



W.P.No.30678 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 28.06.2024

Orders pronounced on : **10.07.2024**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.30678 of 2022

and W.M.P.Nos.30117, 30118 of 2022 and 19865 of 2023

M.Abdul Saleem

.. Petitioner

Versus

1. The State of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner,
Directorate of School Education,
D.P.I. Compound, College Road,
Chennai - 600 006.
3. The Joint Director,
Directorate of School Education,
D.P.I. Compound, College Road,
Chennai - 600 006.



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4. The Chief Educational Officer,
Presidency Girls Higher Secondary School Campus,
Gengu Reddy Road, Opp. Santhosh Hospital,
Egmore, Chennai - 600 008.
5. The District Educational Officer,
Government Girls Higher Secondary School,
Near Sidco Nagar, Villivakkam, Chennai - 600 049.
6. The Correspondent,
The Muthialpet Higher Secondary School,
Chennai - 600 001.
7. D.Thirunavukkarasu .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for all the records on the file of the 4th respondent (CEO) which culminated in the order in O.Mu.No.3731/A3/2021, dated 25.02.2022, followed by proceeding made in O.Mu.No.2552/A1/2020, dated 18.03.2022 of the 5th respondent (DEO) and quash both the proceedings and direct the 4th, 5th and 6th respondents to do necessary correction in matter of petitioner post as Junior Assistant, instead of Library Clerk, with all attendant, seniority, monetary and all other benefits attached to the post.

For Petitioner : Mr.C.Johnson



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For Respondents : Mrs.S.Mythreye Chandru,
Special Government Pleader,
for RR-1 to 5

: Mrs.S.P.Arthi, for R6

: Mr.S.P.Naviaraj, for R7

ORDER

A. The Writ Petition:

This Writ Petition is filed challenging the orders, dated 25.02.2022 and 18.03.2022 and consequently, carry out necessary corrections in the service records of the petitioner that the petitioner is a Junior Assistant working in the sixth respondent School with all consequential service benefits.

B. The Case of the Petitioner:

2. The case of the petitioner is that the sixth respondent is a Government recognized aided Private School which was established in the year 1847 and upgraded as a Higher Secondary School in the year 1978.



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The petitioner joined as a Watchman in the said School with effect from 01.09.1999. After that, he was promoted to Library Attender with effect from 01.06.2005. While so, when a vacancy arose in the post of Junior Assistant due to the retirement of one *K.P.Premalatha* on 31.10.2010, the petitioner was promoted as against the vacancy on 01.11.2010 as Junior Assistant. The petitioner's predecessor, *K.P.Premalatha* was appointed to the post of Junior Assistant in the place of one *Jothi Prasad*, Junior Assistant, who retired on 30.04.2002.

3. The petitioner's appointment as Junior Assistant was also approved by the official respondents with effect from 01.11.2010. However, an approval order was issued on 10.01.2013, in which, instead of naming the post of the petitioner as 'Junior Assistant', it is inadvertently mentioned as 'Library Clerk' and 'Library Clerk Assistant'. This error crept in because, in the service record of *K.P.Premalatha*, her position was erroneously described as 'Library Clerk / Junior Assistant (Library)'.



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4. The petitioner as well as the sixth respondent School made representations to correct the mistake in the relevant records. In the proceedings of the Directorate, dated 15.07.2013, the petitioner's designation is correctly mentioned as Junior Assistant. Even in the election duty identity card and other connected documents such as a list of Government Examiners etc., the petitioner has been mentioned with the correct designation as Junior Assistant. Even the salary slip of the petitioner for March, 2020 etc., clearly mentions the petitioner's designation as Junior Assistant.

5. On the contrary, the seventh respondent in the Writ Petition namely, *D.Thirunavukkarasu*, was appointed as against the resultant vacancy of one *Subramanian* as Tamil Teacher. The said *Subramanian* is a Library Clerk. Upon his elevation, there can be a vacancy only in the post of Library Clerk. Merely because the seventh respondent is appointed by the present set of management, they want to favour him over and above the



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petitioner. Therefore, now, there is an attempt to change as if the petitioner's predecessor, *Premalatha*, is a Library Clerk and the seventh respondent's predecessor, *Subramanian*, is a Junior Assistant while the truth is otherwise. Therefore, the departmental auditor correctly objected and sought clarification from the sixth respondent management. The sixth respondent management instead of properly clarifying the position, wanted to favour the seventh respondent merely because the petitioner is an old employee and the seventh respondent is now appointed by them. As such, the impugned proceedings were passed as if the petitioner's designation is only a Library Clerk and not a Junior Assistant.

C. The Case of the Respondents:

6. The Writ Petition is resisted by the fifth respondent namely, the District Educational Officer, by filing a counter-affidavit. It is the case of the fifth respondent that the petitioner was appointed as 'Watchman' on 01.09.1999 and was promoted to 'Library Attender' on 01.06.2005 and



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promoted to 'Clerk' on 12.10.2012. In the approval order, dated 10.01.2013 itself, it is specifically noted that the designation of the petitioner is 'Library Clerk'. The management of the sixth respondent School forwarded a proposal on 10.02.2014 requesting that the date of appointment of the petitioner should be altered from 01.07.2012 to 01.11.2010. In the proposal itself, it mentioned the name of the post as 'Library Clerk'. The request was also accepted and the order of the fifth respondent on 18.02.2014 mentioned the designation of the petitioner as 'Library Clerk'. Subsequently, in the year 2020, the School management made a request to change the designation of the petitioner from 'Library Clerk' to 'Junior Assistant' vide letter, dated 05.09.2020 which was forwarded to the Chief Educational Officer by proceedings, dated 29.04.2021. The Chief Educational Officer, thereafter, considered and rejected the proposal by the order, dated 25.02.2022. The same was also forwarded to the management by the consequential communication, dated 18.03.2022.



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7. The Writ Petition is also resisted by the sixth respondent School. It is submitted that since the petitioner is working as a Library Clerk and has access to records, had indulged in falsification of the documents and tampered with the designation etc., and thus, cleverly tried to portray himself as a Junior Assistant while he currently holds the position of Library Clerk alone. The representation, that is mentioned by the petitioner as if the School management requested to change his designation as Junior Assistant, is nothing but manipulation of the records by the petitioner himself. Using the school letterhead, he wrote a letter to the official authorities. Similarly, having access to the digital portal etc., he clandestinely described himself as 'Junior Assistant' which resulted in the error of fixation on his pay and payment of his pay in the Junior Assistant Scale. Previously, the post of Library Clerk, Junior Assistant etc., were all in the same scale of pay, however, during subsequent pay revisions, the scale of pay in respect of the post of Junior Assistant became higher than that of the post of Library Clerk and therefore, the petitioner is indulged in the present exercise. The entire



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case of the petitioner suffers from *suppressio veri* and *suggestio falsi*.
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Hence, the case of the petitioner is liable to be rejected with costs.

D. Discussion & findings:

8. Heard *Mr.C.Johnson*, learned Counsel for the petitioner, *Mrs.S.Mythreye Chandru*, learned Special Government Pleader for the respondent Nos.1 to 5, *Mrs.S.P.Arthi*, learned Counsel for the sixth respondent and *Mr.S.P.Naviaraj*, learned Counsel for the seventh respondent.

9. This Court heard the learned Counsel for the petitioner in detail on various occasions since factually in different places the petitioner was described with different designations, it involved the exercise of verification of all the records. In this case, there has been carelessness on the part of the sixth respondent management as well as on the official authorities on some occasions while making entries in the service book or in their



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communication in not using proper terminologies/designation concerning the posts. Originally, when the petitioner was appointed, it can be seen from the allocation of posts that there existed only two categories namely, Library Clerk and Clerk. It is the Clerk post which was subsequently upgraded and re-designated as Junior Assistant. Originally, the pay for the posts of Clerk, Library Clerk and Junior Assistant were at the same level, while in the successive pay revisions, pay for the post of Junior Assistant became higher than that of the Library Clerk.

10. On verification of records, as far as the petitioner is concerned, there is no quarrel over the fact that the petitioner was initially appointed as 'Watchman' on 01.09.1999 and thereafter, he was promoted as 'Library Attender' with effect from 01.06.2005. The only question is as to which post he was promoted as on 01.11.2010. The order of approval, dated 10.01.2013 contains a column that states the name and post. The name of the petitioner, *M.Abdul Saleem*, was mentioned and the post was clearly



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described as 'Library Clerk'. It was also mentioned in the fourth column that the petitioner is appointed as against the vacancy which arose on the superannuation of *K.P.Premalatha* who was working as Library Clerk as of 31.10.2010. In the sentence below the tabular column the petitioner's designation is mentioned as 'Library Clerk Assistant'. In the service register of the petitioner produced by the sixth respondent School , more specifically in Page Nos. 11 and 12, it is mentioned that the petitioner is promoted as 'Library Clerk'. However, both the approval order as well as the service register clearly mention that the petitioner is appointed as against the vacancy upon the retirement of *K.P.Premalatha*.

11. On a verification of the service record of *K.P.Premalatha*, it can be seen that she was working only as a Lab Assistant. While so, on 03.01.2007, in the place of one *Jothi Prasad*, Junior Assistant, who retired, the said *K.P.Premalatha* was promoted with effect from 03.01.2007. Due approval is also granted to the same. Picture of a portion of the service



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record of the said *K.P.Premalatha* is as follows :-

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[illegible]



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12. Further, page No.11 of the service record of *K.P.Premalatha* also reads as if she is a Junior Assistant and a picture of the same is as follows :-



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11

(14)

(15)

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13. There is also a statement of pay fixation which is made in respect



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of Appendix - IV, by which also, *K.P.Premalatha*, is described as Junior
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Assistant. Therefore, it can be seen that said *K.P.Premalatha* was appointed and she retired with the designation of Junior Assistant. Therefore, the order of approval of the petitioner's promotion mentioning as if the said *K.P.Premalatha* was working as a Library Clerk and she retired from the said post is factually erroneous.

14. Now, adverting to the case of the seventh respondent, it can be seen that one *Subramanian* was working as a Junior Assistant and upon obtaining a qualification of B.A and B.Ed., in Tamil and since there is no other qualified Teacher to be promoted to B.T. Assistant as per rule, he was appointed as B.T. Assistant and therefore, in the resultant vacancy, the seventh respondent was appointed as Junior Assistant and there is no iota of doubt as far as the appointment of the seventh respondent as Junior Assistant is concerned.



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15. However, as of date, there is only one post of 'Junior Assistant' and one post of 'Library Clerk' which is allowed in respect of the sixth respondent School. Allegations are made as if the petitioner had subsequently tampered the records. The subsequent events such as the petitioner writing letters or his designation as Junior Assistant in the digital portal are not material to decide the *lis* on hand and as such, cannot be termed as material facts.

16. The question is as to what post the petitioner was promoted. The promotion entries made in the service register as well and the approval order mention the post as 'Library Clerk' as well as the petitioner is appointed as against the vacancy arising out of the retirement of *K.P.Premalatha*. Now, it transpires that the said *K.P.Premalatha* is not working as Library Clerk, but, as Junior Assistant. Though it is mischief is alleged on the part of the petitioner while calling his designation as Junior Assistant, it can be seen that is only later. The initial mistake lies on the part of the official



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respondents as well as the sixth respondent management. They are not able to reconcile both the facts i.e., *K.P.Premalatha* retiring as Junior Assistant and the petitioner being promoted as Library Clerk in her place.

17. The issue is that both the designations 'Junior Assistant' and 'Library Clerk' are used in different combinations as 'Junior Library Clerk', 'Library Clerk Assistant', 'Junior Clerk' etc., in various entries in the service records. Even the seventh respondent, in one place, mentioned as a 'Junior Assistant (Library)'. Understandably, up to a point in time all these posts were all in the same scale of pay. Therefore, I conclude that the designations were mentioned recklessly and the problem arises subsequently, when the scales of pay differs in revision.

18. The question is how to resolve the impasse. In spite of mistakes/mischief played by all the three sides, the law leans in favour of correction of mistake. The contention of the petitioner is that the initial



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mistake at the earliest level was made only by the official respondents as well as the School committee and therefore, he should not be put to prejudice. If considered from that perspective, there is nothing on record to indicate that *K.P.Premalatha* was ever appointed or treated as Library Clerk. Her records are categorical and crystal clear that originally, she was a Lab Assistant and she was promoted to the post of Junior Assistant and she retired as a Junior Assistant receiving the said scale of pay. Therefore, when she retired, it can only be said that the vacancy which arose was only the post of Junior Assistant and therefore, mentioning the petitioner as 'Library Clerk/Library Clerk Assistant is only an error.

19. Now, if the mistake is corrected, a situation arises that after having eligible for one post of Library Clerk on the lower scale of pay and one post of Junior Assistant on a higher scale of pay, there will be two persons working in the same post of Junior Assistant. Therefore, considering the fact that the petitioner was described as a 'Library Clerk' in the promotion



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order, the petitioner shall substantively occupy the post of 'Library Clerk', however, the difference of pay between the post of Junior Assistant and the Library Clerk shall be allowed as personal pay to the petitioner. While the petitioner will be substantively occupying the post of Library Clerk, for pay and emoluments by allowing special pay / personal pay, on par with that of the Junior Assistant, the petitioner should be notionally be placed on equivalent to Junior Assistant until his retirement and after his retirement, the resultant vacancy can be treated as Library Clerk.

20. In view thereof, this Writ Petition is allowed on the following terms :-

(i) The impugned orders of respondent Nos.4 and 5 in O.Mu.No.3731/A3/2021, dated 25.02.2022 and O.Mu.No.2552/A1/2020, dated 18.03.2022 respectively shall stand set aside;

(ii) The seventh respondent is declared to have been validly appointed as Junior Assistant in the sanctioned post / vacancy of Junior Assistant in



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respect of the sixth respondent School;

(iii) The petitioner will occupy the sanctioned post/vacancy of Library Clerk, however, will be treated notionally on par with Junior Assistant by allowing him the difference in pay of the Library Clerk to that of the Junior Assistant by way of special pay / personal pay, given the anomaly situation, until his retirement and upon his superannuation, the resultant vacancy will be considered only as a Library Clerk;

(iv) Considering the extraordinary facts in the instant case, neither any amount will be recovered from the petitioner nor can the petitioner claim any arrears as of date;

(v) The pay of the petitioner shall be accordingly fixed in the post of Library Clerk. The respondents shall notionally consider him as having appointed as Junior Assistant from the date of his promotion with effect from 01/11/2010 and accordingly arrive at the pay and the difference of pay shall be allowed to him as Special Pay/Personal Pay until his retirement and on that basis his retiral benefits and pension shall be fixed;



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(vi) Such exercise of pay fixation shall be carried out within a period of twelve weeks from the date of this Order;

(vii) There shall neither be any recovery nor the petitioner can claim any arrears upon such fixation and the actual benefits if any that may accrue to the petitioner only from the date of this Order.

(viii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

10.07.2024

Neutral Citation: yes
grs

To

1. The Secretary,
Education Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner,
Directorate of School Education,
D.P.I. Compound, College Road,
Chennai - 600 006.

3. The Joint Director,

<https://www.mhc.tn.gov.in/judis>



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D.P.I. Compound, College Road,
Chennai - 600 006.

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Presidency Girls Higher Secondary School Campus,
Gengu Reddy Road, Opp. Santhosh Hospital,
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D.BHARATHA CHAKRAVARTHY, J.

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