

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.Nos.2768, 2769 & 2771 of 2018

and

CMP Nos.22844, 22846 & 22849 of 2018

1. The Chief Educational Officer,
Cuddalore District,
Cuddalore.

2. The Director of School Education,
College Road,
Chennai. Appellants in all

Vs.

1. P.Mohanraj Respondent in WA No.2768/18
2. S.David Selvaraj Respondent in WA No.2769/18
3. G.Vaidyanathan Respondent in WA No.2771/18

Writ Appeals filed under Clause 15 of the Letters
Patent against the Common Order dated 20.10.2017 made in
W.P.Nos.4088, 4089 & 4090 of 2011.

Common Prayer:

Writ Petitions filed under Article 226 of the
Constitution of India for issuance of Writ of Mandamus
directing the respondents herein to pay back to the
petitioner the withheld increments and the benefits accrued
thereon.

For Appellants : Mr.K.Karthikeyan
in all WAs. Government Advocate.

For Respondents : Mr.P.Gurunathan
in all WAs.

C O M M O N J U D G E M E N T

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

Writ appeals are directed against the common order made
in W.P.Nos.4088, 4089 & 4090 of 2011 dated 20.10.2017, by
which the writ Court, while allowing the writ petitions,
directed the appellants to release the increment withheld in
respect of the writ petitioners/respondents herein by
passing appropriate orders within a period of four weeks
from the date of receipt of the copy of the order made in
the above writ petitions

2. Facts leading to the filing of the instant writ appeals, are as follows:

(i) Writ petitioners/respondents were all retired Headmasters and were selected by the Tamilnadu Service Recruitment (Direct) and joined as Graduate Teachers in the year 1972. Services of all the three writ petitioners' were regularized on 03.08.1973 and were promoted as Headmasters in the year 2001 and continued till their retirement.

(ii) Respondent in W.A.No.2768 of 2018 retired on 31.05.2006, respondent in W.A.No.2769 of 2018 retired on 31.07.2006 and respondent in W.A.No.2771 of 2018 retired on 31.12.2005 respectively. All the three respondents were aggrieved by a communication dated 29.06.2006 withholding increments, on the ground that G.O.Ms.No.181 dated 29.10.2001 which came into force from 01.03.1984 which states that the Headmasters of High School have to pass the account test for the Executive Officers. Since as per this G.O.No.181 dated 29.10.2001, pass in the accounts test for Executive Officers is a must for the purpose of drawing increments by virtue of retrospective nature of the G.O. Therefore, they filed WP Nos.4088, 4089 & 4090 of 2011.

3. Before the writ Court, learned counsel for the writ petitioners / respondents herein submitted that Rule 9 of Special Rules for Tamilnadu School Educational Services, as it stood on the date of appointment applies to persons who are appointed other than by direct recruitment and all the three petitioners were appointed as Headmasters by transfer in the year 2001. Therefore, any amendment which has come retrospectively on 29.10.2001, affecting the petitioners' rights cannot be applied to them.

4. Before the writ Court, learned counsel for the writ petitioners / respondents herein further submitted that the petitioners need not challenge the amendment which gave retrospective effect, 23 years backwards, which took away the vested rights of the Government servant. It further stressed that amendment should have only prospective effect from the date of the order i.e. 29.10.2001.

5. Before the writ Court, learned counsel for the writ petitioners / respondents herein further submitted that in the similar circumstances, Madurai Bench of Madras High Court in a case relating to one Mr.S.Ganesan in W.P.No.3726 of 2004 by order dated 03.08.2007 directed to pay all the withheld increments on the ground that the amendment to Rule 9 cannot be enforced against the petitioner therein as he had already passed the account test for subordinate officers and that the petitioners/respondents were also similarly placed. Therefore, they contended that withholding of the petitioners'/respondents increments on the basis of the amended G.O. dated 29.10.2001 is not in accordance with law

and the petitioners should be paid all the withheld increments.

6. Opposing the relief sought for in the writ petition, learned counsel for the State submitted that since the G.O. has retrospective effect from 01.03.1984, the petitioners have failed to comply with the G.O. and hence the increment paid should be withheld. G.O.No.181 dated 29.10.2001 has been given retrospective effect from 01.03.1984, thereby giving statutory authority to the already existing G.O.No.536 School Education Department, dated 27.03.1982 which was in vogue for all these years. Learned counsel for the State further submitted that in view of the above G.O.'s, proceedings in Rc.No.596/A5/2006 dated 29.06.2006, were issued cancelling the 2nd and 3rd increments sanctioned in the post of Headmaster. He further submitted that the Director of School Education, Chennai in proceedings Rc.No.21102/C1-C4/2002 dated 09.09.2004 had also issued instructions that in respect of promotion as Headmaster till 2001, the 2nd increment in respect of Headmaster should be sanctioned only after passing the prescribed test.

7. Upon hearing both the learned counsels, writ Court passed the following orders.

"10....this Court feels that there is no merit in the pleading of the 1st respondent as similarly placed issue was decided by this Court in WP(MD)No.3228 of 2004 in the case of S.Ganesan v. The Chief Educational Officer, Theni, where the Court clearly said that

"....7. Though the appointment order granted to the petitioner clearly states that he should pass the test in terms of Rule 9 of the Tamilnadu Educational Service Rules but on the date of his appointment, the petitioner had already passed the account test for subordinate officers part-1 in the year 1985-1986 itself. This contention of the learned counsel for the petitioner that Rule 9 item No.1 does not apply to the case of the petitioner because it applies only to categories as provided therein and not to those who appointed otherwise than by direct recruitment is well merited.

8.The learned counsel also says that the amendment for the first item introduces class v to categories found in the bracketed portion and that amendment should have only prospective effect from the date of the order i.e., 29.10.2001, he also stated that even though the amendment has been come into force from 01.03.2004 he need not challenge the said

amendment on the ground that such an amendment by giving retrospective effect of 23 years backwards and took away the vested rights of a Government servant and it is a arbitrary and unenforceable. In view of the said right, he need not challenge the said G.O. separately.

9. Though the Government from time to time frames rules under Article 309 which are Legislative in character it can also make rules retrospectively. But those rules cannot take away the vested rights of the Government servants which had already accrued to them and in the present case it deposits the accrued increments as per the rules in force on the date of his appointment. The rule cannot be enforced retrospectively in the case of the petitioner and the learned counsel for the petitioner's arguments is well founded and the writ petitioner has to succeed.

10. Rule 9 as it stood on the date of appointment applies to persons who are appointed other than by direct recruitment. In the present case, the petitioner was appointed by transfer. Even for those the test that was prescribed earlier was account test for subordinate officer's part 1, Rule 9 only prescribes Account test for executive officers for categories those who are appointed by direct recruitment. The very idea of introduction of an amendment is to include the post of headmaster which comes under class v so that they also must pass the account test for executive officers."

11. In as much as the said amendment deprive the right of the petitioners before the amendment, the amendment cannot be enforced against the petitioner.

12. Therefore, the writ petitioner are make out the case before this Court and hence the writ petition is liable to be allowed.

13. In the result:

(a) all the three Writ Petitions in WP.Nos.4088, 4089 and 4090 of 2011 are allowed;

(b) the respondents are directed to release the increment withheld in respect of the petitioners by passing appropriate orders;

(c) the said exercise shall be done by the respondents within a period of four weeks from the date of receipt of a copy of this order. No costs.

8. Aggrieved by the abovesaid order, the Chief Educational Officer, Cuddalore and the Director of School Education, Chennai, have filed the instant writ appeals on the following grounds.

(i) Writ Court has not considered that the Respondents / Writ Petitioners have not challenged the validity of G.O.Ms.No.181, School Education (A2) Department, dated 29.10.2001 and the said order remains unchallenged till now.

(ii) Writ Court has not considered that in much as the validity of G.O.Ms.No.181, School Education (A2) Department, dated 29.10.2001, in and by which Amendments were issued to the Special Rules for the Tamil Nadu School Educational Service (Section 8A in Volume II of the Tamil Nadu Services Manual, 1969), in more particular to Rule - 9 therein, the same is valid and enforceable.

(iii) Writ Court has not appreciated that it is within the power of government to frame rules under Article 309 of the Constitution of India, which are legislative in Character and government can also make rules retrospectively.

(iv) Writ Court erred in holding vide para - 9 of the order impugned herein that, those rules cannot take away the vested rights of the Government Servants which had already accrued to them and in the present case it deposits the accrued increments as per the rules in force on the date of his appointment, in view of the fact that the respondents were aware of the fact of the requirement of passing of the prescribed Tests as stated in the order of promotion as Headmaster Vide Proceedings Na.Ka.No.77000/C4/2001, dated 03-10-2001 of the Director of School Education, Chennai - 6, the 2nd Appellant herein.

(v) Writ Court has not considered that the respondents / Writ Petitioners viz. Thiru.P.Mohanraj having accepted the promotion and having joined in the post of Headmaster of Government High School at Kurungudi on 04-10-2001 did not choose to challenge the condition vide Para - 4 of the proceedings as stated supra, whereby he was categorically informed that he should pass all the Tests as prescribed as per rule 9 of the Tamil Nadu School Educational Service Rules, if he has not passed already, within two years from the date of joining as Headmaster, and had filed the writ petition in 2011, after ten years, that too after his retirement from Service, so as to protect himself from the applicability of relevant service rules.

(vi) Writ Court has not considered that vide G.O.Ms.181, School Education (A2) Department dated 29-10-2001, as against reference 2nd cited therein and read, it is stated inter alia vide para 2 in G.O.Ms.No.181 that it has been ordered that for appointment as Headmasters in Tamil Nadu School Educational Service, one should have passed Account Test for Executive Officers, Deputy Inspectors Test and District Office Manual Test, it has also been ordered in the said government orders, that this will come into force with effect from 01-03-1984"; therefore even before the amendment to the rule - 9 of the said Rules was made in G.O.Ms.181, School Education (A2) Department dated 29-10-2001, with effect from 1-3-1984, it was already brought into force with prospective effect from 1-3-1984 by virtue of G.O.Ms.No.536, Education Department dated 27-03-1982.

(vii) Writ Court by setting aside the impugned Order has virtually allowed the writ petitioner to draw increments applicable to the higher post to which the petitioner is otherwise not entitled to draw for his failure to pass the Account Test for Executive Officers as laid down vide G.O.Ms.181, School Education (A2) Department dated 29-10-2001 and as per the condition, as stipulated in the order promoting him from Graduate Asst., to High School Headmaster post.

(viii) Writ Court has erred in holding that vide para 11 "in as much as the said amendment deprive the right of the petitioners before the amendment, the amendment cannot be enforced against the petitioner." Such finding of the writ Court is without appreciation of G.O.No.536, Education, dated 27.03.1982, wherein it is stated that the condition would come into force with effect from 01.03.1984, which G.O. cited as reference 2 in G.O.Ms.No.181, School Education (A2) Department dated 29.10.2001.

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

10. G.O.Ms.No.536, Education (A2) Department dated 27.03.1982, is extracted hereunder.

ABSTRACT

Education - School Education Department - Passing of Tests by school Assistants and Headmasters Representation of B.T. Assistants - orders passed.

Education (A2) Department
G.O.Ms.No.536
Dated the 27-03-1982
Panguni 24 Thunmathi
Thiruvalluvar Andu

2013

Read:

From the Joint Director of School Education
D.O.Letter

No.107280/C29/80 Dt.03.04.81.

From: T.N.P.S.C. Letter No.394/BA4/82
Dt.13.03.82

ORDER:

According to rule II of the Special Rules for the Tamil Nadu Educational subordinate service a person appointed to the service in the combined category for Deputy Inspectors of schools and School Assistants has to pass the Deputy Inspectors' Tests, and Account Test for subordinate officers part-I. A person who fails to pass test will not be eligible for increments other than the first increment in the time scale of pay applicable to him. The School Assistant have represented that these tests would be unnecessary for them that these tests have not been prescribed for their counterparts in aided and local body schools, and that therefore the rule requiring the school assistants to pass the said tests removed. The Director of School Education has also endorsed the representation of the school Assistants and has recommended that for completion of probation as school assistants / Deputy Inspectors of Schools, the tests now prescribed need not be insisted upon and that the provision in the rule may be deleted.

2. The Government have examined the recommendation of the Director of School Education and pass following orders.

(i) Passing of Deputy Inspector's Test and Account Test for Subordinate Officers (Part-I) need not be insisted upon the case of School Assistants in the combined category of Deputy Inspectors of Schools of completing the probation and for drawl of increments.

(ii) However for purpose of posting as Deputy Inspectors of Schools, such of those persons in the combined category of Deputy Inspectors of Schools and School Assistants with Deputy Inspector's Test and Account Test for subordinate Officers (Part-1) shall alone be given posting as Deputy Inspectors of Schools.

(iii) For appointment as Headmasters in the Tamilnadu School Education Service one should have passed the Account Test for Executive Officers, Deputy Inspectors' Test and District Office Manual Test.

3. The order in para 2(i) and (ii) above shall take effect with effect from the date of these orders. The orders in para 2(iii) shall

take effect from the date of drawl of list for appointment of Headmaster for 1984 i.e. 1-3-1984.

4. The Director of School Education is requested to send necessary draft amendments to the special Rules for the Tamilnadu Educational Subordinate Service and Special Rules for Tamil Nadu School Educational Service to give effect to the above orders.

(By Order of the Governor)

Sd/- C.Ramdas

Commissioner of Secretary to Government.

11. Proceedings of the Director of School Education, Chennai in R.C.No.77000/C4/2001 dated 03.10.2001, is extracted hereunder.

Sub: Tamilnadu School Educational Service - Appointment of High School Headmaster though promotion - Order issued.

Under rule 10 (a) (i) of the Tamil Nadu State and Subordinate service General rule, under mentioned teachers are appointed by transfer of service to category 5 of the Tamil Nadu School Education Service temporarily as Headmaster of the Govt. High school mentioned below:

Name of the Teacher, Designation and working place	The place where he is promoted as High School Headmaster.
386 S.Mohanraj, B .T. Asst. (Maths) Govt. Boys Higher Secondary School, Kattumannarkoil, Cuddalore District.	The Headmaster, Govt. High School, Kurunkudi, Kattumannarkoil T.K. Cuddalore District.

To Join duty forthwith the headmaster concerned is requested to relieve the teacher immediately with instructions to join the new post at once.

In case, the teacher is not willing to join the new post with, he may temporarily relinquish the post three years or permanently. He should send the relinquishment letter within three days

through the headmaster. Incase the teacher is not in possession of the qualifications prescribed in the Tamilnadu School Education service he should pass the above said tests within Two years from the date of joining as headmaster.

As the teacher is working as P.G Assistant / language teacher in the Tamil Nadu State and Subordinate service general rule 9, if he join the new post as high school Headmaster, it is deemed that he had forgone his seniority in the Higher Education service.

Certificate rules F.R.22(b), is issued that the teacher is fully qualified to hold the post with effect from date of joining is issued to enable to fix his pay in the Headmaster post. The District Educational officer concerned is requested to ascertain from the service register as to whether the teacher is fully qualified to hold the post or otherwise he should send a report to the Director of School Education without fixing his pay in this new post.

These orders are issued subject to Final Verdicts on the O.A.No's.8825, 8826, 8829, 9120, 9202/98, 187/99 and 6690/99 of the Tamilnadu Administrative Tribunal in which interim orders are issued.

The date of relieving and joining reports should be sent to the Director immediately.

Sd/-.

Director of School Education.

12. G.O.Ms.No.181, School Education (A2) Department dated 29.10.2001, is extracted hereunder.

ABSTRACT

Rules: Tamilnadu School Educational Service - consideration of certain other teaching posts also, besides the existing ones, for appointment as Headmaster / Headmistress in Government High Schools by recruitment by transfer - prescription of qualification and tests for appointment to the post of Headmaster / Headmistresses in Government High Schools - Amendments to special Rules for the Tamil Nadu School Educational Service - orders issued.

SCHOOL EDUCATION (A2) DEPARTMENT

G.O.Ms.No.181

Dated:

29.10.2001.

Read:

1. G.O.Ms.No.1529 Education, dated 22.07.81.
2. G.O.Ms.No.536 Education, dated 27.03.82.
3. Madras High Court Order dated 22.09.83 in writ petition No.5216/83
4. From the Director of School Education
Lr.No.107286/C24/90 dated 21.09.95,
23.02.98, 8.9.99 and 17.09.99.
5. From the Secretary, Tamil Nadu Public
Service Commission Lr.No.3880/RND-A2/2000
dated 8.3.2001.

ORDER:

In the Government order first read above, orders were issued pending amendment to special Rules for Tamilnadu School Educational Service that appointments to the post of Headmasters and Headmistress in the Tamilnadu School Educational Service shall be made by recruitment by transfer from deputy inspector of school and school assistant, and from Pandits and Munshis grade 1, secretarial Assistants, Engineering instructors, Agriculture Instructor and physical Directors who possess a degree in any subject or language, with a degree in teaching and who have 5 years teaching experience after acquiring a teaching degree.

In fixing the inter-se-seniority among these categories, the date of appointment shall be taken into account in the case of Deputy Inspectors of School and School Assistants and the date of passing of B.Ed., or B.T. or the date of appointment after passing B.T or B.Ed. which ever is later shall be taken into account in respect of Pandits and Munshis grade 1 secretarial Assistants, Engineering Instructors, Agricultural Instructor and Physical Directors. In the Government order second read above, it has been ordered that for appointment as Headmasters in Tamil Nadu School Educational Service, one should have passed Account test for Executive Officers, Deputy Inspectors test and District Office Manual Test. It has also been ordered in the said Government Order, that this will come into force with effect from 1.3.1984.

Subsequent to the issue of Government order first read above, TVLR Narayanan and S.Nandagopal Tamil Pandits Grade-I have filed two writ petition No.5216/83 challenging the order issued in the Government order first read

above prescribing 5 years experience after acquiring teaching degree as a prerequisite qualification for appointment by recruitment by transfer as headmaster and headmistresses in Government secondary schools. The said writ petition in reckoning their experienced not after their acquisition of the degree in teaching, but even before that, since Tamil Pandits possess Pandits Training and also in view of the Madras High Court order third read above five years experience after acquiring teaching degree prescribed in the Government order first read above need not be insisted in respect of Tamil Pandits alone and it may be insisted in respect of other categories of teachers viz., secretarial Assistants, Engineering Instructions, Agriculture instructors and physical directors for appointment by recruitment by transfer as Headmaster / headmistress in Government Secondary School. Based on the Government order first and second read above and also taking into account the Madras High Court order above, the following amendments are issued to the Special Rules for the Tamil Nadu School Educational Service.

2. The following Notification will be published in the Tamil Nadu Government Gazette.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendments to the special Rules for the Tamil Nadu School Educational Service (Section 8 - A in volume 11 of the Tamil Nadu Service Manual, 1969)

2. Amendments (1) and (2) hereby made shall be deemed to have come into force on the 22nd July 1981 and amendments (3) and (4) hereby made shall be deemed to have come into force on the 1st March 1984.

AMENDMENTS

In the said Special Rules:

(1) in rule 2, in sub-rule (a) under class V, for the expression "Deputy Inspectors of Schools, and the School Assistants and career Masters" in column (2) against the entry "Headmasters and Headmistress including, Headmasters and Headmistress in the Model High Schools attached to Training Colleges in the Collegiate Education Department" in column (1),

the expression "Deputy Inspector of School, School Assistants, Career masters, Pandits and Munsis Grade I Secretarial Assistant, Engineering instructors, Agricultural instructors and Physical Directors" shall be substituted.

2) in rule2 - B-

1. For the expression "Deputy Inspectors of Schools and school assistants and career Masters" the expression Deputy Inspectors of schools, School Assistants, Career Masters. Pandits and Munshis Grade I, Secretarial Assistants. Engineering Instructors, Agricultural instructors and physical Directors shall be substituted.

(ii) the explanation shall be numbered as explanation I and after Explanation I as so numbered, the following explanation shall be added, namely.

Explanation II - for the purpose of fixing the inter-se-seniority among the categories eligible for appointment posts of Headmasters and Headmistress, the date of regular appointment in the cadre shall be taken into account the case of Deputy Inspectors of Schools, School Assistants and career Masters and the date of passing of B.T or B.Ed or the date of appointment after passing the B.T. or B.Ed., whichever is later shall be taken into account in respect of other categories"

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In the Annexure, after the category "Assistant Director (Visual Education)" in column (1) and the entire relating thereto in column (2) and (3) the following categories and entries shall respectively be inserted in columns (1)	(2)	(2)
Headmasters and Headmistress including Headmasters and Headmistress in Model High Schools attached to Training colleges in the collegiate Education Department	Recruitment by transfer	(i) A Bachelor's degree in the subject or language of any University in the state or a degree of equivalent standard. (ii) B.T. or B.Ed., degree of any University in the state or a degree of equivalent standard. (iii) Experience in teaching for a period of not less than five years provided that, in the case of Tamil Pandits the teaching experience acquired before or after obtaining a degree in teaching shall be taken into account. (iv) Must have passed (a) Account Test for Executive officers (b) Deputy Inspector's Test (3 Papers) (c) District Office Manual Test (Now Tamil Nadu Government Office Manual Test)

4. In rule 9 in the Table under Column (1) in Item (1), for the expression "except; those appointed the expression except those appointed in class V and those appointed shall

be substituted.

(ii) In item (ii) for the expression "classes IV and V" the expression "class IV" shall be substituted.

V.K.Subburaj,
Secretary to Government

13. Proceedings of the Director of School Education, Chennai in R.C.No.21102/C1-C4/2002 dated 09.09.2004, is extracted hereunder.

Sub: Tamilnadu School Educational Service - promotion as High School Headmaster and Sanction of increment to the High School Headmasters who have not passed prescribed tests - Clarifications issued - Regarding.

Ref: 1.G.O.Ms.No.536, School Education Dated 27.03.82.

- 2. G.O.Ms.No.131 School Education Dated 29.10.2001.
- 3. G.O.Ms.(ID) No.192 Dated 01.10.2002.
- 4. Director of School Education Proceedings R.C.No. 6947/T36/ 2002 Date: 04.05.2002.
- 5. District Educational Officer, Nagapattinam R.C.No.4550/B5/04 Dated.11.08.04.

In the Government Order 1st cited, instructions were issued that for the promotion as high school headmaster, the B.T Assistant must have passed the Account Test for Executive Officers Part I, Deputy Inspectors test and District Office Manual Tests.

Pending issue of relaxation to the Tamil Nadu Subordinate service rules instruction was issued that promotions may be made temporarily with a condition to pass the above test within two years from the date of promotion in accordance with the Tamil Nadu school Education special rules 9.

The headmasters promoted from 82-84 must pass the Tests within two years, failing which the second and subsequent increments will be stopped until he passes in the examinations as per orders 4th cited.

Thereafter in the reference 2nd cited an amendment was issued

to the Tamil Nadu School Education Service rule 9 making the above test mandatory for promotion to the post of High

Based on the above orders it is informed that those who were promoted as high school Headmaster till the year 2001, are entitled for the 2nd increment in the post of headmaster only after passing all the tests prescribed in the rules.

From the year 2002, seniority list was prepared by including the B.T.Assistants, who have passed the Account test for subordinate officers Part-I or Executive Officers Test and the Departmental Tests.

Therefore, it is ordered that from 2002, the High Schools Headmasters who have passed the prescribed test alone are eligible for pay fixation in the post of high school headmaster.

Therefore, it is informed that duly observing the above instructions pay in the post of High School Headmaster may be fixed under rule F.R.22(b) of the fundamental Rules.

Sd/-

Director of School Education.

14. Though the appellants have relied on the abovesaid government orders to contend that government have the powers to pass orders with retrospective effect, writ court has not only considered the fact that vested rights cannot be taken away by giving retrospective effect from 1984, but also considered that in similar circumstances, Madurai Bench of this Court, W.P.(MD). No.3226 of 2004, in the case of S.Ganesan Vs. The Chief Educational Officer, Theni, has granted similar relief to the petitioner therein. Government have issued G.O.Ms.No.181, School Education (A2) Department, Chennai, dated 29.10.2001, whereas respondent in W.A.No.2768 of 2018/petitioner in W.P.No.4088 of 2011 has been appointed as Headmaster in the counselling held on 04.10.2001 much earlier than the G.O. It should be noted that, he had worked as Headmaster and attained superannuation on 31.05.2006. Mr.S.David Selvaraj, respondent in W.A.No.2769 of 2018/Petitioner in W.P.No.4089 of 2011, retired as Headmaster on 31.07.2006 and Mr.G.Vaidhyanathan, respondent in W.A.No.2771 of 2018/petitioner in W.P.No.4090 of 2011, retired on 31.12.2005. It is seen that, after retirement of two headmasters, Mr.P.Mohanraj, respondent in W.A.No.2768 of 2018/Petitioner in W.P.No.4088 of 2011, does not indicate any condition that he should pass Account Test within two years from the date of appointment, as Headmaster in High School.

15. Though the appellants have relied on G.O.536, Education (A2) Department, Chennai, dated 27.03.1982 and contended that for appointment as Headmasters in Tamil Nadu School Education Service, one should have passed the Account Test for Executive Officers, Deputy Inspector's Test and District Office Manual Test, and that the same would come into effect from 01.03.1984, as stated supra, admittedly, appellants have appointed all the respondents, as Headmasters in School Education Department, in 2001, without insisting for passing of Account Test, i.e. Prior

to issuance of the rules by way of amendment, G.O.Ms.No.181, School Education (A2) Department, Chennai, dated 29.10.2001.

16. Though government have issued executive instructions on 27.03.1982, reading of the same, shows that the Director of School Education, Chennai has been requested to send necessary draft amendments to the special rules for Tamil Nadu Educational Subordinate Service and Special Rules for Tamil Nadu School Educational Service to give effect to the orders issued in G.O.536, Education (A2) Department, Chennai, dated 27.03.1982 and the rules have been amended only on 29.10.2001, by G.O.Ms.No.181, School Education (A2) Department, Chennai, dated 29.10.2001. Thus, even prior to the amendment, respondents have been promoted. Notwithstanding the executive instructions, which became statutory rules only on 29.10.2001, respondents have passed Account Test for subordinate officers part-1. Respondent in W.A.No.2768 of 2018/petitioner in W.P.No.4088 of 2011, retired on 31.05.2006. Respondent in W.A.No.2769 of 2018/Petitioner in W.P.No.4089 of 2011, retired on 31.07.2006 and respondent in W.A.No.2771 of 2018/petitioner in W.P.No.4090 of 2011, retired on 31.12.2005.

17. Vide proceedings in R.C.No.596/A5/2006, dated 29.06.2006, orders have been issued cancelling the 2nd 3rd increments sanctioned in the post of Headmaster, after retirement.

18. Going through the material on record, we are of the view that the appellants have not made a strong case for interference. Hence, Writ Appeals are dismissed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy// सत्यमेव जयते
Sub Assistant Registrar

ars/dm

To,

1. The Chief Educational Officer,
Cuddalore District,
Cuddalore.

2. The Director of School Education,
College Road, Chennai.

+1 cc to Government Pleader Sr.No. 3982

W.A.Nos.2768, 2769 & 2771 of 2018
and

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