



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.07.2018

DELIVERED ON : 31.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A(MD)Nos.347 of 2016 and 741 of 2018

and

C.M.P(MD)Nos.2154 of 2016 and 4407 of 2018

W.A(MD)No.347 of 2016:

The Principal,
Government Law College, Madurai.

... Appellant/Respondent -1

Vs.

1. V.Karthigeyan

... Respondent -1 / Petitioner

2. The Chairman Tamil Nadu Public
Service Commission, Chennai.

... Respondent -2 / Respondent -2

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 07.01.2016 made in W.P(MD)No.14452 of 2014 on the file of this Court and allow the writ appeal.

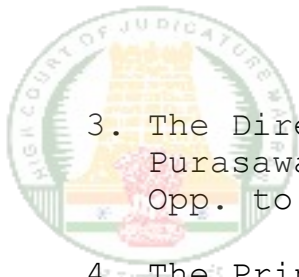
Prayer in WP(MD)No. 14452/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the 1st Respondent in Na.Ka. NO. 386/E/2014, dated 22.08.2014, quash the same, and consequently direct the 1st Respondent to issue persons studied in Tamil Medium (PSTM) Certificate to the petitioner within the time as stipulated by this Honble Court.

W.A(MD)No.741 of 2018:

1. The Secretary,
Department of Law Ministry,
Government of Tamil Nadu,
Secretariat, St. George Fort,
Chennai - 600 009.

2. The Secretary,
Department of Higher Education,
Government of Tamil Nadu,
Secretariat, St., George Fort,
Chennai - 600 009.



3. The Director of Legal Studies,
Purasawakkam High Road,
Opp. to Naidu Hall, Kilpauk, Chennai - 600 010.

4. The Principal,
Government Law College,
Madurai - 20.

... Appellants/Respondent 2,3,4 & 6
Vs.

1. A.Aathiyan

...1st respondent/writ petitioner

2. The Registrar,
The Tamil Nadu Dr.Ambedkar Law University,
Poompozhi, No.5, Dr.D.G.S, Dinakaran Salai,
Chennai - 600 028.

... 2nd respondent /5th respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 24.04.2018 made in W.P(MD)No.9396 of 2017 on the file of this Honourable Court.

Prayer in WP(MD)NO. 9396/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 4th, 5th and 6th Respondents to consider the petitioners representation dated 13.03.2017 and to provide him (PSTM) Person Studied in Tamil Medium Certificate during the time of issuing his course completion certificate

For appellants : Mr.B.Pugalendhi
(in both writ appeal) Additional Advocate General
assisted by
Mr.A.K.Baskarapandian,
Special Government Pleader

For R-1 in
W.A(MD)No.741/2018 : Mr.A.K.Hemaraaj
For R-1 in
W.A(MD)No.347/2016 : Mr.R.V.Rajkumar
For R-2 in
W.A(MD)No.347/2016 : Mr.K.K.Senthil

COMMON JUDGMENT

DR.ANITA SUMANTH, J.

Both first respondents in the appeals before us have completed their B.L five year degree course from the Government Law College; R1 in W.A(MD)No.347 of 2016 (referred to hereinafter as 'first WA') in 2004-05 and R1 in W.A(MD)No.741 of 2018 (referred to hereinafter as second WA') in 2016-17.



2. The Principal Government Law College, Madurai is the appellant in the first writ appeal, arraying the law graduate as R-1 and the the Chairman of Tamil Nadu Public Service Commission (in short 'TNPSC') as R-2.

3. The Secretaries of the Department of Law and Department of Higher Education, the Director of Legal Studies (in short 'DLS') and the Principal of the Government Law College, Madurai, are the appellants in the second writ appeal, where the law graduate and the Registrar of the Tamil Nadu Dr.Ambedkar Law University have been arrayed as R1 and R2 respectively.

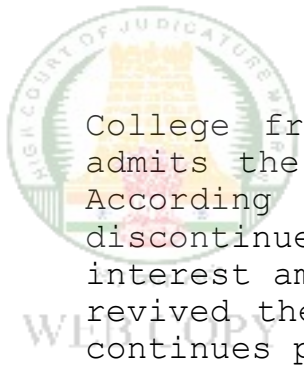
4. Since a common question arises for resolution in both writ appeals, we have taken the matters up for combined hearing and decision. The issue concerns the issue of a Certificate for Persons who have studied in Tamil Medium (referred to hereinafter as 'PSTM'). The long and short of it is that according to R1 in both appeals they have undergone the five year Law degree course in Tamil during the years 1994-95 to 1999-2000 and 2012-13 to 2016-17 respectively, and are thus entitled to the PSTM certificate whereas according to the appellants, the Madurai Law College did not conduct the Law course in Tamil during those years. The claim of R-1 in both appeals was thus rejected.

5. Heard Mr.B.Pugalendhi, learned Additional Advocate General assisted by Mr.A.K.Baskarapandian, learned Special Government Pleader for the appellants in both writ appeals, Mr.R.V.Rajkumar, learned counsel for the first respondent in the first writ appeal, Mr.A.K.Hemaraj, learned counsel for the first respondent in the second writ appeal and Mr.K.K.Senthil learned counsel for the Tamil Nadu Public Service Commission (referred to hereinafter as 'TNPSC').

6. The facts are set out independently and at a later part of this order in respect of the two contesting respondents, namely, the first respondent in both the writ appeals. We first set out the common issue to be adjudicated upon and propose to apply our conclusion in regard to the same to the facts of each individual case.

7. The Madurai Law College (referred to hereinafter as 'Law College') was set up in the year 1974 with the medium of instruction being English. In 1978, the State of Tamil Nadu issued a Government Order in G.O.Ms.No.1492 Education Department, dated 10.08.1978 (referred to hereinafter as 'GO'), introducing the Tamil medium of instruction in the Law College. G.O.Ms.No.280, Law (LS) Department dated 14.11.2006 was issued thereafter to provide a stipend as incentive to the students joining the Tamil course.

8. The position on the ground, as reflected by a communication issued by the DLS to the Learned Additional Advocate General is that the course was conducted in Tamil medium in the Law



College from the academic year 1978-1979. The communication also admits the position that the GO was never rescinded or withdrawn. According to this communication, the Tamil medium course was discontinued in the Law College, to quote the DLS, 'due to lack of interest among the students in opting for Tamil medium'. The college revived the course again from academic year 2013-2014 and the same continues presently.

9. According to paragraph 4 of the aforesaid communication, 'it is the regular practice among the Principals of the Government Law College, where Tamil medium sections is available either to start or discontinue the Tamil Medium Section based on the demands of the students. But once started, the students who were admitted in the Tamil Medium Sections are entitled to get Government stipend which is being considered as the sanction of the Government to run the Tamil Medium Course in that particular academic year.'

10. The aforesaid communication in Rc.No.190/A3/2016, dated 20.07.2018, sets out the comprehensive position of commencement and discontinuance of the Tamil Medium Courses in all eleven (11) Law Colleges functioning in the State of Tamil Nadu. We refrain from adverting to the particulars in entirety, except in respect of those relating to the Madurai Government Law College with which we are presently concerned.

At paragraph 7 of the aforesaid communication, the DLS states as follows:

'...

7. Since there was no separate section for Tamil Medium in the Government Law College, Madurai during the academic year 2012-2013, no student was admitted in the Tamil Medium in that particular academic year even though a few students may have opted for Tamil Medium.

..'

11. There appears to be an ongoing tussle between the students of various Government Law Colleges in the State of Tamil Nadu and the Colleges as to whether they have opted for and studied in the Tamil Medium section or not. The trigger for the tussle was occasioned in 2010 with the passage of Act 40 of 2010, enacted to provide 'Preference in appointment in the services under the State to persons who have obtained the educational qualification prescribed for direct recruitment through Tamil medium of instruction'.

12. The rationale behind the passage of the Act itself is that the students who have studied in Tamil medium are found to have very remote chances in selection for employment in Central / other State Governments / Private sector and hence, it was felt necessary that the State of Tamil Nadu should have afford them preference in this regard. A special classification was thus carved out constituting persons who have obtained the educational qualification prescribed for direct recruitment through the Tamil medium of instruction.



13. The Act provided for a reservation of 20% of all vacancies to be filled in on a preferential basis by persons who have studied in Tamil medium and who have provided PSTM certification. A spate of claims were made for the PSTM certificate by those who desirous of availing the benefits under the said statute.

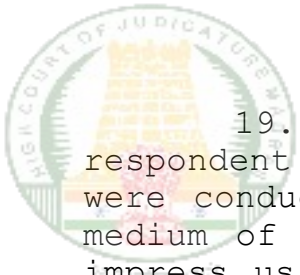
14. In a reported decision in the case of T.Sergia Bindu v. Secretary to Government Home Department, Government of Tamil Nadu and others [(2013) 4 MLJ 433], a Division Bench of this Court considered the challenge to the appointment of a candidate, the third respondent therein, who had been appointed in judicial service with the benefit of PSTM certification. According to the writ petitioner therein, the appointment of the third respondent in that case was incorrect. She contended that the third respondent ought not to have been issued PSTM certification since there had been no Tamil medium in the five (5) year B.L degree course in the Madurai Law College for the period 1999 - 2004 during which the third respondent underwent the course.

15. The Division Bench after noticing G.O.Ms.No.1492, whereunder Tamil medium of instruction had been introduced in the Government Law College, Madurai, also took note of the admitted position that the said GO had not been withdrawn, rescinded, cancelled or superceded. Hence, the said medium of instruction would continue to be available even during the period 1999-2000.

16. It was brought to the notice of the Bench that the Dr.Ambedkar Law University does not issue any certificate indicating the medium of instruction to any candidate. It appears that neither does the DLS. Therefore, and in conclusion the Division Bench rejected the writ petition upholding the appointment of the third respondent candidate therein.

17. The settled position as per the aforesaid order is that the Tamil medium of instruction introduced in 1978 vide G.O.Ms.No.1492 dated 10.08.1978 continues to be available for the period 1978 till date. Substantial reliance is placed by the learned counsels for the first respondent in both the writ appeals on the decision of this Court in Sergia Bindu's case (supra).

18. Attempting to distinguish the aforesaid decision Mr.Pugalendhi points out that G.O.Ms.No.1492 has issued only with respect to the three (3) year law course and not the five (5) year law course. However, this argument has only to be stated to be rejected since, the view of this Court in Sergia Bindu's case (supra), is in respect of a candidate who had undergone the five (5) year course. Having accepted the decision of this court in Sergia Bindu's case (supra), the application of the GO to the five (5) year law course cannot be called into question now. We reject this argument of the appellants. Further,



19. An argument advanced by the learned counsel for the first respondent in both writ appeals is to the effect that the classes were conducted entirely in Tamil in the Law College and thus, the medium of instruction had been Tamil only. This argument does not impress us. The language in which classes are taught has little or nothing to do with the medium of instruction of the course itself. In this regard, a decision of this Court in the case of Yamunadevi and Others v. TNPSC and others [2015 (3) L.W. 383] is relevant. The decision dealt with a similar issue as in the present case where a student of the Coimbatore Law College had sought the issuance of a PSTM certificate. His claim was ultimately rejected on the ground that the Coimbatore Law college did not, admittedly, conduct the course with Tamil medium of instruction as the GO was not applicable to the said college. V.Ramasuramanian, J. in the case of Yamunadevi (supra) states, tongue in cheek, as follows:

'20...The standard of teaching has fallen to such an extent today that one may even teach English in Tamil. If so done, the person who studied English in such a manner cannot claim that he studied English Literature itself in Tamil Medium...'

20. This observation, which is applicable across the board, lays down a universal proposition. That apart, the conclusion arrived at by this court in Yamunadevi's case (supra) would not apply to the present case since that was a matter concerning the Coimbatore Law College which, admittedly was not covered under the 1978 GO and hence, and admittedly, did not have a Tamil stream of instruction at all.

21. Thus, and in the absence of G.O.1492, the mere fact that classes had been taken in Tamil would not have persuaded us to come to the conclusion that the college had a Tamil Medium course.

22. In order to ascertain for ourselves the conduct of the course, particularly the Tamil stream over the years since 1978, we called for various documents from Mr.Pugalendhi. What emanates from the documents produced is this:

(i) Pursuant to G.O.Ms.No.1492 dated 10.08.1978, the Madurai Law College has commenced a stream with the Tamil medium of instruction.

(ii) Admittedly, and as per the official communication from the DLS addressed to the learned AAG and supplied to the Court, the Law College appears to have taken a unilateral policy decision to discontinue classes in the Tamil medium of instruction between 1994-95 and 2012-13. re-introducing the same from 2013-14 onwards till date. We are of the view that if at all the authorities intended to withdraw/reverse the original policy, such withdrawal/reversal ought to have been official, by way of a Government order and clearly brought to the notice of the public. The arbitrary withdrawal and re-introduction of the Tamil medium cannot be at the whim of the Law College and ought to have been



reflected at least in the college prospectus/instructions to candidates in the respective years when such changes were made. This has not been done.

23. Mr. Pugalandhi, admits to the position that the prospectus for the respective years does not contain an announcement putting the students to notice as to the fate of the Tamil medium stream in the relevant year.

24. We have also perused the available files and documents maintained by the Law college in respect of R1 in both writ appeals. While we will advert to the specific documents in detail while elucidating on the facts of each individual case, suffice it to say that there is no authoritative official document available in the files so as to indicate the intention of the appellants to discontinue the course. The documents reveal thus:

(i) The Prospectus/Instructions to students contains no mention of separate medium of instruction.

(ii) Application Form to be submitted by a student does not contain a field calling for medium of instruction opted for by the applicant.

(iii) Admit Card issued for the selected candidate does not contain a field indicating the medium of instruction.

(iv) The Law Colleges follows the procedure of re-admission of the candidate for every year of the course. The application form for the 2nd, 3rd, 4th and 5th years contains a column at point 12 enquiring thus 'state whether the applicant wishes to join the tamil medium class'. This form is used from the second to the fifth year of the five(5) year course. It is only at this stage that the first reference is made to medium of instruction.

(v) The application for issuance of Transfer certificate and refund of Library Caution Deposit does not contain a column setting out the medium of instruction. However, the Transfer Certificate cum Conduct Certificate dated 01.06.2017, refers to, in column 7 to medium of instruction, which is filled in as 'English' by the Law College. The writ petition has been filed by R-1 in the second writ appeal in the month of April, 2017. For this reason, we do not take into consideration documents that are dated subsequent to the filing of the writ petition.

25. In the above circumstances, the student population at large is perfectly justified in proceeding on the basis of the policy set out in G.O.Ms.No.1492 that, admittedly, continues until officially withdrawn. We hold so.

26. We are also guided by the statement of the DLS in communication dated 20.07.2018, that the Tamil medium is either continued or discontinued based on the interest displayed by the student community. We are of the view that this is not an acceptable modus operandi and would result in uncertainty. In the light of the discussion above, the Tamil medium of instruction introduced in the Madurai Law College by G.O.Ms.No.1492 dated 10.08.1978 continues



till date until officially withdrawn. We however, hasten to clarify that a claim by a candidate for PSTM certification does not become automatic and is subject to our findings in the latter portion of this order.

27. We proceed to apply our conclusion as above to the facts of each individuals' cases. R-1 in the first writ appeal has undergone the course for the period 1996 - 1997 to 2001 - 2002 and R-2 in the second writ appeal, for the period 2012 - 2013 to 2016 - 2017. The files maintained by the Law college in relation to R1 in both writ appeals were produced by Mr.Pugalendhi. They reveal as follows:

Documents relating to R-1 in the first Writ Appeal:

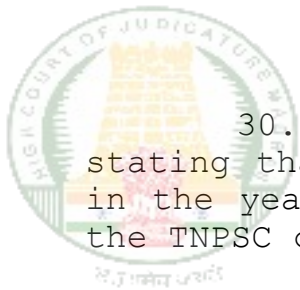
(i) The candidate had sought a copy of the prospectus as well as application form vide his letter dated 02.04.2014 under the Right to Information Act. By reply dated 09.04.2014, the RTI officer expresses inability to furnish the aforesaid documents since that were unavailable. However, the Instructions to candidates issued by the DLS for the five year B.L degree course commencing 1997 has been circulated before us. We do not find reference to any specific medium of instruction therein or the withdrawal of the Tamil medium.

(ii) Since the file of R1 in the first writ appeal did not contain his application form, a sample application of an alternate student of the same batch was supplied. The form does not contain a field / column relating to medium of instruction.

(iii) The available application forms for re-admission to the second to fifth years were perused. The application forms contain, column 11(a) enquiring 'whether the applicant wishes to join the Tamil medium class' have been left blank, whereas, in the said column in the form relating to the fourth year of the course submitted on 14.07.1999, R-1 in the first writ appeal states 'English Medium'.

28. The period 1994-1995 to 2013-2014 is a grey area since according to the Law College there has been no Tamil medium of instruction contrary to what the students would state. We have, in our conclusion on the larger issue found that the Tamil medium of instruction, introduced in 1997 continues till date. We however clarify that any claims for PSTM certificate are to be very cautiously entertained seeing as a substantial benefit is sought to be obtained by such students as conferred by Act 40 of 2010, balancing however legitimate claims made by students.

29. In the case of R1 in the first writ appeal, an argument has also been raised by Mr.Pugalendhi to the effect that the claim is hit by laches since the candidate has applied for the PSTM certificate only in the year 2014 in respect of a course completed during the period 1996-97 to 2000 - 2001 after a lapse of 13 years.



30. The delay is explained and justified by Mr.Rajkumar stating that the need to apply for the PSTM certificate arose only in the year 2014 after receipt of the counselling call letter from the TNPSC on 21.03.2014. The timeline is as follows:

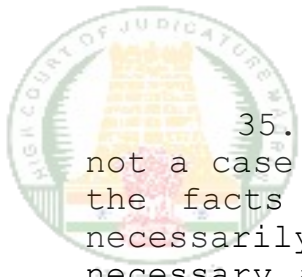
- (i) Period of course - 1996-97 to 2000-2001.
(ii) Application and issuance of Transfer Certificate and Conduct Certificate - 12.10.2001.
(iii) Act 40 of 2010 introduced
(iv) 27.04.2012 - TNPSC Registration.
(v) Notice of counselling from the TNPSC - 21.03.2014
(vi) Request for issuance of PSTM certificate - 26.03.2014.

31. The above sequence of dates and events reveals that there might be some point in what Mr.Rajkumr argues as regards the question of laches. However, G.O.Ms.NO.1492 has been introduced with a specific and laudable purpose. It seeks to confer a benefit in respect of those students who have consciously applied for and pursued the Tamil medium of instruction. Thus, the candidate has to demonstrate by conduct and by way of documentation that he intended to, as well as actually studied in Tamil medium in order to be eligible for the benefit conferred.

32. In the present case, the application form for re-admission to the 4th year reveals that the candidate had opted for English as the medium of instruction. The candidate was present in Court instructing Mr.Rajkumar and the documents were shown to the learned counsel as well as the candidate. To a specific query, R1 in the first writ appeal confirms that the documents in the file relate to him and have been filled in and signed by him.

33. In the course of hearing, reference was also made to the possibility of a candidate switching from the Tamil medium to English medium or vice versa. Mr.Pugalendhi, is categorical that such switch-over is not possible. We agree with him particularly in the context of G.O.Ms.No.1492 and the specific and laudable object for which it has been introduced.

34. At that juncture, Mr.Rajkumar raises an objection to the circulation of the form submitted by his client for re-admission to the 4th year as, according to him, it constitutes additional and new evidence, not liable to be admitted in writ appeal. A series of judgments to this effect is relied upon. For the sake of completion, we list the citations relied upon: State of Uttaranchal and others v. Kharak Singh [(2008) 8 Supreme Court Cases 236], Greater Mohali Area Development Authority and Another v. Manju Jain and Others [(2010) 7 MLJ 1052 (SC)], Sanghvi Reconditioners Private Limited v. Union of India and Others [(2010) 2 Supreme Court Cases 733], M.Nagabhushana v. State of Karnataka and Others [(2011) 3 MLJ 982 (SC)], State of Uttar Pradesh and Others [(2015) 1 Supreme Court Cases 347].



35. We however reject this contention straightaway. This is not a case of admission of new evidence per se. This is a case where the facts as regards the application and admission process have necessarily to be perused and ascertained by us. This becomes necessary all the more for the reason that a counter affidavit has been filed by the Principal of the Law College in the writ petition, wherein at paragraph 8, the Principal avers specifically that R-1 has been admitted only in English Medium. The documents produced not are only in support of this ground and do not constitute a new plea or ground. This averment of Mr. Rajkumar is thus rejected. It appears obvious to us that the present argument is merely a last-ditch attempt to get over an inconvenient document of the candidate's own making.

36. Though we have categorically found and concluded that Tamil medium of instruction introduced in 1978 continues till date, we wish to make it clear that this does not lead to the conclusion that all or any claim to the PSTM certificate are liable to be accepted. A candidate would be eligible for a PSTM certificate only if the documents available clearly reflect the intention of the candidate to be admitted in the Tamil medium of instructions and to pursue the entire course in Tamil.

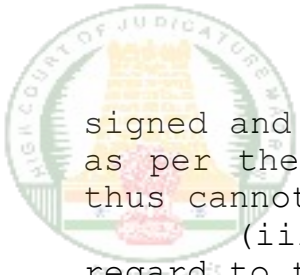
37. We have ascertained that R1 in the first writ appeal has, notwithstanding his categoric assertions to the effect that he applied for the Tamil medium actually opted for the English medium in one year. For this reason, we were initially inclined to levy a nominal cost on him for having raised a frivolous claim for a PSTM certificate that is clearly an afterthought after the elapse of 13 years from completion of the course when he himself had opted for English medium at the relevant point in time. Clearly, the candidate was merely taking a chance to see if he could succeed in his attempt at obtaining a PSTM certificate inspired by the decision of this Court in Sergia Bindu's case. We refrain from doing so solely in the circumstances in which the litigation has arisen.

38. W.A(MD)No.347 of 2016 is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

39. Coming to the case of the first respondent in the second writ appeal, the files reveal as follows:

(i) The application form and Admit Card for the year 2012 - 2013 do not contain a column as regard medium of instruction.

(ii) However, in the application forms for admission to the 2nd to 5th year, five year B.L course, column 12 provides specifically for the applicant to state whether he wishes to join the Tamil medium class and the candidate has endorsed therein 'Tamil Medium'. On the reverse of the application form is a tabular column, where the authorities have indicated their verification of the Form and admission of the student. The endorsements 'verified' and 'admitted' figure in the column for all five years and are duly



signed and dated by the authorities. The admission of the candidate as per the application submitted by him for the respective years, thus cannot be called into question.

(iii) The application / transfer certificate is silent in regard to the medium of instruction.

WEB COPY

40. As we have stated in the case of R-1 in the first writ appeal, notwithstanding the fact that we have held that the Tamil medium of instruction is available from 1978 till date, the intention of the candidate at the time when he joined the course and over the ensuing period of the course itself is fundamental in determining whether the candidate had studied in the Tamil medium of instruction or not.

41. In the light of our conclusion on the larger issue and on the basis of the official documentation in the case of R1 in the second writ appeal. we find that the candidate has indeed studied in Tamil medium for the years 2012 - 2013 to 2016 - 2017.

42. WA(MD)No.741 of 2018 is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

43. A word as regards stipend payable to those who opt for Tamil medium vide G.O.Ms.No.280 dated 14.12.2006. This has no application to R1 in the first writ appeal seeing as we have allowed the writ appeal.

44. As far as R1 in the second writ appeal is concerned, counsel claims that his client has been making demands for the stipend from 2012 itself. Nothing is available on record to substantiate this demand. What is available is a representation dated 13.03.2017, making a request for payment of stipend as per the aforesaid GO. In the light of our conclusion that R1 in the second writ appeal has studied in the Tamil medium of instruction, he is entitled to the stipend as per the aforesaid GO. The same shall be paid over to him by the appellants within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Secretary,
Department of Law Ministry,
Government of Tamil Nadu,
Secretariat, St. George Fort,
Chennai - 600 009.



2. The Secretary,
Department of Higher Education,
Government of Tamil Nadu,
Secretariat, St., George Fort,
Chennai - 600 009.
3. The Director of Legal Studies,
Purasawakkam High Road,
Opp. to Naidu Hall, Kilpauk, Chennai - 600 010.
4. The Principal,
Government Law College,
Madurai - 20.
5. The Registrar,
The Tamil Nadu Dr.Ambedkar Law University,
Poompozhi, No.5, Dr.D.G.S, Dinakaran Salai,
Chennai - 600 028.

+2CC to Mr.R.NARAYANAN, Advocate, SR.No. 75860
+1CC to Mr.R.V.RAJKUMAR, Advocate, SR.No.76325
+1CC to Mr.K.K.SENTHIL, Advocate, SR.No. 75862
+1CC to the Special Government Pleader SR.Nos. 76401,76402

W.A(MD)Nos.347 of 2016 and 741 of 2018
and
C.M.P(MD)Nos.2154 of 2016 and 4407 of 2018
31.07.2018

PM
ES/SKN/RSK/SAR 4/20.08.2018/12P/11C