



W.P.(MD)No.16109 of 2022

WEB COPY

DATED: 28.08.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.16109 of 2022
and
W.M.P(MD)No.11642 of 2022

K.Sathiya Nesan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. 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.

4.Principal and Secretary,
Lady Doak College,
Madurai – 625 002.

...Respondents

PRAYER:Writ Petition is filed under Article 226 of the Constitution of India, 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 O.Mu.No.4800/E1/2022, dated 20.05.2022, quash the Same, and further direct the 2nd and 3rd respondents herein to approve forthwith the promotion of petitioner as

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



W.P.(MD)No.16109 of 2022

Junior Assistant in the 4th respondent's college and disburse the grant-in-aid towards her salaries w.e.f.01.04.2022 with all attendant benefits.

For Petitioner : M/s.A.Amala

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader for R1 to R3

* * * * *

ORDER

The instant writ petition has been filed challenging the order passed by the Joint Registrar of Collegiate Education, wherein the request of the Private Aided College for approving the promotion of Lab Assistant to that of Typist has been rejected.

2.A perusal of the impugned order reveals that the post of Lab Assistant is equivalent to that of Junior Assistant/Typist and therefore, the appointment to the post of Junior Assistant/Typist from the post of Lab Assistant can never be considered to be a promotion.

3.The learned Counsel appearing for the writ petitioner contended that the said issue is no longer *res integra* and she relied upon the Hon'ble Division Bench

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



W.P.(MD)No.16109 of 2022

judgment of our High Court in W.A.(MD)Nos.114 & 9 of 2020, dated 25.03.2021.

WEB COPY

4.Per Contra, the learned Counsel appearing for the respondents herein would contend that when sanction was granted to the Aided College for appointment to the post of Lab Assistant, it was treated only as non-promotional post. Therefore, the petitioner can never be promoted as Junior Assistant/Typist, considering the post of Lab Assistant as feeder category. He further contended that the payscale of the Lab Assistant is equivalent to that of Junior Assistant/Typist and therefore, the same is non promotional post also. He further contended that in case the petitioner is promoted as a Junior Assistant/Typist, the same will be treated as a feeder category for further promotion and it would create financial implications to the Government. Hence he prayed for dismissal of the writ petition.

5.I have carefully considered the submission made on either side and perused the materials available on record.

6.A perusal of the impugned order reveals that the request of the management for approving the promotion order from the post of Lab Assistant to the post of Junior Assistant/Typist has been rejected on the sole ground that the post of Junior Assistant/Typist can never be treated to be a promotional post, in view of the fact



W.P.(MD)No.16109 of 2022

that the salary of both the posts are one and the same.

WEB COPY

7.The Hon'ble Division Bench of our High Court, in the judgment W.A(MD)Nos.114 & 9 of 2020, dated 25.03.2021, has considered a similar issue. The operative portions of the order in Paragraph No.2 to 6 are extracted as follows:-

"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?

3.The learned Special Government Pleader submitted that under those circumstances, the orders passed require interference.

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

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



W.P.(MD)No.16109 of 2022

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. 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."

8.In view of the judgment of the Hon'ble Division of our High Court, the respondent authorities cannot take a stand that both the posts of Lab Assistant as well as the post of Junior Assistant/Typist are drawing the same payscale and therefore, it is not a promotional post and the issue has already been decided by the

<https://www.mca.gov.in> above said judgment of the Hon'ble Division Bench.



W.P.(MD)No.16109 of 2022

WEB COPY

9.In view of the above said deliberations, the order impugned in the writ petition is hereby set aside and the second and third respondent are directed to approve the promotional order of the writ petitioner with effect from the date on which (*)**the promotion was granted by the management** and pass consequential orders within a period of twelve weeks from the date of receipt of a copy of this order.

10.With the above said observations, this writ petition stands allowed.
No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CO)

**(*)Corrected as per the order of this court dated
18.10.2024 made in WP(MD).16106 to 16109 of
2022.**

Sd/-

Assistant Registrar

// True Copy //

/10/2024

Sub Assistant Registrar()

RJR

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



W.P.(MD)No.16109 of 2022

To
WEB COPY

To be substituted to the order which is already despatched on 16.10.2024

- 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.

+1 CC to M/s.A.AMALA, Advocate (SR-47149[F] dated 29/08/2024)

W.P.(MD)No.16109 of 2022
and
W.M.P(MD)No.11642 of 2022
28.08.2024

SI -(26.09.2024) 7P/ 5C

MK -(21.10.2024) 7P/ 5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.