



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD) Nos.7448 of 2017, 16291, 16292, 16336, 16337 &amp; 19041 of 2016

W.P.(MD) No.7448 of 2017:

01. S.Jegadeesan
02. J.Subburaj
03. P.Alagu Murugan
04. D.Muthupandian
05. P.Raja
06. A.Ramaraj
07. N.Eswari
08. A.Shanmuga Sundarapandi
09. P.Bala Guru
10. S.Chinnamayan
11. P.Nageshwari
12. K.Rathina Gandhi
13. K.Siva Shankar
14. V.Malarkodi
15. S.Radha
16. C.Vetriselvan
17. M.Rasheethkhan

.. Petitioners

-vs-

1. State of Tamil Nadu  
rep.by its Secretary  
Department of Agriculture  
Fort St.George  
Chennai 600 009

2. The Commissioner of Agriculture  
O/o the Commissioner of Agriculture  
Chepauk  
Chennai 600 005

3. Mr.M.Ramesh
4. Mr.M.Rajini Kanth

.. Respondents

**Prayer in W.P.(MD) No.7448 of 2017:** Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari Mandamus, to call for the records pertaining to the impugned order in Letter No.Ka.Ba.Ni2/19797/2017

stipulated

For Respondents:: Mr.D.Muruganantham

Mr.T.Arul for R4

01. V.Murugan

03. V.Kaniraja

05. N.Asokalingam

## .. Petitioners

-VS-

1. The State of Tamil Nadu  
rep.by its Secretary to Government cum  
Agricultural Production Commissioner  
Secretariat, Fort St.George  
Chennai 600 009

2. The Commissioner of Agriculture  
Ezhilagam, Chepauk  
Chennai 600 005

3. The Joint Director of Agriculture  
Nirubar Colony  
Anna Nagar  
Palayamkottai 627 002  
Tirunelveli District

4. The Joint Director of Agriculture  
Krishnankovil  
Nagercoil, Kanyakumari District 629 001

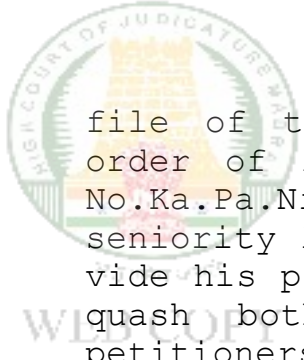
6. Mr.M.Rajini Kanth

7. Mr.A.Rayappanathan

8. Mr.K.Venkatesan

.. Respondents

**Prayer in W.P. (MD) No.16291 of 2016:** Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari and Mandamus, to call for the records on the



file of the second respondent in connection with the impugned order of rejection passed by him in his proceedings in Letter No.Ka.Pa.Ni.1/78748/15 dated 22.07.2016 as well as the impugned seniority list drawn in the cadre of Assistant Agriculture Officer vide his proceedings in Ka.Pa.Ni.2/78748/2016 dated 22.07.2016 and quash both as arbitrary and ultravires in so far as the petitioners are concerned and consequently direct the respondents to prepare the seniority list based on the date of joining and age as per Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules within the time limit that may be stipulated by this Hon'ble Court.

For Petitioners:: Mr.G.Thalaimutharasu

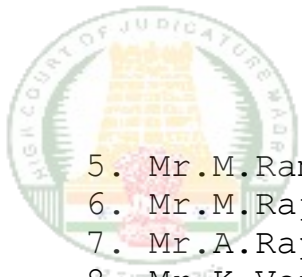
For Respondents:: Mr.D.Muruganantham  
Additional Government Pleader for R1 to 4  
Mr.T.Arul for R6

W.P.(MD) No.16292 of 2016:

|                      |                |
|----------------------|----------------|
| 01. R.Kumaresan      |                |
| 02. P.Mariappan      |                |
| 03. A.Murugaiah      |                |
| 04. C.Senthilkumar   |                |
| 05. S.D.Cherman      |                |
| 06. S.Muthusamy      |                |
| 07. M.Maragathavalli |                |
| 08. A.Sathishkumar   |                |
| 09. P.Pasunkodi      |                |
| 10. R.Praja          | .. Petitioners |

-vs-

1. The State of Tamil Nadu  
rep.by its Secretary to Government cum  
Agricultural Production Commissioner  
Secretariat, Fort St.George  
Chennai 600 009
2. The Commissioner of Agriculture  
Ezhilagam, Chepauk  
Chennai 600 005
3. The Joint Director of Agriculture  
Nirubar Colony  
Anna Nagar  
Palayamkottai 627 002  
Tirunelveli District
4. The Joint Director of Agriculture  
Krishnankovil  
Nagercoil, Kanyakumari District 629 001



5. Mr.M.Ramesh  
 6. Mr.M.Rajini Kanth  
 7. Mr.A.Rayappanathan  
 8. Mr.K.Venkatesan  
 9. Mr.R.Selvaraj

.. Respondents

**Prayer in W.P. (MD) No.16292 of 2016:** Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in connection with the impugned seniority list drawn in the cadre of Assistant Agriculture Officer vide his proceedings in Ka.Pa.Ni.2/78748/2016 dated 22.07.2016 and quash the same as arbitrary and ultravires in so far as the petitioners are concerned and consequently direct the respondents to prepare the seniority list based on the date of joining and age as per Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules within the time limit that may be stipulated by this Hon'ble Court.

For Petitioners:: Mr.G.Thalaimutharasu

For Respondents:: Mr.D.Muruganantham  
 Additional Government Pleader for R1 to 4  
 Mr.T.Arul for R6

W.P. (MD) No.16336 of 2016:

M.Shanmugam

.. Petitioner

-vs-

1. The State of Tamil Nadu  
 rep.by its Secretary to Government cum  
 Agricultural Production Commissioner  
 Secretariat, Fort St.George  
 Chennai 600 009

2. The Commissioner of Agriculture  
 Ezhilagam, Chepauk  
 Chennai 600 005

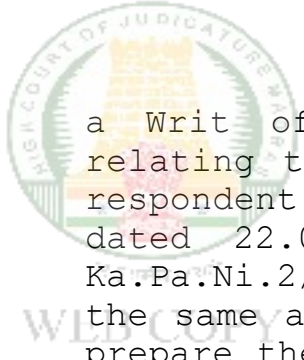
3. The Joint Director of Agriculture  
 Master Plan Complex, Collectorate  
 Theni District

4. M.Ramesh  
 5. M.Rajini Kanth  
 6. A.Rayappanathan

.. Respondents

<https://hcservices.ecourts.gov.in/hcservices/>

**Prayer in W.P. (MD) No.16336 of 2016:** Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of



a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of rejection passed by the second respondent in his proceedings in Letter No.Ka.Pa.Ni.1/78748/2015 dated 22.07.2016 as well as the impugned seniority list in Ka.Pa.Ni.2/78748/2016 issued by the second respondent and quash the same as illegal and consequentially direct the respondents to prepare the seniority list based on the date of joining and age as per Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules within the time limit fixed by this Hon'ble Court.

For Petitioner :: M/s Chamundi Bose

For Respondents:: Mr.D.Muruganantham  
Additional Government Pleader for R1 to 3  
Mr.T.Arul for R5

W.P.(MD) No.16337 of 2016:

S.Kavasakar .. Petitioner

-vs-

1. The State of Tamil Nadu  
rep.by its Secretary to Government cum  
Agricultural Production Commissioner  
Secretariat, Fort St.George  
Chennai 600 009

2. The Commissioner of Agriculture  
Ezhilagam, Chepauk, Chennai

3. The Joint Director of Agriculture  
Master Plan Complex, Collectorate  
Theni District

4. M.Ramesh

5. M.Rajini Kanth

6. A.Rayappanathan .. Respondents

**Prayer in W.P.(MD) No.16337 of 2016:** Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 22.07.2016 in Ka.Pa.Ni.2/78748/2016 issued by the second respondent and quash the same as illegal and consequentially direct the respondents to prepare the seniority list based on the date of joining and age as per Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules within the time limit fixed by this Hon'ble Court.



For Petitioner:: M/s Chamundi Bose

For Respondents:: Mr.D.Muruganantham  
Additional Government Pleader for R1 to 3  
Mr.T.Arul for R5

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W.P.(MD) No.19041 of 2016:

01. J.Subburaj
02. P.Alagu Murugan
03. D.Muthupandian
04. P.Raja
05. A.Ramaraj
06. N.Eswari
07. A.Shanmuga Sundarapandi
08. S.Jegadeesan
09. P.Bala Guru
10. S.Chinnamayan
11. P.Nageshwari
12. K.Rathina Gandhi
13. K.Siva Shankar
14. V.Malarkodi
15. S.Radha
16. C.Vetriselvan

.. Petitioners

-vs-

1. State of Tamil Nadu  
rep.by its Secretary  
Department of Agriculture  
Fort St.George  
Chennai 600 009

2. The Commissioner of Agriculture  
O/o the Commissioner of Agriculture  
Chepauk  
Chennai 600 005

.. Respondents

**Prayer in W.P. (MD) No.19041 of 2016:** Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter No.Ka.Ba.Ni2/78748/15 dated 22.07.2016 on the file of the respondent No.2 and quash the same as illegal and consequently to direct the respondents to re-fix the seniority in the cadre of Assistant Agriculture Officer, recruited through employment exchange in the year 2009, by adhering to the date of joining in service within the time stipulated by this Hon'ble Court.



For Petitioners :: Mr.T.Lajapathi Roy  
For Respondents :: Mr.D.Muruganantham  
Additional Government Pleader

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**COMMON ORDER**

Since the issues raised in all the writ petitions are one and the same, they are taken up together and disposed of by this common order. For convenience, the facts as pleaded in W.P.(MD) No.7448 of 2017 are referred to in this order. The said writ petition is directed against the impugned order in Letter No.Ka.Ba.Ni2/19797/2017 dated 13.03.2017 issued by the Commissioner of Agriculture, Chennai, the second respondent herein, to quash the same as illegal with a consequential direction to the respondents to refix the seniority in the cadre of Assistant Agriculture Officer, recruited through employment exchange in the year 2009, by adhering to the date of joining in service within a stipulated time to be fixed by this Court.

2. Learned counsel for the petitioners submitted that the first petitioner with the qualification of Diploma in Agriculture (two year course), after registering his name in the District Employment Exchange, was waiting for the employment. Similarly, the other petitioners also have completed the Diploma in Agriculture (two year course) and they have also registered their names in the District Employment Exchange and were waiting for employment. Only in the year 2009, recruitment process to fill up the post of Assistant Agricultural Officer was initiated and the petitioners were issued with the call letters. Accordingly, they also participated in the selection process and were selected as Assistant Agricultural Officers. When the first petitioner joined the post on 2.3.2009 in the office of the Assistant Director of Agriculture, Sedapatti, Madurai district and the second petitioner also joined on 2.3.2009 as Assistant Agricultural Officer in the office of the Assistant Director of Agriculture, Mukkudal, Tirunelveli District, however, he was transferred to Madurai district on 5.5.2010 and again he was further transferred on 25.6.2012 to the office of Assistant Director of Agriculture, Madurai West and presently serving as Administrative Officer/Assistant Agricultural Officer at Uzhavar Sandhai, Chokkikulam, Madurai from 1.7.2016. The third petitioner, who also joined on 2.3.2009 in the office of Assistant Director of Agriculture, Mukkudal, Tirunelveli District, came on transfer to the office of Assistant Director of Agriculture, Alanganallur Block on 20.1.2010 and since then, he is serving as Assistant Agricultural Officer. The fourth petitioner joined duty on 5.3.2009 and is presently serving in the office of Assistant Director of Agriculture, Vadipatti Block on 1.7.2012. When the

https://hcservices.hcservices.org/hcservices/ 7, 12, 14 & 16 joined on 2.3.2009 and working as Assistant Agricultural Officers, petitioner no.11 joined on 5.3.2009, petitioners 9, 13, 17 joined on 16.3.2009 and





petitioner no.15 also joined on 7.3.2009 and serving as Assistant Agricultural Officers. While so, the second respondent issued a communication dated 23.5.2016 releasing the temporary list of seniority in the cadre of Assistant Agricultural Officer, placing the petitioner no.1 below several juniors who joined duty after his date of joining duty, he submitted his objections along with other petitioners. However, the second respondent issued an order dated 22.7.2016 rejecting the request of the petitioners to fix the seniority on the basis of the date of joining in duty, by quoting Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules. Aggrieved by the same, W.P.(MD) No.19041 of 2016 was filed and the same is also pending.

3. Explaining further, it is stated that Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules is applicable only in the case of recruitment based on the common written examination and on the basis of the marks secured by the candidates, the merit list is generally prepared by the competent authority. But in the case on hand, recruitments were made based on the employment exchange seniority. In view thereof, there is no possibility of fixing any rank or mark at the time of selection of the candidates. It is for this reason the petitioners have given objection/reply to fix their seniority based on the date of their joining duty as Assistant Agricultural Officer. When the respondents 3 & 4 joined duty on 11.3.2009 and 9.3.2009 respectively, they should be placed below the petitioners, as they were all appointed on 2.3.2009. Since the placement of seniority of the Assistant Agricultural Officer is highly improper, the impugned order is liable to be set aside holding that Rule 35(a) of the Rules cannot be made applicable to the present case. The representation dated 7.6.2016 submitted by the first petitioner to the Commissioner of Agriculture, Chennai also indicated that the seniority of a person in a service, where the normal method of recruitment to that service or class is by more than one method of recruitment, be determined with reference to the date on which he is appointed to the service. The proviso also says that where the junior appointed by a particular method of recruitment happens to be appointed to a service, class earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service or class on the same date on which the junior was appointed and this is for the purpose of fixing the inter se seniority. Therefore, in the present case, when the petitioners were all appointed earlier to the respondents, Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules with proviso shall be made applicable.

4. Similarly, Mr.G.Thalaimutharasu, learned counsel for the petitioners in W.P.(MD) Nos.16291 & 16292 of 2016 also submitted that the petitioners, having obtained Diploma in Agriculture, registered their names with the District Employment Exchange, Tirunelveli. On the basis of the employment seniority, they were





sponsored to the post of Assistant Agricultural Officer in the ratio of 1:5 to the second respondent, who in turn called them for interview. After the certificate verification, issued the appointment order dated 1.3.2009. In view of their appointment, they also joined the post of Assistant Agricultural Officer and for the past seven years, without any charge or punishment, they have been working. Subsequently, the third respondent has regularised their service and issued an order declaring their probation on completion of two years from the date of joining in proceedings Ni4/337/09 dated 20.5.2011 insofar as the first four petitioners are concerned and by another proceedings, the respondents 5 & 6 were appointed. Adding further, it is stated that when they have been recruited in the year 2009 and placed within the district by the third respondent, no district seniority was issued by the official respondents. When this being the position, 112 persons who entered the service in the year 2010, who are admittedly juniors to the petitioners, were shown above in the tentative seniority list. Continuing his arguments, he submitted that when the Joint Director of Agriculture, the third respondent herein has selected the candidates based on the district employment seniority, no test or examination was conducted and no mark was allotted, therefore, the stand taken by the respondents in the counter affidavit that on the basis of the marks allotted to them during the certificate verification or interview, the seniority list is prepared, is wholly erroneous. Moreover, when the petitioners were all appointed in the year 2009, in any event the persons appointed in 2010 cannot be placed above the petitioners who were appointed one year ago viz., in 2009. Therefore, the respondents should have applied Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules, he pleaded.

5. Detailed counter affidavits have been filed by the Commissioner of Agriculture, the second respondent herein. The Government of Tamil Nadu, the first respondent herein in Letter No.33575/AA4/2007-4 Agriculture (AA4) Department dated 25.1.2008 have approved the estimate of vacancies in respect of the post of Assistant Agricultural Officers as 1707 and permitted the Director of Agriculture/Commissioner of Agriculture (recruiting authority), the second respondent herein to take action to fill up all the 1707 vacant posts through employment exchange by properly following the service rules and the rule of reservation. Accordingly, the second respondent called for the Statewise eligible candidates from the Director of Employment and Training, who also in turn sponsored 3691 candidates against the requirement to fill up 1707 posts of Assistant Agricultural Officers. All the aforesaid 3691 candidates were called for interview held from 12.1.2009 to 4.2.2009 and finally 1692 eligible candidates were selected based on their qualification, employment seniority, <https://hcservices.com/magazine/hcservices/> the interview. Applying the rule of reservation and the marks secured by them, the selection list was prepared. Out of 1692 selected candidates, only 1595 candidates alone were given



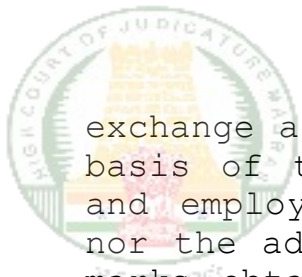
appointments at the first instance during the month of March, 2009. Since Court cases were pending against 97 candidates, they were not given appointments. However, after disposal of the cases during the year 2010, the remaining 97 candidates were also given appointments during the year 2010. Now all these 97 (12+74+11) candidates shall be placed in the appropriate place based on merit as per the marks secured by them during the interview conducted from 12.1.2009 to 4.2.2009.

6. The learned Additional Government Pleader for the official respondents, restating the stand taken in the counter affidavits, submitted that on the basis of the marks allotted to the candidates while appointing them as Assistant Agricultural Officers, the seniority list was also communicated to 1703 Assistant Agricultural Officers directly recruited and joined as Assistant Agricultural Officers during the year 2009 was drawn by the Director of Agriculture and the same was issued vide the second respondent's letter No.FSE2/78748/2017 dated 23.5.2016. Thereafter, the final seniority list was communicated by the Commissioner of Agriculture vide proceedings No.FSE2/78748/2017 dated 22.7.2016. Challenging the same, the writ petitions have been filed which are wholly not maintainable. The learned Additional Government Pleader, concluding his arguments, submitted that while preparing the seniority list of Assistant Agricultural Officers, Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules and Section 40(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 were followed. Since there was only one method of recruitment, the appointing authority, namely, the Director of Agriculture, based on the rule of reservation and marks, selected the candidates and thereafter the seniority was fixed as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules on the basis of the marks awarded in the interview.

7. The learned counsel appearing for one of the private respondents also adopted the arguments of the learned Additional Government Pleader for the official respondents.

8. Heard the respective learned counsel for the petitioners, the learned Additional Government Pleader for the official respondents and the learned counsel for one of the private respondents.

9. Admittedly, all the petitioners and the private respondents were appointed as Assistant Agricultural Officers in the Department of Agriculture under the control of the second respondent. While the petitioners were recruited through the employment exchange, they were all appointed in the year 2009 <https://hcservices.ecourts.gov.in/hcservices/> 9, 5.3.2009 etc. Although the counter affidavits filed by the official respondents show that the Assistant Agricultural Officers were appointed through the employment

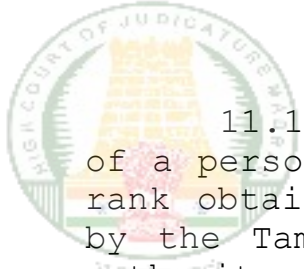


exchange after holding interview and the selection was made on the basis of the marks obtained in the interview, the academic mark and employment seniority also was followed, neither the counter nor the additional typedset filed by them would show what are the marks obtained by the petitioners and the marks obtained by the private respondents. Secondly, paragraph-5 of the counter shows that the provisional seniority list of 1703 Assistant Agricultural Officers directly recruited and joined as Assistant Agricultural Officers during 2009 and 2010 was drawn by the Director of Agriculture and the same was also communicated in Letter No.FSE2/78748/2017 dated 23.5.2016. A perusal of the said list enclosed by the respondents also failed to show any basis, namely, whether it was on the basis of the marks obtained by the petitioners during the time of recruitment or the marks allotted by the interview panel during the selection process. Secondly, when the petitioners were appointed during 2009, it is not known how some of the Assistant Agricultural Officers who are shown as private respondents appointed in the year 2010 can be placed above the petitioners on the basis of the marks. It is pertinent to extract paragraph-7 of the counter affidavit filed in W.P.(MD) No.7448 of 2017, which reads as follows:-

"7. As regard to the averments made in the paragraphs 5 to 12 of the affidavit of the petitioners it is submitted that the petitioners herein are few among 1703 candidates selected and joined as AAOs during 2009, whose services in the post of AAO were also regularised with effect from the date of their joining as AAO."

10. A perusal of the above stand shows that when the petitioners herein are few among the 1703 candidates selected and joined as Assistant Agricultural Officers during the year 2009 and their services in the post of Assistant Agricultural Officer were also regularised with effect from the date of joining as Assistant Agricultural Officers, as per law, they should be placed above the candidates subsequently appointed in the same post. It is also relevant to extract rule 35(a) of the Tamil Nadu State and Subordinate Service Rules, which reads as follows:-

"35(a) The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of



11.1. A perusal of the above rule shows that the seniority of a person in the service or category shall be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other appointing authority, as the case may be, subject to the rule of reservation and the date of commencement of his probation shall be the date on which he joins duty. Hence, the stand taken by the respondents that on the basis of the marks allotted to the candidates at the time of interview the selection was made, is wholly misconceived and wrong, for, no order of appointment based on selection of marks, weightage mark was shown at any point of time.

11.2. Secondly, the tentative seniority list issued also failed to show anything in that direction.

11.3. Thirdly, no such documents were filed before me to support their case that the selection of Assistant Agricultural Officers were made on the basis of allotment of marks.

12. Although the respondents strongly deny that rule 35(aa) cannot be made applicable, because, the normal method of recruitment to that service is not more than one method of recruitment, they should go only by rule 35(a), which says from the date of commencement of his probation, in the present cases, when the respondents themselves have admitted in paragraph-7 of the counter affidavit that their services in the post of Assistant Agricultural Officer were regularised with effect from the date of their joining as Assistant Agricultural Officers, their services will be counted from the date of regularisation for all purpose, therefore, the impugned order cannot be sustained. Accordingly, the impugned order is set aside and the respondents are directed to re-draw the seniority list of Assistant Agricultural Officers appointed in the year 2009 by taking into account their service in the post of Assistant Agricultural Officer with effect from the date of his/her joining as Assistant Agricultural Officer. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. With this direction, the writ petitions are allowed. Consequently, W.M.P.(MD) Nos.5835 to 5838 of 2017, 8635, 9145, 10163 of 2017, 11925 to 11932, 11940 to 11947 & 13757 of 2016 are closed. No costs.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government cum

<https://hcservices.ezgovt.in/hcservices> Tamil Nadu Public Service Commission

Secretariat, Fort St.George

Chennai 600 009



2. The Commissioner of Agriculture  
Ezhilagam, Chempauk  
Chennai 600 005

3. The Joint Director of Agriculture  
Nirubar Colony  
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4. The Joint Director of Agriculture  
Krishnankovil  
Nagercoil  
Kanyakumari District 629 001

5. The Joint Director of Agriculture  
Master Plan Complex, Collectorate  
Theni District

+1CC to Mr.G.Thalaimutharasu, Advocate, SR.No. 91501  
+2CC to Mr.T.Lajapathi Roy, Advocate, SR.No. 91339, 91340  
+1CC to Mr.T.Arul, Advocate, SR.No. 91412  
+1CC to the Special Government Pleader SR.No.91153, 91562

W.P. (MD) Nos.7448 of 2017 etc.  
06.12.2017

bala  
AM/SKN RSK/SAR 2/23.01.2018/13P/11C