



W.P.(MD).No.26311 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.01.2025

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.26311 of 2023
and WMP(MD).Nos.22654 & 24704 of 2023**

S.Sridaran

....Petitioner

Vs

1.The Director of School Education
College Road
Chennai

2.The Joint Director of School Education
Personnel
College Road
Chennai

3.The Chief Educational Officer
Thanjavur

4.The District Educational Officer
Secondary Education
Thanjavur

5.The Headmaster
Government High School
Thirukkattupalli
Thanjavur District

6.The Headmaster
Government Girls Higher Secondary School
Peravoorani
Thanjavur District

.....Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned proceedings of the third respondent dated 16.10.2023 in Na.Ka.No. 6567/A1/2023 and quash the same.

For Petitioner : Mr.V.R.Shanmuganathan

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

The instant writ petition has been filed by a Junior Assistant working in the sixth respondent School challenging the order passed by the third respondent on 16.10.2023 wherein the appointment of the writ petitioner as Junior Assistant by way of transfer of service from Lab Assistant was cancelled.

2.The writ petitioner herein was initially appointed as a Watchman in the sixth respondent School on 10.02.1989 and later, he was promoted as Office Assistant on 16.02.1991. Thereafter, the petitioner was promoted as Record Clerk on 30.03.2007. Later, the petitioner was promoted as Lab Assistant on 06.11.2009. On the ground that there are no further promotional opportunity to the Lab Assistant, the petitioner was appointed as Junior Assistant by transfer of service on 10.05.2013 by way of order passed by the fourth respondent.



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3.Under the impugned order dated 16.10.2023, the third respondent has challenged the said order of appointment by transfer on the ground that the post of Lab Assistant and the post of Junior Assistant carry the same scale of pay. In such circumstances, Rule 3(g) of Tamil Nadu Ministerial Service Rules cannot be invoked. The said Rule can be invoked only in cases where the pay scale of Lab Assistant is lower than that of Junior Assistant. This order is put to challenge in the present writ petition.

4.According to the learned counsel for the writ petitioner, the petitioner and another similarly placed person namely S.Ramesh have filed WP(MD).Nos.26311 and 26310 of 2023 challenging the same order. Both the writ petitions were disposed of by the writ Court by way of independent proceedings on 08.01.2024. One of the writ appeals filed by the State Government as against the order of WP(MD).No.26310 of 2023 came up before the Hon'ble Division Bench in WA(MD).No.1054 of 2024. The Hon'ble Division Bench was pleased to confirm the order of the writ Court and dismissed the writ appeal. However, the writ appeal filed by the State Government as against the order passed in WP(MD).No.26311 of 2023 came up before the Hon'ble Division Bench in WA(MD).No.1511 of 2024 wherein the Hon'ble Division Bench by way of an order dated 05.09.2024 had set aside the order of the writ Court and remitted the same on the ground that the counter has not been filed by the respondent authorities.



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5.The learned counsel for the petitioner had further contended that the authorities have filed vacate stay petition even before the matter was pending before the writ Court. After the writ appeal was disposed of remitting the matter back to the writ Court, the authorities have filed an additional counter reiterating their stand.

6.The learned counsel for the petitioner relying upon Rule 3(g) of Tamil Nadu Ministerial Service Rules had contended that the said Rule can be invoked in any of the two circumstances wherein there is no promotional opportunity 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. The case of the petitioner falls within the first category namely no further promotional opportunity, once he promoted as Lab Assistant.

7.Per contra, the learned Government Advocate appearing for the respondents, relying Paragraph Nos.3, 4 and 5 of the counter had contended that under G.O.Ms.No.45 Finance Department dated 10.02.2011, the pay scale of the Junior Assistant was revised at Rs.5200-20200+G.P. Rs.2400/-. Under G.O.Ms.No.63, Finance Department dated 26.02.2011, the pay scale of Lab Assistant was revised as Rs.5200-20200+G.P.Rs.2400/-. Therefore, the pay scale of Lab Assistant as well as the pay scale of Junior Assistant were made equal from the year 2011 onwards. However, the petitioner has been appointed as Junior Assistant by way of transfer of service only in the year



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2013. Therefore, after the pay scales were made equal, the question of appointing the petitioner as Junior Assistant by way of transfer of service is not legally sustainable. Hence, he prayed for dismissal of the writ petition.

8.I have considered the submissions made on either side and perused the material records.

9.It is not in dispute that after the petitioner is promoted as Lab Assistant, there is no further promotional opportunity to the writ petitioner.

Rule 3(g) of Tamil Nadu Ministerial Service Rules is extracted as follows:

“3. Method of Recruitment-Special:-

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- *(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;*

(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 belongs 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;

(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.A perusal of the above said Rules reveal that the 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, shall be considered for appointment by recruitment by transfer as Junior Assistant in the Tamil Nadu Ministerial Service, subject to the possession of the prescribed qualifications for direct recruitment.



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11. In the present case, the petitioner was holding the post of Lab Assistant which does not have any promotional opportunity. Therefore, for complying with the condition under Rule 3(g) of Tamil Nadu Ministerial Service Rules, the petitioner has satisfied the first clause, namely he is not having further promotional opportunity. However, the authorities have considered the second clause and arrived at a finding that the pay scale of Lab Assistant and that of the Junior Assistant are one and the same. It is made clear that for invoking Rule 3(g) of Tamil Nadu Ministerial Service Rules, it is enough, if any one of the ingredients is fulfilled by a candidate. This Court in WP(MD).No.26310 of 2023 had allowed the writ petition on the ground that merely because of pay scales are the same that would not prevent a candidate from being recruited to another service by transfer of service. The said order has been confirmed in WA(MD).No.1054 of 2024 dated 25.06.2024.

12. In view of the above said deliberations, the order impugned in the writ petition is set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

02.01.2025

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