



W.P.(MD).No.1482 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.1482 of 2024
and W.M.P(MD)No.1519 of 2024

The Secretary,
Fatima College (Autonomous),
Mary Land, Madurai – 625 018.

... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of Higher Education,
Fort St. George,
Chennai - 600 009.
2. The Director of Collegiate Education,
College Road, Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Madurai Region, Palam Station Road,
Madurai - 625 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent Joint Director of Collegiate Education in Oo.Mu. No.10742/E1/2023, dated 06.11.2023, quash the same, and further direct the 3rd respondent to approve



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forthwith the promotions given to the Lab Assistants in the petitioner's College viz., S. Mahilprabha as Typist, w.e.f., 01.06.2018, M. Jeyakumar as Typist w.e.f., 02.07.2018, Sr. S. Stella Arul Mary as Junior Assistant w.e.f., 01.08.2019, I. Francis Xavier as Junior Assistant w.e.f., 01.08.2019 and L. Shanthi as Storekeeper w.e.f., 01.06.2022 with all attendant benefits.

For Petitioner : Ms. A.Amala

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present writ petition has been filed challenging the impugned proceedings issued by the 3rd respondent Joint Director of Collegiate Education in Oo.Mu. No.10742/E1/2023, dated 06.11.2023 and further direct the 3rd respondent to approve forthwith the promotions given to the Lab Assistants in the petitioner's College viz., S. Mahilprabha as Typist with effect from 01.06.2018, M. Jeya Kumar as Typist with effect from 02.07.2018, Sister S. Stella Arul Mary as Junior Assistant with effect from 01.08.2019, I. Francis Xavier as Junior Assistant with effect from 01.08.2019 and L. Shanthi as Storekeeper with effect from 01.06.2022 with all attendant benefits.



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2.(i).The petitioner College is a minority educational institution in terms of Article 30 of the Constitution of India. In the year 2018 to 2022, the College promoted five Lab Assistants to Typists, Junior Assistants and Storekeepers in the sanctioned vacancies. The appointments were made by way of promoting them from the post of Lab Assistants on 01.06.2018, 02.07.2018, 05.08.2019, 01.08.2019 and 01.06.2022 respectively. The details of the said five appointments are tabulated as follows:

S.No.	Name	Promoted Post	Date of Promotion	Vacancy Details
1	S.Mahilprabha, Laboratory Assistant	Typist	01.06.2018	Promotion of Typist S.Mary Clarabai as Assistant on 01.06.2018 FN
2	M.Jeyakumar, Laboratory Assistant	Typist	02.07.2018	Promotion of Typist K.Sundari as Assistant on 02.07.2018 FN
3	Sr.S.Stella Arul Mary, Laboratory Assistant	Junior Assistant	01.08.2019	Retirement of Junior Assistant M.James on 31.07.2019 AN
4	I.Francis Xavier, Laboratory Assistant	Junior Assistant	01.08.2019	Retirement of Junior Assistant S.Siriyamalar Annai Mary on 31.07.2019 AN
5	L.Shanthi, Laboratory Assistant	Store- keeper	01.06.2022	Retirement of Storekeeper S.Marypushparani on 31.05.2022 AN

(ii).After giving the promotions, the petitioner College submitted the proposal to the third respondent/Joint Director of Collegiate Education for



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the purpose of approval and disbursement of grant in aid towards their salaries on 23.08.2023 and 28.08.2023. Since there was no response from the third respondent, a reminder was submitted through registered post on 29.09.2023 by the petitioner. Thereafter, the third respondent vide impugned proceedings, dated 06.11.2023 refused to approve the promotion stating that as per the proceedings of the Joint Director of Collegiate Education, the Lab Assistants could not be promoted as Junior Assistants/Typists/Storekeepers. Challenging the same, this writ petition came to be filed.

3.The learned counsel for the petitioner submitted that the incumbents are the senior most non-teaching staff eligible for promotion from the post of Lab Assistants to the post of Junior Assistants, Typists and Storekeepers respectively. The delay in the grant of approval to the promotion of Junior Assistants, Typists and Storekeepers causes delay in the payment of salary to the incumbents. All these years, the petitioner's College had been filling up the vacancies in the cadre of Junior Assistant, Typist and Storekeeper only by promoting the Lab Assistant and from time to time, the same have been approved by the Joint Director of Collegiate Education. In view of the same pressed for allowing the writ petition.



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4.Despite giving several opportunities for filing counter, the learned Government Advocate has not filed any counter so far, on behalf of the respondents.

5.Heard the learned counsel for the petitioner, the learned Government Advocate for the respondents and carefully perused the materials available on record.

6.The *lis* in hand is no more res-integra and the Division Bench of this Court has dealt with the similar matter in W.A(MD) Nos.114 and 9 of 2020, dated 25.03.2020, has passed favourable orders to the very same petitioner College. The relevant portion of the said Judgment of the Division Bench is extracted hereunder:

“2.In both the cases, promotions have been given from the post of Lab Assistant to Junior Assistant. It appears that both the posts carry the same scale of pay. The case of the appellants in these cases is that, inasmuch as Lab Assistant post is not the feeder category to the post of Junior Assistant, where is a question of promotion being approved by them?”



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4. The learned counsel appearing for respondent No.1 in W.A. (MD)No.9 of 2020 placing reliance upon G.O.Ms.No.11, Education Department, dated 04.01.1989, submitted that recruitment by transfer is permissible from Lab Assistant to Junior Assistant. Secondly, it is submitted that the post of Junior Assistant is a feeder category to the post of Assistant and thereafter, Superintendent. However, the post of Lab Assistant is not a feeder category. The incumbents are languishing in the post of Lab Assistant for decades. Therefore, in any case, no prejudice would be caused.

5. We find force in the submissions made by the learned counsel appearing for the respondents. As per G.O.Ms.No.11, Education Department, dated 04.01.1989, the recruitment by transfer can be made from the post of Lab Assistant to the post of Junior Assistant. Though it has been misconstrued as that of promotion from the post of Lab Assistant to the post of Junior Assistant, inasmuch as there is no loss of revenue to the appellants, such recruitment by transfer cannot be objected to, after all, both the posts are drawing the same scale of pay, which certainly benefits the persons, who moved from the post of Lab Assistant to the post of Junior Assistant.

6. Right to be considered for promotion cannot be denied, though it is not a vested right. The proceedings relied upon by the appellants are meant for Specific Service Rules namely, the Tamil Nadu Private Colleges (Regulation) Act, 1976 and therefore, it cannot be applied in the case on hand. Even otherwise, as observed by us, the facts would clearly establish that no prejudice is caused. To put it differently, the Management can very well fill the post of Junior Assistant. If the post is filled otherwise, the appellants would have given sanction/permission. Admittedly, the posts are also vacant.



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Therefore, looking from any perspective, we do not find any reason to interfere with the order of the learned Single Judge. Accordingly, these Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.”

7. Fully fortified by the Judgment passed by the Division Bench of this Court as discussed Supra, this Court is of the considered view that since there is no loss of revenue to the respondents, such recruitment by transfer cannot be objected to. Seeing that the right to be considered for promotion cannot be denied, I hereby quash the impugned proceedings of the third respondent, dated 06.11.2023 and further, direct the third respondent to approve forthwith the promotions given to the Lab Assistants in the petitioner's College. Viz., S. Mahilprabha as Typist, w.e.f., 01.06.2018, M. Jeyakumar as Typist w.e.f., 02.07.2018, Sr. S. Stella Arul Mary as Junior Assistant w.e.f., 01.08.2019, I. Francis Xavier as Junior Assistant w.e.f., 01.08.2019 and L. Shanthi as Storekeeper w.e.f., 01.06.2022 with all attendant benefits.



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8. Accordingly, the petition stands allowed. There shall be no order

as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No

Index : Yes / No

Internet : Yes

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To

1. The Secretary,
Department of Higher Education,
Fort St. George,
Chennai - 600 009.
2. The Director of Collegiate Education,
College Road, Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Madurai Region, Palam Station Road,
Madurai - 625 002.



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L.VICTORIA GOWRI, J.

PNM

**ORDER IN
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