



W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH Court**

**DATED : 26.02.2024**

**CORAM**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592,**  
**28599 to 28601 of 2023**  
**and W.M.P(MD)Nos. 7941, 8248, 8760, 10967, 10986,**  
**14070, 15030, 15031, 18236, 18461, 19702, 20453, 20474, 21775, 24489,**  
**24490, 24492, 24650, 24652, 24653, 24656, 24660, 24661 of 2023,**  
**2281, 2285 & 2384 of 2024**

**In W.P(MD)No.8665 of 2023:**

1. G.Mari
2. S.Selvi
3. R.Rosaline Mary
4. S.Jesu Rethinam
5. S.Arumugam
6. A.Jayakrishna Rani

... Petitioners

**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 (Personnel),



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

O/o. Joint Director (Personnel),  
DPI Campus, Chennai.

4. The Chief Educational Officer,  
Madurai District, Madurai.
5. The Chief Educational Officer,  
Sivagangai District, Sivagangai.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to declare that the petitioners have completed the probation in the cadre of Junior Assistant by way of relaxing the rules as was granted in respect of similarly placed persons by the Government of Tamil Nadu vide G.O.(ID) No. 210 School Education (Pa.Ka.4(2)) Department, dated 17.06.2019 and G.O(ID) No. 124 School Education (Pa.Ka.4(2)) Department, dated 15.09.2020 and consequentially confer all other consequential service and monetary benefits including the yearly increment and conferment of selection grade along with its accrued arrears thereof within the stipulated time fixed by this Court.

For Petitioner : Mr.Ajmal Khan, Senior Counsel  
for M/s.Ajmal Associates

For Respondents : Mr.N.Ramesh Arumugam  
Government Advocate



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

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### **COMMON ORDER**

The present writ petitions have been filed for the issue of a writ of mandamus, directing the respondents to declare that the petitioners have completed the probation in the cadre of Junior Assistant by way of relaxing the rules as was granted in respect of similarly placed persons by the Government of Tamil Nadu vide G.O.(ID) No. 210 School Education (Pa.Ka.4(2)) Department, dated 17.06.2019 and G.O(ID) No. 124 School Education (Pa.Ka. 4(2)) Department, dated 15.09.2020 and consequentially confer all other consequential service and monetary benefits including the yearly increment and conferment of selection grade along with its accrued arrears thereof within the stipulated time fixed by this Court.

2.All the petitioners in these petitions were initially appointed as Office Assistants. Thereafter, they were promoted as Record Clerks. They were further promoted to the post of Lab Assistants. After promoting to the post of Lab Assistants, their services were regularized on various dates. From the post of Lab Assistants, they were promoted as Junior Assistants / Typists on various dates. Subsequently, the fifth respondent declared their probation in the category of Junior Assistant / Typist on various dates. So, the fourth



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

respondent, vide impugned proceedings, dated 15.09.2023, issued a show-cause notice stating that the promotion of the writ petitioners as Typist / Junior Assistant from the post of Lab Assistant and their promotion as Assistant from Junior Assistant is contrary to Rule 3(G) of the Tamil Nadu Ministerial Service Rules. The fulcrum of the show-cause notices, dated 15.09.2023, which came to be served upon the petitioners with a predetermined conclusion to revert them back to the post of Lab Assistant is the subject of challenge in these writ petitions.

3.Strongly contending that when a show-cause notice has been issued with a predetermined conclusion, then the requirement of giving an opportunity to show-cause becomes nugatory and the same would be an empty formality. It is only under these circumstances, the writ petitioners have challenged impugned show-cause notice, dated 15-09-2023 issued upon the various writ petitioners. For the sake of convenience, the details of the petitioners' service particulars are extracted and tabulated as follows.



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

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| Sl. No | Writ Petition No/Name of the Writ petitioner | Date of initial appointment as Office Assistant               | Date of 1 <sup>st</sup> promotion as Record Clerk | Date of 2 <sup>nd</sup> promotion as Lab Assistant | Date of regularisation in the post of Lab Assistant | Date of 3 <sup>rd</sup> promotion as Junior Assistant | Date of regularisation in the post of Junior Assistant | Date of impugned show cause |
|--------|----------------------------------------------|---------------------------------------------------------------|---------------------------------------------------|----------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------|-----------------------------|
| 1      | W.P. (MD)8665/2023<br>G.Maari                | 14.12.2000<br>O.A                                             | Promoted as Record Clerk                          | 30.07.2014                                         | -                                                   | 30.06.2015                                            | 04.11.2015                                             | 15.09.2023                  |
| 2      | W.P. (MD)9115/2023<br>P.Meenambigai          | 21.04.2023<br>Sweeper                                         | 24.02.2012<br>Lab Assistant                       | -                                                  | 14.05.2013                                          | 09.10.2014<br>(transferred)                           | 30.04.2015                                             | 15.09.2023                  |
| 3      | W.P. (MD)9976/2023<br>R.Sampathlal           | 04.09.1991<br>O.A                                             | 28.10.2008                                        | 16.12.2010                                         | 25.02.2010                                          | 01.08.2014                                            | Not given                                              | 15.09.2023                  |
| 4      | W.P. (MD)17994/2023<br>B.Saravanakumar       | 30.10.2000<br>O.A                                             | 03.10.2007                                        | 11.11.2011                                         | Not given                                           | 17.06.2014                                            | 28.07.2015                                             | 17.04.2023                  |
| 5      | W.P. (MD)23496/2023<br>K.Kannan              | 10.11.2006<br>O.A                                             | 26.02.2012                                        | 04.03.2014                                         | -                                                   | 10.03.2015<br>(Typist)                                | 22.08.2016                                             | 15.09.2023                  |
| 6      | W.P. (MD)24286/2023<br>S.Rathinavel          | 26.11.2001<br>O.A                                             | 20.10.2006                                        | 03.08.2008                                         | 31.10.2011                                          | 01.11.2012                                            | 07.01.2015                                             | 15.09.2023                  |
| 7      | W.P. (MD)25592/2023<br>N.Shanmugasundaram    | 12.08.1996<br>Night Watchman transferred as O.A on 13.08.1997 | 02.03.2006                                        | 17.11.2011                                         | Not given                                           | 30.01.2013                                            | Not given                                              | 15.09.2023                  |
| 8      | W.P. (MD)28599/2023<br>S.Saravanan           | 01.08.2006<br>O.A                                             | 22.11.2011                                        | 30.04.2012                                         | 01.07.2013                                          | 25.06.2014                                            | 29.05.2018                                             | 15.09.2023                  |
| 9      | W.P. (MD)28600/2023<br>M.Pramila             | 01.08.2006<br>O.A                                             | 03.05.2012                                        | 17.05.2012                                         | 01.11.2013                                          | 14.10.2015<br>(Typist)                                | 10.02.2017<br>(Regularisation of Typist)               | 15.09.2023                  |
| 10     | W.P. (MD)28601/2023<br>L.R.Balakumar         | 01.08.2006<br>O.A                                             | 27.04.2012                                        | 15.05.2012                                         | Not given                                           | 14.10.2015<br>(Typist)                                | 29.05.2018<br>(Probation in Typist)                    | 15.09.2023                  |



W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023

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4.The case of the petitioners is that from the post of Lab Assistant, the next avenue for promotion was to the post of Junior Assistant. The petitioners were promoted and posted to the post of Junior Assistants / Typists and they have been working in the said post for the past several years, ie., at least for a period of five years and more.

5.The reasons substantiated by the respondents in the impugned show-cause notice relying upon Rule 3G(1) of the Tamil Nadu Ministerial Service Rules is not sustainable in view of the order passed by this Court in W.P.No.13849 of 2020, dated 05.02.2021. That apart, the Division Bench of this Court in a writ appeal in W.A(MD) Nos.114 and 9 of 2020 has passed an order on 25.03.2021 in a similar case and the relevant portion of which is extracted as follows.

*“4.The learned counsel appearing for respondent No.1 in W.A. (MD)No.9 of 2020 placing reliance upon G.O.Ms.No.11, Education Department, dated 04.01.1989, submitted that recruitment by transfer is permissible from Lab Assistant to Junior Assistant. Secondly, it is submitted that the post of Junior Assistant is a feeder category to the post of Assistant and thereafter, Superintendent. However, the post of Lab Assistant is not a feeder category. The incumbents are languishing*



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

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*in the post of Lab Assistant for decades. Therefore, in any case, no prejudice would be caused.*

*5. We find force in the submissions made by the learned counsel appearing for the respondents. As per G.O.Ms.No.11, Education Department, dated 04.01.1989, the recruitment by transfer can be made from the post of Lab Assistant to the post of Junior Assistant. Though it has been misconstrued as that of promotion from the post of Lab Assistant to the post of Junior Assistant, inasmuch as there is no loss of revenue to the appellants, such recruitment by transfer cannot be objected to, after all, both the posts are drawing the same scale of pay, which certainly benefits the persons, who moved from the post of Lab Assistant to the post of Junior Assistant.”*

6. There is no dispute with regard to the fact that the petitioners, who were holding the post of Lab Assistant was subsequently promoted as Junior Assistant / Typist and the pay scale for both the posts of Junior Assistant / Typist and Lab Assistant are equal. However, this Court has dealt with a case, with respect to the consideration of promotion of the Lab Assistants to the post of Junior Assistants and has dealt with elaborately and the portion of the said order, which is relevant to the facts and circumstances of this case is extracted as follows:

*“2. The petitioners herein were originally appointed to the post of Office Assistant on various dates during the year 2007-10. After serving for some time, all of them were promoted as Lab Assistant in*



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

*the year 2013-15 and as on date they have been working as Lab Assistant in the School Education Department.*

*3. Originally, the post of Office Assistant was a feeder category for promotion to the post of Record Clerk or Lab Assistant and further promotion avenue is the post of Junior Assistant in the Tamil Nadu Ministerial Service. The Government has issued G.O.Ms.No.15 dated 21.02.2002 by amending the then existing Tamil Nadu Ministerial Services vide rule 3(g) whereby 20% of the post of Junior Assistant was directed to be filled up recruitment by transfer from persons in service other than the Tamil Nadu Ministerial Services who are in categories having no promotional post or even after more than one promotion would still be in a category carrying scale of pay less than that of Junior Assistant.*

*4. As far as these petitioners were concerned, they were eligible for promotion to the post of Junior Assistant against 20% quota, since the post of Lab Assistant did not have any further avenue of promotion and the pay scale applicable to the Lab Assistant was lower than the pay scale applicable to the post of Junior Assistant. Subsequently, the Government issued G.O.Ms.No.303 dated 11.10.2017, whereby the posts of Lab Assistant and the Junior Assistant were placed in the same level with Rs.19,500/- as Basic Pay. After the Government Order was implemented, the posts of Lab Assistant and the Junior Assistant carried the same pay scale.*

*5. The grievance of the petitioners herein is that in view of the same pay scale being made applicable to them as that of the Junior Assistant from 2017, these petitioners were sought to be excluded from being considered for promotion to the post of Junior Assistant by citing the rule position. According to these petitioners, even after the parity in pay scale introduced in the year 2017, the post of Lab Assistant*



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

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*continued to be included in the panel for recruitment by transfer to the post of Junior Assistant in terms of the amendment to Rule 3(g) of the Tamil Nadu 4 Ministerial Service Rules. However, presently citing the amendment, these petitioners have been denied inclusion and consideration for further promotion to the post of Junior Assistant. According to these petitioners, they have no further avenue of promotion at all and they would have to languish in the same post till their retirement, if the only door to the promotion is shut.*

*6. The petitioners herein therefore approached the authority concerned seeking consideration of their promotion as Junior Assistant, notwithstanding the parity in the pay scale. However the authorities have issued proceedings viz., that in view of the parity in the pay scale as between the two posts, the Government has been approached for clarification and they would be informed whether they would be considered for promotion or not on such clarification from the competent authority. Challenging the proceedings dated 24.07.2020, the petitioners are before this Court.*

....

*11. This Court has considered the arguments of the learned counsel for the petitioners and the learned Special Government Pleader for the respondents. The issue that calls for adjudication before this Court is rather peculiar one for the reason that though these petitioners have been compensated in terms of the emoluments by bringing them on par with the Junior Assistants in the matter of pay scale, yet, on the other hand, the effect of such action of the respondents in 2017, has resulted in negation of the right of the petitioners for their legitimate career advancement.*

*12. The rules which were amended in 2002 by providing a percentage of quota for transfer of persons from other service to the*



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

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*ministerial service in the matter of promotional prospects of the Lab Assistants, the administration could not have possibly foreseen the present development, namely bringing the pay scale on par as between the Lab Assistants and Junior Assistants. However, in the light of the above development, the authority should not lose sight of the fact that the amendment to the rule was necessitated to provide promotional avenue to the post of Lab Assistant, as without such amendment, the post would have become dead end post.*

*13. As submitted by the learned counsel for the petitioners that the post of Lab Assistant does not have any other avenue of promotion except to the post of Junior Assistant and from Junior Assistant, further career advancement is possible in the administrative hierarchy. If promotion to the post of Junior Assistant is denied, it means that the career advancement of the petitioners would come to an abrupt halt permanently till their retirement. Such adverse scenario does not augur well for good administration as right to have reasonable and proper promotional opportunity, is a fundamental right within the administrative framework and no category of employees could be denied the legitimate career progression in Public Service and allow them to stagnate at a particular level undermining their efficiency and expectations.*

*14. Needless to mention that in the absence of avenues for career growth would not sub serve efficient administration as the same would demotivate any employee from discharging the duties to his/her full potential. In any case, the doctrine of legitimate expectation is one of the recognized principles in service jurisprudence which is to be applied in any given case, whenever such legitimate expectation is sought to be negated.*



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

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15. It is useful to refer to the relevant provisions of the rule which read as under: “9.By recruitment by transfer from any other service. (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 10 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.”

16. As far as the case on hand is concerned, the above rule has a rider that in consideration of promotion to the post of Junior Assistant, the post should carry a lower pay than that of Junior Assistant. But what ultimately falls for consideration before this Court is whether an employee carrying the same pay scale as that of the pay scale applicable to the promotional post, can he/she be denied promotion at all in his/her entire career in terms of the spirit of the rule and object behind the amendment of 2002. In order to give thrust to the object and the spirit of the rule providing a promotional opportunity to the dead end post of Lab Assistant, merely because of change of pay scale, cannot be allowed to take away a valuable right to promotion during the long career span of an employee.

17. In the said circumstances, the Government has to fairly consider the claim of the petitioners and issue necessary clarification



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

WEB COPY

*towards consideration of the claim of these petitioners for promotion to the post of Junior Assistant or to take suitable action for tweaking the rule in order to remove the so called impediment as reflected in the rule or as it perceived in respect of the petitioners' category. In the counter affidavit, it has been clearly stated that the Government has not taken any steps in issuing any clarification as on date. This Court in the fitness of things, would therefore have to issue suitable direction to the Government for issuing necessary clarification, towards redressal of the legitimate grievance of the petitioners/Lab Assistants.*

*18. In the above circumstances, this writ petition is disposed of with a direction to the first respondent to issue necessary clarification or to initiate any action for inclusion of the post of Lab Assistant for promotion to the post of Junior Assistant, notwithstanding the parity of pay scales as applicable to both the posts in order to subserve the spirit of the rule for which it was amended in 2002. ”*

7. Fully fortified by the discussions of this Court in the order discussed *supra*, I am of the considered opinion that the impugned show cause notice intending to revert back all the petitioners from the post of Junior Assistant to Lab Assistant, would certainly be an impediment in their career advancement. Observing that the post of Lab Assistant would be a dead end post without promotional avenues, I have no hesitation to hold that a show cause notice issued with a predetermined conclusion, automatically make the requirement of giving an opportunity to show cause nugatory and an empty



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

formality. Reversion would haunt the petitioners endlessly doing away with his / her promotional avenue till retirement, forcing them to get stagnated in the post of Lab Assistant, which has no promotional avenue. That apart, the petitioners fundamental right to be considered for promotion would be permanently deprived of.

8. Since the impugned show cause notice has been issued with a predetermined conclusion to revert the petitioners back to the post of Lab Assistant from the post of Junior Assistant / Typist, I have no hesitation to hold that the requirement of giving an opportunity to show cause has become nugatory. It is only for these reasons, the notices in question have been challenged by the petitioners and sought to be quashed on the ground that the notices disclose premeditation/bias. However, observing that, in the impugned show cause no personal illwill could be attributed to any specific person and this Court is unable to find any traces of premeditated mind on the part of the fourth respondent from the reading of the show cause notices. The same are mere notices affording opportunity to the appellants to respond to the proposal contained in the show cause notices.



W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023

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9.In view of the same, the petitioners are directed to submit their explanation to the show cause notice, dated 15-09-2023 within a period of two weeks from the date of receipt of copy of this order. Thereafter, the fourth respondent is directed to pass appropriate order in the light of the order passed by this Court in W.P. No.13849 of 2020, dated 21.12.2020, thereby, protecting the right of the petitioners to be considered for promotion.

10.Accordingly, all the petitions stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**26.02.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
**PNM**



**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023**

To

1. The 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.
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W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to 28601 of 2023

**L.VICTORIA GOWRI, J.**

PNM

**COMMON ORDER IN**  
**W.P.(MD).Nos.8665, 9115, 9976, 17994, 23496, 24286, 25592, 28599 to**  
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**and W.M.P(MD)Nos. 7941, 8248, 8760, 10967, 10986, 14070, 15030, 15031,**  
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