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W.P.No.16966 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM:

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

W.P.No.16966 of 2023 and
WMP.Nos.16169 & 16170 of 2023

R.Gowrinathan

... Petitioner

Vs.

- 1.The State of Tamilnadu
Rep.by its Principal Secretary to Government,
School Education Department,
St.George Fort,
Chennai
 - 2.The Commissioner of School Education,
O/o.Commissioner of School Education,
DPI Campus,
College Road,
Nungambakkam,
Chennai
 - 3.The Joint Director of School Education(Personnel),
O/o.Joint Director of School Education(Personnel),
DPI Campus,
Chennai
 - 4.The Chief Educational Officer,
Thiruvarur,
Thiruvarur District
- [RESPONDENTS]



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PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the fourth respondent vide his proceedings ந.க.எண்.2112/அ1/2023 dated 24.05.2023 and quash the same as illegal and consequentially to direct the respondents to declare that the petitioner has completed the probation in the cadre of Junior Assistant by way of relaxing the Rules as was granted in respect of similarly placed persons by the Government of Tamilnadu vide G.O.(1D)No.210 School Education (ப.க.4(2) Department dated 17.06.2019 and G.O.(1D) No.124 School Education (ப.க.4(2) Department dated 15.09.2020 and consequentially confer all other consequential service and monetary benefits including the yearly increment and conferment of selection grade along with its accrued arrears thereof within the time that may be stipulated by this Court.

For Petitioner : Mr.B.Vishnu Chelliya

For Respondents : Mr.R.Neelakandan,
Additional Advocate General
Assisted by
Mrs.S.Mythereya Chandru,
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the fourth respondent dated 24.05.2023 thereby reverted the petitioner from the post of Junior Assistant to the post of Lab Assistant.



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2. The petitioner was initially appointed as Office Assistant and thereafter promoted to the post of Lab Assistant. In the category of Lab Assistant, his services were regularized and he had also successfully completed his probationary period. From the post of Lab Assistant, he was posted through recruitment by transfer as Junior Assistant in the year 2015. In the cadre of Junior Assistant, his services were also regularized. However, his probation was not declared to be successfully completed so far. In the post of Junior Assistant, the petitioner has completed more than ten years of service. Therefore, probation is deemed to have been declared as completed. However, as per Rule 3(g) of Tamilnadu Ministerial Service Rules, the recruitment by transfer from the post of Lab Assistant to the post of Junior Assistant is not permissible as long as both the posts carries identical scale of pay. Therefore, the other service right and monetary benefits of the petitioner were kept in abeyance. The post of Lab Assistant does not have any further avenue of promotion. It carried lesser pay than that of Junior Assistant. Therefore, he was posted as Junior Assistant through recruitment by transfer in terms of Rules 3(g) of Tamilnadu Ministerial Service Rules. However, GO.Ms.No.63,



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Finance Department dated 26.02.2011 brought both the posts in the same level of pay i.e. 5200-20200+2400 GP. The scale of pay of the post of Lab Assistant and Junior Assistant became one and the same. The Rule 3(i) of the Tamilnadu Ministerial Service Rules contemplates that one can be posted as Junior Assistant through recruitment by transfer from any other services only if the scale of pay of the post carries lesser pay than that of Junior Assistant.

3. The learned Additional Advocate General submitted that the petitioner was appointed as Junior Assistant from the post of Lab Assistant. When the Government Order in GO.Ms.No.63 Finance Department dated 26.02.2011 introduced the identical scale of pay for both the posts i.e. Lab Assistant and Junior Assistant, the same scale of pay will be applicable to the Lab Assistants working in the Department of School Education. Therefore, the Lab Assistants were brought to the identical scale of pay on par with the Junior Assistants. Even before issuance of the Government order in GO.Ms.No.63 Finance Department dated 26.02.2011, Lab Assistants were promoted as Junior Assistants as



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per Rule 3(g)(i) of the Special Rules for Tamilnadu Ministerial Service Rules in view of the fact that post of Lab Assistant carried a lower scale of pay.

3.1 He further submitted that the persons in services other than the Tamilnadu 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 Assistant cum Typist or Typist in the Tamilnadu Ministerial Service subject to the possession of the prescribed qualifications for direct recruitment. He further submitted that some of the similarly placed persons filed writ petitions and the same were allowed. Aggrieved by the same, the respondents filed writ appeal and the same are pending. However, one of the order passed by the learned Single Judge of this Court was complied with while facing the contempt proceedings in Cont.P.No.390 of 2022.



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4. Heard, the learned counsel appearing on either side.

5. In the matter of posting as Junior Assistant from the post of Lab Assistant, this Court in WP.No.13849 of 2020 by an order dated 05.02.2021, directed to issue 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 the year 2002. Subsequently, the Government of Tamilnadu, considering the same category employees, who were posted from the post of Lab Assistant to the post of Junior Assistant by way of recruitment by transfer vide GO.1(D)No.124 School Education Department dated 15.09.2020, has relaxed the Rules in exercise of power conferred under Section 58 of Tamilnadu Government Servant(Conditions of Service) Act, 2016 and thereby all of them are allowed to continue in the post of Junior Assistant. However, the said relaxation was not extended to the petitioner so far.



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6. Further, this Court in WP.No.13849 of 2020 dated 05.02.2021, by extracting Rule 9 of Special Rules for Tamilnadu Ministerial Service Rules-'By recruitment by transfer from any other services' held that the said Rule has a rider that in consideration of promotion to the post of Junior Assistant, the post should carry a lower pay than that of Junior Assistant. But what ultimately falls for consideration before this Court is whether an employee carrying same pay scale as that of the pay scale applicable to the promotional post, can he/she be denied promotion at all in his/her entire career in terms of the spirit of the rule and object behind the amendment of 2002. In order to give thrust to the object and the spirit of the rule providing a promotional opportunity to the dead end post of Lab Assistant, merely because of change of pay scale, cannot be allowed to take away a valuable right to promotion during the long career span of an employee.

7. Considering both the above referred cases, this Court in WP.No.2033 of 2023 dated 25.01.2023 allowed the writ petition and set aside the order of reversion from the post of Junior Assistant to the post of Lab Assistant.



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8. In view of the above, the impugned order of the fourth respondent dated 24.05.2023 is set aside and this writ petition is allowed. The respondents are directed to declare that the petitioner has completed his probation in the cadre of Junior Assistant by way of relaxing the rule and consequently confer all other consequential service and monetary benefits including the yearly increment and conferment of selection grade within a period of twelve weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

06.02.2024

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.Principal Secretary to Government,
The State of Tamilnadu
School Education Department,
St.George Fort,
Chennai
- 2.The Commissioner of School Education,
O/o.Commissioner of School Education,
DPI Campus,
College Road,
Nungambakkam,
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- 3.The Joint Director of School Education(Personnel),
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- 4.The Chief Educational Officer,
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Thiruvarur District



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G.K.ILANTHIRAIYAN, J.

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