



W.P.(MD).No.26825 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.01.2025

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.26825 of 2023
and W.M.P.(MD)Nos.23061, 23062 & 24694 of 2023

L.R.J.Sakila

... Petitioner

Vs

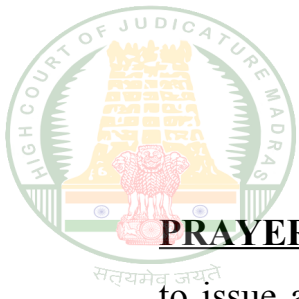
1. The State of Tamil Nadu
Rep by its Principal Secretary to Government,
School Education Department,
St. George Fort,
Chennai.

2. The Commissioner of School Education,
O/o. Commissioner of School Education,
DPI Campus,
College Road,
Nungambakkam,
Chennai.

3. The Joint Director of School Education (Personnel),
O/o. Joint Director of School Education (Personnel),
DPI Campus,
Chennai.

4. The Chief Educational Officer,
O/o. the Chief Educational Officer,
Thirumangalam,
Madurai District.

...Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 4th respondent vide his proceedings in Na.Ka.No. 8868/A2/2022 dated 15.09.2023 and quash the same as illegal.

For Petitioner : Mr.H.Mohamed Imran
for
M/s.Ajmal Associates

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

The instant Writ Petition has been filed by a Junior Assistant employed in the fourth respondent office, challenging the show cause notice issued by the fourth respondent on 15.09.2023, why the petitioner cannot be reverted back to the post of Lab Assistant.

2. A perusal of the impugned order reveals that the petitioner who was working as a Lab Assistant was appointed as Junior Assistant by way of transfer of service. It is an admitted fact that the post of Lab Assistant and the post of Junior Assistant carry the same scale of pay. It is also an admitted fact that the post of Lab Assistant does not have any promotional opportunity. Therefore, invoking Rule 3(g) of Tamilnadu Ministerial Service Rules, the petitioner was appointed as a Junior Assistant on 27.02.2014. The petitioner is functioning as a Junior Assistant from the year 2014 onwards.



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3. Under the impugned show cause notice dated 15.09.2023, the fourth respondent herein has proposed to cancel the said order and proposes to appoint the writ petitioner as a Lab Assistant again. The said show cause notice is under challenge in the present writ petition.

4. According to the learned Counsel appearing for the writ petitioner, though it is only show cause notice, the authorities have already taken a decision to the effect that the petitioner is not entitled to be appointed as a Junior Assistant, in view of the fact that the post of Junior Assistant and Lab Assistant are carrying equal scale of pay. Therefore, he is constrained to file a writ petition challenging the show cause notice.

5. The learned Counsel appearing for the writ petitioner further contends that either one of the two conditions mentioned under Rule 3(g) of TamilNadu Ministerial Service Rules have to be satisfied. In the present case, the petitioner was holding the post of Lab Assistant which does not have any promotion opportunity. Therefore, when one of the conditions is satisfied, the question of satisfying other condition does not arise. The learned Counsel appearing for the petitioner also relied upon the judgment of this Court in W.P.(MD).No.26311 of



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2023 dated 02.01.2025 which was allowed following the orders of the Hon'ble

Division bench of this Court in W.A.(MD).No.1511 of 2024 dated 05.09.2024.

6. Per contra, the learned Additional Government Pleader appearing for the respondents objected to the maintainability of the writ petition on the ground that the writ petition has filed challenging the show cause notice. He further submitted that without submitting explanation to the show cause notice, the writ petition ought not to have been filed. He relied upon Para 12 of the counter and contended that since the post of Lab Assistant as well as the post of Junior Assistant carry same scale of pay, the question of appointing the petitioner as a Junior Assistant by way of transfer of service invoking rule 3(g) of Tamilnadu Ministerial Service Rules does not arise. He further contended that both the posts were fixed in the same scale of pay under G.O.Ms.No.63, Finance Department dated 26.02.2011, and the same was not taken into consideration. Hence, he prayed for sustaining the show cause notice issued by the respondents.

7. I have carefully considered the submissions made on either side and perused the materials available on record.



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8. The facts captured above will clearly indicate that the post of Lab Assistant as well as the post of Junior Assistant carry equal scale of pay and there are no promotional opportunities to the employee who is holding the post of Lab Assistant. Whether an employee who is not having any promotional opportunities can be appointed to another post under Rule 3(g) of Tamilnadu Ministerial Service Rules is no longer *res integra*.

9. The Hon'ble Division Bench in W.A.(MD).No.1511 of 2024 by an order dated 05.09.2024, had categorically held that such an appointment by transfer of service is maintainable. This Court has followed the said judgement in W.P.(MD).No.26311 of 2023 dated 02.01.2025. Therefore, it is clear that when two conditions are imposed for invoking rule 3(g) of Tamilnadu Ministerial Service Rules, it is enough to comply with anyone of the conditions. The petitioner having complied with the condition that the post of Lab Assistant does not have any promotional opportunities, invoking of the above said rule cannot be found to be defective.



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10. The impugned show cause notice reveals that the authority has already taken a decision that the order of promotion granted to the writ petitioner is illegal and he has expressed his intention to cancel the said order. Since the show cause notice is predetermined, the writ petition is maintainable.

11. In view of the above said facts, the impugned show cause notice is set aside. This writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.01.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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R.VIJAYAKUMAR, J.

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