

W.A.(MD)No.758 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)No.758 of 2025
and
C.M.P.(MD)No.5170 of 2025**

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Higher Education,
Fort St. George, Chennai – 600 009.

2.The Director of Collegiate Education,
College Road, Chennai – 600 006.

3.The Joint Director of Collegiate Education,
Madurai Region, Palam Station Road,
Madurai – 625 002.

... Appellants

Vs.

The Secretary,
Fathima College, (Autonomous),
Mary Land, Madurai – 625018.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.1482 of 2024, dated 26.02.2024.

For Appellants :Mr.J.Ashok
Additional Government Pleader
For Respondents :Ms.A.Amala



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed by the respondents in the writ petition challenging the order, dated 26.02.2024, passed in W.P.(MD)No.1482 of 2024.

2. The Writ Petition was filed for issuance of a Writ of Certiorarified Mandamus to quash the order dated 06.11.2023 passed in Oo.Mu.No. 10742/E1/2023 by 3rd respondent and consequently to direct the 3rd respondent to approve forthwith promotions given to Lab Assistants in the petitioner's college viz. S.Mahilprabha as Typist with effect from 01.06.2018, M.Jeyakumar as Typist with effect from 02.07.2018, Sr.S.Stella Arul Mary as Junior Assistant with effect from 01.08.2019, I.Francis Xavier as Junior Assistant with effect from 01.08.2019 and L.Shanthi as Storekeeper with effect from 01.06.2022 with all attendant benefits.

3. The brief facts as stated in the affidavit is that the writ petitioner college namely Fathima College is a private aided minority college governed under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules framed thereunder. In the year 2018 to 2022 the college promoted five Lab Assistants on various dates to Typist, Junior Assistants and Store Keeper in the



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sanctioned vacancies. The details are tabulated hereunder:

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S. No.	Name and designation	Promoted post and date of promotion	Vacancy details
1	S.Mahilprabha Laboratory Assistant	Typist 01.06.2018	Promotion of Typist S.Mary Clarabai as Assistant on 01.06.2018 FN
2	M.Jeyakumar Laboratory Assistant	Typist 02.07.2018	Promotion of Typist K.Sundari as Assistant on 02.07.2018 FN
3	Sr.S.Stella Arul Mary Laboratory Assistant	Junior Assistant 01.08.2019	Retirement of Junior Assistant M.James on 31.07.2019 AN
4	I.Francis Xavier Laboratory Assistant	Junior Assistant 01.08.2019	Retirement of Junior Assistant S.Sieiyamalar Annai Mary on 31.07.2019 AN
5	L.Shanthi Laboratory Assistant	Storekeeper 01.06.2022	Retirement of Storekeeper S.Marypushparani on 31.05.2022 AN

4. After conferring promotions, the college submitted the proposal for approval to the 3rd respondent, Joint Director of Collegiate Education on 23.08.2023 and 28.08.2023 and a reminder through registered post on 29.09.2023. Thereafter the 3rd respondent/ Joint Director, vide proceedings dated 06.11.2023 refused approval stating the Laboratory Assistants cannot be promoted as Typist, Junior Assistants and Store Keeper. Hence the writ petition challenging the order dated 06.11.2023.

5. The Writ Court had considered the rival claims and thereafter

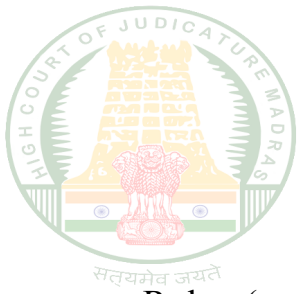


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followed the Division Bench order passed in W.A.(MD)No.114 and 9 of 2020 and allowed the writ petition. Aggrieved over the same, the respondents in the writ petition had preferred the present writ appeal raising various grounds.

6. After hearing the rival submissions, this Court had given its anxious consideration. It is an admitted facts that Laboratory Assistant, Library Assistant (only one promotion as Librarian) and some other posts are not having any promotional avenue and the said persons would be stagnated in the same post in their entire service.

7. The primary contention of the Learned Additional Government Pleader is that the Laboratory Assistant is not the feeder category to promote to the post of Junior Assistant since both carry same scale of pay. Further submitted that when several requests came from the colleges for such promotion the government had issued clarification in Government Letter No.646/G2/13-1 dated 14.08.2013 wherein it is clarified that the post of Laboratory Assistant and Junior Assistant carries same scale of pay and therefore the Laboratory Assistant post cannot be feeder category for promotion to the post of Junior Assistant. The said contention of the appellants cannot be accepted since the said government letter is only circular and the same is not having any statutory force. Also, it is not acceptable for various reasons which is discussed in the following paragraphs.



8. Under Rule 11(4)(i) of Tamil Nadu Private Colleges (Regulation)

Rules (as amended vide G.O.Ms.No.60 of Education dated 20.01.1986), it has been stated that if any eligible candidate is available in the same college, then the said vacancy shall be filled by the serving persons available in the college, if the conditions regarding qualification are satisfied. The said rule is extracted hereunder:

*“(4) (i) Promotion in respect of teaching staff shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal, and in respect of **non-teaching staff** promotions shall be made on seniority basis, provided other conditions regarding qualification are satisfied.*

*(ii) The committee shall fill up the posts **by promotion or by direct recruitment**. The committee shall, while making promotion, consider claims of all the qualified teachers in that college. If, however, **none of the qualified teachers in the college is found suitable for promotion, the vacancy shall be filled up by direct recruitment** by calling applications from qualified persons through the press or by calling for a list of candidates from the Employment Exchange by following the rule of reservation ordered by the government from time to time for direct recruitment.*

Explanation.—For purpose of this rule, if an educational agency has established and administered more than one college, then the colleges under the control of that educational agency shall be treated as on unit.”



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As per rule 11(4)(ii), the college is permitted to fill the post by promotion from the in-house candidate. if none available, then only the college shall opt for direct recruitment. Therefore, the rule is clear that the college shall consider to fill the vacancy through “in-house candidate,” provided the candidate possess the qualification to hold the said post. If not available then only they can recruit any candidate from outside. In the present case, the candidates are having qualification to hold the post of Typist, Junior Assistant, Storekeeper and the candidates are “in-house candidates”. Therefore, the offering of the post of Typist, Junior Assistant, Storekeeper to the candidates is perfectly valid.

9. The next contention of the appellants is that the Laboratory Assistant and Typist, Junior Assistant, Storekeeper posts are having equal pay, hence the same cannot be considered as promotion. Further Rule 3(g) (i) to (v) of the Special Rules for the Tamil Nadu Ministerial Service Rules do not permit promotion by way of ‘recruitment by transfer’ as Typist, Junior Assistant, Storekeeper and the same itself is self-explanatory. The said Rule 3(g) consists of sub clauses from (i) to (ix) and the same is extracted hereunder:

*“(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:-*



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(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;*

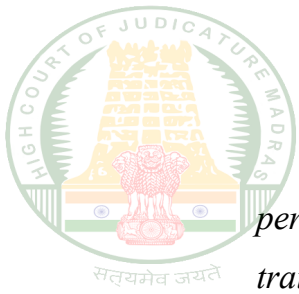
(iii) *Appointment to the posts of Junior Assistants, Junior-Assistant-cum-Typists or Typists from the lower categories shall not exceed twenty percent of the vacancies in each of the categories;*

(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 posts 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]”*

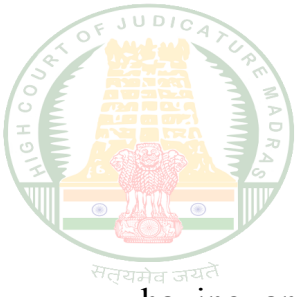
10. The contention of applicability of Ministerial Rules to the aided private colleges is not acceptable since the Tamil Nadu Ministerial Service Rules, Tamil Nadu Subordinate Service Rules and Tamil Nadu Basic Service Rules are not applicable to the private aided colleges. In the present case the college is private aided college and hence the said rules are not applicable.

11. Even if it is considered the said rule is applicable as claimed by the appellants, this Court is of the considered opinion that the appellants had



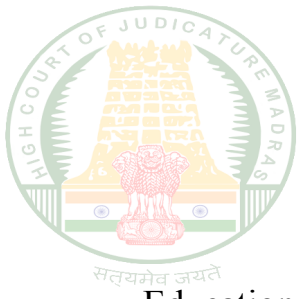
misconstrued the rules, especially Rule 3(g)(i). The said rule 3(g)(i) was enacted to grant promotion to the persons who are holding non-promotional post. When the object of the said Rule 3(g)(i) is to grant promotion to the persons holding non-promotional, then the said rule may be taken as aid to construe where ever the post is non-promotional post, then the persons servicing in such post ought to be granted the opportunity for promotion either by “promotion by transfer” or “recruitment by transfer” or “by simple transfer”. In the present case, the candidates serving as Typist, Junior Assistant, Storekeeper are not having any opportunity to be promoted to any post, then the candidates ought to be considered for granting promotion or recruitment or transfer as per the said rule.

12. The next contention of the appellants is that the second portion of the Rule 3(g)(i) is that promotion shall be granted to Junior Assistant post from the post who are having lower scale of pay than Junior Assistant. In the present case the Lab Assistant and Junior Assistant are having equal pay. Even it is equal pay, then the candidate shall be granted “transfer” to the said post, since the fact remains the said post Lab Assistant is not a promotional post. Therefore, the second portion of Rule3(g)(i) ought to be harmoniously construed along with other provisions and also the principles of the purposive interpretation to be applied. In such circumstances, the equal pay may not be a hindrance to grant “transfer” to the said post, rather than giving “promotion”



13. Further, the said rule speaks of giving training if the person is not having any experience of clerical work. And also speaks of “recruitment by promotion” and “recruitment by transfer”. If the appellants' contention is accepted that two posts are having equal pay, hence promotion cannot be granted, then the candidates are entitled to recruitment by transfer as stated supra. When the rule itself speaks of recruitment by transfer then there is no impediment to recruit the petitioner by transfer from the Lab Assistant post. In other words, when the Lab Assistant and Junior Assistant are having equal pay, then the petitioner is entitled to recruitment by transfer or simple transfer, if not the promotion. Therefore, for this reason the contention of the appellants cannot be accepted.

14. When Rule 11(4)(i) and (ii) of the Tamil Nadu Private College Regulation Rules states that the private aided college shall promote from available persons in the college (inhouse candidate), if not available then only by recruitment from outside. And when the Rule 3(g) (i) to (ix) of Tamil Nadu Ministerial Service Rules states recruitment by transfer. Then both the rules read together, the private colleges are entitled to “recruitment by transfer” or “transfer” from Lab Assistant to Junior Assistant. As rightly pointed out by the writ petitioner when the salary for both the post is same, then the government will not have any monetary loss.



15. It is seen, the government has passed the G.O.Ms.No.11 Education Department dated 04.01.1989 granting permission to the private colleges to fill the post of Junior Assistant from the persons holding the post of Record Clerk, Library Attenders, Laboratory Assistants and similar posts irrespective of scale of salary. The relevant portion of the said G.O.Ms.No.11 is extracted hereunder:

“3. Accordingly, the Government direct that irrespective of the scales of pay the posts of Junior Assistant in a private college shall be filled up from the persons working in the categories of Record Clerk, Library Attenders, Laboratory Assistants, Museum Keepers, Herbarium Keepers and Mechanics and posts in similar time scales of pay in the same college ne considered on the seniority basis as per Rule 4 (i) of the Tamil Nadu Private Colleges (Regulations) Rules, 1979 as amended.”

When the aforesaid G.O. clearly states that irrespective of scale of pay the Junior Assistant post shall be filled by the aided private colleges from the post of Laboratory Assistant, then the contention of the appellants is totally against the said G.O.Ms.No.11. It is not the case of the appellants that the said G.O. was withdrawn or not in force or not applicable. Therefore, this Court is of the considered opinion irrespective of equal pay scale or lower pay scale the Junior Assistant post shall be filled up from the persons holding the post of Record Clerk, Library Attenders, Laboratory Assistants.



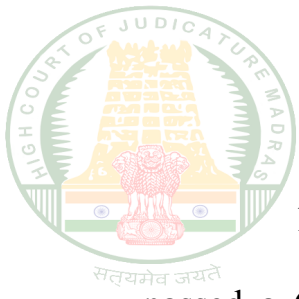
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16. At this juncture, it is pertinent to mention that G.O.Ms.No.114

Higher Education Department dated 28.06.2012 the post namely Museum Keepers, Herberium Keepers, Mechanics and some other posts are not granted to any colleges and hence the said posts cannot be granted approval after 28.06.2012. In the present case the posts namely Typist, Junior Assistants and Store Keeper are not covered under G.O.Ms.No.114, therefore there is no impediment to grant any approval.

17. The Writ Court had relied on the order passed by the Hon'ble Division Bench in W.A.(MD)No.114 and 9 of 2020 dated 25.03.2021, thereafter had allowed the writ petition. This Court had considered the issue raised by the appellants independently. And also concur with the order passed by the earlier Division Bench. Therefore, this court is not inclined to deviate from the settled issue. The Writ Court has rightly allowed the writ petition following the Hon'ble Division Bench order and had directed the appellants to grant approval. And there is no infirmity in the impugned order passed by the Writ Court. Hence, the same is confirmed.

18. For the reasons stated supra, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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19. This Court is of the considered opinion that when the State had passed a G.O.Ms.No.11 and the same is still in force, then the appellants are bound to grant approval. It is not known why the appellants decline approval. Over and above the department is preferring writ appeals thereby wasting the precious time of the Courts. Therefore, this Court is constraint to direct the appellants especially the Secretary Higher Education Department and Director of Collegiate Education to grant approval in such cases stated supra. Otherwise, the Courts would be constraint to take action against the Secretary Higher Education Department and Director of Collegiate Education.

[J.N.B., J.] [S.S.Y., J.]
25.03.2025

Index : Yes / No

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To

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Department of Higher Education,
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- 3.The Joint Director of Collegiate Education,
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