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W.P.Nos.21849, 19008 and 19526 of 2025

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 10.12.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**W.P.Nos.21849, 19008 and 19526 of 2025**

**And**

**W.M.P.Nos.24629, 24630, 21289, 21832,  
49527, 46346 and 46350 of 2025**

1.I.Jainulabudeen  
2.A.Mansoor Ahamed  
3.Syed Noor Alam Ibrahim ... Petitioners in W.P.21849/2025

1.B.Mohamed Salman  
2.Sheik Mohamed  
3.J.Musthafa  
4.Y.Peer Mohamed  
5.B.Anwar Ali ... Petitioners in W.P.19008/2025

1.K.Syed Vajeethu  
2.M.Thungu Abdul Razak ... Petitioners in W.P.19526/2025

**Vs.**

1.The Principal Secretary to Government,  
Backward Classes, Most Backward Classes and  
Minorities Welfare Department,  
Secretariat,  
Fort St.George,  
Chennai – 9. ... Respondent in W.P.21849/2025

2.The Tamil Nadu Wakf Board  
Rep. by its Chairman,  
No.1, Jaffar Syrang Street,  
Vallal Seethakathi Nagar,  
Chennai – 1.



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3.The Chief Executive Engineer,  
Tamil Nadu Wakf Board  
No.1, Jaffar Syrang Street,  
Vallal Seethakathi Nagar,  
Chennai – 1.

... Respondents in W.Ps.21849 &  
19008/2025

1.The State of Tamil Nadu  
Rep. by its Principal Secretary to Government,  
Backward Classes, Most Backward Classes  
and Minorities Welfare Department,  
Secretariat,  
St.George Fort,  
Chennai 600 009.

2.The Chief Executive Engineer,  
Tamil Nadu Wakf Board,  
Chennai – 600 001.

... Respondents in W.P.19526/2025

**Prayer in W.P.No.21849 of 2025:**

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent ending with Proc No.10773/E1/2006 dated 23.05.2025 and quash the same and consequently direct the third respondent to declare the completion of probation of petitioners and to disburse all the monetary and attendant benefits in light of the proceedings of the third respondent dated 26.07.2018 in Proc No.10773/ E1/2006-2.

**Prayer in W.P.No.19008 of 2025:**

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to the declare the



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completion of probation period of the petitioners with effect from 27.06.2018 in terms of its proceedings in ref: Proc.10773/E1/2006-2 dated 26.07.2018, being the appointing authority, in accordance with rule 10 of the Tamilnadu State Wakf Board Service Regulation, 1971 within a time frame as may be fixed by this Hon'ble Court.

**Prayer in W.P.No.19526 of 2025:**

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus call for the records relating to the impugned order passed by the second respondent vide his proceedings in Proc.No.10773/E1/2006 dated 23.05.2025 and quash the same as illegal and consequentially to declare the probation of the petitioners and disburse all the service and monetary benefits strictly in conformity with the proceedings of the second respondent in Proc. No.10773/E1/2006-2 dated 26.07.2018, within the time that may be stipulated by this Hon'ble Court.

For Petitioners : Mr.N.A.Nissar Ahmed  
Senior Counsel  
for M/s.I.Kowser Nissar  
in W.P.No.21849 of 2025

Mr.R.Veeramani  
in W.P.No.19008 of 2025

Mr.Nambi Arooran  
for M/s.Ajmal Associates  
in W.P.No.19526 of 2025



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For Respondents : Mr.P.Balathandayudam for R1  
Special Government Pleader  
Mr.R.Abdul Mubeen for R2 and R3  
in W.P.No.21849 of 2025

Mr.R.Abdul Mubeen for R2 and R3  
in W.P.No.19008 of 2025

Mr.P.Balathandayudam for R1  
Special Government Pleader  
Mr.R.Abdul Mubeen for R2  
in W.P.No.19526 of 2025

### **COMMON ORDER**

W.P.No.21849 of 2025 has been filed seeking issuance of Writ of Certiorarified Mandamus calling for the records of the third respondent ending with Proc No.10773/E1/2006 dated 23.05.2025 and quash the same and consequently direct the third respondent to declare the completion of probation of petitioners and to disburse all the monetary and attendant benefits in light of the proceedings of the third respondent dated 26.07.2018 in Proc No.10773/ E1/2006-2.

2.W.P.No.19008 of 2025 has been filed seeking issuance of Writ of Mandamus directing the respondents to the declare the completion of probation period of the petitioners with effect from 27.06.2018 in



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terms of its proceedings in ref: Proc.10773/E1/2006-2 dated 26.07.2018, being the appointing authority, in accordance with rule 10 of the Tamilnadu State Wakf Board Service Regulation, 1971 within a time frame as may be fixed by this Court.

3.W.P.No.19526 of 2025 has been filed seeking issuance of Writ of Certiorarified Mandamus, call for the records relating to the order passed by the second respondent vide his proceedings in Proc.No.10773/E1/2006 dated 23.05.2025 and quash the same as illegal and consequentially to declare the probation of the petitioners and disburse all the service and monetary benefits strictly in conformity with the proceedings of the second respondent in Proc. No.10773/E1/2006-2 dated 26.07.2018, within the time that may be stipulated by this Court.

4.Since the issue involved in these writ petitions are interrelated, they are taken up together and disposed of by way of a common order.

5.The respective learned counsel appearing for the



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petitioners submitted that Wakf Board is an autonomous body constituted as per the provisions of the Wakf Act, 1995 conferred with the power to appoint and engage its own staff and the terms and conditions of the service of the staff is governed by the Tamil Nadu Wakf Board Service Regulations, 1971. The Wakf Board in order to fill the vacancies to the post of Junior Assistants invited applications through paper publication in every district from those enrolled in the employment exchange. Upon satisfaction of the educational qualification and the performance of the respective candidates, 17 persons were appointed as Junior Assistants, out of which, four persons were employed through employment exchange, 13 persons were employed through paper publication.

6.The respective learned counsel appearing for the petitioners further submitted that in the year 2017, the Wakf Board sought for permission to fill up various posts in the Wakf Board and to regularize the persons who were already appointed during the years 2007 – 2010 and in response to the same, the Government vide proceedings dated 04.05.2017 informed that Wakf Board is an autonomous body and the appointing authority to the post of Junior

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Assistants in the Wakf Board and therefore it is for the Wakf Board to regularize the services and the Government to grant permission to regularize the services of the employees of the Wakf Board does not arise. Thereafter the Wakf Board passed a resolution dated 26.07.2018 for regularization of the services of the 13 persons who were employed through paper publication as Junior Assistants. Thereafter the Wakf Board once again sought for clarification from the Government and the Government in the year 2025, issued order as if the appointment of the petitioners is contrary to Employment Exchange (Compulsory Notification of Vacancies) Act, 1959.

7.The learned Senior Counsel appearing for the petitioners in W.P.No.21849 of 2025 submitted that out of 17 persons appointed as Junior Assistants, four persons who were employed through employment exchange were not disturbed and in the remaining 13 persons, two persons resigned the post and one person died and the remaining 10 persons rendered service for more than a decade in the Wakf Board as Junior Assistants and hence the impugned order is not sustainable one.



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8. In support of his contentions, the learned Senior Counsel appearing for the petitioners in W.P.No.21849 of 2025 relied upon the following decisions:

(i) The decision of the Madurai Bench of this Court reported in **MANU/TN/1907/2012 [P.Pandeyrajan Vs. General Manager, Tamil Nadu State Transport Corporation (Nellai) Ltd., Tirunelveli District and ors.]**, the relevant portion of which is extracted hereunder:

*56. This Court in P.M.Malathi v. State of Tamil Nadu and others (2012 (3) M.L.J. 669) also held, that it is not permissible for the State to fill up the posts, only by calling names from the employment exchange, and thereby denying right of consideration, to other eligible persons, who are not registered with employment exchange.*

*57. The Judgments of the Supreme Court is declaration of law and binding on all, including the State Government and the State agencies. Any rules or instructions by other authorities or State Government cannot have binding effect on the law declared by Hon'ble Supreme Court and the High Court. Reference in support*



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*can be made to the judgment of Hon'ble Supreme Court in Commissioner of Central Excise v Ratan Metal and Wire Industry (2008 (13) SCALE 353).*

*58. In view of the settled law, the reliance by the respondents on the judgment of the Hon'ble Supreme Court in [Man Singh v Commissioner, Garhwal Mandal Pauri and Others](#) (supra) cannot advance the case of the respondents, as the Hon'ble Supreme Court in the latest judgment held that earlier view of the Hon'ble Supreme Court that appointment by the names from the employment exchange will be valid is no longer good law.*

*59. The reliance on the Judgment of the Hon'ble Supreme Court in [Arun Tewari v. Zila Mansavi Shilshak SANGH](#) (supra) is also misplaced as the Hon'ble Supreme Court nowhere laid down, that names from the employment exchange alone can be called. It was on the peculiar facts and circumstances of the said case, that the Court did not interfere with selection process for want of eligibility of the petitioners to challenge the selection. This judgment, again has no application to facts of*



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*this case. Similarly, reliance on the Division Bench of this Court is misplaced rather contemporaneous, as the view of the Hon'ble Division Bench stands overruled by the Hon'ble Supreme Court in State of Orissa and Another v. Mamata Mohanty (2011 (2) S.C.T. 718).*

60. Therefore, any appointment merely by inviting names from the Employment Exchange does not meet the requirement of [Articles 14](#) and [16](#) of the Constitution of India, as it violates the mandate of [Articles 14](#) and [16](#) of the Constitution of India; as it results in depriving of eligible candidates having the requisite qualification for the post from being considered.

61. In view of what has been stated above, the first question is answered in favour of the petitioners, and Notifications issued by all Corporations, inviting applications through only employment exchange are ordered to be quashed.

62. This process of appointment through employment exchange is prima facie



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*arbitrary, as it is clear from the facts of the cases referred to above. The respondents are not only filling up the posts, by requesting the employment exchange to sponsor the names of eligible candidates, but have also allowed the employment exchanges, to lay down their own criteria of recommending the names based on seniority, and thereby leaving it to the choice of the employment exchange, to consider the eligibility conditions of the employees to be appointed. This process has resulted in many of the eligible candidates not getting chance to be considered for employment, in Government undertaking as in number of occasions, name of the person registered with employment exchange for more than 20 years earlier were not given any chance to compete for the post, for want of seniority. This has resulted in many eligible persons becoming overage without any chance to be considered. This process, therefore on the face of it, is arbitrary, and cannot be accepted in any civilized society.*

(ii)The decision of the Madurai Bench of this Court reported in

**CDJ 2008 MHC 2041 [P.Nageswaram, Madurai District Vs.**



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***District Elementary Educational Officer, Madurai and another],***

the relevant portion of which is extracted hereunder:

*"4. The learned counsel for the petitioner school submits that the first respondent is keeping matter pending, since the said teacher was appointed without reference to the sponsorship from the Employment Office and she was appointed based an invitation of application through Paper Publication.*

*5. The learned counsel further submits that the matter in issue is covered by the judgment of Division Bench of this Court in W.A. No.696 of 1998 dated 12.11.2002 and a Full Bench of this Court in R. Sivakumari Vs. Ramanathapuram Mavatta Payirchipetra Edaihilai Asiriyargal Sangam (2007) 6 MLJ 1583: 2007(5) CTC 561). In the said Judgments, the Division Bench as well as the Full Bench, following the Judgment of the Supreme Court in Excise Superintendent Malkapatnam, Krishna District Vs. K.B.N. Visweshwara Rao and Others, (1996) 6 SCC 216: 1997-I-LLJ-567, held that the sponsorship through employment office can be*



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*a source and not an exclusive source and the Appointing Authorities are empowered to invite applications through Paper Publication and other modes and if appointments are made by giving opportunity to all the candidates to apply, the same is permissible appointments are bound to be approved."*

(iii)The decision of this Court reported in **CDJ 2004 MHC 2041 [B.Ramasubramanian and another Vs. The Director of School Education, College Road, Chennai and others]**, the relevant portion of which is extracted hereunder:

*"6. Following the ratio laid down by the Apex Court in Excise Superintendent v. K.B.N. Visweshwara Rao (1996) 6 SCC 216, a Division Bench of this Court in Nehru Memorial College v. The State of Tamil Nadu and others 2003 Writ L.R.31, held as follows:*

*"Though it is mandatory on the part of the private educational institutions receiving aid from the Government to notify the vacancies to the respective Employment Exchanges, they are also at liberty to call for names by publication in newspapers having wider*



*circulation, and by display on their office notice board, or announce on radio, TV and Employment news bulletin.”*

*7. Hence, applying the ratio laid down by the Apex Court in Excise Superintendent v. K.B.N. Visweshwara Rao (1996) 6 SCC 216 and by this Court in Nehru Memorial College v. The State of Tamil Nadu 2003 Writ L.R.31 I am satisfied that the refusal to approve the appointment of the petitioners in the third respondent-school, merely on the ground that they were not sponsored by the Employment Exchange is arbitrary, unreasonable and violative of Articles 14, 16 and 19(1)(g) of the Constitution of India.”*

9.Per contra, the learned counsel appearing for the Wakf Board submitted that the Wakf Board enacted the Tamil Nadu State Waqf Board Service Regulations, 1971 and as per the proviso to Regulation 3 of the Tamil Nadu State Waqf Board Service Regulations, 1971, the appointment by direct recruitment shall be made only in consultation with the Employment Exchange as provided for the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 and further submitted that though the petitioners claim that they



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were temporarily appointed during the years 2007 – 2010, such appointment is invalid in law.

10.The learned counsel appearing for the Wakf Board further submitted that in the year 2017, the Wakf Board sought for permission to fill up various posts in the Wakf Board and to regularize the persons who were already appointed during the years 2007 – 2010 and in response to the same, the Government vide proceedings dated 04.05.2017 informed that Wakf Board is an autonomous body and the appointing authority to the post of Junior Assistants in the Wakf Board and therefore it is for the Wakf Board to regularize the services and the Government to grant permission to regularize the services of the employees of the Wakf Board does not arise. Subsequently, new Board assumed office, thereby the Board in order to give clean chit, approached the State Government and the Government instructed the Board that the appointment made during the years 2007 – 2010 is contrary to Employment Exchange (Compulsory Notification of Vacancies) Act, 1959.

11.The learned counsel appearing for the Wakf Board further



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submitted that any appointment made contrary to the Tamil Nadu State Waqf Board Service Regulations, 1971 and Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 is illegal appointment and illegal appointment cannot be regularized, however, earlier it was inadvertently regularized and it will not give right to the petitioners to continue in the post.

12. In support of his contentions, the learned counsel appearing for the Wakf Board relied upon the following decisions:

(i) The decision of the Hon'ble Apex Court reported in **(2007) 1 SCC 373 [Municipal Corporation, Jabalpur Vs. Om Prakash Dubey]**, the relevant portion of which is extracted hereunder:

*"11. The question which, thus, arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be*



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*an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of the rules might not have been strictly adhered to."*

(ii)The decision of the Hon'ble Apex Court reported in **2025 INSC 176 [Amrit Yadav Vs. The State of Jharkhand and ors.]**, the relevant portion of which is extracted hereunder:

*"32. Hence, in view of the above principle and the factual scenario in the case at hand, it is clear that if the subject appointments were ab-initio nullity in the eyes of law, it was not incumbent on the learned Single Judge to pass the order after hearing all the parties that were likely to be affected by such decision, i.e., the candidates who were already appointed on the subject posts including the appellant-employee.*

*33. Therefore, we are of the view that the learned Single Judge did not commit any error while issuing a direction vide order dated 12th September, 2018, for preparation of fresh panel of selected candidates in consonance*



*with the statutory rules and procedure prescribed in the advertisement as it is clearly discernible from our discussion in the first issue that the recruitment process was void ab-initio and ultra vires the Constitution of India. Therefore, there was no need to comply with the principles of natural justice as that would be nothing, but an exercise in futility and the appellant- employee thus, cannot be allowed to claim prejudice from the fact that he was neither impleaded nor heard before the issuance of a direction affecting his service.*

*34. With respect to the power of cancellation of the entire selection process, this Court in [M.P. State Coop. Bank Ltd. v. Nanuram Yadav](#), held thus:-*

*"24. It is clear that in the matter of public appointments, the following principles are to be followed:*

*(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market*



would amount to breach of [Articles 14 and 16](#) of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under [Article 162](#) of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) **The court should not exercise its jurisdiction on misplaced sympathy.**

(7) **If the mischief played is so widespread and all pervasive,**



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**affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.**

**(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside."**

(emphasis supplied)

35. Thus, it is clear that once the appointment process is declared to be a nullity in law, every action taken in furtherance of such appointment process is also illegal, and, therefore, the constitutional courts have jurisdiction to set aside such appointments wholly and ab-initio. This power of the Court is not curtailed even in a situation where a third-party right has been created in those who have been offered appointment or have even joined the service."



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13. Heard the arguments advanced on either side and perused the materials available on record.

14. The facts of the case is not in dispute. The Wakf Board in order to fill the vacancies to the post of Junior Assistants invited applications through paper publication in every district from those enrolled in the employment exchange. Upon satisfaction of the educational qualification and the performance of the respective candidates, 17 persons were appointed as Junior Assistants including the petitioners, out of which, four persons were employed through employment exchange, 13 persons were employed through paper publication.

15. In the year 2017, the Wakf Board sought for permission to fill up various posts in the Wakf Board and to regularize the persons who were already appointed during the years 2007 – 2010 and in response to the same, the Government vide proceedings dated 04.05.2017 informed that Wakf Board is an autonomous body and the appointing authority to the post of Junior Assistants in the Wakf Board and therefore it is for the Wakf Board to regularize the services and

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the Government to grant permission to regularize the services of the employees of the Wakf Board does not arise. Thereafter the Wakf Board passed a resolution dated 26.07.2018 for regularization of the service of the 13 persons who were employed through paper publication as Junior Assistants. Thereafter new Board assumed office and the Board again approached the Government and the Government passed the impugned order.

16.It is equally un-disputed fact that out of 17 persons appointed as Junior Assistants, four persons who were employed through employment exchange were not disturbed and in the remaining 13 persons, two persons resigned the post and one person died and the remaining 10 persons/ petitioners rendered service for more than a decade in the Wakf Board as Junior Assistants.

17.Perusal of the decisions cited supra makes it clear that sponsorship through employment office can be a source and not an exclusive source and the appointing authorities are empowered to invite applications through paper publication and other modes and if appointments are made by giving opportunity to all the candidates to



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apply, the same is permissible appointments and are bound to be approved.

18.Admittedly, the Wakf Board in order to fill the vacancies to the post of Junior Assistants invited applications through paper publication and the petitioners upon satisfaction of educational qualification and performance were appointed during the years 2007 – 2010 and they have rendered service for more than a decade and their services were regularized during the year 2018. The issue once settled cannot be un-settled after a lapse of several years and hence the termination of the petitioners is not sustainable one.

19.The writ petitions are allowed. The impugned order is set aside. No costs. Consequently, the connected miscellaneous petitions are closed.

**10.12.2025**

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Index: Yes/ No  
Speaking Order: Yes/ No  
NCC: Yes/ No

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To

- 1.The Principal Secretary to Government,  
Backward Classes, Most Backward Classes and  
Minorities Welfare Department,  
Secretariat,  
Fort St.George,  
Chennai – 9.
- 2.The Tamil Nadu Wakf Board  
Rep. by its Chairman,  
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**M.DHANDAPANI,J.**  
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**10.12.2025**

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