



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2025

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)No.2110 of 2023 and
C.M.P.(MD)No.16841 of 2023

1. The Principal,
Government Engineering College,
Tirunelveli – 7,
Tirunelveli District.
 2. The Commissioner,
Department of Technical Education,
Guindy, Chennai – 25.
- ... Appellants/Respondents

Vs.

A.Ganapathy ... Respondent/ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 27.10.2022 made in W.P.(MD)No.16383 of 2014 and allow this writ appeal.

For Appellants : Mr.Veera Kathiravan,
Additional Advocate General,
assisted by,
Mr.A.Kannan,
Additional Government Pleader.

For Respondent : Mr.H.Arumugam

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J U D G M E N T**(Order of the Court was delivered by G.R.SWAMINATHAN, J.)**

The Department is on appeal questioning the order dated 27.10.2022 passed by the learned single Judge allowing W.P.(MD) No.16383 of 2014 filed by the respondent herein.

2. The respondent herein was appointed as sanitary worker on 18.06.1984 in Government Engineering College, Tirunelveli. Later, he was appointed as watchman by way of transfer. He was regularised in the post of watchman subsequently, vide proceedings dated 20.02.1985. He successfully completed probation on 04.12.1985. He was then appointed as Office Assistant by way of transfer on 03.04.1989. Till then, the respondent herein was in Tamil Nadu Basic Service. By way of transfer, he was appointed in Tamil Nadu Technical Subordinate Service as Grade I Mazdoor on 06.04.1994. He successfully completed probation on 30.04.1996 and was regularised in that post.



3. He was then promoted to the post of Junior Assistant on 25.02.2004. Unfortunately, he could not join in the said post as he suffered a major accident. Therefore, he requested his employer that he may be allowed to relinquish the said promotion for a period of three years. The request was accepted and proceedings dated 27.07.2004 was issued by the Commissioner, Government of Technical Education, Guindy, Chennai. After a lapse of three years, the respondent herein called upon his employer to now grant him promotion since he had only temporarily relinquished the promotion that was earlier offered to him. His representation was not processed. The respondent filed W.P.(MD)No.12878 of 2011. Vide order dated 17.02.2014, this Court directed the Commissioner, Tamil Nadu Technical Education, Chennai to consider the representation. Pursuant to the said direction, the representation was considered and vide proceedings dated 11.09.2014, his request was rejected. Earlier, the Principal Secretary to Government, Higher Education Department had sent Letter No.16211/C2/2012-3 dated 08.01.2013 to the Commissioner of Technical Education clarifying that the basic servants who have been subsequently promoted to technical posts such as Skilled Assistants, Lab Assistants etc. cannot be considered



for appointment by recruitment by transfer as Junior Assistant as per the Special Rule for Tamil Nadu Ministerial Service. Challenging the same, W.P.(MD)No.16383 of 2014 came to be filed. The learned single Judge vide order 27.10.2022 allowed the writ petition with a direction that the petitioner shall be promoted to the post of Junior Assistant from 25.02.2007 with all consequential monetary benefits. Challenging the same, the employer as well as the Department have filed this writ appeal.

4. The learned Additional Advocate General reiterated all the contentions set out in the grounds of appeal. He took us through the relevant provisions set out in Rule 3(g)(i) of Tamil Nadu Ministerial Service Rules, Tamil Nadu Technical Education Subordinate Service Rules and the contents of the clarificatory letter dated 08.01.2013 and submitted that the order of the learned single Judge is not correct and called upon us to reverse the same.

5. Per contra, the learned counsel for the writ petitioner submitted that the learned single Judge correctly approached the issue and interference is not warranted. The learned counsel for the



writ petitioner relying on the very same provisions gave a different spin altogether.

6. We carefully considered the rival contentions and went through the materials on record.

7. It is not in dispute that the writ petitioner was originally appointed in Tamil Nadu Basic Service. All the three posts namely, Sanitary worker, Watchman and Office Assistant belong to Tamil Nadu Basic Service. Thereafter, he was appointed by way of transfer in the post of Mazdoor Grade I. The post of Mazdoor Grade I is in Tamil Nadu Technical Subordinate Service. The only question that calls for consideration is whether a person holding the post of Mazdoor Grade I in Tamil Nadu Technical Subordinate Service can seek promotion to the post of Junior Assistant which is the Tamil Nadu Ministerial Service. The Principal Secretary to Government, Higher Education Department vide letter No.16211/C2/2012 dated 08.01.2013 had given the following clarification:-

“2. In this connection, I am to state that Rule 3(g)(i) of Tamil Nadu Ministerial Service clearly



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stipulates that persons in the services other than Tamil Nadu Ministerial Service who are in categories having no promotional opportunities alone shall be considered for appointment by recruitment by transfer as Junior Assistant. In the instant case, the persons in the categories such as Skilled Assistant, Lab Assistant etc., which are classified in the Special Rules for Tamil Nadu Technical Education Subordinate Service, have promotional opportunities though they may not possess the requisite qualification. In these circumstances, if such persons are considered for appointment by recruitment by transfer as Junior Assistant, it might block the promotional opportunities of Record Clerks and Basic Servants, who have no other alternatives for promotion other than this provision.

3. In view of the above, I am to clarify that the basic servants who have been subsequently promoted to Technical Posts such as Skilled Assistant, Lab Assistant etc., cannot be considered for appointment by recruitment by transfer as Junior Assistant as per the above said Special Rule for Tamil Nadu Ministerial Service.”

8. The learned single Judge had taken the view that this



clarificatory letter would apply only prospectively and not

retrospectively. In any event, it cannot operate to the prejudice of the

writ petitioner. This reasoning is not correct. It is well settled that if a

statute is merely clarificatory of the previous law, retrospective

operation thereof may be permitted provided that it does not expand

or alter the scope of the original provision ***((2023) 19 SCC 30) Sree***

Sankaracharya University of Sanskrit and Others V. Dr.Manu). An

amending act may be purely clarificatory to clear a meaning of a

provision of the principal Act which was already implicit. A

clarificatory amendment of this nature will have retrospective effect.

(Vide ***(2015) 1 SCC 1 (CIT Vs. Vatika Township (P) Ltd.,)***). After

going through the contents of the letter dated 08.01.2013, we are

satisfied that the letter issued by the Government clarifies what the

Rule actually stands for. The Rule at the first blush looks vague and

ambiguous and to shed light on what it actually means, the aforesaid

letter came to be issued. The principles laid down by the Hon'ble

Supreme Court can very well be applied to the impugned clarificatory

letter issued by the Government. We therefore hold that it is

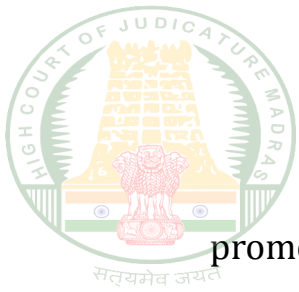
retrospective in operation.



9. The learned counsel appearing for the writ petitioner submitted that since the writ petitioner lacked technical qualification, he cannot be promoted as Skilled Assistant and that therefore he was entitled to be considered for promotion to the post of Junior Assistant. The relevant provision is Rule 3(g)(i) of the Tamil Nadu Ministerial Service Rules which reads as follows:-

“ 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.”

10. The aforesaid Rule has to be parsed for better understanding. It applies to persons in services other than the Tamil Nadu Ministerial Service who are in categories having no

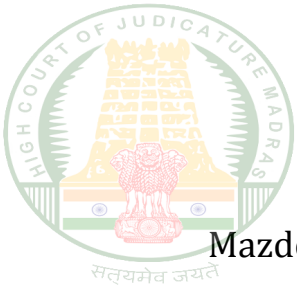


promotional opportunities. It also applies to those persons in services other than the Tamil Nadu Ministerial Service who even after more than one promotion in the respective service would still be in a category carrying scale of pay lower than that of Junior Assistant or Junior Assistant-cum-Typist or Typist. Persons who fall under either one of the aforesaid groups alone shall be considered for appointment by recruitment by transfer as Junior Assistant in the Tamil Nadu Ministerial Service. Of course, they should have the prescribed qualification for direct recruitment.

11. As per Special Rules for Tamil Nadu Technical Educational Subordinate Service, for promotion to the post of Skilled Assistant, the employee must have the following qualification:-

“An Industrial Training Institute Certificate /
National Trade Certificate / National Apprenticeship
Training Certificate in the appropriate trade.”

The very same Rules provide that the post of Skilled Assistant can be filled up by promotion from any post in the service on a lower scale of pay. The post of Mazdoor Grade I is having a lower pay scale compared to that of Skilled Assistant. Therefore, the category of



Mazdoor Grade I is having a promotional avenue.

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12. The learned counsel appearing for the writ petitioner would contend that since the writ petitioner lacks the qualification prescribed in the Rules, he is not having any promotional opportunity and therefore, he must be considered for promotion to the post of Junior Assistant in Tamil Nadu Ministerial Service. This contention is without any merit. The Rule is category or post centric. It is not person-specific. In other words, the question that should be posed is whether the category of Mazdoor Grade I in Technical service is having promotional opportunity. The answer is in the affirmative. That the writ petitioner who is in the rank of Mazdoor Grade I had not qualified himself for availing the said promotional opportunity would not work in his favour. The writ petitioner may have the qualification prescribed for the post of Junior Assistant but again that would not propel his case.

13. There are three kinds of services, Basic Service, Technical Service and Ministerial Service. The writ petitioner originally joined in the Basic Service. By way of transfer, he moved to Technical



Service. He then wanted to move to Ministerial Service. He wanted to be promoted to the post of Junior Assistant in Ministerial Service.

The Rule mentioned above would have enabled consideration of the persons in Technical Service to be considered for appointment as Junior Assistants in Ministerial Service, if the category in which they are working did not have any promotional opportunity. A perusal of the Special Rules for Tamil Nadu Technical Educational Subordinate Service would show that the post of Mazdoor Grade I does have promotional opportunity. It is one of the feeder grades for the post of Skilled Assistant. Therefore, the writ petitioner cannot invoke the said Rule in his favour.

14. The learned Additional Advocate General demonstrated that the post of Skilled Assistant during the relevant time was in scale of pay of Rs.5,200-20,200+2,400/-. The post of Junior Assistant in Tamil Nadu Ministerial Service was in the scale of pay of Rs.5,200-20,200+2,400/-. Thus, the scale of pay of Junior Assistant was equal and on par with that of the scale of pay of the Skilled Assistant Grade II. Rule 3(g)(i) will apply only if the promotional post carried a scale of pay lower than the scale of pay of Junior Assistant.



WEB COPY 15. Looked at from any angle, Rule 3(g)(i) will not come to the petitioner's rescue. It is also submitted that taking into account the length of service put in by the petitioner, he was conferred Selection Grade as well as Special Grade. He retired from service in Special Grade in the post of Mazdoor Grade II. The petitioner cannot plead stagnation also. The order passed by the learned Judge is set aside. This writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (K.RAJASEKAR, J.)
4th July 2025

NCC : Yes / No
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