clerk and Library Assistants cannot have any further promotion from the said post. Therefore, if they are transferred to the post as Junior Assistant / Typist or Store Keeper, they can be promoted further to the post of Assistant and Superintendent. If the private Schools and Colleges are following this, there will not be any loss to the Government. If such approval is not granted,



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then the private Schools or Colleges would indulge in fresh recruitments to the post of Junior Assistant and Lab Assistant, whereby the government would incur financial burden. Hence, both the Colleges as well as the Government are benefitted by such promotion. The Government is not incurring any extra financial burden by granting such promotion. The only objection by the respondents is that they carry equal pay and they are considered on par, hence they cannot be promoted. This Court is of the considered opinion that this plea is hyper technical. If the same cannot be considered promotion, they can be considered as transfer to another post. The respondent further submitted that the Library Assistant post comes under teaching staff whereas the Junior Assistant post comes under non-teaching staff. This is also hyper technical objection. As rightly pointed out by the Learned Counsel appearing for the petitioner that if transferred to Junior Assistant post the petitioner would get an opportunity to be promoted as Assistant and Superintendent. Also, the government would not incur any loss because of such transfer to Junior Assistant post, since Lab Assistant / Library Assistant / Junior Assistant carry same scale of pay.

11. Therefore, this Court is of the considered opinion that the respondents shall consider the alleged promotion from Lab Assistant to Junior



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Assistant as transfer and not promotion. If the same is considered as transfer, then the respondents would not have any impediment in approving the transfer. Hence declining such approval for transferring to such post cannot be sustained. The transfer shall be granted to the petitioners with consequential benefits. The said exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

12. For the reasons stated above, the Writ Petitions in W.P.(MD). Nos.1712, 1713, 1714 and 1715 of 2015 are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

13. Since the writ petitions W.P.(MD)Nos.1712, 1713, 1714 and 1715 of 2015 are allowed, the prayer sought for in the Writ Petition in W.P.(MD)Nos. 3420 to 3423 of 2016 has become infructuous. Therefore, nothing survives for adjudication. Therefore, this Court inclined to dismiss the Writ Petition in W.P. (MD)Nos.3420, 3421, 3422 and 3423 of 2016 as infructuous.



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14. Hence, the Writ Petitions in W.P.(MD)Nos.3420 to 3423 of 2016 are dismissed as infructuous. No costs. Consequently, connected miscellaneous petitions are closed.

14.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Collegiate Education Department,
Fort St.George,
Chennai.
- 2.The Director of Collegiate Education,
College Road,
Chennai – 600 006.
- 3.The Joint Director of Collegiate Education,
O/o. the Joint Director of Collegiate Educational Office,
Madurai Region,
Madurai,
Madurai District – 620 020.



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S.SRIMATHY, J.

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