



W.P.(MD)No.8672 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.8672 of 2024
and
WMP(MD)Nos.7923 & 7924 of 2024

D.Balakumaran

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
St. George Fort, Chennai.

2. The Commissioner of School Education,
O/o. the 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,
Theni, Theni District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent vide his proceedings in Na.Ka.No. A1-4687 / 2020 dated 12.03.2024 and quash the same as illegal and consequently to direct the Respondents to post the petitioner as Junior Assistant and declare the probation in the said post along with all other monetary benefits including the increment for having passed the account test with all along with the service benefits.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

This Writ Petition has been filed seeking to quash the proceedings of the 4th respondent in Na.Ka.No. A1-4687/2020 dated 12.03.2024 and consequential direction to the Respondents to post the petitioner as Junior Assistant and declare the probation in the said post



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along with all other monetary benefits including the increment for having passed the account test along with the service benefits.

2. By consent of both the parties, this writ petition is taken up for final disposal.

3. Heard Mr.H.Mohammed Imran, learned counsel for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader for the respondents.

4. The petitioner who was originally appointed as Office Assistant on 07.11.1997 had promoted to the post of Lab Assistant on 31.10.2013 and his services were also regularised in the cadre of Lab Assistant. From the post of Lab Assistant, he was posted through recruitment by transfer as a Junior Assistant on 26.10.2016. Thereafter, the petitioner was working as a Junior Assistant for more than 8 years. All of a sudden, the third respondent had issued a proceedings dated 13.03.2023 and directed the fourth respondent to



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revert the petitioner to the post of Lab Assistant vide order dated 12.03.2024. The fourth respondent has passed similar such orders on 03.04.2023, in consequence thereof the Headmaster of the said School also passed the relieving order dated 30.04.2023 and the said orders were challenged by the petitioner in WP(MD)No.17161 of 2023. In the said writ petition, an order has been passed setting aside the impugned orders dated 03.04.2023 & 30.04.2023 and the respondents have been directed to consider the petitioner's representation and pass order afresh. Now after considering the representation of the petitioner, the fourth respondent has passed the order dated 12.03.2024 reverting the petitioner to the post of Lab Assistant.

5. Mr.H.Mohammed Imran, learned counsel for the petitioner submitted that even in terms of Rule 3 (g) of the Tamil Nadu Ministerial Service Rules, Lab Assistant post does not have any promotional avenues and hence, the petitioner is entitled to be posted as Junior Assistant which also carries the same scale of pay. There is no quarrel as to the applicability of the Rules.



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6. For the sake of convenience, the Rule 3 (g) of the Tamil Nadu Ministerial Service Rules has been extracted as under:

“(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.”

7. However in the impugned order, the earlier G.O.Ms.No.63, Finance Department, dated 26.02.2011 was taken into consideration. It is claimed that prior to the said G.O., the post of Lab Assistant would carry a lesser pay than that of a Junior Assistant. However, vide



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G.O.Ms.No.63, Finance Department, dated 26.02.2011, both the posts were brought under the same scale of pay and hence, one post can be posted as against the other. Only on the basis of the mandates of the said G.O.Ms.No.63, dated 26.02.2011, the petitioner's promotion to the post of Junior Assistant was reverted back to the post of Lab Assistant. The said submission made by the learned counsel for the petitioner is also admitted by the learned Additional Government Pleader.

8. Once an individual has been appointed by direct recruitment, promotion or transfer to some other post, that would only mean that the earlier post which the individual was holding is no more available to the said individual. In the instant case, the petitioner has been appointed as Junior Assistant on transfer. He was not deputed or promoted to the post of Junior Assistant. Once the petitioner got appointed through transfer, there is no question of reverting him once again to his earlier post. So, the service of the petitioner after he got appointment as Junior Assistant has to be considered only in the



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cadre of Junior Assistant and the fourth respondent cannot take a decision at his pleasure to revert all those persons who got appointed through transfer by cancelling the earlier orders. If any such order is passed, it is arbitrary exercise of power disregarding the fundamental Rules of service jurisprudence. In fact, the petitioner's service in the cadre of Junior Assistant has also been regularized as per the proceedings of the District Education Officer, Uthamapalayam dated 24.11.2017. Hence, I do not find any merits in the impugned order and the same is liable to be set aside.

9. In the result, this writ petition is **allowed.**

"The impugned proceedings of the fourth respondent in Na.Ka.No.A1-4687/2020 dated 12.03.2024 is set aside. The fourth respondent is directed to consider the representation of the petitioner dated 21.02.2024 and pass appropriate orders in accordance with law."

There shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.



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NCC:yes/no
Index:yes/no
Internet:yes/no

PJL

To

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School Education Department,
St. George Fort, Chennai.

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O/o. the Commissioner of School Education,
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R.N.MANJULA, J.

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