

C.M.P.No.4182 of 2020 in W.A.No. SR 19811 of 2020
and
C.M.P.No.6862 of 2020 in Rev. Aplw.No. SR 19118 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.M.P.No.4182 of 2020 in W.A.No. SR 19811 of 2020

and

C.M.P.No.6862 of 2020 in Rev. Aplw.No. SR 19118 of 2020

1. K. Tamilmani
2. M. Krishnakumar
3. B. Shanthi
4. B. Rajeswaran
5. T. Ayyappan
6. A. Subbulakshmi
7. P. Jesindha
8. M. Venkatachalam
9. M. Kandasami

...
Petitioners in
both petitions

Vs.

1. T. Kunjukrishnan
2. Vanithamani
3. R. Saradha
4. R. Lenin
5. N. Murugan
6. P. Ponpandi
7. M. Babu
8. G. Kamala

9. P.J. Josephine
- 10.K.A.Mary Jaya Sundari
- 11.T. Anandhajothi
- 12.M. Rajalakshmi
- 13.R, Ramyashri
- 14.R. Ganesan
- 15.P. Verramani
- 16.S. Sankar Prakash
- 17.D. Doss
- 18.S. Venkatesulu
- 19.K. Govardhan
- 20.K.T. Eswaran
- 21.K. Amudha
- 22.M. Raman
- 23.G. Ananthi
- 24.J. Mahalakshmi

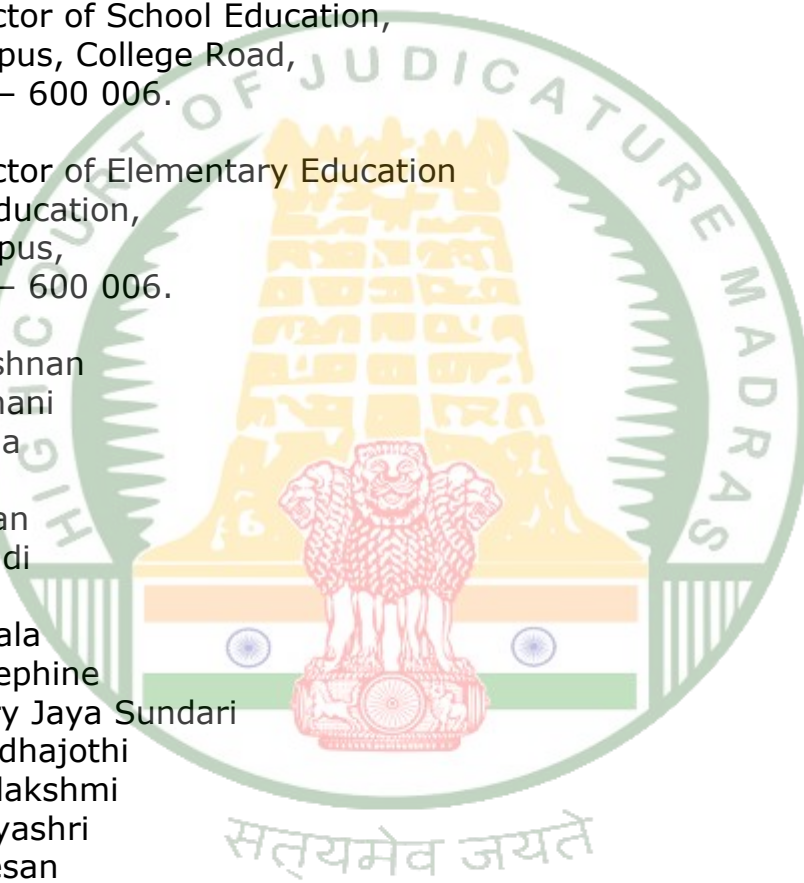
25.The Government of Tamil Nadu,
rep by its Secretary,
School Education Department
Fort St. George,
Chennai – 600 009

26.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006,

27.The Director of Elementary Education,
School Education,
DPI Campus,
Chennai – 600 006

... Respondents in
CMP.4182/2020

- 1.The Government of Tamil Nadu,
rep by its Secretary,
School Education Department
Fort St. George,
Chennai – 600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
- 3.The Director of Elementary Education
School Education,
DPI Campus,
Chennai – 600 006.
- 4.Kunjukrishnan
- 5.Vanithamani
- 6.R.Saradha
- 7.R.Lenin
- 8.N.Murugan
- 9.P.Ponpandi
- 10.Babu
- 11.G. Kamala
- 12.P.J. Josephine
- 13.K.A.Mary Jaya Sundari
- 14.T. Anandhajothi
- 15.M. Rajalakshmi
- 16.R, Ramyashri
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- 22.K. Govardhan
- 23.K.T. Eswaran
- 24.K. Amudha
- 25.M. Raman



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26.G. Ananthi
27.J. Mahalakshmi

... Respondents in
CMP.6862/2020

Prayer:

C.M.P.No.4182 of 2020 in W.A.No. SR 19811 of 2020 filed to grant leave to file the writ appeal against the order dated 30.7.2019 made in W.P.No.4991 of 2015 on the file of this Court.

C.M.P.No.6862 of 2020 in Review Aplw. No. SR 19118 of 2020 filed to grant leave to file review petition against the order dated 13.1.2020 made in W.A.No.3904 of 2019 on the file of this Court.

For Petitioners : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mrs.Dakshayani Reddy
for respondent Nos.1 to 24 in
CMP.No.4182 of 2020
and respondent Nos.4 to 27
in CMP.No.6862 of 2020

: Mr.C.Munusamy
Spl. Government Pleader
for respondent Nos.25 to 27
in CMP.No.4182 of 2020
and respondent Nos.1 to 3
in CMP.No.6862 of 2020

COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

We have heard Shri Ajmal Khan, learned Senior Counsel for the applicants in both the above applications, Shri C.Munusamy, learned Special Government Pleader (Education) for the State and Smt Dakshyani Reddy, learned counsel for the contesting private respondents.

2. In order to appreciate the contentions seeking review and also seeking leave to appeal, it would be appropriate to discuss the background in which the present applications had been filed.

3. Most of the applicants are BT Assistant teachers, who have been promoted as such in the year 2005.

4. The contesting respondents are teachers, who were initially appointed in terms of Rule 11 of the Tamil Nadu State and Subordinate Service Rules, which is extracted herein under:

"11. Appointment by agreements. -(1) When in the opinion of State Government Special provisions inconsistent with any of these rules or of any other rules made under the proviso to article 309 of the Constitution of India or continuing by Article 313 of that Constitution (hereinafter referred to in this rule as the said rules) are required in respect of conditions of service, pay and allowances, pension, discipline and conduct with reference to any particular post, or any of them, it shall be open to the State Government to make an appointment to such post otherwise than in accordance with these rules or the said rules and to provide by agreement with the person so appointed for any of the matters in respect of which in the opinion of the State Government special provisions are required to be made and to the extent to which such provisions are made in the agreement, nothing in these rules or the said rules shall apply to any person so appointed in respect of any matter for which provision is made in the agreement: Provided that in every agreement, made in exercise of the powers conferred by this rule it shall further be provided that in respect of any matter in respect of which no provision has been made in the agreement the provisions of these rules or of the said rules shall apply. (2) A person appointed under sub-

rule (1) shall not be regarded as a member of the service in which the post to which he is appointed is included and shall not be entitled by reason only of such appointment to any preferential claim to any other appointment in that or any other service."

5. Their appointments were pursuant to the G.O.Ms.No.53, School Education (HS1) Department, dated 2.6.2004 that was issued under the provisions of Rule 11 aforesaid. The said Government Order is extracted herein under:

"Government Of Tamil Nadu

ABSTRACT

School Education-Creation of Junior Grade Post Graduate Assistants in Government/ Municipal Higher Secondary Schools from the academic year 2003-2004-Agreement form under rule 11 of the General rules for the Tamil Nadu State and Subordinate Services for the appointment of Junior Grade Post Graduate Assistants-prescribed – Orders issued.

School Education (HS1) Department

G.O.Ms.No.53

Dated: 02.6.2004

Read:

- 1.G.O.Ms.No.100 School Education dated 27/6/2003*
- 2. From the Director of School Education Letter Rc.No.05188/JDP/2004 dated 13.1.2004*
- 3. G.O.(Ms) No.51 School Education Department dt. 1.6.2004*
- 4. G.O.(Ms) No.52 School Education (E1) dated 1.6.2004*

ORDER

The Government in the Government Order first read above have ordered that in view of the difficult financial position in the State, vacancies arising from the academic year 2003-2004 in the various categories of Teacher Posts in all kinds of Schools shall be deemed to be junior Grade Teacher posts and allowed only consolidated pay. In the said Government Order the Junior Grade Post Graduate Assistant was allowed consolidated pay of Rs.4500/- per month.

- 2) The Director of School Education in his letter second read above has forwarded the draft form of Agreement for appointment to the posts of Junior Grade Post*

Graduate Assistant in Government / Municipal Higher Secondary Schools under rule 11 of the General Rules for Tamil Nadu State and Subordinate Services.

3) *The Government after careful examination approve the form of agreement to be executed at the time of appointment by the Junior Grade Post Graduate Assistants as appended to this order.*

4) *The Director of School Education is requested to instruct the appointing authorities to execute the agreement with the Junior Grade Post Graduate Assistants recruited by the Teachers Recruitment Board in the Agreement Form appended to this order. He is also requested to use this Agreement Form in respect of other identical Junior Grade posts in the Tamil Nadu Higher Secondary Educational Service.*

(BY ORDER OF THE GOVERNOR)

*K. GNANADESIKAN,
Secretary to Government.*

To

The Director of School Education , Chennai-6

The Chairman Teachers Recruitment Board, Chennai-6

Copy to

The Commissioner, Corporation of Chennai, Chennai-3

The school Education department (Budget)Chennai-9

The Senior PA to Honourable Minister for Education.

Chennai-9

Law Department, Chennai-9

Personnel and Administrative Reforms

Department, Chennai-9

// forwarded by Order//

SECTION OFFICER."

6. The appointments therefore were on an agreement basis under Rule 11 aforesaid, where Clause 11 of the agreement reads as under:

"11. He/she shall not have any claim for regularisation of his/her services in the post of Post Graduate Assistant (Junior Grade) for fixation of seniority and sanction of increment by virtue of this appointment on any account for any reason whatsoever."

7. It appears that the State Government came up with a policy to give effect to absorption to the teachers who were appointed on

consolidated pay under the agreement, for which the Government Order came to be issued on 27.6.2006, followed by G.O.Ms.No.120, School Education (Va se-2) Department, dated 18.7.2006. The contesting private respondents were given the benefit of absorption and regular appointment under the said Government Order, which is extracted herein under:

"GOVERNMENT OF TAMIL NADU

ABSTRACT

School Education – Teachers working in Government and Aided Schools working under consolidated pay is ordered to be fixed the scale of pay from 1.6.2006 – order issued regarding their probationary period.

School Education (Va Se-2) Department

G.O.(Ms) No.120

Date: 18.7.2006

Read

- 1. Government Order (Ms) No.100, School Education dated 27.6.2003.*
- 2. Government Order (Ms) No.125, School Education dated 12.11.2003.*
- 3. Government Order (Ms) No.51, School Education dated 1.6.2004.*

4. Government Order 9Ms) No.52, School Education dated 1.6.2004.
5. Government Order (Ms) No.53, School Education dated 2.6.2004.
6. Government Order (Ms) No.54, School Education dated 2.6.2006.
7. Government Order (Ms) No.55, School Education dated 2.6.2006.
8. Government Order (Ms) No.99, School Education dated 27.6.2006.

ORDER

In the government order referred to as 8 herein above, order was issued for fixing the pay scale and regularizing the teachers who are working under consolidated pay, on contract basis in the Government and aided schools, from 1.6.2006. Government perused about their probationary period commencing from 1.6.2006.

2. Whenever the teachers who are working under the consolidated pay in the government schools, the contract forms, under the Rule 11 of the Tamilnadu

State and Subordinate Services Rules, were formed in the government orders, referred to as 5, 6 and 7.

3. It is instructed to the Director of School Education/Director of Elementary Education that the teachers who are working under consolidated pay on contract basis shall be concluded with 31.5.2006 afternoon and the eligible teachers, who have completed the qualifications under the Special Rules of the said post, inclusive of physical fitness shall be issued with the proper appointment order in connection with the probationary period commencing from forenoon of 1.6.2006. The teachers who did not complete the rule regarding the age shall be appointed temporarily under Rule 10(a)(i) of the General Rules, and the proposal is directed to be sent to the government immediately for the relaxation of age limit. After the relaxation of the rule, from forenoon of 1.6.2006, they shall be considered to be brought under probationary period. Further their seniority shall be considered as per the communal allotment and the method is the one which was determined by the Teachers Recruitment Board. As far as the teachers were appointed through Employment Exchange, the communal allotment method is follows and determined

as the seniority method.

4. Further, all types of vacancies of teachers, working under consolidated pay in the government schools and aided schools, in connection with the probationary period starting from 1.6.2006, for the amendment to be published under Recognized Private Schools (Regulation) Rules, 1974, the Director of School Education of School Education is directed to send the proper proposal to the government.

5. Further as at present the consolidated pay method is cancelled, the vacancies of Junior Trade Teacher, as found in the government order referred to as 1 herein above, will not be in existence from 1.6.2006.

(BY ORDER OF GOVERNOR)

M.KUTRALINGAM
SECRETARY TO GOVERNMENT"

8. A perusal of the said Government Order would demonstrate that they were appointed on probation and their period commenced with effect from 1.6.2006. On the question of seniority, the recital is

that it shall be considered as per the communal allotment and the method is one which was determined by the Teachers Recruitment Board.

9. It appears that these class of teachers were seeking benefit of treating their period of appointment on consolidated pay also to be counted towards their services on regular basis. From the records that have been filed, we find that the first litigation that emanated for the said relief appears to be writ petitions filed before the Madurai Bench being W.P.(MD) No.21316 and 21317 of 2015, that came to be decided on 12.6.2017. The writ petitions were allowed on the terms as would be evident from the next judgment, which we are extracting herein under.

10. It appears that no writ appeal has been filed against the judgment dated 12.6.2017 of the learned Single Judge at Madurai Bench, but following the same, certain other writ petitions were disposed of at Madurai Bench, against which, W.A.(MD) Nos.449 and 450 of 2020 were filed, where the following interim order has been

passed on 4.6.2020:

"Already two of earlier Writ Appeals in W.A.(MD)Nos.299 and 300 of 2020 have been entertained by this Court and an order of stay also has been granted in favour the appellants therein. In tune with the order passed by this Court dated 06.02.2020, there shall be an order of interim stay.

2. Post this matter along with W.A.(MD)Nos.299 and 300 of 2020 for final hearing."

11. The private respondents petitioners, who are contesting the appeal and the review application filed their own writ petition being W.P.No.4991 of 2015 (T.Kunju Krishnan and others v. Government of Tamil Nadu, rep. by its Secretary, School Education Department, Chennai-9 and others), that was pending before this Court. When the matter came up for final hearing, the judgment of the Madurai Bench was cited and following the same, the learned Single Judge, allowed the writ petition on 30.7.2019. The said judgment dated 30.7.2019 is extracted herein under:

"This Writ Petition has been filed for a direction to the

first respondent herein to regularize the services of the petitioners from their initial dates of appointments till 01.06.2006 with all consequential monetary and service benefits.

2. It is the case of the petitioners that they were recruited by way of direct recruitment and during the period between 2003 and 2006, the Teachers Recruitment Board had conducted examinations and forwarded the list of meritorious candidates to the School Education/Director of Elementary Education for appointment. It is the further case of the petitioners that by way of G.O.Ms.No.55 dated 02.06.2004, an agreement was executed, stating that the petitioners would not be entitled to regularization for five years and subsequent thereto, the Government had issued another G.O.Ms.No.99 dated 27.06.2006, by which, the Government reconsidered the decision of appointing the teachers on consolidated pay for a period of 5 years and decided to regularize the services of all the teachers, who were appointed on a consolidated pay vide G.O.Ms.No.100 dated 27.06.2006 by regularizing their services with effect from 01.06.2006. It is the grievance of the petitioners that there was no whisper with regard to regularization of their services between

their actual date of appointment and 01.06.2006 and though they sent several representation to the 1st respondent through their Association, there was no positive response to the representations. Aggrieved by the same, the petitioners are before this Court, seeking for a suitable direction to the 1 st respondent.

3. Heard the learned counsel on either side and perused the material documents available on record, including the counter affidavit filed by the Respondents.

4. It is not in dispute that the petitioners joined the services prior to issuance of G.O.Ms.100 dated 27.06.2006, however, their services have been regularized in terms of the said Government Order only with effect from 01.06.2006, a perusal of which, would go to show that though the regularization will take place from 01.06.2006, the seniority and roster would be maintained as per the date of appointment. This Government Order has been accepted and has not been questioned, thereby it was left to attain finality and it was the contention of the Government Advocate that having accepted the regularization, claiming retrospective benefits is not permissible, when the

Government Order is not challenged.

5. Though the contention of the Respondents appears to be sound at the first blush, when seen in depth, there is no justification on the part of the Respondents in placing senior persons to juniors, thereby depriving their rights of seniority. It is no doubt true that the regularization can take place with effect 01.06.2006, but at the same time, the date of entry of petitioners will have to be taken into account for the purpose of drawing seniority list, which is already fixed by the Teachers Recruitment Board in this case, as it is impermissible to combine all the persons recruited on various periods together and draw a consolidated list for drawing seniority, which will definitely create confusion and affect the seniority of senior most persons.

6. While dealing with the similar issue with respect to G.O.Ms.No.99 School Education Department dated 27.07.2006, the Madurai Bench of Madras High Court in the case of P.Karthikeyan and another vs. the Commissioner, Most Backward and Denotified Communities Welfare Department, Chennai and another [W.P.(MD) No.21316 of 2015 and 21317 of

2015] decided on 12.06.2017, had held upon relying on a judgment of the Hon'ble Supreme Court, as follows:

"4.The learned Additional Government Pleader appearing for the respondents referred to G.O.Ms.No.99 dated 27.06.2006 and submitted that the petitioners' appointment were regularized only after the issue of the said Government Order. It is pertinent to note that the decision in the year 2006 was to make permanent appointments on regular time scale of pay with effect from 2006. As per the said Government Order, it is made clear that earlier the petitioners were appointed on consolidated pay. The intention of the Government was to treat the petitioners as regular appointees for all purposes, except for granting the regular time scale of pay to them.

5.It is in the said circumstances, the contention of the second respondent that initially the petitioners who were regularized only on 01.06.2006, cannot be treated as regular appointees, from the date of their appointment, so as to promote them for the

post of Headmasters/Headmistresses of the Higher Secondary Schools can not be accepted.

6.The learned counsel for the petitioners also relied upon the Judgment of the Honourable Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others, reported in (1990) 2 Supreme Court Cases 715. The Honourable Supreme Court differentiated the status of persons, who were appointed to a post according to the Rule and the status of the persons, who were appointed on adhoc basis and not according to the Rules where the appointment was purely a stop-gap arrangement. It has been categorically held that the persons who were appointed to the post according to Rule, should be given the benefit of seniority and their period of service shall be counted from the date of their appointment and not from the date of their regularization or confirmation.

7.This Court is also of the view that the

petitioners are entitled to claim the seniority of teaching experience from the date of their appointments i.e., with effect from 02.08.2004 and 27.01.2005 respectively, for the purpose of calculating their period of rendering service as a teacher, for the purpose of promotion to the post of Headmasters/ Headmistresses of the Higher Secondary Schools. Hence, this Court is inclined to allow these Writ Petitions.

8. Accordingly, these Writ Petitions are allowed and the impugned orders passed by the second respondent dated 17.04.2015 and the consequential proceedings of the first respondent dated 20.05.2015 are quashed. The respondents 1 and 2 are directed to treat the petitioners as eligible for promotion to the post of Headmasters/ Headmistresses of the Higher Secondary Schools, as per Rule. This order shall not disturb the rights of any other third party whose rights have already been crystallised. However, for the purpose of calculating seniority and for granting any other monetary benefits, the respondents are directed to treat the services of the petitioners

*from the date of their original appointment.
Consequently, connected Miscellaneous
Petitions are closed. No costs."*

7. In view of the above, this Court finds force in the contention raised by the petitioners and they are entitled for relief / direction sought for in this writ petition. Accordingly, the Writ Petition is disposed of, with a direction to the 1 st respondent herein to regularize the services of the petitioners from the date of entry into service for the purpose of seniority and extend all the monetary benefits flowing thereof, if any, within a period of two months from the date of receipt of a copy of this order. No costs."

12. The State Government questioning the correctness of the directions issued by the learned Single Judge of extending the benefit of regularization with effect from the date of their initial appointment filed W.A.No.3904 of 2019 (Government of Tamil Nadu , rep. by its Secretary, School Education Department, Chennai-9 and others v. T.Kunju Krishnan and others) and the said writ appeal was disposed of by a Division Bench on 13.1.2020 on the following terms:

"The respondents/writ petitioners were appointed as Teachers on consolidated basis in the year 2004. By virtue of G.O.Ms.No.120, School Education (Va Se-2) Department, dated 18.07.2006, the respondents/writ petitioners were brought on regular time scale of pay from 01.06.2006. However, their seniority was to be reckoned as per the communal allotment rank as determined by the Teachers Recruitment Board.

2.The respondents/writ petitioners have filed the instant writ petition for the relief that their seniority must be reckoned from the date of their initial appointment and not from the date of regularisation, though the prayer made in the writ petition reads as under:

"Writ of Mandamus directing the 1st respondent herein to regularize the services of the petitioners from their initial dates of appointments till 1.6.2006 with all consequential monetary and service benefits"

3.Be that as it may, the learned Single Judge, after relying on a judgment of this Court dated 12.06.2017 in W.P.(MD)Nos.21316 and 21317 of 2015 (P.Karthikeyan and Anr., vs. The Commissioner, Most

Backward and Denotified Communities Welfare Department, Chennai and Another), has allowed the writ petition.

4.The learned counsel for the appellants/State submits that the promotion can only be from the date of regularisation and not from any date anterior to the date of regularisation. However, the learned counsel for the respondents/writ petitioners points out the specific admission that has been made by the appellants/State , in para 15 of the grounds of appeal, which reads as under:

"15.The Learned Judge Justice ought to have considered that with regard to promotion of the respondents herein, among those Secondary Grade Teacher / B.T.Assistant/ P.G.Teachers brought into regular time scale with effect from 01.06.2006 vide G.O.Ms.No.99, School Education Department, dated 27.06.2006, the date of initial appointments under contract basis is taken into account already and no injustice caused to them."

5.In view of the statement made in para 15 of the

grounds of appeal read with G.O.Ms.No.120, dated 18.07.2006, it is clear that the Government itself had agreed to grant the benefits of seniority from the date of initial appointment and all monetary benefits from the date of regularisation, which is from 01.06.2006.

6.The learned Single Judge has allowed the writ petition, directing the appellants herein to regularise the services of the respondents/writ petitioners from the date of entry into service for the purpose of seniority and extend all monetary benefits following thereof. The learned counsel for the respondents/writ petitioners concedes that the portion of the order which directs payment of monetary benefits from the date of appointment may be deleted. The learned counsel agrees that the seniority of the writ petitioners be reckoned from the date of initial appointment and monetary benefits be given from the date of regularisation, i.e., from 01.06.2006.

In view of the submissions made, the Writ Appeal is allowed in part to the extent mentioned above. No costs. Consequently, C.M.P.No.24538 of 2019 is closed.”

13. The present applications for review and for granting leave to

appeal to challenge the judgment of the learned Single Judge dated 30.7.2019 have been filed contending that by virtue of the extension of such benefit to the private respondents/petitioners, the applicants who were promoted in the year 2005 are being deprived of their status of seniority, inasmuch as, the private respondents/petitioners would now stand senior to them, as they have been extended the benefit of counting their seniority from the date of initial appointment treating them to be regular. It is in this background that the applicants have approached this Court seeking leave to appeal and also reviewing of the Division Bench judgment dated 13.1.2020.

14. Having heard learned counsel for the parties and in the above background, we find that if the seniority of the applicants are to be directly affected by the implementation of the judicial intervention referred to herein above, then keeping in view the law laid down by the Apex Court in the case of **Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar and another, AIR 1963 SC 786** as also the general law of seniority, they appear to be affected parties and therefore, proper and necessary parties entitled to

be heard in the matter. The applicants having not been made parties to the aforesaid proceedings and they being likely to be affected, have therefore a right to seek leave to appeal. We, accordingly, allow the application seeking leave to appeal and entertain the appeal on merits.

15. For the same reasons, we allow the application seeking leave to file review application and admit the same, as the private respondents/petitioners are also seeking the benefit of the Division Bench judgment, which arises from the same impugned judgment, for which leave to appeal has been sought.

16. Registry is directed to number the appeal and the review application.

17. Learned counsel, who have been appearing in these matters before the learned Single Judge as well as before the Division Bench are already represented before us and therefore, they may file their response, if so, keeping in view the said background as narrated by us within a period of four weeks. The learned counsel for the applicants

may ensure that typed set of papers are duly served on the learned counsel for the opposite parties.

18. The Special Government Pleader (Education) states that no promotions are being made at the moment due to Pandemic. As such, the question of grant of any interim order in the appeal at this stage does not arise. An appropriate request can be made during the pendency of the appeal, if occasion so demands.

List the appeal and the review application on 29.09.2020.

(A.P.S., CJ.) (S.K.R., J.)
01.09.2020

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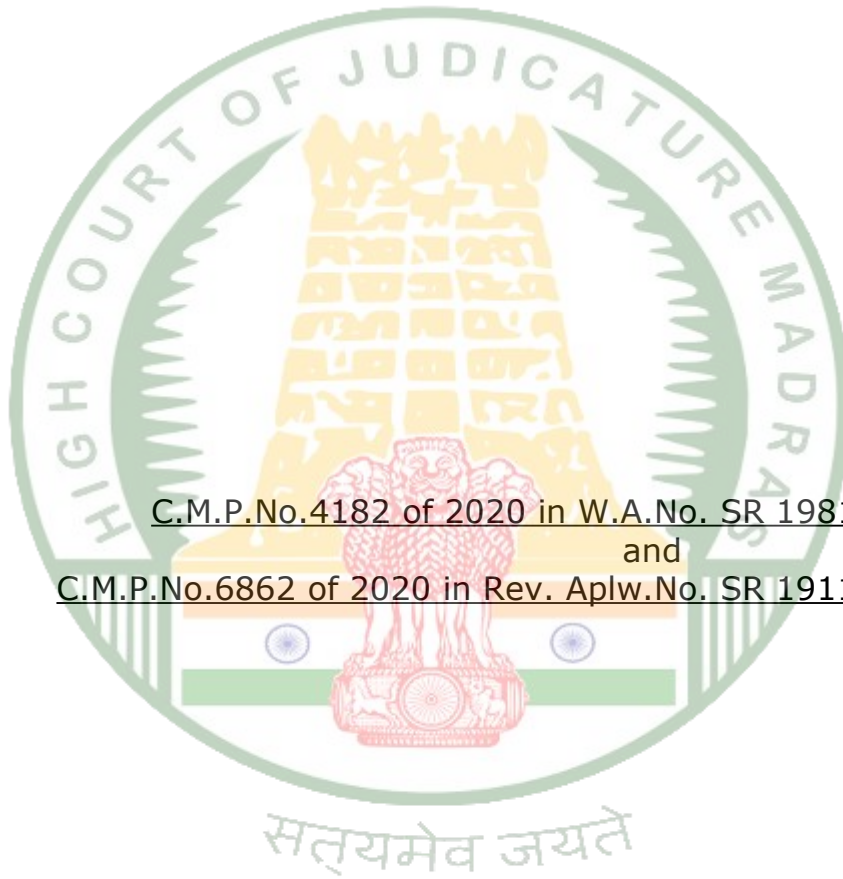
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THE HON'BLE CHIEF JUSTICE
AND
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