



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.12.2021

CORAM:

THE HONOURABLE MR. JUSTICE **B. PUGALENDHI**

**W.P. (MD) No. 9776 of 2021**

**and**

**W.M.P. (MD) Nos. 7505 & 12425 of 2021**

G.Dhanabalan : Petitioner

Vs.

1. The Director General,  
Highways Department,  
Guindy, Chennai - 600 025.

2. The Chief Engineer,  
Highways Department,  
Guindy, Chennai - 600 025.

3. The Superintending Engineer,  
Highways, Construction and Maintenance,  
K.Pudur, Madurai.

4. The Divisional Engineer,  
Highways, Construction and Maintenance,  
K.Pudur, Madurai.

: Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari calling for the records pertaining to the impugned order passed by the first respondent vide proceedings in Kurippanai No.14136/Nir3(1)/2017, dated 30.04.2021 and quash the same.

For Petitioner : Mr.M.Ajmal Khan,  
Senior Counsel

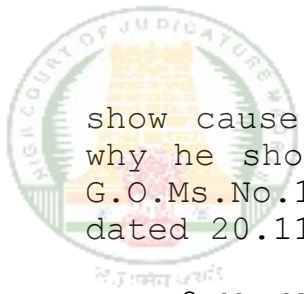
for M/s.Ajmal Associates

For Respondents : Mr.G.V.Vairam Santhosh,  
Additional Government Pleader

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**ORDER**

This writ petition is filed as against the proceedings of the first respondent dated 30.04.2021. The impugned proceedings is a  
<https://hcservices.ecourts.gov.in/hcservices/>



show cause notice calling upon the petitioner to show cause as to why he should not be reverted to the post of Record Clerk, as per G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017.

2.Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioner submitted that though the impugned order is a show cause notice, it is in the form of a pre-meditation that the petitioner is not entitled for any promotion, in view of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017. Therefore, in view of the decision of the Hon'ble Supreme Court reported in **(2006) 12 SCC 33 [M/s.Siemens Ltd. v. State of Maharashtra & Others]**, this writ petition is maintainable.

3.According to the learned Senior Counsel, the petitioner was promoted as Junior Assistant in the year 2012, based on G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985, wherein, the Government has clarified that the pre-foundation course conducted by Madurai Kamaraj University is equivalent to Tenth Standard. The petitioner was also promoted as Assistant in the year 2016 and he sought for promotion for the post of Office Superintendent. In order to prevent him from getting any further promotion, the first respondent has issued the impugned proceedings as if the petitioner is not eligible for the promotion and also liable to be reverted, as per G.O.Ms.No.144, dated 20.11.2017.

4.Mr.G.V.Vairam Santhosh, learned Additional Government Pleader appearing for the respondents, by referring to the counter affidavit, submitted that a pass in the Tenth Standard is the minimum requirement for the post of Junior Assistant. This petitioner was promoted as Junior Assistant based on the certificate of pre-foundation course obtained from Madurai Kamaraj University, under the open university scheme. Though the pre-foundation course was treated as equivalent to SSLC vide G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985, the same was superseded by G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009 and therefore, the pre-foundation course was not treated as equivalent to SSLC from 18.08.2009. However, the petitioner was promoted as Junior Assistant in the year 2012 and thereafter, as Assistant with effect from 01.03.2016.

5.According to the learned Additional Government Pleader, G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017, is having retrospective effect from 18.08.2009, in view of G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009. Similarly placed such candidates, who have been promoted as Road Inspector Grade II from the post of Gang Mazdoor were reverted based on G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017.



6.This Court paid it's anxious consideration to the rival submissions made and also perused the available materials.

7.This writ petition is filed as against a show cause notice. It is a settled position that the Courts have to exercise restraint while interfering with a show cause notice. However, the Hon'ble Supreme Court in **M/s.Siemens Ltd. v. State of Maharashtra & Others** (cited supra) has held that a writ would be maintainable, when a show cause notice was issued with pre-meditation. The relevant portion from the said decision is extracted as under:-

*"9.Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. 1987 AIR (SC) 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, 2004 (3) SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262, but the question herein has to be considered from a different angle, viz., when a notice is issued with pre-meditation, a writ petition would be maintainable. ...*

*... ..*

*11.A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."*

8.A reading of the impugned show cause notice shows that the respondents have taken a decision to revert the petitioner as Record Clerk, in view of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017. Since there exists a pre-meditation, this Court is inclined to decide the case on merits.

9.On a clarification sought for by the Tamil Nadu Public Service Commission in the year 2016-17, a clarification was made by the Equivalence Committee that the pre-foundation course and foundation / bridge course awarded by various Universities cannot be recognized as equivalent to SSLC and HSC courses. This recommendation of the Equivalence Committee is in consonance with the clarification issued in Letter No.33448/M/2010-4, Personnel and Administrative Reforms Department, dated 03.12.2010. The said



clarification was issued by the Personnel and Administrative Reforms Department to G.O.Ms.No.107, dated 18.08.2009. The said Government Order was issued on the eligibility of the Degree obtained under the Open University scheme, without the basic qualifications of SSLC or HSC.

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10. However, vide G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985, the Government has taken a decision to recognize the pre-foundation courses conducted by Madurai Kamaraj University (Open University) as equivalent to ten years SSLC of Tamil Nadu Government for the purpose of entering into public service in the State. The relevant portion of the said Government Order is extracted as under:-

*"3. The Government, after careful consideration direct that the Pre-Foundation Course of the Madurai Kamaraj University - Open University be recognized as equivalent to the 10 years S.S.L.C. of the Tamil Nadu Government for purpose of entry into Public Services in this State. The Government also direct that the two years Foundation Course of the Madurai Kamaraj University - Open University be recognized as equivalent to Higher Secondary (Plus 2) course of the Tamil Nadu Government for purpose of entry into Public Service in this State."*

11. The Government Order in G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009, was issued on the eligibility of the Degree obtained in the Open University without pursuing SSLC or HSC in the regular stream. There is no reference about G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985 in the Government Order in G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009.

12. The Government Order in G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017, was issued taking a decision that the pre-foundation and foundation courses awarded by various Universities are not equivalent to SSLC and HSC of the Tamil Nadu Government. This Government Order came into effect only from the date of its issuance and it cannot be implemented retrospectively. The petitioner was promoted as Junior Assistant in the year 2012 and thereafter, promoted as Assistant in the year 2016, based on the earlier Government Order in G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985. The present Government Order that the pre-foundation course was not equivalent to SSLC was passed only in the year 2017 and therefore, it cannot take away the rights of this petitioner on the promotion that he obtained based on the earlier Government Order.



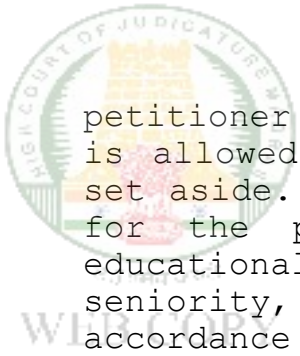
13. On the very same issue, this Court, in **W.P.Nos.22437, 22441 of 2019, dated 14.02.2020 [S.Ranganathan and Another v. State of Tamil Nadu, School Education Department and Another]**, has held as follows:-

"11. The main issue that arises for consideration is whether the qualification that was recognized from the year 1985/88 till the passing of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017, can be completely erased and thereby whoever were benefited by virtue of the earlier Government Orders in the interregnum, can be deprived of their promotion or selection? This issue has been substantially answered by this Court in the judgment that was cited by the learned counsel for the petitioner. The relevant portions were also extracted supra.

12. This Court categorically held that the qualification that was acquired based on the previous Government Orders is valid for all purposes till the passing of the later Government Orders. The later Government Order cannot be given retrospective effect and thereby take away whatever benefits were enjoyed by the candidates by virtue of the earlier Government Orders. G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017 deals with the substantial right with regard to the qualification and, therefore, it can only be given prospective effect and to give it a retrospective effect, will virtually take away all the rights / benefits acquired by the candidates on the strength of the earlier Government Orders. In the considered view of this Court, the qualification that was possessed by the petitioners was, in fact, recognized when they were considered for promotion to the post of Librarian Grade - III. Such a benefit cannot be knocked off by virtue of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017. This is more so due to the fact that the next avenue of promotion to the post of Librarian Grade - II is only based on seniority.

13. In view of the above discussion, this Court has no hesitation to interfere with the impugned order passed by the second respondent dated 26.09.2018 and the same is accordingly quashed. There shall be a direction to the respondents to consider the promotion of the petitioners to the post of Grade - II Librarian based on 2016-17 panel and appropriate orders shall be passed within a period of four (4) weeks from the date of receipt of copy of this order."

14. In view of the foregoing discussions and the above ratio laid down, this Court is inclined to interfere with the impugned notice, as no useful purpose would be served by directing the



petitioner to give his explanation. Accordingly, this writ petition is allowed and the impugned show cause notice dated 30.04.2021 is set aside. Needless to mention that if the next avenue of promotion for the petitioner does not carry with it any pre-requisite educational qualification and that the only consideration is the seniority, the petitioner shall be considered for the same in accordance with his seniority. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P & A)

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Sub Assistant Registrar(CS)

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To

- 1.The Director General,  
Highways Department,  
Guindy, Chennai - 600 025.
- 2.The Chief Engineer,  
Highways Department,  
Guindy, Chennai - 600 025.
- 3.The Superintending Engineer,  
Highways, Construction and Maintenance,  
K.Pudur, Madurai.
- 4.The Divisional Engineer,  
Highways, Construction and Maintenance,  
K.Pudur, Madurai.

+1 CC to M/s.SPL GP ( SR-37748[F] dated 08/12/2021 )

+1 CC to M/s.AJMAL ASSOCIATES, Advocate ( SR-37845[F] dated 08/12/2021 )

**W.P. (MD) No. 9776 of 2021**  
**07.12.2021**

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