



WEB COPY



W.P. No.28122 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.28122 of 2021
and
W.M.P.No. 29711 of 2021

1.R.Dilip Kumar

2.S.Udhayakumar

3.V.Saravanan

... Petitioners

Vs.

1.The State of Tamilnadu
rep. by its Principal Secretary
Education Department
Fort St.George, Chennai-600 009.

2.The Sate of Tamilnadu
rep. by Director of School Education
DPI Campus, College Road,
Chennai – 600 006.

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

4.The Chief Educational Officer,
Thiruvannamalai District,
Thriuvannamalai.
5.The District Educational Officer

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Thiruvannamalai District
Thiruvannamalai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the 1st respondent in Letter No.5353/Pa.Ka./4(2)/2021-1 dated 01.12.2021 and to quash the same in so far as the finding regarding the relinquishment of promotion by the petitioners from the post of Lab Assistant and denial of inclusion of seniority list to the promotional post of Junior Assistant and consequently direct the respondent to promote the petitioners to the post of Junior Assistants/Assistants based on their period of service from the date of appointment with all service and monetary benefits.

For Petitioners : Mr.C.Prabakaran

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

ORDER

The petitioners herein, who were appointed as Census Workers, were disengaged from service. Subsequently, it appears that the petitioners were appointed as Office Assistants in the year 2007 pursuant to an order passed by the Hon'ble Apex Court in various Government Schools and their service were also regularized in the said post. The petitioners were further promoted to the post of Record Clerk in the year 2012 and they were further promoted to the post of Lab Assistants and their services were also regularized in the

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said cadre and they have been continued in the said post.

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2. While continuing in the said post of Lab Assistants, the petitioners have made a claim for promotion to the post of Junior Assistants by making a claim under Rule 3(g) of Tamil Nadu Ministerial Service Rules and approached this Court by filing W.P.No.23695 of 2019. This Court, by an order dated 07.11.2019, disposed of the said writ petition directing the 1st respondent to consider the representation submitted by the petitioners. Pursuant to the said order, the 1st respondent considered the representation submitted by the petitioners and passed the impugned order stating that the petitioners, who are working as Lab Assistants, have drawn a scale of pay equal to the post of Junior Assistants and therefore, they are not entitled for promotion and not entitled to claim promotion to the post of Junior Assistants in terms of Rule 3(g) of Tamil Nadu Ministerial Service Rules.

3. It is also further stated in the impugned order that the petitioners have accepted the scale of pay equal to the post of Junior Assistants that was granted through G.O.Ms.No.63, Finance (Pay Cell) Department, dated 26.02.2011. It is aggrieved by the said order dated 01.12.2021 passed by the



1st respondent, the petitioners approached this Court by filing the present writ petition.

4. This Court heard the learned counsel for the petitioners as well as the learned Government Advocate at length and perused the entire material on record.

5. The entire basis for the claim that is being made by the petitioners who are working as Lab Assistants for promotion to the post of Junior Assistants is under Rule 3(g) of Tamil Nadu Ministerial Service Rules and the said rule reads as under:

“ 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



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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 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; ”

6. A perusal of the above rule itself makes it clear that the employees who are drawing the scale of pay lower than that of the post of Junior Assistants are only entitled for consideration for promotion in terms of the above Rule.

7. In the instant case, all the petitioners herein admittedly are



drawing the scale of pay equal to the post of Junior Assistants. If that be the case, the question of respondents considering the claim of the petitioners for promotion to the post of Junior Assistants does not arise. In the other words, there is no right conferred upon the petitioners for consideration of their case for promotion to the post of Junior Assistant, in view of the fact that they are admittedly drawing the scale pay equal to the post of Junior Assistants.

8. Further, the learned counsel for the petitioner placed reliance on the decision of the learned Single Judge of this Court in W.P.No.13849 of 2020 dated 05.02.2021. This Court has carefully perused the entire order passed by the learned Judge and with respect, this Court is of the considered view that the said order is of no help to advance the case of the petitioners. In the above case, the petitioners who were considered for promotion to the post of Junior Assistants from the post of Lab Assistant were reverted to the post of Lab Assistants, after having realised that they are not entitled for consideration of their case for promotion to the post of Junior Assistants in terms of Rule 3(g) of Tamil Nadu Ministerial Service Rules. The learned Judge, having considered the matter elaborately came to the conclusion that there are no promotional avenues provided to the petitioners on the ground



that the scale of pay is equal to the scale of pay attached to the post of Junior Assistants and thus, by setting aside the impugned order therein, allowed the petitioners therein to continue in the promotional post of Junior Assistants. Practically, by passing the said order, the respondents were directed to violate the Rule 3(g) of the Tamil Nadu Ministerial Service Rules and the relief granted in the said writ petition is directly in contravention of Rule 3(g) of the Tamil Nadu Ministerial Service Rules. When the petitioners are agitating their right in terms of Rule 3(g) of the Tamil Nadu Ministerial Service Rules, this Court at the most can only consider the case of the petitioners under the said Rule, but not in derogation of the said Rule.

9. In case if the petitioners are aggrieved by the said Rule in disentitling them from the consideration of their case for promotion on the ground that they have been drawing the scale of pay equal to the post of Junior Assistants, it is for the petitioners to question the said Rule and then establish their right for consideration of their cases for promotion. In the absence of any Rule, in the considered view of this Court, no mandamus can be issued directing the respondents to violate the statutory Rule. Hence, this Court is not inclined to agree with the view taken by the learned Single Judge



with respect, for the reason that petitioner therein were already promoted and the same was upheld by this Court. Negative equality can't be the basis for issuing Mandamus.

10. Further, the learned Government Advocate placed reliance on another decision of the learned Single Judge of this Court in W.P.Nos.3518 and 3524 of 2024, dated 28.02.2024 wherein, the learned Single Judge considered the very similar aspect and held as under:

“8. The learned Special Government Pleader appearing for the respondents submitted 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.

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 from 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 and as such, the promotion from the post of Lab Assistant to the post of 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 Assistant cum-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;”

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. 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 and this Court finds no infirmity or illegality in the order passed by the third respondent in Na.Ka.No.5034/A1/2023 dated 13.12.2023 and these writ petitions are devoid of merits and are liable to be dismissed.



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11. In the light of the above, the question of the cases of the petitioners for promotion to the post of Junior Assistants in terms of Rule 3(g) of Tamil Nadu Ministerial Service Rules does not arise and there is no such right conferred upon the petitioners to claim the said relief.

12. In the light of the above, this Court does not find any error or illegality in the impugned order passed by the 1st respondent. Accordingly, the writ petition is dismissed and connected miscellaneous petitions, if any, shall stand closed. No costs.

07.06.2024
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Index : Yes/No
Speaking Order : Yes/No
dpa

To:

1.The Principal Secretary
State of Tamilnadu
Education Department
Fort St.George, Chennai-600 009.

MUMMINENI SUDHEER KUMAR,J.
dpa

2.The Director of School Education,
State of Tamilnadu
DPI Campus, College Road,
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and
W.M.P.Nos.29710 & 29711 of 2021

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(2/2)