



WEB COPY



W.P.No.5413 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.5413 of 2015
and
M.P.Nos.1 and 2 of 2015

Tamil Nadu Association of Non- Teaching
Staff of Aided Colleges,
Chennai – Vellore Region,
rep by its Regional Secretary, No.44/1, Station Road,
Kodambakkam,
Chennai – 600 024.

... Petitioner

Vs.

1. The Government of Tamil Nadu,
rep. by its Secretary to the Government,
Higher Education (G2 Department)
Secretariat, Chennai – 9.
2. The Director of Collegiate Education,
College Road, Chennai – 6.
3. The Joint Director of Collegiate Education,
Chennai Region, Chennai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to the letter No.646/G2/2013-1 dated 14.08.2013 issued by the first respondent and the consequential proceedings in



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Pa.Mu.No.8782/B1/2011 dated 18.09.2013 issued by the second respondent and quash the same and direct the respondents to follow the provisions of TNPCR while considering the promotions.

For petitioner : Mr.R.Subramanian
For respondent : Mr.C.Jayaprakash
Government Advocate

ORDER

This writ petition is filed seeking for a direction to quash the letter no.646/G2/2013-1 dated 14.08.2013 issued by the first respondent and the consequential proceedings in Pa.Mu.No.8782/B1/2011 dated 18.09.2013 issued by the second respondent and direct the respondents to follow the provisions of TNPCR for making promotions.

2. The facts in brief as culled out from the affidavit of this writ petition are as follows:

2.1. The petitioner is a registered association of non-teaching staff working in aided Colleges of Tamil Nadu. The Government of Tamil Nadu has promulgated Tamil Nadu Private Colleges Act, 1976, to regulate the conditions of service of teaching and non- teaching staff employed in private colleges. As per Rule 11 (4), *ibid*, which reads as follows:



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“(4) (i) Promotions in respect of teaching staff shall be made on the grounds of merit and ability, seniority being considered only where merit and ability are approximately equal, and in respect of non-teaching staff promotions shall be made on seniority basis, provided other conditions regarding qualifications are satisfied.”

2.2 While so, the Joint Director of Collegiate Education, Thirunelveli Region has issued a proceedings in Na.ka.No.10383E3/86 dated 02.03.1987 addressed to the Secretaries of all aided colleges the guidelines regarding the promotion of non-teaching staff. Further, the annexure to the proceedings provides educational qualifications for different posts. The second respondent *vide* proceedings in Mu.Mu.No.51204/A7/87 dated 23.06.1987 stated that under Rule 11 (4) (1), in case of non-teaching staff promotion should be made only based on seniority provided they satisfy the minimum qualifications. Subsequently, another proceeding was issued in Na.Ka.No,88359/A7/87 dated 03.03.1989 stating that in case of aided colleges, whenever vacancies arises in the post of Junior Assistant, it should be filled only from the feeder category, *viz.*, Record Clerk, Lab Assistant etc. The said conditions was also reiterated in Na.Ka.No.2282/A4/90 dated 08.03.1990. The second respondent has issued proceedings in K.Dis No.98743/YE4/90



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dated 27.03.1991 stating that the seniority from the date of first appointment to the feeder category should be taken into account.

2.3. While so, the second respondent has sought for clarification from the first respondent regarding promotion to the post of Junior Assistant/Store Keeper etc., from the employees of Tamil Nadu Ministerial Service and for publication of the panel. The first respondent has addressed a letter *vide* letter No.646/G2/2013-1 dated 14.08.2013 that as per Rule 13 of Tamil Nadu Civil Ministerial Service Rules, the competent authority alone has to prepare the panel and also the pay scale of Lab Assistant is equivalent to the pay scale of a Junior Assistant/Typist/Store keeper etc., and hence, Lab Assistants cannot to promoted. Eventually, based on the above information, the second respondent issued in Pa.Ma.No.8782/B1/2011 dated 18.09.2013 stated that Lab Assistants working in aided colleges are not entitled to be promoted to any one of the three post and the same was communicated in proceedings in Na.Ka.No.9366/A1/2013 dated 11.10.2013 by the third respondent to the Principal of all the aided colleges to implement the same. Aggrieved, by the same this present writ petition.



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3. The second respondent has filed counter affidavit stating that the Government Aided Colleges are governed by the provisions of Tamil Nadu Private College (Regulations) Act, 1976 and rules frames thereunder. Further, as per G.O.(Ms.) No.63, Finance (Pay Cell) Department, dated 26.02.2011, the pay scale for the post of Lab Assistant has been revised to the same scale of pay as that of Junior Assistant and the Lab Assistant post is not a feeder category for Junior Assistant post.

4. It is submitted by the learned counsel for the respondents that paragraph 11 of G.O.Ms.No.43, Personnel and Administrative Reforms (Per.B) Department dated 15.02.1994, runs as under:

"However, persons holding posts of identical scales in other services like the Tamil Nadu General Subordinate Service, Tamil Nadu Educational Subordinate etc., need not be considered for appointment by transfer as Junior Assistant/Junior Assistant-cum-Typists/Typists as such transfer will block the promotion opportunities of persons in lower categories."

5. It is also further contended by the learned counsel for the respondents that as per Tamil Nadu Private Colleges (Regulations) Rules, 1976, every teacher or other persons employed in a college shall be



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subjected to the orders issued by the Government from time to time and hence, sought for dismissal of this writ petition.

6. The short point for consideration in this writ petition is whether the respondent Government has got powers to control the services of non-teaching staff of private aided colleges in respect of service conditions including promotion. According to the petitioner, the petitioner is entitled for promotion. However, the respondents issued an impugned letter stating that as per the Rules the petitioner cannot be promoted. The petitioner challenged the said order.

7. Rules have been framed basing on Section 50 of the Act. As per Rule 11(4) and Rule 53 of Tamil Nadu Private Colleges Regulation Act, 1976, promotions to the non-teaching staff will be given only based on the seniority. It is not in dispute that the petitioner has been promoted without following 11 (4), *ibid*. As long as there is no dispute that the petitioner is promoted basing on the Tamil Nadu Private Colleges Regulation Act, 1976 rules made thereunder, the respondents cannot impose that the Tamil Nadu State and Subordinate Service Rules have to be followed for promoting the non-teaching staff in aided colleges. As per



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Tamil Nadu Ministerial State Rules, a panel has to be prepared by the appointing authority to consider promotions. As per Rule 11 (4) of the Tamil Nadu Private Colleges Act, 1978, and also by the Government Order promotion have not been given by preparation of panel but by way of seniority.

8. In view of the above discussions, this writ petition is allowed by setting aside the impugned orders. Connected M.Ps are closed. Costs made easy.

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Index : Yes/No
Internet : Yes/No
Citation : Yes/No

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