



W.P.(MD) No.18452 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.18452 of 2020

and

W.M.P.(MD) No.15456 of 2020

M.Kandasamy

... Petitioner

Vs.

- 1.The Director of Collegiate Education,
DPI Campus, College Road,
Chennai-600 006.
- 2.The Joint Director of Collegiate Education,
Madurai Region, Palam Station Road,
Madurai-625 002, Madurai District.
- 3.The Secretary,
Ayya Nadar Janaki Ammal College,
Sivakasi-626 124, Virudhunagar District.
- 4.C.Vinod Kumar
- 5.P.Mangaleswari

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records relating to the



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impugned orders issued by the 3rd respondent herein in proceedings No.Nil dated 17.05.2018 and proceedings No. Nil dated 25.07.2018 appointing the 4th and 5th respondents herein as Junior Assistants in the 3rd respondent college by direct recruitment, quash the same and further direct the 3rd respondent herein to fill up the posts of Junior Assistants by promotion by following Rule 11(4) (i) of Tamil Nadu Private Colleges (Regulation) Rule within a reasonable time as may be stipulated by this Court.

For Petitioner	:	Mr.E.V.N.Siva
For RR1 & 2	:	Mr.V.Om Prakash Government Advocate
For RR3 to 5	:	Mr.M.Senthilkumar

ORDER

The petitioner herein is working as Laboratory Assistant in the 3rd respondent-College, which is a Private Aided College governed by the provisions of Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules thereunder.

2. The grievance of the petitioner is that two vacancies of Junior Assistant that arose in the 3rd respondent-College were filled up by the



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Management of the 3rd respondent-College by appointing Respondent Nos.4 and 5 by way of Direct Recruitment.

3. It is the case of the petitioner that the petitioner being a Laboratory Assistant has got a right to be considered for being appointed as Junior Assistant by virtue of Government Order issued in G.O.Ms.No.11, Education Department, dated 04.01.1989.

4. According to the learned counsel for the petitioner, the post of Junior Assistant is bound to be filled up by the 3rd respondent from the categories of Record Clerks, Laboratory Assistants, Library Assistants, Museum Keepers and Mechanics and posts in similar time scales of pay in the same college by following seniority as basis, as per Rule 11(4)(i) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 (hereinafter referred to as “the Rules, 1976” for brevity). Thus, complaining violation of the Government Order issued in G.O.Ms.No.11, dated 04.01.1989, the petitioner approached this Court questioning the orders of appointment appointing Respondents No.4 and 5 as Junior Assistant in the 3rd respondent-College.



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5. Respondents No.3 to 5 filed a common counter affidavit contending that the pay scale for the posts of Laboratory Assistant and Junior Assistant is equal from the 7th Pay Commission and as such, both the posts are equivalent posts and therefore, the claim of the petitioner that he is entitled to be promoted to the post of Junior Assistant is meaningless. It is also stated that the post of Junior Assistant is only an entry level post in an Aided College and as such, the claim of the petitioner that he is entitled for promotion to the post of Junior Assistant is not correct.

6. In addition to the contentions raised in the counter affidavit, learned counsel for Respondents No.3 to 5 also contended that the petitioner can claim for promotion to the post of Assistant, but not to the post of Junior Assistant, as the posts of Laboratory Assistant and Junior Assistant are of the equal cadre now and therefore, the orders issued by the Government in G.O.Ms.No.11, dated 04.01.1989 have become redundant. He also further contended that in terms of Section 20 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (hereinafter referred to as “the Act, 1976”), the



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petitioner has got an effective alternate remedy of filing an appeal before the Director of Collegiate Education and in terms of Rule 14 of the Rules, 1976.

7. This Court has carefully considered the said submission made by the learned counsel for Respondents No.3 to 5 and perused Section 20 of the Act, 1976. Section 20 of the Act, 1976 provides remedy of an appeal only under specified circumstances especially against orders of punishment imposed on teachers and other persons employed in private colleges. Though Clause (b) of Section 20 of the Act, 1976 provides for an appeal against an order challenging the conditions of service of an employee of a Private Aided College, in the considered view of this Court, the facts of the case on hand do not fall within the meaning of an order under clause (b) of Section 20 of the Act, 1976.

8. Be that as it may, mere availability of alternate remedy is not a bar for entertaining a writ petition. In the instant case, the Government, having considered various representations received from the non-teaching staff of Private Colleges, issued specific orders in G.O.Ms.No.11, dated



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04.01.1989 requiring all the Private Colleges to fill up the post of Junior Assistant only on seniority basis from the categories of Record Clerks, Laboratory Assistants, Library Assistants etc. There is no dispute that the orders issued in G.O.Ms.No.11, dated 04.01.1989 are applicable to Respondent No.3-College. In the absence of any dispute about application of the said orders and also of the fact that the said orders are still in force, it is not open for the 3rd respondent to contend that the orders issued in the said Government Order have become redundant or otherwise. Even otherwise, the said Government Order does not speak of promotion at all and on the other hand, it only mandates that the post of Junior Assistant in Private Colleges shall be filled up by certain categories mentioned in the said Government Order. Therefore, even assuming that the posts of Laboratory Assistant and Junior Assistant have become equal grade or cadre, the same does not entitle the 3rd respondent to ignore the order issued by the Government in G.O.Ms.No.11, dated 04.01.1989. Admittedly, the 3rd respondent-College is an Aided College and the posts of Junior Assistant, which are now filled up by appointing Respondents No.4 and 5 are also admittedly aided posts. Therefore, it is not open for the 3rd respondent-College to violate the



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Government Orders issued in G.O.Ms.No.11, dated 04.01.1989. Thus, the action of the 3rd respondent in filling up the post of Junior Assistant in the 3rd respondent-College by appointing Respondents No.4 and 5 directly instead of filling up the said post from the categories mentioned in G.O.Ms.No.11, dated 04.01.1989 is bound to be declared as illegal and arbitrary.

9. As submitted by the learned counsel for the petitioner, the categories from which the posts of Junior Assistant are required to be filled up have no other promotion avenues and it is only in case if they are appointed as Junior Assistants in terms of G.O.Ms.No.11, dated 04.01.1989, then only they will have further promotional avenues to the post of Assistant and further promotion to the post of Superintendent etc. It is only keeping in view all these circumstances, the Government has issue the said Government Order dated 04.01.1989. But, unfortunately the 3rd respondent, who is bound by the orders issued in the said Government Order has violated the same and acted in an arbitrary manner and the appointment of Respondents No.4 and 5 is also erroneously approved by the Joint Director by issuing proceedings in P.மு.எண்.1567/உள்1/2019-1 and P.மு.எண்.1567/உள்1/2019-2, dated 01.04.2022.



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10. From the perusal of the said orders, it appears that the approving authority, who approved the appointments of Respondents No.4 and 5 has totally acted in ignorance of the Government Order in G.O.Ms.No. 11, dated 04.01.1989 and therefore, the same also are liable to be declared as invalid. No doubt, there is no challenge to the orders of approval issued by the Joint Director, but as this Court has already come to the conclusion that the very appointment of Respondents No.4 and 5 to the post of Junior Assistant directly is contrary to the Government Order and illegal, the consequent approval also does not stand.

11. Further, the very same issue has also come up for consideration before this Court in W.P.(MD) Nos.1712 of 2015 and batch and a learned Single Judge of this Court by order dated 14.06.2023 has considered the same and held as under:

“10. Moreover, it is seen that the persons working in Lab Assistants, Record Clerk and Library Assistants cannot have any further promotion from the said post. Therefore, if they are transferred to the post as Junior Assistant / Typist or Store Keeper, they can be



promoted further to the post of Assistant and Superintendent. If the private Schools and Colleges are following this, there will not be any loss to the Government. If such approval is not granted, then the private Schools or Colleges would indulge in fresh recruitments to the post of Junior Assistant and Lab Assistant, whereby the government would incur financial burden. Hence, both the Colleges as well as the Government are benefitted by such promotion. The Government is not incurring any extra financial burden by granting such promotion. The only objection by the respondents is that they carry equal pay and they are considered on par, hence they cannot be promoted. This Court is of the considered opinion that this plea is hyper technical. If the same cannot be considered promotion, they can be considered as transfer to another post. The respondent further submitted that the Library Assistant post comes under teaching staff whereas the Junior Assistant post comes under non-teaching staff. This is also hyper technical objection. As rightly pointed out by the Learned Counsel appearing for the petitioner that if transferred to Junior Assistant post the petitioner would get an opportunity to be promoted as Assistant and Superintendent. Also, the government would not incur any



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loss because of such transfer to Junior Assistant post, since Lab Assistant / Library Assistant / Junior Assistant carry same scale of pay.”

12. In the light of the above, this Court has no hesitation to declare that the action of the 3rd respondent in appointing Respondents No.4 and 5 to the post of Junior Assistant directly through the impugned order is illegal and arbitrary and accordingly, the impugned proceedings dated 17.05.2018 and 25.07.2018 are set aside and the 3rd respondent is further directed to fill up the vacancies of Junior Assistant in terms of G.O.Ms.No.11, Education Department, dated 04.01.1989.

13. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

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