



W.A(MD)No.1054 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.1054 of 2024
and
CMP(MD)No.7830 of 2024**

1. The Director of School Education,
College Road,
Chennai.

2. The Joint Director of School Education,
Personnel,
College Road,
Chennai.

3. The Chief Educational Officer,
Thanjavur.

4. The District Educational Officer,
Primary Education, Pattukottai.

5. The District Educational Officer,
Secondary Education, Thanjavur.

6. The Block Education Officer,
Ammappettai,
Thanjavur District.

7. The Head Master,
Government High School,
Kayavoor, Thanjavur District.

... Appellants

vs.



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... Respondent

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Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 08.01.2024 made in W.P(MD)No.26310 of 2023.

For Appellants : Mr.S.Shaji Bino, Special Government Pleader
For Respondent : Mr.V.R.Shanmuganathan

JUDGMENT

(Judgment of the Court was made by **R.SURESH KUMAR, J.**)

This appeal has been directed against the order passed by the Writ Court dated 08.01.2024 made in W.P(MD)No.26310 of 2023.

2. That, the respondent / S.Ramesh had joined the services of the Education Department as Office Assistant and his probation was declared successfully, following which, he was posted as Record Clerk on 01.10.2010. From the post of Record Clerk, he has been promoted as Lab Assistant with effect from 21.07.2012. After having worked in that capacity as a Lab Assistant for a period of one year, by invoking the relevant rule namely, rule 3(g) of the Tamil Nadu Ministerial Service Rules, he had been given appointment by transfer and posted as Typist with effect from 02.12.2013. In that capacity, he has been working till 27.10.2023.



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3. On 27.10.2023, order has been passed by the appellant department stating that, rule 3(g) of the Tamil Nadu Ministerial Service Rules having been wrongly invoked in the case of the respondent, since the incumbent who has to be given the benefit of appointment by bringing him into the ministerial service by way of transfer, must have been in a lower pay scale, than the Typist post or Junior Assistant post, for which, such a transfer appointment would be given under rule 3(g) of the Tamil Nadu Ministerial Service Rules.

4. Here in the case on hand, it is to be noted that, the posts of Lab Assistant as well as the Typist carry the same scale of pay. Therefore, such kind of invocation of rule 3(g) of the Tamil Nadu Ministerial Service Rules itself in the year 2013, ought not to have been made by the appellant department. Nevertheless, since such a wrong invocation has been made, by virtue of that, if the respondent had been permitted to work as a Typist for 10 years, that would not make him entitled to claim the benefit of becoming the member of the feeder category for the post of Assistant, which is the next promotional avenue. Therefore, since it has been found that, such a post which had been given to the respondent in the year 2013 as Typist, is a wrong action



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on the part of the appellant department, accordingly, in order to rectify the same, present order dated 27.10.2023 was passed transferring and posting the respondent into the original post of Lab Assistant.

5. Learned Special Government Pleader appearing for the appellants would further contend that, insofar as the said order is concerned, it was only a rectification of the mistake that had been committed as against the rule. That rectification cannot be found fault with and therefore, no interference was called for against the said order. Despite that, the learned Writ Court through the impugned order dated 08.01.2024, had allowed the writ petition filed by the respondent challenging the said order passed by the appellant department dated 27.10.2023 and in this regard, the learned Judge followed the earlier order passed by another learned Judge of the Writ Court dated 05.02.2021 made in W.P.No.13849 of 2020 which is also a wrong application of the judgment and therefore, on that ground also, the writ petition ought not to have been allowed. Therefore, the present appeal challenging the order passed by the Writ Court dated 08.01.2024, is to be considered and ordered. That is what the submission made by the learned Special Government Pleader appearing for the appellants.



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6. On the contrary, Mr.V.R.Shanmuganathan, learned counsel appearing for the respondent would contend that, appointment had been given as a Typist by way of transfer, invoking the rules in the year 2013 since then, the respondent has been working as Typist till 2023 and after one decade, now the present order has been passed without any plausible reason, by thus, the respondent cannot be once again revered back to the original position as Lab Assistant, where, there has been no promotional avenue till the retirement. Therefore, the view that has been taken by the Writ Court in the earlier order dated 05.02.2021 in W.P.No.13849 of 2020 since has been followed by the learned Judge in the present order impugned, it does not warrant any interference at the hands of this Division Bench. Hence, the writ appeal is liable to be dismissed, he contended.

7. We have considered the said rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

8. Even though rule 3(g) of the Tamil Nadu Ministerial Service Rules as has been quoted in the very order passed by the appellant dated 27.10.2023, has stated that one promotion in the respective service would still be in a



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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 transfer as Junior Assistant or Junior Assistant cum Typist or Typist in the Tamil Nadu Ministerial Service, the respondent has been given such a benefit by order dated 02.12.2013, since then, he has been working as a Typist.

9. In his own career of service, the respondent entered into service as Office Assistant initially and thereafter, as Record Clerk from 01.10.2010 and Lab Assistant from 21.07.2012, but in that capacity as Lab Assistant, he has been working only for one year and five months that is, upto 02.12.2013, thereafter, he has been posted as Typist by invoking the said rule and till 27.10.2023, when the order was passed by the appellant department nearly about 10 years, the respondent has been working as a Typist.

10. Therefore, much relevance must be given and weightage also be given only to the Typist post which was held by the respondent for nearly a decade. Since the post of Typist becomes a feeder category for giving promotion to the post of Assistant, such a benefit already accrued on the respondent cannot be denied, by citing wrong application of the rule 10 years back.



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11. Since the wrong application has not been rectified immediately and the appellants allowed the respondent to continue as a Typist for 10 years, all of a sudden, that position cannot be reverted and the respondent cannot be reverted or transferred to the post of Record Clerk.

12. It is also to be noted that, the post of Lab Assistant is not a feeder category for any further promotion and therefore, if any one reaches the position of Lab Assistant, he has to retire or superannuate only as a Lab Assistant. Such kind of position, not to give any promotional avenue to any category of the posts of the Government service, would be detrimental to the entire service condition. This, in fact, has been considered by the Writ Court in W.P.No.13849 of 2020 dated 05.02.2021, where, the learned Judge has held that, the authority should not lose sight of the fact that the amendment of the rule was necessitated to provide promotional avenue to the post of Lab Assistant, as without such amendment, the post would have become dead end post.

13. The said view expressed by the learned Judge in the said judgment, in our respectful view, is to be accepted. Therefore, the order of the learned Judge who followed the said judgment in the present impugned order, as has



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been stated in paragraph 5 of the order which is impugned herein, is also to be accepted. Therefore, we do not find any reason to interfere with the approach and the conclusion reached by the learned Judge in the order impugned by allowing the said writ petition.

14. Resultantly, the appeal fails. Hence, it is liable to be dismissed. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.)

(G.A.M., J.)

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Index : Yes / No
Neutral Citation : Yes / No
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