

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2025

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CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No.6507 & 9268 of 2021
and WMP.Nos.7086, 7088, 9828 & 13066 of 2021

- 1.Sangeetha
2. Muthulakshimi
- 3.Janitha Mary
- 4.Hemalatha
- 5.Maheswari

... Petitioners in WP.No.6507 of 2021

Fathimabee

... Petitioner in WP.No.9268 of 2021

vs

1.The State of Tamil Nadu
Rep by its Secretary to Government
Heath and Family Welfare Department
Fort St.George, Chennai – 9.

2.The Director of Medical Education
State of TamilNadu, Kilpauk
Chennai.

3.The Director of Medical Services
State of Tamil Nadu
Teynampet, Chennai

4.The Dean
Rajiv Gandhi Government General Hospital,
Chennai – 3.



5. Government Diploma Medical Lab
Technician Association
Rep by its State General Secretary
P.U.Shajahan D.No.19
Vinayagamoorthy Street
Sathamangalam, Madurai – 7.

... respondents in both the cases

common prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the impugned order of the 4th respondent made in K.Dis.No.030757/E3/1/2020 dated 05.03.2021 and quash the same.

For Petitioners : Mr.D.R.Arun Kumar in both cases
For Respondents : Mr.E.Sundaram for R1 to R4.
M/s.T.Kalaiselvi, No appearance.

COMMON ORDER

Both the writ petitions are filed challenging the impugned order dated 05.03.2021, reverting the petitioners from the post of Lab Technician Grade I to the post of Lab Technician Grade II.

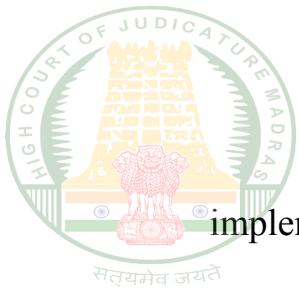
2. The petitioners 1, 4 and 5 were appointed as Lab Technician Grade II on 18.02.2008, the petitioners 2 & 3 were appointed on 08.04.2008 and 04.04.2008 respectively. The petitioner in WP.No.9268 of 2021 was



appointed during 2011. The petitioners were promoted to the post of Lab Technician Grade I on 30.01.2020 as per the seniority, by the 4th respondent.

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3. At the time of promotion, institution-wise seniority was followed as per Rule 4, Class III, Category I of Section 21 of the Tamil Nadu Medical Subordinate Service Rules. The petitioners were promoted on the basis of their seniority to the post of Lab Technician Grade I. While so, the 5th respondent filed writ petition in WP.(MD).No.8916 of 2019, seeking adoption of state wide seniority instead of District/institution wise seniority. The Madurai bench of this Court by an order dated 12.04.2019, disposed of the writ petition by directing the official respondents to consider the representation of the 5th respondent on merits. Subsequently, the 5th respondent filed another writ petition in WP.(MD).No.3152 of 2020, challenging the promotion of the petitioners as well as others as Lab Technician Grade I, and for consequent direction to the respondents 1 to 7 to promote the eligible Lab Technician Grade II, on completion of their qualifying service of 10 years, in the respondent department as Lab Technician Grade I. During the pendency of the writ petition, this Court granted interim order of stay in WMP.No.2691/2020 dated 10.03.2020.



4. According to the petitioners, the state wise seniority was implemented vide GO.Ms.No.147 dated 18.03.2020, whereas the petitioners were promoted on 30.01.2020, based on the old rule that was in existence at the relevant point of time. The 4th respondent without giving an opportunity of hearing to the petitioners passed the impugned order dated 05.03.2021, applying the amended rule dated 19.03.2020, with retrospective effect. The application of the amended rule, according to the petitioner's was against the settled position of law, that no rule or act could be given retrospective effect, unless it was specified in the said Act or rules. Hence, the petitioners were constrained to file the writ petitions for the aforesaid relief.

5. The 4th respondent filed counter affidavit conceding to the prayer in the writ petitions. It is relevant to extract paragraph 10 of the counter affidavit :-

“10) With reference to the averment made in the grounds (i) to (vi) of the affidavit it is submitted that the post of Lab Technician Grade - I the concerned Head of the Institution was the appointing authority. As such, vacancy in the post of Lab Technician Grade - I in each institution is filed by concerned Head of the Institution which results in quicker promotions in certain



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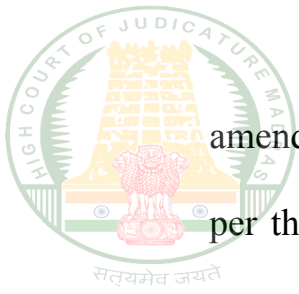
institutions because of more number of vacancies. The feeder category for the post of Laboratory Technician Grade - I is Lab Technician Grade -II. The petitioners were promoted to the post of Lab Technician Grade I before the issuance of amendment G.O. to follow state wide seniority by the Government in G.O.Ms.No. 147 Health and Family Welfare (C2) Department dated 18.03.2020 and the first respondent herein vide letter ref.no: 18891/C2/2019-4, dated: 24.12.2019 have instructed to follow the existing rules for the post of Lab Technician Grade I till amendment were issued and petitioners joined duty before the issue of the G.O.Ms.No. 147 Health and Family Welfare (C2) Department dated 18.03.2020 and the promotion orders issued to the petitioners hold good. In order to obey the order dated: 10.03.2021 in WP (MD) No. 3152 of 020 and WMP No: 2691 of 2020 the Hon'ble Madurai Bench of Madras High court the petitioners were reverted in order dated 05.03.2021 vide ref.no: 30757/E3/1/2020 and the rules in force were only followed by the 4th respondent herein and to avoid contempt proceeding against the 4th respondent the petitioners were reverted with immediate effect to implement the orders of the Hon'ble Madurai Bench of Madras High court.”



6. The 5th respondent filed counter affidavit denying the contentions raised in the writ petition. The 5th respondent contended that challenging the promotion order dated 13.01.2020, he filed WP.MD.No.3152 of 2020, before the Madurai Bench of this Court and obtained the order of interim stay in WMP.MD.No.2691 of 2020 dated 10.03.2020. He further contended that in the promotion order, it was specifically mentioned that the petitioners were temporarily promoted to the post of Lab Technician Grade I, and therefore the impugned order reverting the petitioner's to the post of lab technician Grade II, could not be faulted. The 5th respondent therefore stated that there was no infirmity in the impugned order passed by the respondents and hence, the writ petition was legally unsustainable.

7. Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on record.

8. Admittedly, the petitioners were promoted to the post of Lab Technician Grade I, vide order of the 4th respondent dated 30.01.2020. According to the petitioners, at the time of promotion the institution wise seniority was followed as per Rule 4, Class III, Category I of Section 21 of the Tamil Nadu Medical Subordinate Service Rules. Only thereafter, the



amended rules were issued vide GO.Ms.No.147 dated 18.03.2020. Even as per the respondents counter, the petitioners were promoted on 30.01.2020, long before the amended rules were issued. Even, the 1st respondent vide letter dated 24.12.2019, gave instructions to follow the existing rules for promotion to the post of Lab Technician Grade I, till the amendment was issued. Under the said circumstances the petitioners were promoted and joined duty.

9. Before embarking on the law on the subject the merits of the case on facts are considered. The respondent in the impugned order while reverting the petitioners to the post of Lab Technician Grade II stated that the petitioners were reverted in compliance of the order of this Court, in WP.(MD).No.3152 of 2020 and WMP.MD.No.2691 of 2020. The records reveal that the interim order in WMP.MD.2691 of 2020, was passed only on 10.03.2020, after the petitioners were promoted and took charge of the new post of Lab Technician Grade I. Hence, strictly speaking there was no contempt of the orders of this Court and even the order passed in contempt proceedings was subsequent to the promotion of the petitioners. Therefore, reference to the interim order in WMP.No.2691 of 2020 and the contempt proceedings in Contempt Petition No.1263 of 2021 as a ground for



reversion is unsustainable. Hence, the reasons cited for reverting the petitioners from the post of Lab Technician Grade I, to the post of Lab Technician Grade II, is without any legal basis and has to fail. Further, it appears that the writ petition in WP.MD.No.3152 of 2020 was subsequently dismissed by this Court on the ground of maintainability.

10. It is settled law that the amended service rules cannot be applied retrospectively taking away the vested right of the persons in service. It is useful to refer to the judgment of the Hon'ble Supreme Court in the case of **Food Corporation of India etc V. Om Prakash Sharma and others** reported in (1999) 1 LLJ 1215 SC, wherein it is held as follows :-

"32. The last of the above cases has been decided by the Constitution Bench in which one of us (Justice Agarwal) was a member and he spoke for the Bench. It will be advantageous to quote the following passage in that judgment :

In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have

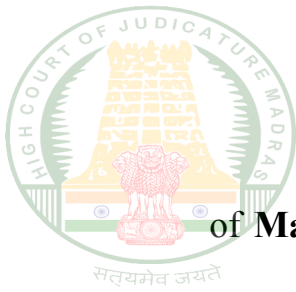


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an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

33. If the principle laid down in the above judgment is applied here, there is no doubt that the impugned amendments in the present case cannot operate retrospectively"



11. In yet another judgment of the Hon'ble Supreme Court in the case of **Mahendran and others v. State of Karnataka and others** reported in

AIR 1990 SC 405 it is held as follows :-

“15. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they



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applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."

12. The above said judgments of the Hon'ble Apex Court are squarely applicable to the facts of the present case. The amendment cannot have retrospective operation affecting the vested rights of the petitioner's, more so, when the GO itself does not speak of retrospectively. Hence, the impugned order dated 05.03.2021, passed by the 4th respondent is unsustainable and liable to be set aside. Ergo, the impugned order dated 05.03.2021, is set aside.

13. In the result, both the writ petitions are allowed by setting aside the impugned order dated 05.03.2021 passed by the 4th respondent in



K.Dis.No.030757/E3/1/2020. No costs. Consequently, connected miscellaneous petitions are closed.

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24.02.2025

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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W.P.Nos.6507 & 9268 of 21



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