



W.P.No.26366 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.26366 of 2024

R.T.Bhalakrishnan

... Petitioner

-Vs-

1. Government of Tamil Nadu,
Represented By Its Principal Secretary to Government,
Handloom, Handicrafts, Textile and Khadi Department,
Fort St.George,
Chennai-600 009.

2. The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam,
Chennai-600 104.

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the concerned record from the second respondent, quash the order of the second Respondent dated 04.04.2024, bearing Letter No.9608/E2(2)/2023 as illegal, arbitrary and contrary to law and consequently direct the respondents to regularize the services of the Petitioner in the post of Typist from 23.10.2008, pay the difference of salary for the period from 23.10.2008 to 18.07.2016 between the Post of Watchman and Typist and further promote the petitioner to the post of Assistant from April 2020 and extend all the monetary benefits.



W.P.No.26366 of 2024

For Petitioner	: Mr.Balan Haridas
For R1	: Mr.R.U.Dinesh Rajkumar Additional Government Pleader
For R2	: Mr.C.Rajkumar

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 04.04.2024, thereby rejecting the representation submitted by the petitioner seeking regularization of the petitioner's service in the post of Typist from 23.10.2008 and to pay the difference of salary for the period from 23.10.2008 to 18.07.2016 between the Post of Watchman and Typist and further promote the petitioner to the post of Assistant from April 2020 and extend all the monetary benefits.

2. The petitioner was appointed as Watchman on 05.09.1989. The petitioner is qualified with English higher grade typewriting and also Tamil lower grade typewriting. The Watchman, who had rendered ten years of service with the qualification of SSLC and English higher grade typewriting and Tamil lower grade typewriting is entitled to be promoted to the post of typist. Even after completion of ten years of service as Watchman, by an order dated 23.10.2008, the petitioner was posted to the post of Typist in the existing vacancy, on condition that the petitioner should not claim any right to the post of Typist till his regular turn comes and that he shall only be eligible to draw the



W.P.No.26366 of 2024

original Grade Pay in the post of Watchman. Accordingly, the petitioner was working as a Typist from 23.10.2008 but he was paid the salary of that of a Watchman. By an order dated 18.07.2016, the petitioner was promoted to the post of Typist. The second respondent, by its communication dated 03.08.2020, called for details from its Subordinate Officers to draw panel for promotion to the post of Assistant. The crucial date for preparing the panel is 15.04.2020. The Junior Assistant/Typist with five years service is eligible for promotion to the post of Assistant. The post of Assistant is filled up by promotion from the category of Junior Assistant/Steno Typist/Typist in the ratio of 4:1 and must have put in not less than two years of service in the said post. Since the petitioner did not have five years of service as Typist as on crucial date, his name was included in the panel for promotion to the post of Assistant. Thereafter, by the subsequent proceedings dated 22.02.2021, it was decided to prepare the panel for the post of Assistant, in which the qualification prescribed was two years as Typist for the promotion to the post of Assistant. In the meantime, the petitioner had attained the age of superannuation and retired from service on 28.02.2023. Even before his retirement, the petitioner submitted a representation repeatedly to regularize his service in the post of Typist from the date of his joining as Typist viz., 23.10.2008 and to promote him to the post of Assistant to include his name in the panel for promotion for the year 2020. It was not considered and as such, the petitioner was constrained to approach this

Page 3 of 17



W.P.No.26366 of 2024

Court in W.P.No.31713 of 2023. This Court, by an order dated 06.11.2023

directed the second respondent to consider the representation submitted by the petitioner on its merits and in accordance with law, within a period of eight weeks. But the second respondent, by an order dated 04.04.2024 rejected the request made by the petitioner, on the ground that the petitioner was allowed to work as Typist from 13.06.2008 with the salary of Watchman and he shall not claim any right to the post of Typist till his regular turn comes. Further, as per G.O.Ms.No.633 dated 07.09.1993, the petitioner was lacking five years of service as Typist on the crucial date for preparing the panel for the post of Assistant. Hence, this writ petition.

3. The learned counsel for the petitioner submitted that admittedly, the petitioner was posted as Typist on 23.10.2008 and he was continuing to do the work of Typist. In fact, the petitioner was posted as a Typist in the available sanctioned vacancy. After having been extracted the work of Typist, he was paid only the salary of Watchman by obtaining an undertaking letter from him. Therefore, the petitioner is entitled for the salary difference between the Watchman and Typist from 23.10.2008 to 17.07.2016. The petitioner also rendered the service of Watchman for ten years with full qualification for promotion to the post of Typist. However, the petitioner was not considered for promotion to the post of Typist, even after completion of ten years of service.



W.P.No.26366 of 2024

Subsequently, by the proceedings dated 22.02.2021, the proceedings dated 03.08.2020 was cancelled and it was prescribed that the length of service as Typist as two years for promotion to the post of Assistant. Therefore, the petitioner was very much eligible for promotion to the post of Assistant, even on the crucial date viz.,15.04.2020.

4. The second respondent filed counter and on the submissions made by the learned counsel for the second respondent revealed that the petitioner had voluntarily agreed to work in the post of Typist without any promise of promotion or monetary benefits in the post of Typist. Therefore, the petitioner is estopped from claiming salary for the post of Typist and promotion to the post of Assistant. Even as per the appointment order dated 23.10.2008, the petitioner should not claim any right in the post of Typist in future till their regular turn comes. They are eligible to draw their original grade pay only. Therefore, the petitioner was discharging duties in the post of Typist on temporary basis by drawing the salary of Watchman. There was a ban from unilaterally effecting promotions or recruitments without prior sanction from 1998 onwards. Therefore, the avenue for promotion was affected and promotion panels were not drawn. Therefore, the petitioner has no vested right to seek promotion and he is entitled to be considered for promotion only as per the applicable rules and availability of vacancies.



W.P.No.26366 of 2024

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5. The learned Additional Government Pleader appearing for the first respondent and the learned counsel for the second respondent relied upon the Judgment reported in **2014 13 SCC 283**, in the case of ***A.Francis Vs Management of Metropolitan Transport Corporation Limited, Tamil Nadu***, in which the Hon'ble Supreme Court of India held that the claim made with regard to salary of the higher post is not tenable in law.

6. They further submitted that where the petitioner had given an undertaking at the time of his appointment as Typist, he is not entitled for the salary to the post of Typist. The petitioner is estopped from contending that he should be given salary for the post of Typist and promotion to the post of Assistant.

7. Heard the learned counsel on either side and perused the materials available on record.

8. On the basis of the submissions and the pleading in this writ petition, the following points arise for consideration:-

(i) Whether the petitioner is entitled for salary in the post of Typist from the date of his appointment viz., 23.10.2008?



W.P.No.26366 of 2024

(ii) Whether the petitioner is entitled for regularization of his service in the post of Typist from 23.10.2008?

(iii) Whether the petitioner is entitled to be promoted to the post of Assistant from the month of April, 2020 with all monetary benefits?

9. The petitioner was appointed as a Watchman on 08.09.1989. The petitioner is qualified with 10th standard and also passed English higher grade typewriting and Tamil lower grade typewriting. Therefore, he is eligible to be appointed as Typist. Though the petitioner is entitled to be promoted as Typist, after completion of service as a Watchman, he was not promoted to the post of Typist. However, by an order dated 23.10.2008, he was promoted to the post of Typist in the existing vacancy, on condition that he should not claim any right to the post of Typist till his regular turn comes and that he is only eligible to draw salary of that of a Watchman. The petitioner was promoted to the post of Typist, only on 18.07.2016, though he was working as a Typist from 23.10.2008. Though there was a specific condition in the promotion order dated 23.10.2008, it is to be noted that even the persons who were working on the basis of stop-gap arrangement were entitled to the scale of pay to the post to which they were promoted. A person cannot be denied of the benefits pertaining to a post by way of an undertaking, when he had discharged his duties in the said post to the fullest.

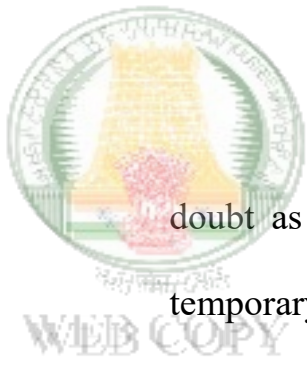


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10. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **1998 5 SCC 87** and held as follows:-

“ 8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to the post. The argument to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case a stop-gap arrangement is made to place him on the higher post, contrary to law and also against the public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872. ”

11. He also relied upon the Judgment of the Hon'ble Supreme Court of India, in the case of **State of Punjab and others Vs Jagjit Singh and Ors**, reported in **2016 Supreme(SC) 869**, wherein it was held that the sole factor that has to be considered while applying the principle of equal pay for equal work in relation to temporary employees is that whether the concerned employees were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same posts. Therefore, there is no room for any



W.P.No.26366 of 2024

doubt as to whether or not the duties and responsibilities discharged by the temporary employees, were the same as that of the duties discharged by regular employees. Hence, 'equal pay for equal work' would be applicable, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

12. The Judgment relied upon by the learned Additional Government Pleader appearing for the first respondent and the learned counsel for the second respondent reported in **2014 13 SCC 283**, in the case of ***A.Francis Vs Management of Metropolitan Transport Corporation Limited, Tamil Nadu***, was distinguished by the Hon'ble Three Judges Bench of the Hon'ble Supreme Court of India in the case of ***The State of Punjab Vs B.K.Dhir***, reported in **2017 Supreme (SC) 908**, wherein it was held as follows:-

“ 5. This Court today in the case of “*The State of Punjab & Another v. Dharam Pal*”, Civil Appeal No. 1549 of 2011, after referring to the authorities in *Smt. P. Grover v. State of Haryana and another AIR 1983 SC 1060* and *Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and others 1998 5 SCC 87* and appreciating the similar factual matrix has held thus:

“In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit gets support from the principles laid down in *Smt. P. Grover (supra)* and *Hari Om Sharma (supra)*. As far as the authority in *A. Francis (supra)* is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would



W.P.No.26366 of 2024

not debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in Hari Om Sharma (supra) and resultantly we hold that the view expressed by the High Court is absolute impeccable.”

Therefore, the Rules do not prohibit grant of pay scale, on par with the same post. Further, merely by giving an undertaking in all circumstances would not debar the employee to claim benefits of the officiating position.

13. Therefore, any undertaking or agreement between the petitioner and the respondents cannot be enforced by law. The stop-gap arrangement that was made to place the petitioner on the higher post, on condition that he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy.

14. It is also relevant to rely upon the Judgment of the Hon'ble Supreme Court of India reported in reported in ***(2021) 10 SCC 116*** in the matter of ***Somesh Thapliyal and another Vs. Vice Chancellor, H.N.B. Garhwal University and another***, wherein it was held as follows:-

“42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinary choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The



employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.

44. In the instant case, they lodged the protest petition and brought their grievance to the notice of the respondents but were unable to question except to pray the almighty to consider their grievance sympathetically.

45. The term 'substantive appointment' is not so defined in the legal dictionary but has been referred in the service jurisprudence by the recruiting authority while framing Rules under Article 309 of the Constitution and what being termed as "substantive appointment" can be gathered from U.P. Sales tax Officers (Grade II) Service Rules, 1983. The relevant extract is as under:

" 'Substantive appointment' means an appointment, not being an ad hoc appointment, on a post in the cadre of the service made after selection in accordance with the rules and, if there are no rules in accordance with the procedure prescribed for the time being by executive instructions, Government."

46. The definition of "substantive appointment" can further be noticed under Rajasthan Administrative Service Rules, 1954 as under :-

"4(n)- "substantive appointment" means an appointment made under the provisions of these Rules to a substantive vacancy after due selection by any of the methods of recruitment prescribed under these Rules and includes an appointment on probation or as a probationer followed by confirmation on the completion of the probationary period."

47. Almost similar nature of rule is available in the



W.P.No.26366 of 2024

services where the recruiting authority has defined what is held as “substantive appointment” under the Recruitment Rules framed under Article 309 of the Constitution and this clearly defines that an appointment made in accordance with the scheme of Rules are held to be substantive appointment.

48. Adverting to the facts of the case, undisputedly, the appellants were appointed pursuant to an advertisement dated 4th February, 2004 and 19th May, 2006 held for regular selection and after going through the process of selection as being provided under Chapter VI of the Act 1973 and on the recommendations been made by the statutory selection committee, constituted under Section 31(1) and (4) of the Act and approved by the executive council, which is a statutory authority, appointments were made in the year 2004 and 2007 respectively.

49. In our considered view, once the appellants have gone through the process of selection provided under the scheme of the Act 1973 regardless of the fact whether the post is temporary or permanent in nature, at least their appointment is substantive in character and could be made permanent as and when the post is permanently sanctioned by the competent authority.””

15. Thus, it is clear that the appointment of the petitioner to the post of Typist can only be treated as a proper appointment and it has been made to fill up the substantive post or substantive vacancy. Therefore, the appointment can be treated as 'substantive appointment', when that being so, from the date of appointment, he is entitled for regularization with monetary benefits in the post of Typist.

16. Further, it is clear that the employer is always in a dominating



W.P.No.26366 of 2024

position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. The bargaining power is vested with the employer and the employee is left with no option but to accept the conditions dictated by the employer. If that being a reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he not estopped from questioning at a stage where he finds himself aggrieved. Therefore, the petitioner can very well challenge the conditions and undertaking.

17. Further, as per the Service Regulations of the second respondent, a Typist with two years of service experience is eligible for promotion to the post of Assistant. As per G.O.No.663 dated 07.09.1993 for common category post like Superintendents, Assistants, Juniors Assistants, Typist, Record Clerks, Office Assistants etc., functioning in the State Public Sector Undertakings/Boards with qualification as prescribed for similar post in the Government Department, there is no need to change existing position in the Service Rules. Therefore, the experience required is only two years for promotion to the post of Assistant. In fact, the second respondent, by the proceeding dated 22.02.2021 had cancelled the proceeding dated 03.08.2020, which needs five years of experience for promotion to the post of Assistant,



W.P.No.26366 of 2024

prescribing the length of service as Typist for a period of two years for promotion to the post of Assistant. Therefore, the petitioner is eligible for promotion to the post of Assistant, even after completion of his two years of his service as a Typist.

18. In view of the above, the impugned order passed by the second respondent cannot be sustained and is liable to be quashed. Accordingly, order passed by the second Respondent dated 04.04.2024, bearing Letter No.9608/E2(2)/2023, is hereby quashed.

19. The respondents are directed to regularize the service of the petitioner in the post of Typist from 23.10.2008 and pay the difference of salary between the Post of Watchman and Typist for the period from 23.10.2008 to 18.07.2016, with interest at the rate of 6% p.a, within a period of twelve weeks from the date of receipt of a copy of this order. The respondents are also directed to permit the petitioner notionally to the post of Assistant from the month of April, 2020 without any monetary benefits. The promotion to the post of Assistant from the month of April, 2020 can be considered for terminal and pensionary benefits as applicable to the post of Assistant.



W.P.No.26366 of 2024

20. Accordingly, this writ petition stands allowed. No costs.

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29.10.2025

Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order

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W.P.No.26366 of 2024

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Handloom, Handicrafts, Textile and Khadi Department,
Fort St.George,
Chennai-600 009.
2. The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
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W.P.No.26366 of 2024

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W.P.No.26366 of 2024

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