



W.A.(MD)No.589 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2025

CORAM:

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

W.A(MD)No.589 of 2025
and
C.M.P.(MD)No.4424 of 2025

The Regional Joint Director of Collegiate Education
Madurai Region,Madurai.

... Appellant

Vs.

1.R.Udhayakumar

2.The Secretary/Correspondent,
V.V.Vanniyaperumal College for Women
Virudhunagar 626 001.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against
the order of this Court in W.P.(MD)No.21782 of 2024, dated 15.10.2024.

For Appellant

:Mr.J.Ashok
Additional Government Pleader



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JUDGMENT

(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 15.10.2024 passed in Writ Petition W.P. (MD)No. 21782 of 2024.

2. The Writ Petition was filed for Writ of Certiorarified Mandamus, to quash the order, dated 04.08.2023, passed in e.F.vz; 7547/A2/2023 by 1st respondent therein/appellant and consequently, to direct the first respondent therein to approve writ petitioner's promotion as Junior Assistant with effect from 01.06.2023.

3. The brief facts as stated in the affidavit filed along with the writ petition in W.P.(MD)No.21782 of 2024 are that the 2nd respondent college namely V.V.Vanniyaperumal College for women is a private aided college governed under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules framed thereunder. On 03.08.2010, the 2nd respondent/the Secretary of the college, vide his proceedings dated



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25.10.2004 appointed the writ petitioner as Lab Assistant. Thereafter the petitioner was working without any blemish. As per Rule 11(4)(i) of Tamil Nadu Private Colleges (Regulation) Rules, promotions in respect of non-teaching staff shall be made based on seniority, provided other conditions regarding qualifications are satisfied. The State Government vide G.O.Ms.No.11, dated 04.01.1989, directed the private colleges to fill up the post of Junior Assistant only on a seniority basis from the categories of record clerks, lab assistants, library assistants etc., and the said G.O. is applicable to the 2nd respondent. Hence the 2nd respondent promoted the petitioner as Junior Assistant with the effect from 01.06.2023 through proceeding dated 27.05.2023. Thereafter submitted the proposal for approval of promotion to the 1st respondent/appellant. The appellant vide communication dated 04.08.2023 stated that since the pay scale of Junior Assistant/Typist/Store Keeper is equal to the pay scale of Laboratory Assistant and hence the promotion granted to the petitioner cannot be approved. In the meanwhile, the G.O.Ms.No.11 was considered by Division Bench in W.A.(MD)Nos.114 and 9 of 2020 and it was made clear that as per G.O.(Ms).No.11, dated 04.01.1989, the recruitment by



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transfer can be made from the post Laboratory Assistant to the post of Junior Assistant. The Division Bench added further that promotion from the post of Laboratory Assistant to the post of Junior Assistant, there is no revenue loss to the Government and such recruitment by transfer cannot be objected since both the posts are drawing same scale of pay which certainly benefits the person who moved from the post of Laboratory Assistant to the post of Junior Assistant. Based on the order passed in the aforesaid writ appeal, the petitioner has submitted a representation dated 10.07.2023 to first respondent/appellant requesting to promote to the post of Junior Assistant with effect from 01.06.2023. The 2nd respondent considered the same and granted promotion and resubmitted the proposal to the 1st respondent to approve the petitioner's promotion. However, since the said promotion has not been approved, the writ petition was filed. The Writ Court had considered the rival claims and thereafter based on the order of the Division Bench and allowed the writ petition. Aggrieved over the same, the respondents in the writ petition had preferred the present writ appeal raising various grounds.



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4. After hearing the rival submission, 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 their entire service.

5. The primary contention of the Learned Additional Government Pleader is that the Laboratory Assistant is not the feeder category for promotion to the post of Junior Assistant since both carry same scale of pay. 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 posts of Laboratory Assistant and Junior Assistant carry same scale of pay and therefore the Laboratory Assistant post cannot be said to be feeder category for promotion to the post of Junior Assistant. The said contention of the appellant cannot be accepted since the said Government letter is only a 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.



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6. 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.*



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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.”

As per rule 11(4)(ii), the college is permitted to fill the post by promotion, if none available then the college shall opt for direct recruitment. Therefore, the rule is clear that the college shall consider to fill the vacancy through “inhouse 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 petitioner is having qualification to hold the post of Junior Assistant and the petitioner is “inhouse candidate”. Therefore, the offering of the post of Junior Assistant to the petitioner is perfectly valid.

7. The next contention of the appellant is that the Laboratory Assistant and Junior Assistant post 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 Junior Assistant and the



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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:-*

*(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;



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(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.

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;



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(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]”*

8. 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.

9. Even if it is considered that the said Rule is applicable as claimed by the appellant, this Court is of the considered opinion that the appellant had misconstrued the Rules, especially Rule 3(g)(i). The said



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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 wherever 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”. In the present case, the petitioner is not having any opportunity to be promoted to any post, then the petitioner ought to be considered for granting promotion or recruitment as per the said rule.

10. The next contention of the appellant 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 is having equal pay. Even it is equal pay, 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 read along with other



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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”

11. 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 appellant contention is accepted that two posts are having equal pay, hence promotion cannot be granted, then the writ petitioner is entitled to recruitment by transfer as stated supra. When the rule itself speaks of recruitment by transfer then there is no impediment to transfer the petitioner to 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, if not the promotion. Therefore, for this reason the contention of the appellant cannot be accepted.

12. When Rule 11(4)(i) and (ii) of the Tamil Nadu Private College Regulation Rules states that the private aided college shall



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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 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



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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 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.

14. The Writ Court had relied on the judgment passed by the Division Bench in W.A.(MD)Nos.114 and 9 of 2020, dated 25.03.2021, thereafter, had allowed the writ petition. This Court had considered the



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issue raised by the appellant independently and also agreed with the order passed by the Coordinate Bench. Therefore, this Court is not inclined to deviate from the settled issue. The Writ Court has rightly allowed the writ petition following the judgment of the Coordinate Bench and had directed the appellant to grant approval. Therefore, there is no infirmity in the impugned order passed by the Writ Court. Hence, the same is confirmed.

15. For the reasons stated supra, the writ appeal stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

[J.N.B., J.] [S.S.Y., J.]
18.03.2025

Index : Yes / No

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To
The Regional Joint Director of Collegiate Education
Madurai Region, Madurai.



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