



W.P.(MD) No.21550 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD) No.21550 of 2024

Poongundran

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Petitioner

-VS-

1.The Director of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.

2.The Joint Director of Collegiate Education,
Thanjavur Region,
Q438 + 752, AVP Azhagammal Nagar,
Thanjavur – 613 005.

3.The Secretary and Correspondent,
Poompuhar College,
Melaiyur – 609 107,
Sirkali Taluk,
Mayiladuthurai District.

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Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India,
praying for issuance of a writ of certiorarified mandamus, to call for the



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records pertaining to the impugned order passed by the 2nd respondent in his proceedings A.Thi.Mu.No.306/Aa2/2023, dated 13.05.2024, and quash the same as illegal and consequently direct the 2nd respondent to approve the petitioner's promotion as Junior Assistant with effect from 01.04.2017.

For Petitioner : Mr.T.Lenin Kumar

For Respondents 1 & 2 : Mr.J.Ashok,
Addl. Govt. Pleader.

ORDER

The instant Writ Petition has been filed by a Lab Assistant, challenging the order passed by the second respondent, wherein the proposal forwarded by the third respondent college management for appointing the petitioner as a Junior Assistant has been returned by the second respondent on the ground that they are expecting Government orders to the said effect.

2. It is not in dispute that the post of Lab Assistant is equivalent to Junior Assistant/Typist and, therefore, the appointment to the post of Junior Assistant/Typist from the post of Lab Assistant can never be



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considered to be a promotion. In case there are vacancies as per the sanctioned strength and they could be filled up by the college management, the authorities are not expected for issuance of any special Government Order to grant permission to fill up the said post.

3. A Division Bench of this Court, in W.A.(MD) Nos.114 and 9 of 2020, dated 25.03.2021, in paragraphs 2 to 6 has held 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.



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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. Therefore, looking from any perspective, we do not find any reason to interfere with the order of the learned Single Judge.



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WEB COPY Accordingly, these Writ Appeals are dismissed. No costs.
Consequently, connected Miscellaneous Petitions are closed."

4. In view of the above judgment of the Hon'ble Division Bench of this Court, the respondent authorities are directed to consider the proposal forwarded by the college management and pass orders in accordance with law. The order impugned in the Writ Petition is set aside and the matter is remitted back to the second respondent for passing fresh orders in the light of the orders passed by the Division Bench of this Court, as stated above.

5. Writ Petition stands allowed. No costs. Consequently, the connected W.M.P.(MD) No.18212 of 2024 is closed.

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

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R.VIJAYAKUMAR, J.

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