



W.A.(MD)No.1660 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.06.2025

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD)No.1660 of 2025
and
C.M.P.(MD)No.9290 of 2025**

- 1.The State of Tamil Nadu,
Rep. 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.

- 1.A.Jayakumar
- 2.The Principal and Secretary,
Lady Doak College,
Madurai – 625 002.

... Respondents



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Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD).No.16107 of 2022 dated 28.08.2024 on the file of this Court.

For Appellants : Mr.C.Venkateshkumar,
Spl. Government Pleader.

For Respondents : Ms.A.Amala

JUDGMENT
(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The writ petitioner was working as Laboratory Assistant in the second respondent college. Vacancy arose in the post of Junior Assistant. The post of Junior Assistant and the post of Laboratory Assistant are in the same scale of pay. When vacancy arose in the post of Junior Assistant, the Management appointed the writ petitioner in the post by way of transfer of service. When proposal was submitted to the competent authority for approval, approval was declined. Challenging the same, the first respondent filed W.P(MD)No.16107 of 2022. The learned single Judge vide order dated 28.08.2024 allowed the writ petition in the following terms:



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“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, 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.



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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.

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 hereby set aside and the second and third respondent are directed to approve the promotional order of the writ petitioner with effect from the date on which (*)the promotion was granted by the management and pass consequential orders 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. costs. Consequently, connected miscellaneous petition is also closed.”

Challenging the same, this Appeal has been filed.

3. When the matter was taken up for hearing, the learned counsel for the writ petitioner submitted that the very same view has been taken by another Division Bench in W.A(MD)No.589 of 2025 (The Regional Joint Director of Collegiate Education, Madurai Region, Madurai Vs R.Udhayakumar & Another) on 18.03.2025. Paragraphs 12 and 13 of the said order read as follows:

“12. 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



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both the rules read together, the private colleges are entitled to recruitment by 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.

13. 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 Attendants, 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, Herberium 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 appellant is totally against the said G.O.Ms.No.11. It is not the case of the appellant 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



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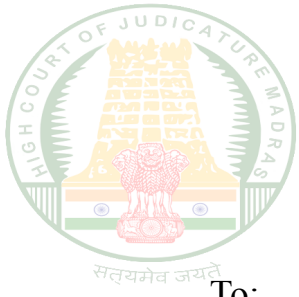
up from the persons holding the post of Record Clerk, Library Attenders, Laboratory Assistants. It is seen that from G.O.Ms.No.114 Higher Education Department dated 28.06.2012 the post namely Museum Keepers, Herberium Keepers, Mechanics are not granted to any colleges and hence the said posts cannot be granted after 28.06.2012.”

4.Though we do have some reservations on this issue, since there is no monetary loss to the Government and when two coordinate benches has taken a particular view, we do not propose to deviate. We therefore sustain the impugned order.

5.This Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (K.R.S. J.)
23.06.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:
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- 1.The Secretary,
Department of Higher Education,
Fort St.George,
Chennai – 600 009.
- 2.The Director of Collegiate Education,
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