



W.P.No.30360 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 11.12.2024

ORDERS PRONOUNCED ON : 03.03.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.30360 of 2015

- 1.C.Babu Hariharan
- 2.A.Thiagesan
- 3.T.Lakshmanadoss
- 4.R.Rajendiran
- 5.R.Dilipkumar
- 6.V.Maheswari

... Petitioners

Vs.

- 1.The Chief Secretary to Government,
Department of School Education,
Secretariat, Chennai-600 009.
- 2.The Director of School Education,
College Road, DPI Campus,
Nungambakkam, Chennai-600 006.
- 3.The District Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying



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for issue of Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in connection with the orders passed by him in his proceedings Na.Ka.No.93216/A4/E1/2014, dated 04.03.2015 and quash the samd and consequently direct the respondents to promote the petitioners to the post of Assistants in any of the existing or immediate future vacancies with effect from the date of promotion given to their colleagues from the date of promotional with all monetary and service benefits.

For Petitioners : Mr.R.Singaravelan
Senior Counsel
assisted by Ms.M.Srividhya

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

The short question that would arise for consideration in this writ petition is as to whether the petitioners herein who are all working as Lab Assistants in Tamil Nadu General State and Subordinate Services are entitled for consideration of their cases for appointment by transfer to the post of Junior Assistant, Junior Assistant-cum-Typist or Typist in terms of Clause (g) of Rule 3 of Tamil Nadu Ministerial Service Rules or not? All the petitioners herein were initially engaged for census work and thereafter, by virtue of the



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orders passed by the Hon'ble Apex Court, they were all appointed as Office Assistants in the State and Subordinate Service during the year 1997 and thereafter, they were promoted to the post of Lab Assistants during the year 2012. From the year 2012 onwards, all the petitioners have been continuing as Lab Assistants and they all were extended the benefit of Selection Grade etc., on completion of fixed number of years of service in the post of Lab Assistant, due to stagnation in the said post for long period.

2. Heard Mr.R.Singaravelan, learned Senior Counsel assisted by Ms.M.Srividhya, learned counsel for the petitioners and Mr.K.H.Ravikumar, learned Government Advocate for the respondents.

3. The learned Senior Counsel appearing for the petitioners, by placing reliance on Clause (g) of Rule 3 of Tamil Nadu Ministerial Service Rules, contended that the said Rule is a beneficial provision introduced for the benefit of certain category of employees, such as the categories, who have no promotional avenues or the categories who have promotional avenues, but



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have been drawing lesser pay than the pay scale attached to the post of Junior Assistant, Junior Assistant-cum-Typist and Typist by way of appointment by transfer and the petitioners herein would fall within the first category viz., the category who have no promotional avenues. He also further contended that the beneficial provision contained in Clause (g) of Rule 3 of Tamil Nadu Ministerial Service Rules is required to be understood in a manner, which will subserve the purpose of introducing the said Rule. In support of his contention, the learned Senior Counsel placed reliance on the decisions of the Hon'ble Apex Court in the case of *Kanai Lal Sur vs. Paramnidhi Sadhukhan* reported in *AIR 1957 SC 907* and *Rohan Builders (India) Private Limited vs. Berger Paints India Limited* reported in *(2024) 5 MLJ 305 (SC)*.

4. He also further contended that the right of consideration for promotion is a fundamental right and therefore, the petitioners are entitled for consideration of their case for promotion in terms of Clause (g) of Rule 3 of Tamil Nadu Ministerial Service Rules and also placed reliance on a decision



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of the Hon'ble Supreme Court in the case of ***Union of India and another vs.***

Hemraj Singh Chauhan and others reported in ***(2010) 4 SCC 290***. He also further contended that the impugned order rejecting the claims of the petitioners for appointment to the post of Junior Assistant etc., on the ground that the petitioners have been drawing scale of pay equal to the post of Junior Assistant and therefore, they do not fall within the scope and ambit of Rule 3(g) is totally arbitrary and result of non-application of mind, as the petitioners would directly fall within the scope of first limb of Rule 3(g)(i) of Tamil Nadu Ministerial Service Rules viz., the category having no promotional avenues.

5. On the other hand, Mr.K.H.Ravikumar, learned Government Advocate appearing for the respondents contended that the petitioners, who were initially appointed as Office Assistants were promoted to the post of Lab Assistants in the year 2012 and the pay of the Lab Assistant was made equal to the pay of Junior Assistant by virtue of orders issued by the Government in G.O.(Ms).No.63, Finance (Pay Cell) Department, dated 26.02.2011 and



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therefore, the petitioners are not entitled for the benefit of appointment to the post of Junior Assistant in terms of Rule 3(g) of Tamil Nadu Ministerial Service Rules. In support of his contention, he also placed reliance on a decision rendered by this Court (MSKJ) in W.P.No.28122 of 2021, dated 07.06.2024.

6. This Court has carefully considered the submissions and also perused the entire material on record.

7. As already noted above, the scope and ambit of Rule 3(g) of Tamil Nadu Ministerial Service Rules has to be examined and understood. If the petitioners would fall within the scope and ambit of the said Rule, they are entitled for consideration for appointment by transfer to the post of Junior Assistant etc., in the Tamil Nadu Ministerial Services. If they do not fall within the scope of the said Rule, they are not entitled for the relief sought in the present writ petition.

8. Rule 3(g) of Tamil Nadu Ministerial Service Rules reads as under:



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“3.Method of Recruitment-Special:

(g) Besides direct recruitment as provided in rule 2, appointment to the categories of Junior Assistant, Junior Assistant-cum-Typist and Typist shall be made by recruitment by transfer from other services, subject to the following conditions, namely:-

(i) Persons in services, other than the Tamil Nadu Ministerial Service, who are in categories having no promotional opportunities or even after more than one promotion in the respective service would still be in a category carrying scale of pay lower than that of Junior Assistant or Junior Assistant cum-Typist or Typist alone shall be considered for appointment by recruitment by transfer as Junior Assistant or Junior Assistant-cum-Typist or Typist in the Tamil Nadu Ministerial Service, subject to the possession of the prescribed qualifications for direct recruitment;

(ii) The sphere of appointment by recruitment by transfer shall be limited to the persons in the lower categories in other services within the purview or control of the Unit or Officer concerned;

(iii) Appointment to the post of Junior Assistants, Junior-Assistant-cum-Typists or Typists from



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the lower categories shall not exceed twenty percent of the vacancies in each of the categories;

(iv) A person to be eligible for appointment as Junior Assistant, Junior Assistant-cum-Typist or Typist should have rendered not less than seven years of service in the lower categories;

*** (v) Those who are in possession of the required educational qualification * and belong to the Tamil Nadu Basic Service shall be given training in clerical work for a period of * Six months, out of which for the first three months the training shall be with the Record Clerk and on its completion, the second three months shall be with the Junior Assistant. The above training shall be for two hours a day without detriment to their normal work;*

***[Substituted vide G.O.Ms.No.336, P & A.R.(B) Department, dt. 13-9-2004 w.e.f. 1-3-2004]*

Provided that the vacancies reserved for recruitment by transfer to the post of Junior Assistant or Junior Assistant-cum-Typist or Typist, the person in lower categories shall be appointed without undergoing the training subject to other requirements being fulfilled in 1994.



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Provided further that from 1995 onwards, the posts shall be filled up only after giving training to the persons in the lower categories;

(vi) For those who are holding posts the post of like Record Clerk having clerical duties, there shall be no fresh training for them in clerical work;

(vii) Such training in clerical duties is not necessary for appointment to the post of Typist;

(viii) While selecting persons in lower categories for training in clerical work, strict seniority should be adhered to;

(ix) Number of persons to be given training each year shall not exceed twenty percent of the estimated vacancies in the category of Junior Assistants or Junior Assistant-cum-Typist or Typists. Number of persons to be given training shall be decided in the previous year.

***[Substituted vide G.O.Ms.No.15, P & AR(B) Dept., dated 21.2.2002 w.e.f. 15.2.1994]”*

9. From a reading of sub-clause (i) of Clause (g) of Rule 3, it is evident that the same covers two categories of employees: Firstly the persons in services other than Tamil Nadu Ministerial Service in the categories having no promotional opportunities; and the second category is the persons even



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after more than one promotion in the respective service, still be in the category carrying scale of pay lower than that of Junior Assistant etc.

10. No doubt, the petitioners, who were initially appointed as Office Assistants were once promoted to the post of Lab Assistants in the year 2012. Admittedly, there is no further promotional opportunities from the post of Lab Assistant and the petitioners have been continuing in the post of Lab Assistant since the year 2012 onwards. Therefore, the petitioners would definitely fall under the first category mentioned in sub-clause (i) of Clause (g) of Rule 3. The second category is the persons who availed the benefit of more than one promotion, but still in a category carrying lessor scale of pay than that of Junior Assistant etc. The petitioners herein are not the persons who availed the benefit of more than one promotion. Therefore, the petitioners cannot be said to be the persons falling under the second category mentioned in sub-clause (i) of Clause (g) of Rule 3. The requirement of drawing scale of pay lower than that of Junior Assistant etc., is only applicable to the persons who availed the benefit of more than one promotion



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in the respective service and still drawing lower pay than that of Junior Assistant etc.

11. From the perusal of Clause (g) of Rule 3, it is evident that the same is intended to benefit the two categories of persons, i.e., who do not have promotional opportunities and those who draw a lesser pay than that of the Junior Assistant etc., even after availing the benefit of promotion more than once. Thus, the said provision intended to benefit the two categories of persons. As already discussed above, the petitioners would directly fall under the first category of sub-clause (i) of Clause (g) of Rule 3. If that be the case, the action of the second respondent in issuing the impugned proceedings, rejecting the claim of the petitioners on the ground that the petitioners have been drawing the scale of pay equal to that of Junior Assistant is totally unsustainable.

12. As rightly contended by the learned Senior Counsel appearing for the petitioners, the beneficial provision introduced shall be given a meaningful interpretation to sub-serve the purpose of introducing such provision as held by the Hon'ble Apex Court in the cases of ***Kanai Lal Sur***



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WEB COPY (supra) and **Rohan Builders (India) Private Limited** (supra).

13. In the case of **Kanai Lal Sur** (supra), the Hon'ble Apex Court held as under:

“6. Mr N.C. Chatterjee, for the appellant, has contended that the object in enacting the relevant Thika Tenancy Acts and Ordinances is absolutely clear. It is a piece of welfare legislation and as such its operative provisions should receive a beneficent construction from the courts. If the scheme of the Act and the object underlying it is to afford full protection to the thika tenants, says Mr Chatterjee, courts should be slow to reach the conclusion that any class of thika tenants are excluded from the benefit of the said Act. In support of his argument Mr Chatterjee has naturally relied on the observations made by Barons of the Exchequer in Heydon case [(1584) 3 Co Rep 8] . Indeed these observations have been so frequently cited with approval by courts administering provisions of welfare enactments that they have now attained the status of a classic on the subject and their validity cannot be challenged. However, in applying these observations to the provisions of any



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statute, it must always be borne in mind that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct. Indeed, Mr Chatterjee himself fairly conceded that he would not be justified in asking the court to put an undue strain on the words used in the section in order that a



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construction favourable to the thika tenants should be deduced. It is in the light of this legal position that we must now consider Section 5 sub-section (1) of West Bengal Act 2 of 1949, amended by West Bengal Act 6 of 1953.”

14. In the case of **Rohan Builders (India) Private Limited** (*supra*), the Hon'ble Apex Court held as under:

“18. While interpreting a statute, we must strive to give meaningful life to an enactment or rule and avoid cadaveric consequences that result in unworkable or impracticable scenarios.²⁹ An interpretation which produces an unreasonable result is not to be imputed to a statute if there is some other equally possible construction which is acceptable, practical and pragmatic.”

15. Then coming to the decision of this Court (MSKJ) in W.P.No.28122 of 2021, relied upon by the learned Government Advocate is concerned, in the said case, the petitioners have availed the benefit of promotion twice, that is, from the post of Office Assistants to the Post of Record Clerks and then to the post of Lab Assistants and such Lab Assistants have been drawing the scale of pay equal to Junior Assistant. Therefore, the



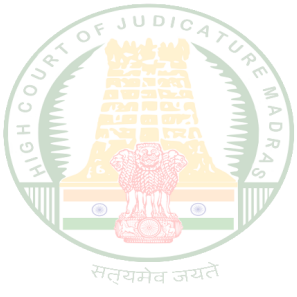
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petitioners in the said writ petition would directly fall under the second category mentioned in sub-clause (i) of Clause (g) of Rule 3 of the Tamil Nadu Ministerial Service Rules. Therefore, the said decision has no application to the case on hand. Further, in the said decision, this Court has not taken note of the differentiation made between the two categories mentioned in sub-clause (i) of Clause (g) of Rule 3 and therefore, for this reason also, the said decision cannot be made applicable to the case on hand.

16. In the light of the above, this Court is of the considered view that the impugned order rejecting the case of the petitioners is liable to be quashed and accordingly, the impugned order is quashed.

17. No doubt, the petitioners, who have been continuing in the post of Lab Assistant since 2012 were extended the benefit of Selection Grade on completion of ten years of service due to stagnation in the said post, which is an alternative for promotion, but the same by itself cannot be treated as a substitute, nor can be put against the right of the petitioners for being considered for recruitment by transfer in terms of Rule 3(g) of Tamil Nadu



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Ministerial Service Rules.

18. Accordingly, the respondents are directed to consider the case of the petitioners for appointment by transfer to the post of Junior Assistant, Junior Assistant-cum-Typist etc., in Tamil Nadu Ministerial Service as and when vacancies arise in terms of Rule 3(g) of Tamil Nadu Ministerial Service Rules in the 20% quota earmarked under the said Rule along with all other eligible candidates.

19. In the result, this Writ Petition is allowed. There shall be no order as to costs.

03.03.2025

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

ABR



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To

- 1.The Chief Secretary to Government,
Department of School Education,
Secretariat, Chennai-600 009.
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MUMMINENI SUDHEER KUMAR, J.

ABR

Pre-delivery Order made in
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