



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2018

DELIVERED ON : 07.12.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P(MD)Nos.21650 to 21655, 21665, 21667, 21850 to 21852 and 23003 of 2018

and

W.M.P(MD)Nos.19553 to 19558, 19573, 19574, 19579, 19580, 19780 to 19782, and 20899 to 20901 of 2018

W.P(MD)Nos.21650 to 21655 Of 2018 & W.P(MD)No21850 to 21852 of 2018:

B.SIVAKAMI	... Petitioner in WP(MD). 21650/ 2018
S.RUKMANI	.. Petitioner in WP(MD). 21651/ 2018
A.SENTHIL MURUGAN	... Petitioner in WP(MD). 21652/ 2018
S.CHRISTINE LUCIA	... Petitioner in WP(MD). 21653/ 2018
T.MAHESWARI	... Petitioner in WP(MD). 21654/ 2018
T.NAGARAJ	... Petitioner in WP(MD). 21655/ 2018
K.MAHENDRAN	... Petitioner in WP(MD). 21850/ 2018
C.JAMINTHAR	... Petitioner in WP(MD). 21851/ 2018
S.LATHA	... Petitioner in WP(MD). 21852/ 2018



Vs. -

1. Teachers Recruitment Board

rep. by its Chairman,

4th Floor, E.V.K.Sampath Maligai,

D.P.I. Compound, College Road,

Chennai - 600 006.

2. The Director of School Education,

O/o. The Directorate of School Education,

College Road, Nungambakkam, Chennai - 6.

3. The Regional Director,

National Council of Teacher Education (NCTE),

Jnanabharathi Campus Main Road,

Nagarabhavi, Bangaluru - 560 072.

.. Respondents in W.P(MD)Nos.21650 to 21655 Of 2018

and W.P(MD)No21850 to 21852 of 2018

PRAYER IN W.P(MD)Nos.21650 to 21655 Of 2018 and

W.P(MD)No21850 to 21852 of 2018:

Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration declaring the rejection of the candidature of the petitioner with remarks as "Does not possess required qualification" published in the website of the first respondent on 12.10.2018 as illegal and consequently to direct the first respondent to select and appoint the petitioner to the post of Special Teacher (Physical Education) by calling the petitioner for counseling within the time stipulated by this Court and pass such further or other orders.

For Petitioner : Mr.S.Louis(in All Cases)

For Respondent No.1 : Mr.VR.Shanmuganathan,
Special Government Pleader.
(in All Cases)

For Respondent No.2 : Mrs.S.Srimathy,
Special Government Pleader.
(in All Cases)

For Respondent No.3 : Mr.SU.Srinivasan
(in All Cases)

W.P(MD)Nos.21665 and 21667 Of 2018 and W.P(MD)No.23003 of 2018:

C.Selva ... Petitioner in WP(MD). 21665 of 2018

S.Manikanda Prabhu ... Petitioner in WP(MD). 21667 of 2018

Deeparani ... Petitioner in WP(MD). 23003 of 2018

Vs.



1. Teachers Recruitment Board
rep. by its Chairman,
4th Floor, E.V.K.Sampath Maligai,
D.P.I. Compound, College Road,
Chennai - 600 006.

2. The Director of School Education,
DPI Campus,
College Road, Chennai - 6.

... Respondents in

W.P(MD) Nos. 21665 and 21667 Of 2018 and
W.P(MD) No. 23003 of 2018

PRAYER IN W.P(MD) Nos. 21665 and 21667 Of 2018 and

W.P(MD) No. 23003 of 2018:

Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the impugned provisional selection list for direct recruitment of special Teachers for the year 2012-16 in respect of Physical Education Teachers published by the 1st respondent dated 12/10/2018 and consequential order of rejection of the candidature of the petitioner with remarks as "Does not Possess required qualification" published in the website of the first Respondent on 12/10/2018 quash the same as illegal and consequently to direct the first respondent to select and appoint the petitioner to the post of Special Teacher (Physical Education) by calling the petitioner for counselling within the time stipulated by this Court and pass such further or other orders.

For Petitioner : Mr. J. Lawrance (in All Cases)

For Respondent No. 1 : Mr. VR. Shanmuganathan,
Special Government Pleader.
(in All Cases)

For Respondent No. 2 : Mrs. S. Srimathy,
Special Government Pleader.
(in All Cases)

COMMON ORDER

This batch of writ petitioners are challenging the Tentative Provisional Selection List of Special Teacher [Teacher Education], since their candidature has been rejected for not possessing required qualification. However, according to the petitioners, they possessed the required qualification as mentioned in the notification No. 05/2017, dated 26.07.2017 placed by the first

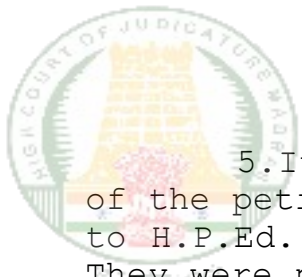


respondent calling application for direct recruitment to the post of Special Teacher [Teacher Education].

2. According to the petitioners, they were short-listed for certificate verification based on their score in the written examination and Employment Exchange seniority. When they produced the certificates during the certificate verification held on 13.08.2018, it was pointed out by the panel that they did not have H.P.Ed. Certificate [Teachers Certificate of Higher Grade in Physical Education]. The petitioners have explained that H.P.Ed. Course was abolished in the year 2004 itself and the Government has re-designated the said course as Certificate Course in Physical Education [C.P.Ed.] and later the same was re-designated as Diploma in Physical Education, which is a two years course. After 2004, H.P.Ed. Course [one year course] was abolished and its equivalent course C.P.Ed. was introduced and thereafter in the year 2006, the course was re-designated as Diploma in Physical Education [2 years course]. Despite the said explanation, their candidature has been rejected as if they do not possess the required qualification.

3. The petitioners would contend that the notification placed by the first respondent prescribes seven technical qualifications and the applicant should possess the basic educational qualification which is SSLC/HSc and any one of the seven technical qualifications. C.P.Ed. Certificate and D.P.Ed. Certificate are equivalent to Government Teachers Certificate of Higher Grade in Physical Education which is one among the seven technical qualifications prescribed in the notification. Therefore, when the Government itself has abolished H.P.Ed. Course as early as 2004 and introduced the re-designated the certificate course in Physical Education and later substituted by Diploma in Physical Education with two years duration, the contention of the first respondent that C.P.Ed. Certificate or D.P.Ed. Certificate possessed by these petitioners cannot be construed as not equivalent certificate to H.P.Ed. is unsustainable.

4. In the counter filed by the first respondent, it is contended that based on the Tamil Nadu Education Subordinate Service Rules 1985, the required qualification has been prescribed in the notification. The petitioners herein, deliberately suppressing the fact that they do not have any one of the seven technical qualifications mentioned in the notification, had wrongly informed in their online application as if they possessed the requisite technical qualification and participated in the written examination. Their suppression of fact and non-availability of required technical qualification came to light during the certificate verification. Neither D.P.Ed. Certificate nor C.P.Ed. Certificate which the petitioners possess is prescribed as the requisite technical qualification. While so, the petitioners candidature has been rejected for not possessing the required qualification besides for suppression of material fact their candidature are liable to be rejected.



5. It is further contended in the counter that the contention of the petitioners that C.P.Ed. Or D.P.Ed. Certificate is equivalent to H.P.Ed. Certificate prescribed in the notification is incorrect. They were never declared by the competent authority as equivalent to H.P.Ed. The State Government in G.O.Ms.No.441, Personnel and Administrative Reforms (PER.R) Department, dated 20.12.1993 has prescribed the manner in which the equivalency committee has to be constituted and the manner in which the equivalency must be declared. Based on the said Government Order, the equivalency committee constituted by TNPSC have made various recommendations and based on the said recommendations, the Government has issued several orders declaring equivalency. No order by the Government has so far issued to the effect that H.P.Ed. Certificate is equivalent to C.P.Ed. Or D.P.Ed. In the absence of such equivalency certificate issued by the competent authority, the petitioners cannot presume that the certificate which they possess is equivalent to H.P.Ed. which is one of the requisite qualification as per the notification.

6. Further it is contended in the counter that the Special Rules of Tamil Nadu Elementary Educational Subordinate Service, 1985 prescribes educational qualification for the post of Physical Education Teacher to be appointed in all middle schools having classes 6 to 8th standards, whereas the Tamil Nadu School Educational Subordinate Rules prescribes higher educational qualification for appointment of Physical Education Teacher in High/Higher Secondary Schools. The certificate possessed by the petitioners is eligible only for being appointed in the primary schools. Earlier when request was made by some of the persons who possessed C.P.Ed. Certificate to be treated as equivalent qualification that of H.P.Ed., this High Court in W.P(MD)No.9016 of 2017 initially granted interim stay and on appeal against the interim order, the Bench has allowed the Board to conduct the examination. Later W.A(MD)No.1296 of 2017 was disposed of with the following observation:

"4..... As rightly contended by the learned Additional Advocate General, we are of the view that by stalling the appointments of nearly 1500 teachers, the Teachers Recruitment Board has been prejudiced to a larger extent. Hence, we are inclined to modify the order dated 22.09.2017 by permitting the Teachers Recruitment Board to proceed with the recruitment of Special Teachers for the vacancies in Director of School Education Department alone by allowing to withhold the notification in respect of 11 vacancies in Physical Education teacher in the recruitment of Special Teachers in the Director Elementary Education alone. However, the interim order granted in the writ appeals shall not stand in the way of the respondents for issuing fresh notification in respect of vacancies relating to the Elementary Education Department."

Pursuant to the said direction of this Court, the first respondent has issued Corrigendum to the notification withholding 11 vacancies of Physical Education Teacher in the Elementary School Education Department and proceeded with selection process of Physical



Education Teacher in High/Higher Secondary Schools under School Education Department. The writ appeal was disposed of vide order dated 11.10.2018. When the user department i.e., Directorate of School Education has prescribed the qualification required for the post to be filled up in consonance with the existing service rules, the first respondent as a nodal agency for recruitment after the approval of the draft notification has placed the same in public domain.

7.It is also contended in the counter that the petitioners herein knowingly that the qualification acquired by them is not included in the notification had furnished false information and got hall ticket to take up the examination. Furnishing of false information came to light during the certificate verification and therefore their candidature were found to be unfit for want of requisite qualification.

8.In the written submissions made by the first respondent, the reason for rejecting the candidature of the petitioners herein is stated as below:

(i)W.P(MD)No.21650 of 2018 - B.Sivakami- Petitioner applied for post of Special Teacher (Physical Education) under Backward Class and secured 75 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Higher Grade in Physical Education - Petitioner produced only D.PEd. certificate at the time of certificate verification, which is not prescribed qualification in the notification - Her candidature was not considered on the ground that she does not possess required qualification.

(ii)W.P(MD) No.21651 of 2018 - S.Rukmani - Petitioner applied for post of Special Teacher (Physical Education) under Schedule Caste (A) and secured 50 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Higher Grade in Physical Education - Petitioner produced only C.PEd. certificate obtained from Karnataka university at the time of certificate verification, which is not prescribed qualification in the notification - Her candidature was not considered on the ground that she does not possess required qualification.

(iii)W.P(MD) No.21652 of 2018 - A.Senthil Murugan - Petitioner applied for post of Special Teacher (Physical Education) under Backward Class and secured 64 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Lower Grade in Physical Education - Petitioner produced only D.PEd. certificate at the time of certificate verification, which is not prescribed qualification in the notification - His candidature was not considered on the ground that she does not possess required qualification.

(iv)W.P(MD) No.21653 of 2018 - S.Christine Lucia - Petitioner



applied for post of Special Teacher (Physical Education) under Backward Class and secured 74 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Lower Grade in Physical Education - Petitioner produced only C.PEd. certificate obtained from Karnataka university at the time of certificate verification, which is not prescribed qualification in the notification - Her candidature was not considered on the ground that she does not possess required qualification.

(v) W.P(MD) No.21654 of 2018 - T.Maheswari - Petitioner applied for post of Special Teacher (Physical Education) under M.B.C/D.N.C. and secured 67 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Higher Grade in Physical Education - Petitioner produced only D.PEd. certificate at the time of certificate verification, which is not prescribed qualification in the notification - Her candidature was not considered on the ground that she does not possess required qualification.

(vi) W.P(MD) No.21655 of 2018 - T.Nagaraj- Petitioner applied for post of Special Teacher (Physical Education) under Schedule Caste and secured 76 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Higher Grade in Physical Education - Petitioner produced only D.PEd. certificate at the time of certificate verification, which is not prescribed qualification in the notification - His candidature was not considered on the ground that she does not possess required qualification.

(vii) W.P(MD) No.21665 of 2018 - C.Selva - Petitioner applied for post of Special Teacher (Physical Education) under Backward Class and secured 67 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Higher Grade in Physical Education - Petitioner produced only D.PEd. certificate at the time of certificate verification, which is not prescribed qualification in the notification - Her candidature was not considered on the ground that she does not possess required qualification.

(viii) W.P(MD) No.21667 of 2018 - S.Manikanda Prabhu- Petitioner applied for post of Special Teacher (Physical Education) under Backward Class Category and secured 67 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Lower Grade in Physical Education - Petitioner produced only D.PEd. certificate at the time of certificate verification, even though he possess B.PEd, M.PEd. - His candidature was not considered on the ground that he does not possess required qualification.

(xi) W.P(MD) No.21850 of 2018 - K.Mahendran - Petitioner applied for post of Special Teacher (Physical Education) under



Backward Class category and secured 59 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Higher Grade in Physical Education - Petitioner produced only D.PEd. certificate at the time of certificate verification, which is not prescribed qualification in the notification - His candidature was not considered on the ground that she does not possess required qualification.

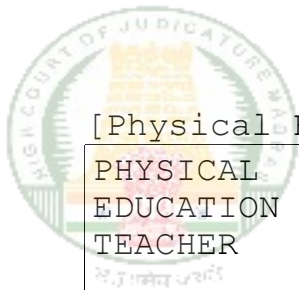
(xii) W.P(MD) No.21851 of 2018 - C.Jaminthar - Petitioner applied for post of Special Teacher (Physical Education) under M.B.C/D.N.C. category and secured 68 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Lower Grade in Physical Education - Petitioner produced only D.PEd. certificate at the time of certificate verification, which is not prescribed qualification in the notification - His candidature was not considered on the ground that she does not possess required qualification.

(xiii) W.P(MD) No.21852 of 2018 - S.Latha - Petitioner applied for post of Special Teacher (Physical Education) under M.B.C/D.N.C category and secured 44 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Lower Grade in Physical Education - Petitioner produced only D.PEd. certificate at the time of certificate verification, which is not prescribed qualification in the notification - Her candidature was not considered on the ground that she does not possess required qualification.

(xiv) W.P(MD) No.23003 of 2018 - Deeparani- Petitioner applied for post of Special Teacher (Physical Education) under Backward Class category and secured 66 Marks in the written examination and attended the certificate verification - Application under technical qualification petitioner claimed as A Government Teachers' Certificate of Higher Grade in Physical Education - Petitioner produced only C.PEd. certificate obtained from Karnataka university at the time of certificate verification, which is not prescribed qualification in the notification - Her candidature was not considered on the ground that she does not possess required qualification".

Thus, besides contending that the petitioners do not possess the required qualification as prescribed in the notification, it is also contended that in so far as the petitioner in W.P(MD) No.23003 of 2018 (Deeparani) is concerned, her C.P.Ed. Certificate is from the Karnataka University and there is no equivalency certificate to show that her one year C.P.Ed. Certificate is equivalent to C.P.Ed. Certificate issued by the Physical Education University at Tamil Nadu.

9. On perusal of the affidavit of the petitioners, counter filed by the first respondent and the written submissions filed on behalf of the respondents, this Court finds that the following qualification has been prescribed for the post of Special Teacher



[Physical Education]:

PHYSICAL
EDUCATION
TEACHER

1. General Educational Qualification: S.S.L.C./
Higher Secondary
2. Technical qualification
 - (i) a) Pass in Pre University: or Higher Secondary: or
Teachers School Leaving Certificate (secondary Grade
or Senior Basic)
and
b) Government Teachers Certificate of Higher Grade
in Physical Education
or
(ii) a) Pass in Secondary School Leaving Certificate
(SSLC)
and
b) Government Teachers Certificate of Lower Grade
in Physical Education.
or
(iii) A Bachelor degree in Physical Education
(B.P.Ed)
or
I(iv) A Bachelor degree in Physical Education and
Sports (B.P.E.S) offered by the YMCA College of
physical Education, Chennai or a qualification
equivalent thereto
or
(v) A Master Degree in Physical Education and Sports
offered by Annamal-- University (directly acquired
M.P.E.S without the degree of B.P.E.S)
or
(vi) A Bachelor degree in Mobility Science for the
Disabled (B.M.S) offered by the YMCA College of
Physical Education, Chennai and other similar colleges
teaching Physical Education.
or
vii) A Master degree in Physical Education (M.P.Ed)
whether acquired through regular course or directly
acquired without acquiring a Bachelor degree in
Physical Education (B.P.Ed)

10. So far as the equivalency is concerned, Paragraph 4(c) of the notification mandates as below:

"4.(c) Equivalent Qualification: If a candidate claims that the educational qualification in the subject possessed by him/her is equivalent to, though not the same, as those prescribed for the appointment, he/she has to produce the subject equivalence G.O issued by the Government of Tamil Nadu at the time of Certificate Verification".

11. Paragraph No. 11 deals about the General Information shows about evidence of documents and production of the same in the following words:

"11. General Information:



a) The number of vacancies notified is only approximate and is liable for modification with reference to vacancy position of User Departments at the time before finalization of selection.

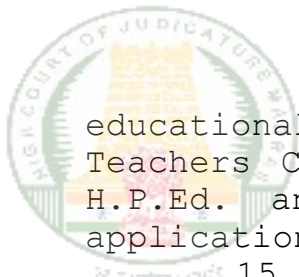
b) Evidence of Claims made in the online application should be submitted in time at the time of Certificate Verification, if called for. Any subsequent claim made thereafter on submission of online application will not be entertained at any cost.

c) Incomplete applications and applications containing false claims or incorrect particulars relating to category of reservation, basic qualifications, communal category and other eligibility criteria will be liable for rejection".

12. As far as these petitioners are concerned, the certificate viz., they possessed is not specifically mentioned in anyone of the seven technical qualifications prescribed in the notification. In so far as the Physical Education Certificate of Higher Grade in Physical Education is concerned, it is contended by the petitioners that it is a one year course and the same was abolished as early as 2004. It is contention of the first respondent that this qualification which is found in the notification is in consonance with the Tamil Nadu Educational Subordinate Service Rules. But even according to their own counter affidavit, different qualification is prescribed for Physical Education Teacher to be appointed in the Elementary Schools, Middle Schools and High/Higher Secondary Schools. Whereas the present notification does not indicate the break-up vacancy in the respective category and the respective educational and technical qualifications for the respective category.

13. In this regard, the order passed by this Court in W.A(MD) No.1296 of 2017, dated 11.10.2018 is relied by the first respondent. If the petitioners have excluded the vacancy meant for Elementary Schools, even then when different educational qualifications are prescribed for Middle Schools and High Higher Secondary Schools, there cannot be a common notification without break-up vacancy under each of the category. Apart from that except the petitioner in W.P (MD) No.23003 of 2018 [Deeparani], others either possessed C.P.Ed. Certificate or D.P.Ed. Certificate. These certificates are issued after completion of two years course by the Educational Authorities in Tamil Nadu.

14. When a particular form of course is abolished as per the instruction of the Government and re-designated subsequently prescribing the course abolished 14 years ago as one of the requisite qualification appears to be improper. Even if the Education Department which is the User Department has approved the draft notification, if the said notification is not in consonance with the subsequent changes in the field of Physical Education, namely abolition of H.P.Ed. Course, introduction of C.P.Ed. and later re-designated as D.P.Ed., these changes ought to have been taken note by the Recruiting Agency. When the re-designated course C.P.Ed. or D.P.Ed. not specifically mentioned in the qualification prescribed, but that course is equivalent to H.P.Ed., then the petitioners had no other option, but to presume that their



educational qualification is equivalent to the abolished Government Teachers Certificate of Higher Grade in Physical Education, i.e., H.P.Ed. and respond to the query affirmative in their online application.

15. It is also to be noted that the said notification carries an inherent defect for not prescribing different educational qualifications for the different cadre, namely, Physical Education Teacher for Middle Schools and Physical Education Teacher for High/Higher Secondary Schools. Having given an undertaking to the High Court that the said recruitment is not for Physical Education Teacher at Primary School level, it is also to be re-looked whether prescribing Government Teachers Certificate of Higher Grade in Physical Education as a requisite qualification in the notification is correct, since the said qualification is only for Physical Education Teachers to be appointed at Elementary School Level. No doubt, the petitioner in W.P(MD)No.23003 of 2018 has only one year course in C.P.Ed. offered by Karnataka University and she has not produced equivalency certificate. Though the petitioner in W.P(MD) No.23003 of 2018 may not have a reason to question the rejection of her candidature, the other petitioners have made out the case of improper application of mind by the User Department as well as the first respondent while prescribing the educational qualification of Physical Education Teacher and for not earmarking the vacancy for Middle Schools and High/Higher Secondary Schools separately with respective educational qualifications for these two categories.

16. In the said circumstances, this Court holds that the rejection of the petitioners' candidature on the ground that they do not possess requisite qualification is per se illegal. For the above said reason, this Court is of the considered opinion that the selection process initiated by the first respondent on the request of the Education Department for recruiting Special Teacher [Physical Education] based on the out-dated Rules, without taking into consideration of changes in the field of Physical Education and establishment of Exclusive University for Physical Education, re-designation of the courses offered as per the mandate of UGC, all put together renders the notification of the first respondent improper and illegal and to that extent it has to be struck down. Therefore, the Notification No.05/2017 placed by the first respondent for recruiting Special Teacher [Physical Education] alone is held to be ultra vires.

17. Though the relief sought in the writ petitions is only to consider the candidature of the petitioners, since the infirmity in the notification in prescribing the educational qualification, carries inherent infirmity, the process of recruitment, based on improper prescription of qualification, cannot be cured by considering the plea of the petitioners before this Court. Hence, this Court is constrained to struck down the entire selection process initiated by the first respondent, through its notification No.05/2017, in so far as the recruitment of Special Teacher [Physical Education]. The first respondent is at liberty to issue separate notification for the recruitment of Physical Education



Teacher at all three levels namely, Primary Schools, High Schools and Higher Secondary Schools with the required respective educational qualifications and proceed further.

18. With the above observations and directions, these writ petitions are disposed of. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR (CS-III)

/TRUE COPY/

SUB ASSISTANT REGISTRAR (CS- II)

To

1. The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K. Sampath Maligai,
D.P.I. Compound, College Road,
Chennai - 600 006.
2. The Director of School Education,
O/o. The Directorate of School Education,
College Road, Nungambakkam,
Chennai - 6.
3. The Regional Director,
National Council of Teacher Education (NCTE),
Jnanabharathi Campus Main Road,
Nagarabhavi, Bangaluru - 560 072.

+10 Ccs MR.S.LOUIS, ADVOCATE IN SR.NO.99344.
+3CCs TO MR.J.LAWRANCE, ADVOCATE IN SR.NO.99405, 99403, 99407.
+3CCs TO MR.SU.SRINIVASAN, ADVOCATE IN SR.NO.99709.

+1 cc to Special Government Pleader, SR.Nos.19926, 19925.

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COMMON ORDER MADE IN
W.P (MD) Nos. 21650 to 21655, 21665, 21667,
21850 to 21852 and 23003 of 2018
and
W.M.P (MD) Nos. 19553 to 19558,
19573, 19574, 19579, 19580, 19780 to 19782, and
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07.12.2018