



W.P.(MD).No.21782 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.21782 of 2023

and

W.M.P(MD) Nos. 18172, 18173 and 26789 of 2023

R.Udhayakumar

... Petitioner

Vs.

1. The Regional Joint Director of Collegiate Education,
Madurai Region,
Madurai – 625 002.

2. The Secretary/Correspondent,
V.V.Vanniaperumal College for Women,
Virudhunagar – 626 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertain to the impugned order of the first respondent in his proceedings ந.க.எண்.7547/A2/2023, dated Nil.08.2023 signed on 04.08.2023 and quash the same as illegal, unconstitutional and consequently direct the first respondent to approve the petitioner's promotion as Junior Assistant in the second respondent's College, in the promotion vacancy of Tmtty.C.Lilly Rose w.e.f. 01.06.2023 in the light of order passed by this Court in W.P(MD) No.12783 of 2017, dated 19.12.2018 in W.A.(MD) No.9 of 2020, dated



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25.03.2021 along with monetary and all other attendant and service benefits within the time frame.

For Petitioner : Mr.S.Balamurugan

For R1 : Mr.N.Satheesh Kumar
Additional Government Pleader

For R2 : No appearance

ORDER

The instant Writ Petition has been filed by a Junior Assistant, working in the second respondent College, challenging the order passed by the first respondent, wherein the request of the Management for approval of the promotion orders have been rejected.

2. The petitioner herein, who was working as a Lab Assistant in the second respondent Institution was promoted as a Junior Assistant in the same College. The said promotion order was forwarded to the first respondent herein for his approval. Under the impugned order dated 04.08.2023, the said proposal was rejected on the ground that the post of Lab Assistant is equivalent to the post of Junior Assistant and therefore, the appointment of the petitioner from the post of Lab Assistant to Junior Assistant cannot be



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approved as a promotion. The said order is under challenge in the present writ petition.

3.The issue involved in the present writ petition is no longer *res integra*. The Hon'ble Division Bench of this Court after considering all the above said issues has dismissed the writ petition filed by the State in W.A. (MD)Nos.114 & 9 of 2020, dated 25.03.2021.

4. Per Contra, the learned Additional Government Pleader appearing for the first respondent 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 pay scale 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.



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

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,



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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 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.



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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 pay scale and therefore, it is not a promotional post and the issue has already been decided by the above said Judgment of the Hon'ble Division Bench.



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9. In view of the above said deliberations, the order impugned in the writ petition is set aside and the respondents are directed to approve the promotion of the writ petitioner as Junior Assistant with effect from 01.06.2023 and pass orders and conferring all consequential benefits 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 to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petitions stand closed.

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