

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.28040 of 2018

T.Karikalan

.. Petitioner

Vs.

1. The Secretary,
Government of Tamil Nadu,
Law Department,
Fort St. George, Chennai-9.

2. The Chairman,
Tamil Nadu Public Service
Commissioner (TNPSC),
TNPSC Road, Park Town,
VOC Nagar, Esplanade,
George Town, Chennai-3.

3. The Chairman,
Bar Council of Tamil Nadu,
High Court Buildings,
Chennai-14.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Declaration, declaring that Section 25 of the Tamil Nadu Government Servants Conditions of Service Act, 2016, shall not be applicable to the Law Graduates, who have joined in law course prior to 14.09.2008, for applying the post of APP and for a consequential direction, directing the 2nd respondent to receive my application, through off-line, sent by registered post.

For Petitioner	: Mr.T.Velumani
For 1st Respondent	: Mr.E.Manoharan, AGP
For 2nd Respondent	: Ms.C.N.G.Niraimathi
For 3rd Respondent	: No appearance

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Instant writ petition has been filed for a Declaration, declaring that Section 25 of the Tamil Nadu Government Servants Conditions of Service Act, 2016, shall not be applicable to the Law Graduates, who have joined law course, prior to 14.09.2008, for applying to the post of Assistant

Public Prosecutor, and for a consequential direction, directing the Chairman, Tamil Nadu Public Service Commission, Chennai, 2nd respondent, to receive the petitioner's application, through off-line, sent by registered post.

2. It is the case of the petitioner that when he was studying in Xth Standard in M.C.T.Muthaiah School, Purasaiwalkam, he was seriously affected with high fever and epilepsy, and he was under constant treatment, and he was unable to write SSLC Board Examination.

3. He completed his SSLC in March' 2002, through private studies. Thereafter, he studied B.A. Economics, through open university system, from University of Madras and finished his B.A. Economics, in the year' 2007.

4. After finishing his under graduation, he applied for LLB from Sri Venkateshwara University, Tirupathy and joined the college on 02.07.2008 and completed his law graduation, in the year 2011. Subsequently, he applied for his enrolment, before the Bar Council of Tamil Nadu, the 3rd Respondent herein and enrolled himself, as an Advocate, on 02.12.2011.

5. Thereafter, as per the new rules, the Bar Council of Tamil Nadu has conducted all India Bar Council of India examination and he has passed the Bar Council of India Examination in the year' 2013. Today, he is practicing in this Court, as a Lawyer and other subordinate Courts, at Chennai.

6. It is the further case of the petitioner that the Bar Council of India, issued the amended Rules, by lifting the bar, for the candidates, who have obtained a degree in post graduate, without a basic degree, and obtained law degree, to enroll themselves, as Advocates.

7. The said notification was challenged before this Court, in various Writ Petitions, and that a Hon'ble Division Bench in a reported judgment in 2010 (4) MLJ 849, held that the notification issued, barring the candidates, who have studied post-graduation, without a basic degree, and subsequently, qualified themselves in Law, can be applied, only to the candidates, who have joined the law courses, after the cut off date i.e., 14.09.2008, the date on which, the notification was issued by the Bar Council of India.

8. On the strength of the above judgment, Bar Council of Tamil Nadu, the 3rd Respondent herein, permitted the petitioner, to enroll himself, as an Advocate, in the Bar Council of Tamil Nadu, and his Registration Number is 4011/2011.

9. Petitioner has contended that Tamil Nadu Public Service Commission, has called for applications, for the post

of Assistant Public Prosecutors from the candidates, who possess the following qualifications, viz., (i) The candidate must possess B.L. Degree; (ii) Must be a member of Bar; (iii) Must possess adequate knowledge in Tamil Language; and (iv) Experience must have an active practice in Criminal Courts for not less than 5 years. On the strength of the aforesaid qualification, he applied for the post of Assistant Public Prosecutor.

10. As per the latest procedure followed by the Tamil Nadu Public Service Commission, the 2nd Respondent herein, all the employment applications shall be submitted, only through online and as such, he has applied for the post of Assistant Public Prosecutor, through online.

11. When he applied online, under the Caption, "HSC or equivalent caption", the selected format is available to be answered. Since, he is not qualified in the Higher Secondary Course, he is unable to fill up the information in the said column and as such, the online application form, submitted by him, was not accepted. Therefore, he downloaded the said application and filled up the particulars and sent the same, to the 2nd Respondent by Registered Post on 22.10.2018.

12. The petitioner has further submitted, that the notification issued by the 2nd Respondent was in consonance with the amendment made to the Service Rules, by the Tamil Nadu Government, in the Tamil Nadu Government Servants Condition of Service Act 2016, and Section 25 provides that a diploma or a degree or a post graduate degree as a qualification for appointment. A diploma should be obtained after completion of SSLC or Higher Secondary Course, viz., 10+3 years or 10+2+2 (lateral entry). A degree obtained after completion of SSLC and Higher Secondary Course should be 10+2+3. Post graduate degree should be obtained after completion of SSLC. Degree means 10+2+3+2 or 3 from any University and Institution.

13. Since the petitioner has not completed his Higher Secondary Education, his application was not processed, and therefore, he is unable to submit his application for the post of Assistant Public Prosecutor, online.

14. As per the notification issued by the Bar Council of Tamil India, prescribing the degree qualification for enrolling Law graduate and Advocate, the said qualification of a degree Viz., 10+2+3 has to be taken into consideration. Insofar as the candidates, who has joined the Law Course, prior to 14.09.2008, the said qualification need not be taken into consideration, by applying the yardstick prescribed by this Court reported in 2010 (4) MLJ 849.

15. The petitioner has further submitted that he joined the Law Course, prior to 14.09.2018 and thus, qualified

himself to apply for the post of Assistant Public Prosecutor, by passing degree B.A. Economics and Law Degree. Since the portal of the 2nd Respondent is not accepting his application through online, he was constrained to send the application, through off line, to the 2nd Respondent. Hence, the present writ petition, on the prayer sought for.

16. On the above averments, Mr.T.Velumani, learned counsel for the petitioner made submissions.

17. Ms.CNG.Niraimathi, learned counsel appearing for the 2nd respondent-TNPSC, submitted that decision in K.Sakthi Rani Vs. Secretary, Bar Council of Tamil Nadu, Chennai reported in 2010 (4) MLJ 849, can be made applicable only for enrollment.

18. She further submitted that similar contention, made in respect of the staff of this Registry, who have not studied (10+2) Higher Secondary course, has been rejected, by a Hon'ble Division Bench and the claim of similarly placed persons in Railways was also declined by another Hon'ble Division Bench of this court.

19. Heard the learned counsel appearing for the parties and perused the materials available on record.

20. Tamil Nadu Government Servants (Conditions of Service) Act, 2016, namely, Tamil Nadu Act 14 of 2016, is an Act to regulate the Service conditions of the Tamil Nadu Government Servants, and received the assent of the Hon'ble Governor, on the 14th September 2016 and published in Part IV-Section 2 of the Tamil Nadu Government Gazette Extraordinary dated 15.09.2016. Section 25 of the said Act deals with the Special Qualifications, and it reads thus:

25. No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he,-

(a) possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the special rules; or

(b) possesses such other qualifications as have been declared to be higher than or equivalent to the said special qualifications or special tests-

(i) by the Government in consultation with the Committee constituted under the Chairmanship of the Chairman, Tamil Nadu Public Service Commission for the purpose, in cases where the appointment has to be made in consultation with the Commission; and

(ii) by the Government or by the appointing authority with the approval of the Government in other cases.

Explanation-I.-In cases where the special rules prescribe a diploma or a degree or a post-graduate degree as a qualification for appointment, then,-

(a) a diploma obtained, after completion of S.S.L.C. or Higher Secondary Course [10+3 (3 Years Diploma)] or [10+2+2 (Lateral Entry)]; or

(b) a degree obtained, after completion of S.S.L.C. and Higher Secondary Course (10+2+3 or more); or

(c) a post-graduate degree obtained, after completion of S.S.L.C., Higher Secondary Course and a degree (10+2+3+2 or 3) from any University or Institution, recognized by the University Grants Commission shall be recognized as the qualification.

Explanation-II.-In cases where the special rules prescribe a diploma in a particular subject as qualification, then, a degree in that subject shall be deemed to be a higher qualification.

Explanation-III.-In cases where the special rules prescribe a period of practical or other experience in addition to educational or technical qualification, for an appointment, such a period of practical or other experience, as the case may be, should have been acquired after obtaining the educational or technical qualification prescribed for such appointment unless otherwise specified in the special rules.

21. Tamil Nadu Public Service Commission, the second respondent herein, has issued a Notification No.23/2018 dated 03.10.2018, calling for applications from eligible candidates, only through online mode upto 31.10.2018, for direct recruitment to the post of Assistant Public Prosecutor, Grade-II in the Prosecution Department, included in the Tamil Nadu General Service. Dates and time and the educational qualification (as on 03.10.2018) stipulated in the notification, are as under:

"3. Important Dates and Time:

Date of Notification		03.10.2018
Last date for submission of application		31.10.2018
Last date for payment of fee through Bank (State Bank of India or Indian Bank)		02.11.2018
Dates of Written Examination		
Preliminary Examination	05.01.2019 F.N	10.00 A.M. to 12.00 Noon
Main Written Examination:		Dates will be announced later

(B) Educational Qualification (as on 03.10.2018)

Applicants should possess the following or its equivalent qualification awarded by any University or Institution recognised by the University Grants

Commission:

- i) Must possess B.L. degree,
- ii) Must be a member of the Bar,
- iii) Must possess adequate knowledge of Tamil and
- iv) Experience: Must have had active practice in 'criminal courts' for a period of not less than five years.

NOTE:

(i) The qualification prescribed for the posts should have been obtained by passing the required qualification in the following order of studies: 10th + HSC or its equivalent + Bachelor's degree as required under Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

Results of the examination should have been declared on or before the date of notification (Section 20(4) (iv) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016)

(ii) Applicants claiming equivalence of qualification should upload and submit evidence for equivalence of qualification, in the form of government order issued on or before the date of this notification, when called for, failing which, their application will be summarily rejected. The Government orders regarding equivalence of qualification issued after the date of this notification will not be accepted.

(For further details regarding equivalence of qualification refer to para.10 of the Instructions to Applicants)

22. Mr.T.Karikalan, petitioner and a practising lawyer, aspirant to become an Assistant Public Prosecutor, and being aggrieved by the above said clause, has filed the instant writ petition for a Declaration, declaring that Section 25 of the Tamil Nadu Government Servants Conditions of Service Act, 2016, shall not be applicable to Law Graduates, who have joined law course, prior to 14.09.2008, for applying to the post of APP and sought for a consequential direction, directing the Chairman, Tamil Nadu Public Service Commissioner, Chennai, 2nd respondent, to receive the petitioner's application, through off-line, sent by registered post.

23. Petitioner has appeared for LLB Degree examination, during June 2011, and obtained the Degree of L.L.B. (Bachelor of Laws) (3 Year course) from Sri Venkateswara University in June 2011, and the same is as under:

SRI VENKATESWARA UNIVERSITY
FACULTY OF LAW

This is to certify that Karikalan J son of
M.K.Thiruvengadam, has been admitted to the DEGREE
OF L.L.B., (BACHELOR OF LAWS) (3 Year Course) having

been certified by duly appointed Examiners to be qualified to receive the same and having been placed in the THIRD class at the Examination held in JUNE 2011.

Given under the Seal of the University
Tirupati
Date 24 MAY 2013 Controller of
Examinations

24. On the averments extracted supra, Mr.T.Velumani, learned counsel for the petitioner submitted that the petitioner has entered Law Degree Course on 05.09.2018, prior to the Legal Education Rules, which came into existence on 14.09.2008. Reliance was also made to the observation of the Hon'ble Division Bench in K.Sakthi Rani v. Secretary, Bar Council of Tamil Nadu reported in (2010) 4 MLJ 849, Paragraph No.53, wherein the Hon'ble Division Bench, has observed thus:

"53. Admittedly, the Rules of Legal Education, 2008, came into existence on 14.9.2008. It is not in dispute that the petitioners have completed their law course by that time. It is also not in dispute that the old rule which was in existence prior to the new rules, did not prohibit the entry of the petitioners into the law course. It is a well settled principles of law that a rule which is by way of subordinate legislation, is to be construed as prospective unless the same is made retrospective provided the parent Act gives such a power."

25. Question in the above reported judgment was that "whether persons who studied law, without a basic degree, but obtained Post Graduate degree, in Open Universities, are entitled to be enrolled as Advocates and the applicability of Rule 2(8), Rule 4 and Rule 5 of the Legal Education Rules, 2008."

26. The petitioners therein have obtained Masters Degree in various Open Universities. Thereafter, they applied for the Law Degree to various colleges and universities recognized by the Bar Council of India. All the petitioners have been admitted with their Masters Degree obtained from the Open Universities in Law Colleges. The prospectus issued by the colleges also provided for admission of the petitioners in Law course. The petitioners therein got selected for admission after going through the process of selection along with other degree holders. Thereafter the petitioners completed their degree in law.

27. Placing reliance on the Legal Education Rules, 2008, resolutions of the Bar Council of India, which considered a decision of the Hon'ble Supreme Court and Rule 5(b) proviso of the above said rules, Bar Council of Tamil Nadu, rejected the applications of the petitioners therein to enroll themselves

as Advocates. Rejection orders were challenged, and the Hon'ble Division Bench in K.Sakthi Rani's case, by holding that Legal Education Rules, 2008, cannot be applied to their case, set aside the rejection orders and consequently issued directions.

28. Though Mr.T.Velumani, learned counsel for the petitioner, in the instant case, emphasised on the observation by a Hon'ble Division Bench in K.Sakthi Rani's case, reading of the entire judgment shows that all the petitioners therein have already completed Law Degree, before coming into force of the Legal Education Rules on 14.09.2008, which is evident from the submission of the learned counsel for the petitioners therein. Paragraphs 87 and 92 (iii) of the judgment, substantiates the above conclusion.

29. It is well settled that a judgment has to be read as whole in the context on the issues raised and decided alone can be taken as the precedent. Reference can be made to the decision of a Hon'ble Full Bench of this court in G.S.Jagadeesh v. Chairman, 3 Year LLB. Admission 2016-17 (FB) (Mad.) reported in 2018 (4) CTC 337, at paragraph 31 held thus:

"31. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. Paragraphs and sentences in a Judgment cannot be read in isolation from the context in which the Judgment was rendered K.Sakthi Rani, supra, is not an authority for the proposition as sought to be propounded by the learned counsel appearing on behalf of the respondent/Tamil Nadu Dr.Ambedkar Law University, that every previous Certificate and/or Degree should have been obtained by attending a Regular course in a recognized institution."

In the light of the above decisions and discussion, R.Sakthi Rani's case cannot be made applicable to the instant writ petition.

30. In T.L.Muthukumar and Others vs. Registrar General, High Court, Madras and Another, reported in (2011) 2 MLJ 785, petitioners therein, were staff of this court. They did not undergo two year +2 course, but obtained degree, through open Universities. Government issued G.O.Ms No.107 dated 18.08.2009, which stated that those degrees issued by the Open University would be recognised and accepted for appointment and promotion, provided the said degree has been obtained after completing (10+2) Higher Secondary Examination. All the petitioners therein, obtained BA/BBA degree, through correspondence course, but not completed +2 course (Higher Secondary). T.L.Muthukumar and others challenged G.O.(Ms) No.107 Personnel and Administrative Reforms Department dated 18.08.2009 and consequently, prayed for a direction to the

Registrar General, High Court, Madras to consider their case for promotion.

31. After considering the rival submissions, a Hon'ble Division Bench of this Court in T.L.Muthukumar's case held as follows:-

"9. The short question that falls for consideration in this case is as to Whether a candidate, who obtained B.A./B.Sc./B.Com. Degree without successfully completing 12 years schooling can be a ground for promotion to the higher post on the basis of having qualification of graduation degree, that too through correspondence course.

10. As noticed above, UGC, in exercise of power conferred by clause (f) of sub-section (1) of Section 26 of the University Grants Commission Act, 1956, framed the 1985 Regulations. Clause 2 of the Regulation referred to in the instant case reads as under :-

"2. Admission/Students:

1. No student shall be eligible for admission to the 1st Degree Course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. In case there is no previous academic record, he shall be eligible for admission if he has passed an entrance test conducted by the University provided that he is not below the age of 21 years on July 1 of the year of admission.

2. No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.Sc./B.Com. (General Honours/Special) degree as the case may be.

Provided that no student shall be eligible to seek admission to the Masters Course in these faculties, who has not successfully pursued the first Degree Course of three years duration.

Provided further that, as a transitory measure where the universities are unable to change over to a three year degree course, they may award a B.A./B.Sc./B.Com. (Pass) degree on successful completion of two year course, but that no student of this stream shall be eligible for admission to the Masters course unless he has undergone a further one year bridge course and passed the same. The three year degree course after 10+2 stage should in no case be termed as B.A./B.Sc./B.Com. (Pass) degree.

11. On the other hand, the qualification prescribed under the High Court Rules framed under Article 229 of the Constitution of India has specifically provides that for promotion to certain posts, including Assistants, a

candidate must hold B.A./B.Sc./B.Com/B.A. (Hons.)/B.Sc. (Hons.)/B.Com. (Hons.) degree of the Madras University or equivalent thereof of a recognized University.

12. Clause 2 of 1985 Regulations was considered by the Supreme Court in the case of Annamalai University rep. by Registrar - Vs - Secy. to Govt. Inf. and Tourism Dept. and Ors. (2009 (4) SCC 590). In that case, the question of interpretation and application of 1985 Regulations vis-à-vis Section 26 of the UGC Act, 1956 and the Indira Gandhi National Open University Act, 1985 (for short Open University Act) fell for consideration. The facts of that case was that the legality of the appointment of one Ramesh to the post of Principal in the Film and Television Institute was challenged on the ground that he did not have the requisite essential qualification for the post of Principal. The challenge to the appointment was that he did not possess the basic graduation degree and thus the post-graduate degree conferred on him by the appellant, Annamalai University, is invalid in law. Admittedly, the said candidate, Ramesh, was holding a Diploma in Film Technology and directly obtained M.A. degree through Open University System in an examination held by the aforementioned University. A Division Bench of this Court held that the M.A. Degree obtained by the said candidate through Open University System without their being a first Bachelors Degree was not a valid one. The matter ultimately went to the Supreme Court. Their Lordships upholding the decision of the High Court held as under :-

"33. Indisputably, the fact that the appellant - University had been granting postgraduate degrees to the candidates concerned although they had not completed three years' course in violation of the Regulation 2 of the 1985 Regulations came to the notice of the UGC as also IGNOU officials. A meeting was held in March 2004. It was agreed in the said meeting that the admission to the Masters' Degree Programme under the OUS without requiring the three years graduate degree qualification be discontinued with effect from July, 2004 as would appear from a letter issued by the IGNOU to the Vice-Chancellor of the appellant - University, the relevant portion whereof reads as under:-

"In the meeting, both the undersigned as Chairman DEC and Chairman UGC had emphasized the need to discontinue the Master's Degree Programme without requiring 3 years graduate degree qualification under Open education stream, which is in practice in some Universities of Tamil Nadu.

We drew your kind attention to the UGC regulation 1985 regarding the minimum standard of instructions for the grant of the first degree through non-formal/distance education dated 25th November, 1985

according to which no student shall be eligible to seek admission to the Master's Degree Programme who has not completed first degree course of three years duration. This clearly stipulates that the practice of admitting students of Master's Degree Programme who have not undergone 3 years undergraduate programme successfully is against the provisions of the above regulation. In view of this, it was agreed in the meeting of March 11, 2004 that new admission to the Master's Degree Programme under open education scheme as prevailing in some Universities in Tamil Nadu should be discontinued with effect from the forthcoming session starting from July 2004. I would feel grateful to receive your confirmation on this matter.

It is also worth to quote para 40, 42 and 50 of the judgment, which reads as under :-

"40. UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas Open University Act was enacted by the Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of Open University Act shows that the formal system of education had not been able to provide an effective means to equalize educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

* * * * *

42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by it in terms of clauses (e), (f), (g) and (h) of Sub-section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the co-ordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Section 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of the UGC are all pervasive in respect of the matters specified in Clause (d) of Sub-section (1) of Section 12A and Clauses (a) and (c) of Sub-section (2) thereof.

* * * * *

50. The UGC Act, thus, having been enacted by the Parliament in terms of Entry 66 of List I of the Seventh Schedule to the Constitution of India would prevail over the Open University Act.

13. After the decision rendered by the Supreme Court in the Annamalai University case (supra), the Government of Tamil Nadu, through its Personnel and Administrative Reforms Department, issued a circular being G.O. No.107 dated 18th Aug., 2009, recognizing those degrees obtained through Open University only after the person having passed Secondary School Examination (10th Standard) and Higher Secondary Examination (+2) alone for appointment/promotion in public service. For better appreciation, G.O. No.107, dated 18th Aug., 2009, is quoted herein below :-

"Public Services - Equivalent Qualification - Diploma/Degree/Post Graduate degrees obtained from open universities after passing Higher Secondary School Education (+2) Recognition to get employment in public services orders issued.

Personnel and Administrative Reforms (M) Department

G.O. (Ms). No.107 Date :
18.8.2009

Aavani 2,

Thiruvalluvar Aandu 2040

Read :

1. G.O. (Ms). No.180, Personnel and Administrative Reforms Department dated 22.9.2000.
2. Letter No.R.E.D./301-6/2004, dated 17.7.2004, from Chief General Manager, Tamil Nadu, BSNL Ltd.
3. D.O. letter No.1745/RND-F 1/2007 dated 5.4.2007 from the Secretary, Tamil Nadu Public Service Commission.
4. D.O. Letter No.5280/RND F.1/2007 dated 27.9.2007 from the Joint Secretary, Tamil Nadu Public Service Commission.

ORDER :

In the Government Order, first read above, orders have been issued granting approval for employment in Public Services considering the degrees conferred by Open Universities in Tamil Nadu recognized by the University Grants Commission, in respect of Diploma course, Under-Graduate course and Post-Graduate course as equivalent to that of the Diploma course, Under-Graduate course and Post-Graduate course given by the said universities through Regular stream.

2. The Chief General Manager, BSNL Tamil Nadu Circle, in the letter second read above, has requested for clarification as to whether the persons who have

obtained a degree in B.Sc., B.A., etc., through Open Universities without a pass in higher secondary examination (+2) shall be considered as having passed the higher secondary examination, for the post for which the minimum educational qualification is fixed as a pass in Higher Secondary Education and can be considered for the promotion posts in government departments.

3. The Secretary, Tamil Nadu Public Service Commission was requested to forward the recommendation made by Equivalence Committee on the aforesaid proposal. The Equivalence Committee recommended that the persons who have obtained B.Sc., B.A. degree in Open Universities without having passed the higher secondary school examination, cannot be considered either for employment or promotion in government service by considering them to have passed the +2 examinations of the State Government. Even when the said proposal was sent again for the recommendation of the Equivalence Committee, it insisted on the decision already taken.

4. The Government carefully examined this recommendation and having decided to accept the recommendation of the Equivalence Committee issues an order recognizing the degrees in Diploma/Degree/Post-Graduate degree obtained through Open Universities only after having passed secondary school examination (10th Std.) and higher secondary school examination (+2) alone for appointment/promotion in Public Services.

// By Order of the Governor//

K.N.Venkataraman

Secretary to Government"

14. From a perusal of Clause 2 of the 1985 Regulations and the ratio decided by the Supreme Court as quoted hereinbefore, it is manifest that for the purpose of obtaining a Post Graduate Degree a candidate has to satisfy and comply the mandatory requirements provided therein. According to the rule, no candidate shall be eligible for award of first degree unless he has successfully completed 12 years schooling. Similarly, no student shall be eligible to seek admission to the Masters course in any faculty, who has not successfully pursued the first degree course of three years duration.

15. In the instant case, the question is as to whether a candidate after obtaining such a degree from an Open University without completing 12 years schooling can claim, as a matter of right, promotion to the higher post, ignoring the service conditions prescribed under the service rules.

16. As stated above, in exercise of powers conferred by Article 229 of the Constitution of India, the High Court framed the rules providing service conditions of its employees, including the condition for promotion. It is well settled that the object of Article 229 is to secure the independence of the High Court and all powers vested in the Chief Justice and the High Court to run the High Court administration.

17. The object of Article 229 has been elaborately discussed by the Supreme Court in the case of M. Gurumoorthy Vs. Accountant General, Assam (Nagaland), (1971) 2 SCC 137. The Supreme Court, in the said judgment, observed as under :-

11. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointment of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the article. This is essentially to secure and maintain the independence of the High Courts. The anxiety of the Constitution-makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the Judges of the High Court nor can the amount of any expenditure so charged be varied even by the Legislature. Clause (1), read with clause (2) of Article 229 conferred exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service. In the matter of appointments even the Legislature cannot abridge or modify the powers conferred on the Chief Justice under clause (1). The approval of the Governor, as noticed in the matter of rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval. Even under the Government of India Act the power to make rules relating to the conditions of service of the staff of the High Court vested in the Chief Justice of the Court under Section 242(4), read with Section 241 of the Government of India Act, 1935. By way of contrast reference may be made to Article 148 relating to the Comptroller and Auditor General of India. Clause (5) provides:

"Subject to the provisions of this Constitution and of any law made by Parliament the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General."

18. As discussed above, the rule framed by the High Court inter alia clearly lays down the qualification for the purpose of promotion from Categories 7, 8 and 9 to Category 6. It is clearly mentioned that for the purpose of promotion, a person must possess and hold the B.A./B.Sc./B.Com or other Bachelors degree of the Madras University or of a recognized University. The rule does not recognize B.A. or B.B.A. degree from an Open University obtained by a candidate without having the basic +2 qualification. The condition contained in the High Court Service Rules, therefore, cannot in any way be superseded by other law not applicable to the employees of the High Court.

19. Admittedly, the petitioners, although, obtained the first degree by correspondence course without having the basic +2 qualification. Such degree having not been recognized under the Rules framed by the High Court in exercise of powers conferred under Article 229 of the Constitution of India, the petitioners cannot claim promotion on that basis."

32. In G.Kamala Kannaiah and Another vs. The Registrar, Central Administrative Tribunal, Chennai and others, W.P.No.12532 of 2013, applications were invited by Railways, for filling up the post of Office Superintendents/Grade II and LDCE quota. The said notification was cancelled and a fresh notification was issued. Petitioners therein were not included in the eligibility list, on the ground that they did not acquire degree under the patten 10+2+3 (High + Higher Secondary + Degree).

33. After considering the rival submissions, a Hon'ble Division Bench of this court in W.P.No.12532 of 2013, dated 21.08.2014, at paras 11 to 17, held as follows:-

"11.It is necessary to refer to the relevant notification for proper understanding of the issue involved herein. Regulation 2.1 of the UGC (Minimum Standards of Instruction for the Grant of the First Degree through Formal Education) Regulations, 2003, deals with the admission to the first degree programme, which reads as under :

2.1.No student shall be eligible for admission to a first degree programme in any of the faculties unless he/she has successfully passed the examination

conducted by a Board/University at the +2 level of schooling (either through formal schooling for 12 years, or through open school system) or its equivalent.

12. The said notification was issued in super session of the earlier notifications dated 25.11.1985 and 30.05.1986 and notification issued in December, 1998. The 2003 notification does not permit even admission to first degree programme without completing +2 level of schooling (either through formal schooling for 12 years, or through open school system) or its equivalent and on the basis of the entrance test to the graduation course as was permissible in Regulation, 1985. It is indisputable that the petitioners had not completed 12 years of schooling either through 11+1 or 10+2 stream.

13. In the notification dated 30.12.2011 for filling up the vacancies of OS/Gr.II, the following eligibility criteria was fixed : 2.0. Eligibility Criteria

2.1 Serving ministerial staff of all departments (except Accounts & RPF) having the service detailed below and possessing qualification of Graduation, the degree either under 11+1+3 years stream or under 10+2+3 years stream from a recognized University.

2.2 Degree obtained by Under Graduate or Post Graduate directly from Open University or other such institutions without 11+1+3 or 10+2+3 stream will not be eligible. Such applications will be summarily rejected. It is not the case of the petitioners that the qualification prescribed in the notification was contrary to any statutory provision or rules.

14. The issue involved herein is not as to whether the degree obtained by the petitioners is invalid, as the University Grants Commission has rightly stated that the degree obtained by the petitioners is valid for all practical purposes except for appointment, as the fixing of eligibility criteria is within the domain of the employer. The respondents-employer have clearly stated that a candidate must possess qualification of graduation either under 11+1+3 years stream or under 10+2+3 years stream from a recognized University.

15. The Railway Department / Respondents are the final authorities to fix the eligibility criteria unless the same is arbitrary, unreasonable and contrary to the public policy. Further, there is no ambiguity with regard to the qualification fixed by the respondents. The petitioners, though, have obtained graduation degree from the Open University, however, it is not the satisfying requirement of the eligibility criteria as

clearly stated in the notification issued for filling up the vacancies.

16. In view of the foregoings, we are of the considered view that the petitioners' applications were rightly rejected as they did not have eligible qualification for OS/Gr.II posts. We do not find any error in the order dated 22.11.2012 passed by the Tribunal, sought to be impugned in this petition, warranting interference and as such, there is no merit in the writ petition.

17. As a result, the writ petition is dismissed. No order as to costs. Consequently connected miscellaneous petition is closed."

34. In G.S.Jagadeesh vs. Chairman reported in 2018 (4) CTC 337, the issue was whether the candidates who have obtained Secondary or Higher Secondary Certificate, from a Board recognised by the State through private study and not regular stream, and having a degree from a recognised university can be admitted to law course. While, considering the two conflicting judgments in S.R.Deepak v. Tamil Nadu Dr.Ambedkar Law University and another reported in 2016 (2) LW 64 (Mad) (DB) and the other rendered in Therthagiri v. Director of School Education and others reported in 2017 (1) CTC 160 (DB), a larger Bench of this court at paragraphs 40 to 44, Hon'ble Full Bench held that, graduates from open university not having Secondary and Higher Secondary Course certificate are not eligible for admission to law course. Decision of the Hon'ble Full Bench in G.S.Jagadeesh vs. Chairman reported in 2018 (4) CTC 337, relied on by the petitioner would not render any assistance to the prayer sought for in the instant writ petition, whereas, decisions in T.L.Muthukumar vs. Registrar General, High Court, Madras reported in (2011) 2 MLJ 785, and G.Kamalakanniah Vs. Registrar, CAT, Madras Bench and another in W.P.No.12532 of 2013, dated 21.08.2014, are applicable to the case on hand. In the former, High Court staff, have not been granted promotion and in the latter, it is the Railway staff.

35. Judicial notice is also taken of on the decision rendered in W.A. No.529 /2013 dated 05.02.2014, wherein the Hon'ble Full Bench, inter alia considered as to whether teachers with one year double degree or those who possess secondary Grade Teachers/Primary School Headmasters with 10+2+3, pattern, can be promoted as B.T. Assistants. Paragraph 20 of the judgement in W.A. No.529/2013 dated 05.02.2014 dealing with the submission of the Government is reproduced hereunder:

"20. During the course of arguments in these batch of cases, Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing for the official respondents prayed for leave of this

Court to permit the Director of Elementary Education to file an affidavit and also filed the said affidavit dated 03.12.2013, which is taken on record. The contents of the affidavit filed by the Director of Elementary Education read that in view of the judgments passed by the Hon'ble Courts and various objections, one year double degree course is not considered for promotion and also for recruitment also and accordingly, the Director of Elementary Education has passed orders dated 19.07.2012 stating that while preparing the panel for promoting Secondary Grade Teachers/Primary School Headmasters to B.T. Assistants, only degree holders studied in the 10+2+3 pattern should be included and the names of the double degree and one year degree course holders should not be included. The Director of Elementary Education further took a stand that in the interest of students, the candidates with one year degree course would not have adequate exposure in the concerned discipline, and, they, in-turn, would not be in the position to do justice to the students while dealing with the subject and ultimately, the students studying in the Government schools would encounter an irreparable loss in the inadequacy of subject transaction and guidance and that the Department has taken a decision to promote only those Secondary Grade Teachers/Primary School Headmasters who studied in 10+2+3 pattern to B.T. Assistants and those with double degree and one year degree holders should not be considered for promotion."

36. Communication of UGC dated 07.06.1999 to the Registrars of all the Universities relating to the specification of degrees, and the provision of UGC Act, 1956, considered by the Hon'ble First Bench is reproduced at paragraph Nos.30 and 31, the Hon'ble First Bench held as follows:

"30. It is relevant and useful to extract the following provisions of the UGC Act, 1956 and the Rules and Regulations framed thereunder:

(a) Section 22 of the UGC Act, 1956

S.22.Right to confer degrees: -(1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act or Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette."

(b) Regulations 2.5 and 2.6 of the UGC (Affiliation of Colleges by Universities) Regulations, 2009

"2.5. "programme"/programme of study" means a higher education programmed pursued for a degree specified by the Commission under Section 22(3) of the UGC Act;

2.6. "Statutory /Regulatory Body" means a body so constituted by a Central/State Government Act for setting and maintaining standards in the relevant areas of higher education, such as All India Council for Technical Education (AICTE), Medical Council of India (MCI), Dental Council of India (DCI), National Council for Teacher Education (NCTE), Bar Council of India (BCI), etc."

(c) Communication relating to Nomenclature of Degrees specified by UGC to award under Section 22 of the UGC Act, 1956

D.O.No.F.1-52/97 (CPP-II) dated the 7th June 1999 from Dr.(Mrs.) Pankaj Mittal, Deputy Secretary, University Grants Commission addressed to the Registrar, All the Universities relating to specification of Degrees.

Dear Sir/Madam,

As per Section 22 of the UGC Act, a "Degree" means, a degree which is specified by the University Grants Commission by notification in the official gazette. This clearly implies that no degree is a valid degree unless it is specified by the University Grants Commission. The 104 degrees already specified by the University Grants Commission by notification, are given in Appendix-1. In continuation to the degrees already specified, the Commission in its meeting held on 23rd April 1998, approved the specification of 34 additional degrees. A list of new degrees specified by the Commission may be seen at Appendix-II. You would appreciate that the Specification of Degrees is done by the UGC so as to ensure a uniform national norm in terms of the nomenclature of the degree, the duration of the course, the eligibility criteria for and the standard of the degrees awarded by

the various universities. You are, therefore, requested to award only those degrees which are specified by University Grants Commission.

It appears that some universities award degrees giving the subjects or other details like Home Science or special within brackets after the degree. For example, B.Sc. (Home Science), BA (Hons.) or MA (Music), B.Sc. (Special). This practice, if followed, should be discontinued.

In case your university is offering any other degree which is neither included in Appendix-I nor in Appendix-II, you may either change the nomenclature of the degree to fall in line with the specified degrees of University Grants Commission, or apply to the University Grants Commission for its specification. Till the degree is specified by University Grants Commission, it should not be offered by any of the universities.

This may kindly be treated as a priority issue, since henceforth a degree which is not specified by the University Grants Commission, will not be treated as a valid degree.

With regards,

Yours sincerely

Appendix -I

S.No.	Abbreviation of Degree	Expansion of Degree	Years of study	Minimum Eligibility criteria
.....				
5	BA	Bachelor of Arts	3	10+2
.....				
14	B.Com	Bachelor of Commerce	3	10+2
.....				
35	B.Sc.	Bachelor of Science	3	10+2

Appendix -II

S.No.	Abbreviation of Degree	Expansion of Degree	Years of study	Minimum Eligibility criteria
.....				
3	B.A. B.Ed.	Bachelor of Arts and Bachelor of Education	4	XII Standard
.....				
7	B.Com. B.Ed.	Bachelor of Commerce and Bachelor of Education	4	XII Standard
.....				
19	B.Sc. B.Ed.	Bachelor of Science and Bachelor of Education	4	XII Standard

There cannot be any dispute that UGC, being a statutory body, is having right to confer or grant degree and as per Section 22(3) of the UGC Act, 1956, degree means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the official gazette. Regulation 2.5. of the UGC (Affiliation of Colleges by Universities) Regulations, 2009 defines "programme/programme of study" and it means a higher education programme pursued for a degree specified by the Commission under Section 22(3) of the UGC Act.

31. Notification dated 01.12.1958 issued under Section 22(3) of the UGC Act specifies the degree. UGC has also issued subsequent communication dated 07.06.1999 relating to Nomenclature of Degrees specified by UGC to award under Section 22 of the UGC Act, 1956. As per Appendix No.I, B.A., B.Sc., B.Com., are of 3 years duration and the minimum eligibility criteria is 10+2. Appendix-II to the above said subsequent communication dated 07.06.1999 speaks about the degree that UGC has specified under Section 22 of the UGC Act. As per Appendix II, B.A. B.Ed., B.Sc. B.Ed., B.Com.

B.Ed., are of four years study (3 years under graduate study and 1 year B.Ed.) with minimum eligibility criteria of +2 standard. Therefore, the statutory body, namely, UGC prescribed three years study for undergraduate degree, namely, B.A., B.Sc., B.Com., and as per Appendix-II to the subsequent communication dated 07.06.1999 issued by them, B.A., B.Ed., B.Sc., B.Ed., B.Com., B.Ed., is of four years duration (3 years under graduate study + 1 year B.Ed.,). As per Section 22(3) of the UGC Act, 1956, degree means any such degree as may, with previous approval of the Central Government notified by the UGC in the official gazette and the regulations at appendix speaks about basic/undergraduate degree of only three years and not one year.

37. After considering Annamalai University's case and other judgments, at paragraph Nos.39 to 42, the Hon'ble First Bench, held as follows:

39. The learned Judge has also held that First degree should not be decided with reference to the person acquiring it, but it should be determined with reference to the subject in which such a degree is sought to be obtained and in para 28, found that literal interpretation sought to be given by the contesting respondents would only dilute the standards and not improve the standards and held as follows:

"28. Let us have a look at the consequences that would flow out of the literal interpretation sought to be given by the contesting Respondents. A person who has done a 3 year degree in History, would be eligible, if the argument of the Respondents is accepted, for the grant of a B.Sc. degree in Mathematics, after undergoing a course of a duration of one year or less. If such a person is held to be eligible to seek admission to a Master's Degree in Mathematics, by giving a literal interpretation to Regulation 2 (3), that would mock at the provisos to Regulation 2(3). I am conscious of the fact that there are Universities which permit Graduates in a particular subject, to acquire Post Graduate Degrees in different subjects. But they have all been ingenious inventions of later years, for the purpose of taking the employers for a ride. Even then, to my mind, there is no University which offers a Post Graduate Degree in Mathematics or Chemistry or Physics for a person who studied B.A.

(History) or the Literature or Economics at the degree level. Therefore, the interpretation to be given to the expression "first degree" appearing in Regulation 2(3) has to advance the cause of improvement of standards, for which the Commission itself framed the Regulations. The literal interpretation sought to be given by the contesting Respondents would only dilute the standards and not improve the standards and hence the contention of the contesting Respondents on the basis of the U.G.C. Act and the Regulations issued by the Commission has to fail."

This Court is in agreement with the said view taken by the learned Judge. It is also the policy decision of the Government in their affidavit dated 03.12.2013 not to take into consideration one year double degree for promotion as well as for recruitment and such a stand has been taken in the interest of the students. There is no question of referring the matter to Equivalence Committee for the reason that dual/double degree is not related to the allied subject, but entirely a new subject and therefore, the submission made in that regard is also liable to be rejected.

40. Though it is contended that the notification under Section 22(3) of the UGC Act would be in conflict with the Regulations under Section 26F, this Court is of the view that the said submission is also liable to be rejected for the reason that the underlying object is to maintain the standard of education and the facts of the case would also disclose that teachers/persons with one year additional/dual degree in the event of promotion/recruitment for taking classes for students studying in Government Schools/aided Schools and judicial notice can be taken note of the fact that most of them are hailing from economically backward sections and downtrodden community and by imparting quality education, they should also come up in their life and serve this country. The Hon'ble Supreme Court of India in Annamalai University case (cited supra) has also held that the regulations framed by UGC are to determine the standard of education and are applicable to both Open Universities as well as conventional/formal Universities and alternative system was not in substitution of the formal system and lay down the mode and manner of imparting education.

41. In the considered opinion of the Court, the decision rendered by the Hon'ble Supreme Court

of India in Annamalai University case (cited supra) is a complete answer to the points urged by the respective learned Counsel appearing for the parties, who advance the cause of persons who had undergone dual/additional degree of duration of one year. The stand of the Director of Elementary Education, Chennai, in the affidavit dated 03.12.2013, cannot be taken/considered as mala fide or abuse of power and taking into consideration the welfare of the students only, such a stand has been taken.

42. The learned Judge in the impugned judgment, on a threadbare analysis of the factual aspects and legal position, has come to the conclusion that the writ petitioners seek to agitate totally a different subject on the basis of a degree obtained after undergoing a course of one year duration and can be compared with the regular undergraduate degree of three years duration and therefore, directed the official respondents not to recognize the candidature of such persons both for appointment as well as for promotion. The Teachers Recruitment Board (TRB) has taken into consideration the said aspect and rightly rejected the claim of the writ petitioners that they are ineligible for TET on the ground that the claim made by them on the basis of the degree of one year duration is invalid and this Court finds no merit in the stand taken by TRB.

Thus it could be seen that, even in the case of recruitment of teachers in Government service, as well as promotion, a degree obtained under 10+2+3 pattern alone, has been permitted.

38. That apart, section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is virtually the reproduction of G.O.Ms No.107 Personnel and Administrative Reforms Department dated 18.08.2009, which has been upheld by a Hon'ble Division Bench of this court. Needless to state decisions of a Coordinate Bench are binding.

39. In the light of the above discussion and decisions, we are of the view that the prayer sought for cannot be granted. Writ petition is dismissed. No costs.

kk/asr

26.10.2018

This Matter having been listed on 9.11.2018 for being mentioned perusing to the order of this court dated 26.10.2018 in the presence of Mr.T. Velumani, Advocate for petitioner and

of Mr.P.S. Sivashanmugasundaram Special Government Pleader for R1 and 4 Mrs. CNG. Niraimathi, Standing Counsel for TWPS for 2nd respondent the court made the following order;

(Order of this Court was made by S.MANIKUMAR, J.)

On the basis of a certificate dated 30.10.2018, issued by Institute of Distance Education, University of Madras, Mr.T.Velumani, learned counsel for the petitioner submitted that the fact that the petitioner had undergone the preparatory programme for foundation course and passed in the Entrance Test conducted by the Institute of Distance Education, University of Madras and thereafter, admitted to B.A. Economics course under the Open University system, was not placed before this Court, at the time of arguments and hence seeks for modification, by way of "Being Mentioned".

2. We have gone through the supporting affidavit filed alongwith the writ petition. There is not even an averment that the petitioner has undergone a preparatory programme for foundation course. A new fact is now sought to be introduced by way of being mentioned and such course is not permissible.

3. Review of judgment is not permissible by introducing new facts. Under the guise of modification, even review is not permissible. Reference can be made to the following decisions.

- (i) Delhi Administration Vs. Gurdip Singh Uban and Ors., reported in AIR 2000 SC 3737,
- (ii) Ram Chandra Singh Vs. Savitri Devi and Ors., reported in AIR 2004 SC 4096,
- (iii) A.P.S.R.T.C. and Ors. Vs. Abdul Kareem, reported in (2007) 2 SCC 466 and
- (iv) Cine Exhibition Pvt. Ltd. and Ors. Vs. Collector, District Gwalior and Ors., reported in AIR 2013 SC 3669,

4. In the light of the above discussion and decisions, no further order is required.

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09.11.2018

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Sd/-

Assistant Registrar (CS-VI)

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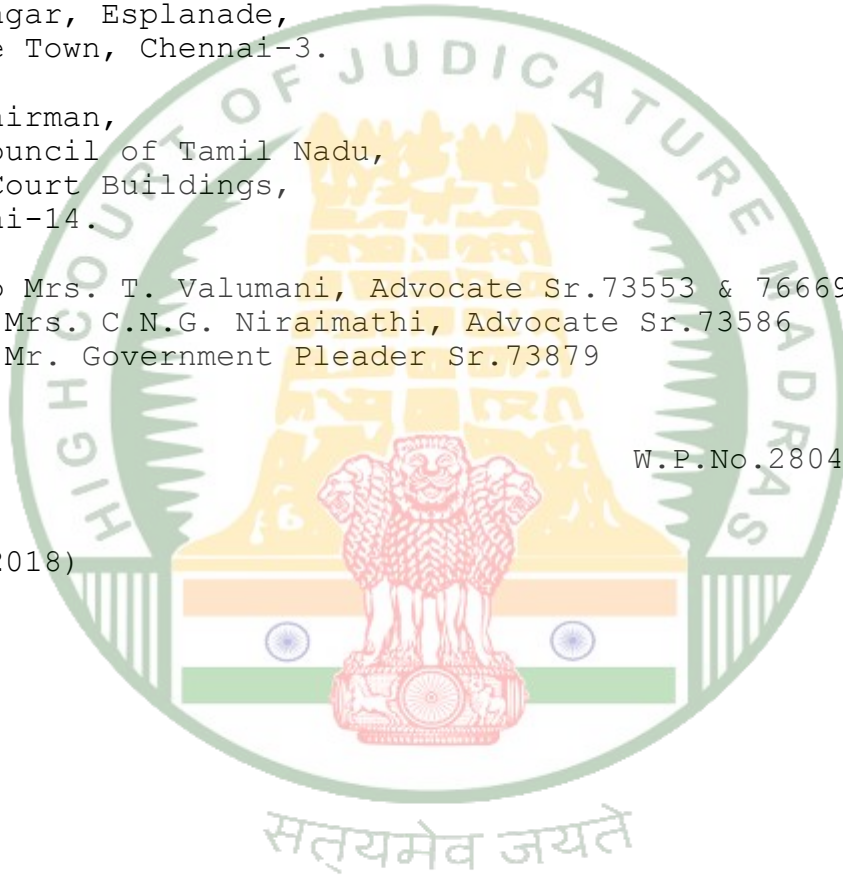
Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Law Department,
Fort St. George, Chennai-9.
 2. The Chairman,
Tamil Nadu Public Service Commissioner (TNPSC),
TNPSC Road, Park Town,
VOC Nagar, Esplanade,
George Town, Chennai-3.
 3. The Chairman,
Bar Council of Tamil Nadu,
High Court Buildings,
Chennai-14.
- + 4 ccs to Mrs. T. Valumani, Advocate Sr.73553 & 76669
+ 1 cc to Mrs. C.N.G. Niraimathi, Advocate Sr.73586
+ 1 cc to Mr. Government Pleader Sr.73879

W.P.No.28040 of 2018

EV(CO)
EU(15/11/2018)



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