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W.P.No.26604 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.26604 of 2023

and

W.M.P.Nos.26010 and 26011 of 2023

S.Kannan

... Petitioner

..Vs..

1. State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Fort St. George, Secretariat,
Chennai – 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
3. The Joint Director of School Education (Personnel),
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.
4. The Chief Educational Officer,
Tiruvarur District,
Tiruvarur.
5. The District Educational Officer (Secondary),
Tiruvarur Education District,
Tiruvarur District.

... Respondents



W.P.No.26604 of 2023

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the fourth respondent in Na.Ka.No.2112/A1/2023 dated 22.08.2023, and to quash the same and consequently directing the respondents to allow the petitioner to continue in service in the post of Junior Assistant based on the order of recruitment by transfer issued by the District Educational Officer, Tiruvarur in Na.Ka.No.1594/A1/2014 dated 08.08.2014 with consequential and other attendant benefits.

For Petitioner : Mr. J.Jayamalan

For Respondents : Mrs. S.Mythreye Chandru,
Special Government Pleader

ORDER

The present writ petition has been filed challenging the impugned proceedings of the third respondent in Na.Ka.No.2112/A1/2023 dated 22.08.2023 and for consequential direction to allow the petitioner to continue in service in the post of Junior Assistant based on the order of recruitment by transfer issued by the District Educational Officer, Tiruvarur in Na.Ka.No.1594/A1/2014 dated 08.08.2014 with consequential and other attendant benefits.



W.P.No.26604 of 2023

2. The brief facts of the case are stated hereunder:

WEB COPY

2.1. The petitioner was originally appointed as Office Assistant on 17.07.1991 by the proceedings of the Adult District Educational Officer, Thajavur and was posted in the Government High School, Kattakudi, Needamangalam Taluk, Tiruvarur District. The service of the petitioner was regularized and the probation was declared in the post of Office Assistant. Subsequently, the petitioner was promoted to the post of Record Clerk by the Adult District Educational Officer in the year 2008. The probation was also declared in the post of Record Clerk and thereafter, the petitioner was promoted to the post of Lab Assistant with effect from 02.03.2012.

2.2. The further case of the petitioner is that from the post of Lab Assistant, the next avenue for promotion was to the post of Junior Assistant. The petitioner was promoted and posted to the post of Junior Assistant by the District Educational Officer, through proceedings dated 08.08.2014. The petitioner has been working in this post for more than nine years and he was also regularized in the said post.



W.P.No.26604 of 2023

2.3. The grievance of the petitioner is that the fourth respondent through the impugned proceedings dated 22.08.2023 cancelled the appointment of the petitioner to the post of Junior Assistant and reverted him back to the post of Lab Assistant. Aggrieved by the same, the present writ petition has been filed before this Court.

4. The main thrust of the submission made by the learned counsel appearing on behalf of the petitioner is that the impugned proceedings of the fourth respondent is liable to be interfered with by this Court since the order was passed even without putting the petitioner on notice and therefore, there is violation of principles of natural justice. The learned counsel further submitted that the ground taken by the fourth respondent for cancelling the appointment of the petitioner to the post of Junior Assistant by relying upon Rule 3(g)(i) of the Tamil Nadu Ministerial Service Rules is also not sustainable in view of the order passed by this Court in W.P.No.13849 of 2020, dated 05.02.2021.

5. The learned counsel submitted that this Court has already held that steps must be taken by the respondents to include the post of Lab Assistant for promotion to the post of Junior Assistant and



W.P.No.26604 of 2023

uncertainty must be removed in order to avoid any future confusion.

Without undertaking this exercise, once again the respondents have committed the same mistake and had come to a conclusion that the petitioner is not entitled for promotion to the post of Junior Assistant and accordingly, the petitioner was reverted back to the post of Lab Assistant.

6. Per contra, learned Special Government Pleader appearing on behalf of the respondents submitted that the petitioner was not entitled for being appointed to the post of Junior Assistant. That apart, pay scale for both the posts of Junior Assistant and Lab Assistant are equal and therefore, there is no question of the petitioner being reverted to the post of Lab Assistant. The learned Special Government Pleader submitted that since the impugned order passed by the fourth respondent does not result in any civil consequences to the petitioner, there is no requirement to afford an opportunity and thereafter, pass the order. In view of the same, learned Special Government Pleader submitted that there is absolutely no ground to quash the impugned order passed by the fourth respondent.

7. This Court has carefully considered the rival submissions and perused the materials available on record.



W.P.No.26604 of 2023

WEB COPY

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 11.08.2014. Such an order was passed by the District Educational Officer through proceedings dated 08.08.2014. There is also no dispute with regard to the fact that the petitioner was also working/discharging his duties as Junior Assistant for nearly nine years. If the fourth respondent intended to cancel the appointment of the petitioner to the post of Junior Assistant, the minimum that was required on the part of the fourth respondent is that the petitioner should have been put on notice and the explanation of the petitioner should have been called for. The fourth 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. Therefore, according to the petitioner, the impugned order passed by the fourth 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.



W.P.No.26604 of 2023

9. The learned counsel appearing on behalf of the petitioner urged this Court to go into grounds on which the fourth 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. Hence, if a fresh notice is issued by the fourth 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 fourth respondent since the order has been passed in violation of principles of natural justice and the order has civil consequences against the petitioner.

12. Accordingly, the impugned proceedings of the fourth respondent in Na.Ka.No.2112/A1/2023 dated 22.08.2023 is hereby set aside. If the fourth respondent wants to initiate any fresh proceedings against the petitioner in this regard, it is left open to the fourth respondent



W.P.No.26604 of 2023

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.

13. In the result, this Writ Petition is allowed in the above terms. Since the impugned order passed by the fourth respondent has been set aside by this Court, it goes without saying that the petitioner will be entitled to continue in service in the post of Junior Assistant. No costs. Consequently, the connected miscellaneous petitions are closed.

12.11.2024

Index : Yes/No
Internet : Yes/No

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To

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2. The Director of School Education,
DPI Campus, College Road,



W.P.No.26604 of 2023

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W.P.No.26604 of 2023

V.BHAVANI SUBBAROYAN,J.

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W.P.No.26604 of 2023

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