



W.P.No.15016 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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1. A.Sivalingam
2. E.Muthuvadivel
3. S.Venkatasamy
4. S.Meenakshi
5. A.Arulraj
6. K.Karthik
7. D.Raja
8. S.Mohan
9. B.Chandran
10. S.Ravichandran
11. D.Manikandan
12. M.Palaniyappan
13. C.Senthil
14. N.Arivusudar
15. P.Manokaran
16. G.Malaiguru
17. M.Kaliraj
18. T.Yogaraj
19. S.Vedhapuri
20. B.Balaji Rao

...Petitioners

-Vs-

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Fort St.George, Secretariat,
Chennai – 600 009.



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2. The Commissioner of School Education,
DPI Campus, College Road,
Chennai 600 006.

3. The Joint Director of School Education (Personnel),
DPI Campus, College Road,
Chennai 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to pass orders for creation of promotional avenue to the petitioners stagnated in the same post of Lab Assistant on par with other non-teaching staff in School Education Department, following the ratio laid down by the Hon'ble Apex Court to grant promotion by breaking the stagnation in the same post, in consideration of the representation submitted by the petitioners, with all consequential and other attendant benefits, within a time frame to be fixed by this Hon'ble Court.

For Petitioners : Mr.G.Sankaran, Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

This writ petition has been filed for direction directing the respondents to pass orders for creation of promotional avenue to the petitioners stagnated in the same post of Lab Assistant on par with other non-teaching staff in School



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Education Department, following the ratio laid down by the Hon'ble Apex Court to grant promotion by breaking the stagnation in the same post, in consideration of the representation submitted by the petitioners, with all consequential and other attendant benefits, within a time frame to be fixed by this Hon'ble Court.

2. Heard the learned Senior Counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents and perused the materials available on record.

3. The petitioners were appointed as Lab Assistants in High schools/Higher Secondary Schools under Rashtriya Madhyamik Shisha Abhiyan in the year 2017. Their services were regularized and they successfully completed their probationary period. In the absence of framing of rules, there is no promotional avenue provided for the direct recruits in the post of Lab Assistant. Therefore, they are stagnated in the same post from the date of their appointment.



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4. The learned Senior Counsel appearing for the petitioners submitted that the post of Lab Assistant carries lesser scale of pay than the post of Junior Assistant. Therefore, post of Lab Assistant remains to be a feeder post for promotion to the post of Junior Assistant as per Rule 3(g) of Tamil Nadu Ministerial Service Rules. However, subsequently, the scale of pay for the post of Lab Assistant was made on par with the scale of pay for the post of Junior Assistant. Since both the posts of Junior Assistant and Lab Assistant carries equal scale of pay, the avenue of promotion from the post of Lab Assistant to the post of Junior Assistant is prohibited as per Rule 3(g). He further submitted that the Hon'ble Supreme Court of India held that no Government servants can be stagnated in the same post without any avenue of promotion.

5. In the Judgment of ***Raghunath Prasad Singh Vs Secretary, Home (Police) Department, Government of Bihar and others*** reported in ***1988 (Supp) SCC 519***, it was held that in the absence of promotion prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. Therefore, directed the Government to provide at least two promotional opportunities to the officers of the State Police.



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6. He further submitted that even the Ministerial staffs working in the School Education Department Viz., Junior Assistant, Assistant and Superintendent are given promotional opportunity to the teaching post viz., B.T.Assistant and P.G.Assistant on acquiring necessary qualification within the vacancies earmarked as per Rules. However, the petitioners are not provided with any promotional opportunities. Though the Tamil Nadu School Education Subordinate Service and Special Rules for Tamil Nadu Higher Secondary Education Service provide for promotion by recruitment by transfer to the post of B.T.Assistant and P.G.Assistant, the benefits of promotion is not made available to the post of Lab Assistant, in spite of the fact that they are qualified with B.T.Assistant and P.G.Assistant degree.

7. In support of his contention, the learned Senior Counsel appearing for the petitioner relied upon the Judgment reported in **2004 9 SCC 65** in the case of **State of Tripura and others Vs K.K.Roy**, wherein it was held as follows:-

“ 6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that



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there was no avenue of appointment, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the Appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said principle.”

8. A perusal of the counter filed by the third respondent and the submissions made by the learned Government Advocate appearing for the respondents revealed that the scale of pay of the Lab Assistants remained lesser than the post of the Junior Assistant. The post of Lab Assistant comes under Tamil Nadu General State and Subordinate Service Rules. Whereas, the post of Junior Assistant falls under the Tamil Nadu Ministerial Service Rules. When the scale of pay of Lab Assistant was lower than that of the Junior Assistant, they were given promotion/transfer of service as Junior Assistant under the Tamil Nadu Ministerial Service Rules.



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9. As per G.O.Ms.No.63 Finance (Pay Cell) Department, dated 26.02.2011, the scale of pay of Lab Assistant has been revised Rs.5200-20200+2000 to 5200-20200+2400 resulting in equal scale of pay to the Junior Assistants. Therefore, the scale of pay for both the posts of Lab Assistant and Junior Assistant are equal cadre. Therefore, the Lab Assistant/Junior Assistant is not permissible. As per Rule 3(g) of the Tamil Nadu Ministerial Service Rules, it is not possible.

10. It is relevant to extract Rule 3(g) of the Tamil Nadu Ministerial Service Rules as follows:-

“ 3(g) Besides direct recruitment as provided in rule 2, appointment to the categories of Junior Assistant, Junior Assistant-cum-Typist and Typist shall be made by recruitment by transfer from other services, subject to the following conditions, namely:-

(i) Persons in services, other than the Tamil Nadu Ministerial Service, who are in categories having no promotional opportunities or even after more than one promotion in the respective service would still be in a category carrying scale of pay lower than that of Junior Assistant or Junior Assistant cum-Typist or Typist alone shall be considered for appointment by recruitment by transfer as Junior Assistant or Junior Assistantcum-Typist or Typist in the Tamil Nadu Ministerial Service, subject to the possession of the prescribed qualifications for direct recruitment.

(ii) The sphere of appointment by recruitment by transfer shall be limited to the persons in the lower categories in other services within the purview or control of the Unit or Officer concerned;

(iii) Appointment to the posts of Junior Assistants, Junior-Assistant-cum-Typists or Typists from the lower categories shall not exceed twenty percent of the vacancies in each of the categories;”



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11. Thus, the posts of Junior Assistant and Lab Assistant are having same scale of pay and the petitioners cannot be promoted as Junior Assistant.

Therefore, when there is no avenue for promotion in the Rules, it cannot be claimed as a matter of right. The service under the Government are governed by the relevant Service Rules and the promotion avenues can be given to a Government Servant only when the same is provided under the relevant service rules.

12. That apart, the petitioners were appointed only in the year 2017 and they had completed 7 years of service so far. Therefore, if the relevant Service Rules provides for any promotion, it will be considered by the respondents.

13. In view of the above, the Judgment cited by the learned Senior Counsel appearing for the petitioners is not applicable to the case on hand. Accordingly, this writ petition is disposed of. There shall be no order as to costs.

29.01.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

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The State of Tamil Nadu,
School Education Department,
Fort St.George, Secretariat,
Chennai – 600 009.
- 2.The Commissioner of School Education,
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Chennai 600 006.
3. The Joint Director of School Education (Personnel),
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