

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 18.12.2020

Order delivered on: 25.03.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.10081, 8650, 10411, 10753,10757 & 14200 of 2020
and
W.M.P.Nos.12250, 10469 , 14070, 12663, 12664, 13067 , 13069,
13071,13072, 176712 & 17673 of 2020

W.P.No.10081 of 2020

Dr.D.Rajabaskar ...Petitioner

Vs

1. The Government of Tamil Nadu,
represented by its Agricultural Production
Commissioner and Principal secretary
to Government,
Wallajah Road, PWD Estate, Chepauk,
Triplicane, Chennai - 600 005.
 2. The Vice Chancellor,
Tamil Nadu Agricultural University,
Lawley Road,
Coimbatore - 641 003.
 3. The Registrar,
Tamil Nadu Agricultural University,
Lawley Road,
Coimbatore - 641 003.
 4. The Head of Department of Pulses,
Tamil Nadu Agricultural University,
Lawley Road,
Coimbatore - 641 003.
 5. Dr.P.S.Shanmugam,
Assistant Professor,
(Agriculture Entomology),
Department of Pulses,
Tamil Nadu Agricultural University,
Lawley Road,
Coimbatore - 641 003.
- ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus calling for the records relating to the impugned University order bearing No.A1/5753-PAPK/2020 dated 20.06.2020 passed by the 3rd respondent herein and quash the same and consequently issue a direction directing the Respondent Nos.1-4 to allow the petitioner to be posted back as the Assistant professor (Agricultural Entomology) at the Department of Pulses, Tamil Nadu Agricultural University, Coimbatore.

For Petitioner

in W.P.No.10081/2020 : Mr.R.Singaravelan,
Senior Counsel
for M/s. Adith Narayan Vijayaraghavan

For Respondents

in W.P.No.10081/2020 : Mr.R.A.S.Senthilvel,
Additional Government Pleader for R1
Mr.A.L.Somayaji,
Senior Counsel
assisted by Mr.Abdul Saleem,
Standing Counsel for R2 to R4

W.P.No.8650 of 2020

Dr.S.Natarajan Vs ..Petitioner

1. State of Tamil Nadu,
represented by its Agricultural Production
Commissioner and Principal Secretary
to Government, Department of Agriculture,
Fort St.George,
Chennai - 600 009.
2. The Vice Chancellor,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.
3. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 641 003. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari to call for the records relating to the impugned order of the 3rd respondent in Proceedings in No.A1/5753-TPMK/2020 dated 20.06.2020 and quash the same in so far as the petitioner is concerned.

For Petitioner
in W.P.No.8650/2020 : Mr.S.Sathia Chandran

For Respondents
in W.P.No.8650/2020 : Mr.R.A.S.Senthilvel,
Additional Government Pleader for R1
Mr.A.L.Somayaji,
Senior Counsel
assisted by Mr.Abdul Saleem,
Standing Counsel
for R2 & R3

W.P.No.10411 of 2020

Dr.R.Agila ...Petitioner

Vs

1. The Tamil Nadu Agricultural University,
rep. by its Registrar,
Maruthamalai Road,
Coimbatore - 641 003.
2. The Professor and Head,
Tamil Nadu Agricultural University,
Rice Research Station,
Tirur - 602 025
Thiruvallur District. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the records relating to the impugned order bearing ref.No.A1/5753-CARDS/2020 dated 31.07.2020 passed by the 1st respondent University insofar as Sl.No.15 is concerned and consequential relieving order bearing ref.No.Estt.RRS/Tirur/Dr.RA-Prof(AEX)/2020 dated 03.08.2020 passed by 2nd respondent and to quash the same as being illegal, arbitrary, malafide, unlawful and for consequential directions to the 1st respondent University to retain the petitioner in Rice Research Station, Tirur, Thiruvallur District.

For Petitioner
in W.P.No.10411/2020 : Mr.NGR.Prasad,
for M/s.Row and Reddy

For Respondents
in W.P.No.10411/2020 : Mr.A.L.Somayaji,
Senior Counsel
assisted by Mr.Abdul Saleem,
Standing Counsel
for R1 & R2

W.P.No.10753 of 2020

Dr.R.Radhajeyalakshmi

...Petitioner

Vs

1. The Vice Chancellor,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.
 2. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.
- ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari to call for the records relating to the impugned order of the 2nd respondent in Proceedings in No.A1/5753-PAT/2020 dated 31.07.2020 and quash the same in so far as the petitioner is concerned.

For Petitioner
in W.P.No.10753/2020 : Mr.P.Manojkumar,

For Respondents
in W.P.No.10753/2020 : Mr.A.L.Somayaji,
Senior Counsel
assisted by Mr.Abdul Saleem,
Standing Counsel
for R1 & R2

W.P.No.10757 of 2020

Dr.A.Baskaran

...Petitioner

Vs

1. The Vice Chancellor,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

2. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari to call for the records relating to the impugned order of the 2nd respondent in Proceedings in No.A1/5753-HOR/2020 dated 31.07.2020 and quash the same in so far as the petitioner is concerned.

For Petitioner
in W.P.No.10757/2020 : Mr.P.Manojkumar,

For Respondents
in W.P.No.10757/2020 : Mr.A.L.Somayaji,
Senior Counsel
assisted by Mr.Abdul Saleem,
Standing Counsel
for R1 & R2

W.P.No.14200 of 2020

Dr.M.Rajakumar ...Petitioner

Vs

1. The Vice Chancellor,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

2. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari to call for the records relating to the impugned order of the 2nd respondent in Proceedings in No.A1/12842/2020 dated 25.09.2020 and quash the same in so far as the petitioner is concerned.

For Petitioner
in W.P.No.14200/2020 : Mr.P.Manojkumar,

For Respondents
in W.P.No.14200/2020 : Mr.A.L.Somayaji,
Senior Counsel
assisted by Mr.Abdul Saleem,
Standing Counsel
for R1 & R2

C O M M O N O R D E R

The matter is taken up through web hearing.

All these writ petitions have been filed seeking to challenge the respective transfer orders transferring the writ petitioners to different places under the control of the 2nd respondent University.

2. These writ petitioners belong to the faculty of the University working as Assistant Professors, Associate Professors and Professors. Broadly, the challenges in the writ petitions premised on two legal grounds, apart from certain other individual grievances expressed in the respective writ petitions. However, without first delving into the individual grievances of assailment, in the fitness of things, this Court felt that the principal contentions need to be dealt with, which are common to all the writ petitions and in the event of this Court agreeing with the contentions of the writ petitioners, there may not be any necessity to appreciate the individual pleas. In that view of the matter, these writ petitions are dealt with commonly as under.

3. Learned Senior Counsel Mr.R.Singaravelan appearing for the writ petitioner in W.P.No.10881/2020 Dr.D.Rajabaskar, was in fact spearheading the attack on the impugned orders of transfer on two important legal grounds.

4. According to the learned Senior Counsel, the Government has issued G.O.Ms.No.249 dated 21.05.2020, Finance (Budget General-I) Department, introducing certain measures to control the expenditure during the pandemic crisis regarding transfers of officials of the Government and other Institutions governed by the orders of the Government including the 2nd respondent University.

5. In this regard, the learned Senior Counsel would draw reference to the relevant portion of the Government Order. As far as the cases on hand are concerned, the following instructions are given.

"g) General transfers shall be kept on hold for 2020-21 to minimize expenditure on transfer travel expenses. Only transfers on administrative grounds by an authority higher than the authority normally empowered to transfer and mutual request transfers will alone be allowed."

6. Learned Senior Counsel would submit that in terms of the above instructions, the Government, directed all General Transfers to be kept on hold for the purpose of minimising the

expenditure on relocating the officials from one place to another and the exception was culled out only in case where mutual requests could be considered. In case of compelling administrative exigency, the authority higher than the authority normally empowered to transfer is competent to effect transfer.

7. According to the learned Senior counsel, there are two aspects of consideration in case of transfer during Covid-19 situation. One is that, general or routine transfer is not permissible as per the G.O. and even if there is any administrative requirement, such transfer could be effected only by an authority higher than the authority normally empowered to transfer the official concerned. In this case, the normal authority to transfer these writ petitioners in terms of the statutory regulation governing the service conditions of the petitioners is the first respondent, who is empowered to transfer. However, as per the above G.O., during the Covid-19 pandemic situation, he was not empowered to transfer, as such power has been divested of the authority by the said G.O. to tide over the extraordinary crisis faced by the Government. On this ground alone, the learned Senior Counsel would submit that the transfer orders are liable to be interfered with.

8. Secondly, even assuming that the 2nd respondent (Vice Chancellor) is the competent authority to transfer, notwithstanding the said G.O. being the ultimate authority in charge of the University, whether the impugned transfers have been approved by him in reality by proper application of mind on his part or the University administration had taken the decision to transfer en masse of several faculty members on its own and made the Vice Chancellor sign on the dotted lines is another legal dimension that call for examination. According to the learned Senior Counsel, if the 2nd respondent has completed the formality of signing the transfer orders routinely and in that case, the procedure adopted by the University is illegal, arbitrary and unjust and opposed to the legal principles laid down by the Courts' consistently that when a procedure is contemplated to be followed in a particular method in the statutory regulation, the same has to be done in that method and not differently.

9. In fact, the learned Senior Counsel would at the initial stage of his submission requested this Court to summon the relevant files relating to the impugned transfers of the petitioners. In response to the request of the counsels, the files were directed to be produced and the University has also produced the files for perusal of this Court.

10. Learned Senior Counsel would submit that the transfer orders have been passed purported to be under Chapter III of the

Statutes of The Tamil Nadu Agricultural University. Chapter III Clause 7 speaks about the powers of the Vice Chancellor of the University. As far as the power of transfer is concerned, sub Clause 2(d) authorises the Vice chancellor to transfer personnel from one post to another in the interest of the University. In terms of Appendix XIII, Vice Chancellor is the designated authority to transfer Associate Professors, Assistant Professors and Professors of the University. Therefore, the power of transfer of these writ petitioners exclusively vested with the Vice Chancellor of the University, but despite that, the orders communicating transfers of the petitioners have been signed only by the Registrar of the University. The communication merely states that the transfers have been approved by the Vice Chancellor. But the communications do not bear the signature of the Vice Chancellor at all. Therefore, the learned Senior Counsel would submit that there is a bona fide doubt and misgiving as to whether there was any application of mind on the part of the competent authority at all when the transfers were said to have been approved by the 2nd respondent or is it a case University administration taking the decision first and the 2nd respondent's approval had been obtained towards fulfillment of the formality to save the impugned action from judicial interference?

11. Learned Senior Counsel, in support of his contentions that the impugned orders were issued in derogation of procedure set out in Regulations of Tamil Nadu Agriculture University, would cite the following decisions.

(i) 2007(5) SCC 85 (Kunwar Pal Singh v. State of U.P.)

Learned Senior Counsel would refer to paragraph No.16 of the above decision which is extracted hereunder.

"16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act."

ii) 2015 (4) SC 544 (Mackinnon Mackenzie & Co.Ltd. vs. Mackinnon Employees Union)

Learned Senior Counsel would draw reference to paragraph No.42 of the above decision, which reads as follows:

"42. Apart from the said decisions, this Court has followed the Privy Council of 1939 and Chancellor's decisions right from the year 1875 which legal principle has been approved by this Court in the case of Rao Shiv Bahadur Singh & Anr. vs. State of Vindhya Pradesh and the same has been followed until now, holding that if a statutory provision prescribes a particular procedure to be followed by the authority to do an act, it should be done in that particular manner only. If such procedure is not followed in the prescribed manner as provided under the statutory provision, then such act of the authority is held to be null and void ab initio in law. In the present case, undisputedly, the statutory provisions of Section 25FFA of the I.D. Act have not been complied with and therefore, consequent action of the appellant-Company will be in violation of the statutory provisions of Section 25FFA of the I.D. Act and therefore, the action of the Company in retrenching the concerned workmen will amounts to void ab initio in law as the same is inchoate and invalid in law."

iii) 1999(3) SCC 422 (Babu Verghese v. Bar Council of Kerala)

Learned counsel would refer to paragraph Nos.31 and 32 of the aforesaid decision, which is extracted hereunder.

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor vs. Taylor (1875) 1 Ch.D 426 which was followed by Lord Roche in Nazir Ahmad vs. King Emperor 63 Indian Appeals 372 = AIR 1936 PC 253 who stated as under :

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh & Anr. vs. State of Vindhya Pradesh* 1954 SCR 1098 = AIR 1954 SC 322 and again in *Deep Chand vs. State of Rajasthan* 1962(1) SCR 662 = AIR 1961 SC 1527. These cases were considered by a Three-Judge Bench of this Court in *State of Uttar Pradesh vs. Singhara Singh & Ors.* AIR 1964 SC 358 = (1964) 1 SCWR 57 and the rule laid down in *Nazir Ahmad's case* (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."

(iv) AIR 1964 SC 358 (*State of Uttar Pradesh vs. Singhara Singh and others*).

Learned counsel would draw the attention of this Court to paragraph No.8 of the above decision, which is extracted hereunder.

"8. The rule adopted in *Taylor v. Taylor*(3) is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on magistrates the power to record statements or confessions, by necessary implication, prohibited a magistrate from giving oral evidence of the statements or confessions made to him."

12. In all the above decisions, the Hon'ble Supreme Court has consistently held that when a statutory provisions prescribe a particular procedure to be followed by the authority to do an act, it should be done in that particular manner only. If such procedure is not followed in the prescribed manner as provided

under the statutory provision, then such act of the authority is to be held as illegal and void ab initio.

13. Learned Senior Counsel would revert to the first contention after learning about the documents filed on behalf of the University that the Vice Chancellor of the University had in fact, written to the Government seeking special permission and concurrence for effecting transfers for administrative requirements and a letter was also addressed in that regard by the Vice Chancellor on 23.05.2020. In that letter, the University had indicated number of transfers under various heads and also indicated that by effecting such transfers, there would be substantial saving in the State budget. In response to the same, a letter was issued on 19.06.2020 by Principal Secretary to Government, Department of Agriculture, wherein he accorded concurrence to the University to proceed with the process of transfer and thereafter only transfers were ordered was the case of the University, in reply to the contention that no transfer was permissible in the face of G.O.Ms.No.249 dated 21.05.2020.

14. At this, the learned Senior Counsel would submit that G.O.Ms.No.249 is issued by the Government in exercise of its executive power under Article 162 of the Constitution of India and there cannot be any order or communication by any official of the Government superseding or overriding the same. According to the learned Senior Counsel, the sanctity of the Government Order which had been brought into existence by operation of the constitutional provisions cannot be diluted by a simple communication of the Secretary to the Government.

15. Learned Senior Counsel in support of the above submission would rely on the following decisions:

i) Manu/TN/9958/2006(K.Sampath vs State of TamilNadu)

Learned Senior Counsel would draw reference to the paragraph Nos.9 and 10 of the above decision of this Court which are extracted hereunder.

"9. The reason stated in the impugned order stating that in view of the subsequent clarification issued by the Government by letter dated 4.10.2000 clarifying G.O.Ms.No.118 dated 14.2.1996, is totally illegal since the Government order issued with the executive power of the Government in the name of the Governor cannot be clarified by a letter of the Secretary to the Government. Admittedly no amendment to G.O.Ms.No.118 dated 14.2.1996 is issued and therefore the Government order will prevail over the subsequent Government letter.

10.(a) In the decision reported in (2005) 10 SCC 244 (R.P.Bhardwaj v. Union of India and others) the

issue dealt with was as to whether a letter of the Central Ministry issued by the Secretary will over ride the Office Memorandum and the Honourable Supreme Court held that the Government letter cannot be acted upon unless a new Office Memorandum is issued."

ii) 2005(10) SCC 244(R.P.Bhardwaj v. Union of India)

Learned Senior Counsel would draw reference to the paragraph No.8 of the above decision relied upon by the Hon'ble Supreme Court in the above extracted decision which is extracted hereunder.

"8. In connection with the above noted letter dated 23-11-1989, we would like to observe that nothing has been indicated as to why the position as prevailing earlier, by virtue of OM dated 19-7-1989 required any change. We also find that the position as provided by OM dated 19-7-1989 has not been done away with by the letter dated 23-11-1989. There was only a proposal for alteration of the period during which the two dates were to operate. According to the letter 23-11-1989, noted above, for the selections which were to be held after 1989 the crucial dates would be July 1/October 1. It was also similarly provided by means of earlier OM dated 18-7-1989 but for the period prior to 1989 it would be 31st December. What would be the purpose of the proposal to do away with the provision of crucial date being July 1/October 1 for the period prior to 1989, is not decipherable from the letter itself, nor, as fairly conceded by the learned counsel for the respondents, could he provide any explanation for the same. It was understandable if the criteria as provided by the OM dated 19-7-1989 were done away with altogether for all cases, if not, some reasons should have come forward as to why the same criteria were retained for selection for the period after 1989, but insofar as it related to the period prior to 1989, a change was proposed to be made. In case it was not reasonable to have this criterion of crucial dates for the period prior to 1989, in what manner would it be proper for the period thereafter, is not understandable. We have already noticed that the OM dated 19-7-1989 contained instructions to be noted and followed by all concerned. That position was prevailing when the proposal by means of letter dated 23-11-1989 was mooted. It was not yet issued as OM for compliance by all concerned as

was done in respect of the OM dated 19-7-1989. In our view, it was still at a premature stage and before being final so as to be circulated by the Government of India for being followed by the authorities and the departments and all concerned, it seems to have been acted upon by the Service Commission against the OM which was in operation. Even if any implied approval is inferred by the Public Service Commission, it would be of no consequence since then too it would not be anything more than an approval of a proposal. An approved proposal would not replace an OM issued by the Government of India. Even after approval the Government may not issue any OM. The Commission wrongly acted upon the mere proposal.

iii) Manu/TN/1311/2004 (P. Jeya v. Union of India)

Learned Senior Counsel would draw the attention of this Court to paragraph Nos. 28 & 34 which are extracted hereunder.

"28. The big question that is to be solved at the outer periphery of deciding the subject matter is whether the memorandum issued earlier giving expression to the G.O. issued under the authority and in the name of the Governor or any of its ingredients could be superseded by a memorandum of the Government of Pondicherry, as it has been done in the case in hand and whether the same could be sustained in law particularly in the context of the relevant constitutional provisions and the other laws relating to the subject matter. In the above circumstances, is it not amounting to, testifying the validity of the very G.O. issued in the name of the Governor so as to extract the guidelines prescribed in the earlier memorandum and would it not amount to the Government acting by annulling or modifying certain principles of the G.O. by a simple memorandum and whether it is permissible in law and whether it is legal. This Court is of the firm view that a G.O. can have a over-riding effect on a memorandum and not on the vice versa, since a memorandum is an executive instruction without having the legal force as it is in the case of a G.O. regularly issued by the order and in the name of the Governor. Furthermore, once the executive order is issued in the name of the Governor, it cannot be modified or altered or annulled or cancelled by yet another executive order not having been issued in the name of the Governor, and therefore, it is safe to conclude that in the light of the above proposition of law, the very act of superseding the earlier memorandum dated 3.8.1995 by the memorandum impugned herein itself

is neither proper nor for any good reason assigned nor based on any principle of law, and therefore, the impugned order since being bereft of legal force nor based on any tangible reason, it is difficult to withhold the same.

...

...

34. In the given case, Government Order has been passed in exercise of power under Article 162 of the Constitution of India and it is an executive order, which could be issued only in the name of the Governor. The executive order issued in the name of the Governor cannot be modified by another executive order, not being issued in the name of the Governor. Earlier memorandum dated 3.8.1995 giving clarification to the Government Order, thereby treating the male and the female on par with each other has been modified by the second memorandum, which is impugned herein, to the effect that it is the origin of the father and not that of the mother, which could be the criteria for the issuance of the scheduled caste certificate in favour of the children born to the parents of different origin on the relevant date of notifying the order issued by the President of India. Reading the Articles 14 and 15 of the Constitution of India it could be found that genderwise there cannot be any discrimination between the parents of the child praying for the issuance of the scheduled caste certificate and it is the only possibility in this circumstance, regarding the subject matter is to accept the earlier memorandum dated 3.8.1995, which has been passed inconsonance with the Government Order, whereby in the case of persons born after the date of notification of the Presidential Order, the place of residence for the purpose of acquisition of the status, is the place of permanent abode of either of their parents at the time of notification of the Presidential Order, based on which the Scheduled Caste certificate could be issued to their children and in the given case, since the mother has the origin of Union Territory of Pondicherry, which is an admitted fact on the part of the respondents, regardless of the fact that the father on the date of notification of the Presidential Order since being a migrant, which is immaterial and since Articles 14 and 15 of the Constitution of India as above discussed, there cannot be any discrimination among sex, which has been specifically declared under Article 15(1) of the Constitution of India."

iv) T.Subbulakshmi vs. State of Tamil Nadu, [W.P. (MD). No.23880 of 2007] dated 12.11.2009

Learned Senior Counsel would draw the attention of this Court to paragraph Nos.7 & 8 of the said order which read as follows.

"7. At the outset, it is to be stated that a letter issued by the Department of the Government cannot override the order issued with the executive power of the Government in the name of the Governor. This Court in a similar situation in the case reported in 2007 Writ L.R. 521 (K.Sampath V. The State of Tamil Nadu & Others) held as hereunder :

"9. The reason stated in the impugned order stating that in view of the subsequent clarification issued by the Government by letter dated 4.10.2000 clarifying G.O.Ms. No.118 dated 14.2.1996, is totally illegal since the Government order issued with the executive power of the Government in the name of the Governor cannot be clarified by a letter of the Secretary to the Government. Admittedly no amendment to G.O.Ms.NO.118 dated 14.02.1996 is issued and therefore the Government order will prevail over the subsequent Government letter.

10. (a) In the decision reported in (2005) 10 SCC 244 (R.P.Bhardwaj V. Union of India and others) the issue dealt with was as to whether a letter of the Central Ministry issued by the Secretary will override the Office Memorandum and the Honourable Supreme Court held that the Government letter cannot be acted upon unless a new Office Memorandum is issued. The relevant portion of para 8 is extracted hereunder, ".... We have already noticed that the OM dated 19.7.1989 contained instructions to be noted and followed by all concerned. That position was prevailing when the proposal by means of letter dated 23.11.1989 was mooted. It was not yet issued as OM for compliance by all concerned as was done in respect of the OM dated 19.7.1989. In our view, it was still at a premature stage and before being final so as to be circulated by the Government of India for being followed by the authorities and the departments and all concerned, it seems to have been acted upon by the Service Commission against the OM which was in operation. Even if any implied approval is inferred by the Public Service

Commission, it would be of no consequence since then too it would not be anything more than an approval of a proposal. An approved proposal would not replace an OM issued by the Government of India. Even after approval the Government may not issue any OM. The Commission wrongly acted upon the mere proposal."

(b) In an unreported decision in W.P.No.1713 of 1998, etc., batch by common order dated 7.11.1990, this Court considered similar issue as to whether the Government letter will prevail over the Government Order or not and held that the Government Order having been authenticated and expressed to be taken in the name of the Governor, has the sanctity of an order issued under Article 166 of the Constitution of India and the Government letter issued subsequently cannot supersede the earlier Government Order.

(c) This Court in the decision reported in 2004 WLR 805 (P.Jeya V. Union of India & Others) considered a similar issue as to whether the Government letter will prevail over the Government Order. The relevant portion of para 34 reads as follows, "In the given case, Government Order has been passed in exercise of power under Article 162 of the Constitution of India and it is an executive order, which could be issued only in the name of the Governor. The executive order issued in the name of the Governor cannot be modified by another executive order, not being issued in the name of the Governor."

8. This Court is of the considered view that the principle of law laid down in the decision cited supra is squarely applicable to the facts of the instant case as in this case also the first respondent by issuing the impugned letter dated 07.03.2007 cancelled the Government Order issued by the Government in the name of the Governor and as such on this ground alone the impugned letter issued by the first respondent is liable to be quashed."

16. The above decisions have clearly laid down the law namely that executive decision taken under Article 162 of the Constitution of India cannot be superseded by an administrative decision of the Government or by a another executive order.

Learned Senior Counsel would therefore, submit that the permission so granted by the Secretary to Government, vide letter dated 19.06.2020, relied on by the University cannot prevail over G.O.Ms.No.249 dated 21.05.2020 and therefore, the permission granted by the Government is non-est and acting on such illegal permission by the University is to be declared as null and void. Learned Senior Counsel would finally sum up that on this broad legal objections, the validity of the impugned orders may be tested and in view of the settled legal position as elucidated above, the impugned orders may not pass the test of judicial scrutiny and therefore implored this Court to interfere with the impugned action of the 2nd respondent.

17. Apart from the above lead submissions of the learned Senior Counsels Mr.R.Singaravelan, learned counsels Mr.NGR Prasad, Mr.Sathia Chandran and Mr.P.Manoj Kumar, chipped in their submissions by adding their individual perspectives on the legal contentions as set out above. Although each counsel has attempted to highlight the individual grievances of the respective writ petitioners, this Court, however, did not wish to get embroiled into any factual controversy by venturing into the area of individual concerns, as scope of interference in transfer orders is very limited and narrow and in that legal context, the validity of the transfer orders can be examined or appreciated only on exceptional legal contentions, as the judicial rule is that no transfer order ought to be subjected to judicial intervention as a matter of routine and any intervention is an exception to the rule.

18. On behalf of the University Mr.A.L.Somaiyaji, learned Senior Counsel appeared and made his submissions.

19. According to the learned Senior Counsel, in regard to the objections relating to G.O.Ms.No.249 dated 21.05.2020 he emphasised the fact that Government order was issued more from the point of view of saving the finance of the State during the pandemic crisis and the order is not meant to benefit the officials of the Government, by providing immunity to them from transfers. Therefore, the learned Senior counsel would submit that it is certainly not open to the writ petitioners to take advantage of the Government Order, as if they have been conferred with the benefit of absolute immunity from transfer, during the pandemic period.

20. The letter of the Vice Chancellor dated 23.05.2020 has clearly indicated that most of the transfers are mutual transfers which in fact, is permissible under G.O.Ms.No.249 dated 21.05.2020. The other transfers indicated in the letter had become necessary and in order to save substantial amount for the State. If such transfers are to be effected, there will

always be scope for filling up and readjustment of vacancies and the expenditure was found to be very meagre as reflected in the letter of the Vice Chancellor dated 23.05.2020. Therefore, the competent authority namely Principal Secretary to Government had accorded permission to the proposed transfer vide his letter dated 19.06.2020. In order to highlight the proposal of the Vice-Chancellor, the learned Senior Counsel has taken this Court through the contents of the letter dated 23.05.2020, which read as follows:

"TAMIL NADU AGRICULTURAL UNIVERSITY

Prof.N.Kumar, Ph.D., F.H.S.I., Coimbatore - 641 003
Vice-Chancellor Tamil Nadu, India

To
The Chief Secretary to Government,
Secretariat,
Chennai - 600 009.

No.A1/TNAU-Transfer/2020 dated 23.05.2020

Through: The Agricultural Production Commissioner
and Principal Secretary to Government,
Secretariat, Chennai.

Sir,

Sub: Establishment - Tamil Nadu Agricultural
University, Coimbatore - Transfers on
administrative grounds - Concurrence -
requested - regarding.

Ref: G.O.No.249, dated 21st May 2020 of Finance
(Budget General-I) Department, Secretariat,
Chennai.

Anent to the reference cited, I am to inform that TNAU, Coimbatore is in the process of implementing the transfers on administrative grounds to fill up the vacant positions in the ICAR-KVK's and ICAR-AICRP schemes from Non-Plan through deployment, to reduce the budget burden on Non-Plan. Mutual transfers, deployment within the same campus and other transfers to accommodate and facilitate the above mentioned budget saving transfers were also proposed for implementation in the current year to improve the overall performance of TNAU, considering the prevailing post COVID 19 pandemic situation.

Nature of transfer proposed and its implications on the budget saving of the Government is detailed in the annexure.

Implementation of the proposed transfers will result in the annual savings of Rs.482.00 lakhs coupled with the envisioned target of improved performance and productivity of TNAU as a whole. Expenditure involved through TTA is a very meagre amount of Rs.9.30 lakhs which can very well be managed with TNAU available budget.

Hence, concurrence may be accorded for implementing the transfers under administrative grounds to take advantage of budget savings in Non-Plan and also to improve the overall performance and productivity of TNAU, Coimbatore.

Vice-Chancellor

Vice-Chancellor Coimbatore - 641 003
Tamil Nadu Agricultural University Tamil Nadu, India.

ANNEXURE

Details of proposed transfers and budget savings

Transfers [Approximately]:

S. No.	Nature of Transfer	Nos.	Financial Commitment
1.	Mutual and request transfers	172	Nil
2.	Deployment within the campus	55	Nil
3.	Transfers with TTA under ICAR schemes	79	Nil
4.	Transfers with TTA under Non-Plan	108	9.30 Lakhs
5.	Total savings in the State budget		482.00 lakhs

Vice Chancellor"

21. According the learned Senior counsel, in agreement with the above proposal mooted by the Vice-Chancellor, the Principal Secretary to Government vide his letter dated 19.06.2020 responded positively and he being the competent authority, it cannot be gainsaid that the letter would have less

legal significance than G.O.Ms.No.249 dated 21.05.2020. Further, the Vice Chancellor being the highest official in charge of the overall administration of the University, there is nothing legally wrong in his exercising the power of transfer, notwithstanding the instructions of the Government order (G.O.Ms.No.249 dated 21.05.2020). In fact, the learned Senior counsel would submit that G.O.Ms.No.249 is only an administrative instructions and not a statutory rule and therefore, there is no legal infirmity in the transfer orders passed by the Vice Chancellor of the University. The learned Senior Counsel submitted that the Vice Chancellor being admittedly the competent authority, the proceedings of the transfer have been conveyed by the Registrar of the University and in the orders, it is clearly stated that the transfers have been approved by the competent authority namely, Vice Chancellor of the University. It is not necessary that the letter conveying the transfers ought to bear the signature of the Vice Chancellor.

22. As regards the contention as to whether the letter by the official of the Government can supersede the executive order issued under Article 162 of the Constitution of India, learned Senior Counsel would rely on the decision of the Hon'ble Supreme Court reported in 1995(4) SCC 478 (Swapan Kumar Chaudhary v. Tapas Chakravorty). He would draw reference to paragraph No.9 of the said order which is extracted hereunder.

9. The second submission is based on form only. The mere fact that the first order dated 7.4.1989 had been addressed to some other persons apart from Chief Inspector of Factories and is stated to have been issued at the order of the Governor, whereas the second is only to the Chief Inspector of Factory In-charge and does not mention about issuance at the direction of the Governor, cannot take away its weight. Even if some concession is made in this regard, the mere fact of one nomenclature has no material bearing, unless we are satisfied about the justification or legality of granting of same pay scale to both the wings and/or the duties and functions of both being same.

23. According to the learned senior counsel the above observation would demonstrate that the communication of the Principal Secretary to Government dated 19.06.2020 cannot have lesser constitutional value or administrative guidance than G.O.Ms.No.249 dated 21.05.2020.

24. The learned Senior Counsel summed up that the orders of transfer have been passed for administrative requirements and it is not only these writ petitioners have been transferred, there are several other faculty members have been transferred in

order to improve the academic efficiency and efficient management of the University Administration. If any interference in these administrative transfers, the same would affect the academic programmes and the calendar envisaged by the University in the following years and may also send a negative signal to the other faculty members who have been transferred and have obeyed the transfer orders and joined the transferred places.

25. Learned Senior Counsel finally submitted that in any case, the transfers cannot be faulted with legally, as the records produced would support that Vice Chancellor as the competent authority has individually approved all the transfer orders in terms of the University Regulations and the main two principal legal contentions have no merit and the same may have to be brushed aside by this Court as being without substance.

26. As regards the individual grievances expressed by each of the writ petitioners, their objections have been met in the respective counter affidavits filed by the University. According to the counter affidavits, these objections of the petitioners have no legal legs to stand on for this Court to intervene in the transfer orders, exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. In effect, the University contended that the faculty members cannot dictate the University as to how it should arrange its affairs in the matter of transfers and postings.

27. This Court has considered the submissions of the learned Senior Counsel Mr.R.Singaravelan, Mr.N.G.R.Prasad and other Counsels on behalf of the petitioners and also Mr.A.L.Somaiyaji, learned Senior counsel instructed by Mr.Abdul Saleem, learned Standing Counsel for the University, perused the original files relating to the impugned transfers and the pleadings and other materials placed on records.

28. In regard to the first contention viz., that in the face of G.O.Ms.No.249 dated 21.05.2020 whether the present transfers could be legally countenanced or not, the materials that are placed for consideration before this Court on behalf of the University are two documents. One is the letter written by the Vice Chancellor to the Principal Secretary to Government dated 23.05.2020 which is already extracted supra. In the letter, the Vice Chancellor requested the Government to accord concurrence for proposed transfers of over 300 faculty members under various heads like mutual transfers, deployment within Campus, ICAR Schemes etc. Although the letter is indicative of the substantial savings in the State budget in carrying out the transfers with very meagre financial burden on the exchequer, whether irrespective of the contents of the letter, such transfers could be effected at all during the pandemic time, is

a moot point in this case, with reference to G.O.Ms.No.249 dated 21.05.2020. In response to the communication of the Vice Chancellor dated 23.05.2020, the Secretary to Government vide his letter dated 19.06.2020 has accorded permission. The letter reads as under.

Agriculture (AU) Department,
Secretariat, Chennai-9.

Letter No.8148/AU/2020-1, dated 19.06.2020

From
Thiru.Gagandeep Singh Bedi, I.A.S.,
Agricultural Production Commissioner and
Principal Secretary to Government.

To

The Vice Chancellor,
Tamil Nadu Agricultural University,
Coimbatore-3.

Sir,

Sub: Agriculture - Establishment - Tamil Nadu
Agricultural University, Coimbatore
Transfers on administrative grounds -
Concurrence requested - Clarification -
Regarding.

Ref: 1. G.O. (Ms) No.249, Finance (Budget
General-I), dated 21.05.2020
2. From the Vice Chancellor, TNAU letter
No.A1/TNAU-Transfer/2020, dated
23.05.2020.

* * * * *

I am directed to invite your attention to the reference 2nd cited and to clarify that mutual transfers as proposed thereunder may be made as also allowed in reference 1st cited.

2. Apart from this, the request for filling up of ICAR funded posts in Krishi Vigyan Kendras by TNAU through transfers has also been taken into consideration. As elaborated in reference 2nd above, I am to state that, as filling up of ICAR funded posts through transfers is inevitable on administrative reasons and to save State Government expenditure of Rs.4.82 Cr per annum, these transfers may also be made. The consequential transfers referred to in your letter 2nd cited may be made as a

sequence to the above filling up of Krishi Vigyan Kendras posts with minimum possible extent.

3. Hence, I am directed to request you to pursue necessary action in the matter in accordance with the above clarification.

Yours faithfully,

sd/-

for Agricultural Production Commissioner
and Principal Secretary to Government

29. The submission of the learned Senior Counsel Mr.A.L.Somayaji in this regard that a letter is authored by the Principal Secretary to Government and therefore, it cannot be accorded lesser status than G.O.Ms.No.249 appears to be misplaced and may not be legally correct. As rightly contended by the learned Senior counsel Mr.Singaravelan, G.O. issued by the Government in exercise of its executive power under Constitutional provision cannot suffer dilution of its contents as a consequence of the letter issued by the Secretary to Government. No doubt as rightly pointed out by the learned Senior counsel Mr.A.L.Somayaji that G.O.Ms.No.249 dated 21.05.2020 is meant for minimising the expenditure of the Government in the matter of transfers of Government servants during the pandemic times and such order cannot be taken advantage of by the University faculty members as a conferment of benefit of moratorium on transfers. At the same time, whatever be the stand point of the Government, when G.O. has been issued and is in force providing prohibition of general transfers, such prohibition is meant to be followed during the pandemic times and there cannot be a deviation from the instructions on the basis of a letter of clarification issued by the Government, overriding the executive order of the Government issued in the name of His Excellency the Governor of the State.

30. If any letter of clarification can dilute the G.O. intended for a particular purpose during the particular period of time, then the very G.O. itself will lose its legal sanctity and would become irrelevant in its implementation and practice. Therefore, this Court is unable to accept that the letter dated 19.06.2020 issued by the Principal Secretary to Government would have equal force as that of G.O.Ms.No.249 dated 21.05.2020. Such submission, in the opinion of this Court, does not merit any serious consideration and the same has to be rejected, as being without legal substance.

31. As regards the issue as to whether the Vice Chancellor is empowered to transfer all these writ petitioners in terms of G.O.Ms.No.249 dated 21.05.2020 or not, it was submitted by the learned Senior Counsel that the Vice Chancellor, being the head of the University, there is no other authority above him and in that view of the matter, the impugned transfers by Vice Chancellor, cannot be faulted with. This Court did not wish to test the validity of transfer orders on this ground as to whether the Chancellor of the University, who is above the Vice Chancellor may be the authority to transfer in terms of G.O.Ms.No.249 dated 21.05.2020, as it is of the view that His Excellency The Governor of the State, by virtue of his holding highest executive position in the State, being designated as Chancellor of the University, may not be expected to involve in the day today administration of the University. In view of the above, this Court is not inclined to enter into realm of who is the competent in respect of the transfer of the University Officials during the pandemic times and the leave the issue open ended.

32. In regard to the other principal contention of the learned Senior Counsel for the petitioners, whether there was proper application of mind on the part of the 2nd respondent in following the procedure contemplated under the University Regulation in transferring these writ petitioners, this Court perused the relevant files produced by the University. On perusal of the files, this Court finds that the Vice Chancellor has affixed his signature in tabulated sheets containing the names of all the transferees as approved, alongside the signature of the Deputy Registrar and Registrar of University.

33. This Court finds very curiously two discrepancies in the approval of the impugned transfers by the Vice Chancellor. One, barring the faculty Dr.S.Natarajan, in all other cases, the Vice Chancellor had signed the transfer orders much before the letter of permission and concurrence given by the Government on 19.06.2020, which denote the decision was taken to transfer, before even a letter was addressed to the Government or before even proper permission could emanate from the Government. Almost all the transfers had been approved in the month of May, 2020 itself i.e., on 18.05.2020 and 26.05.2020, etc.

34. Apart from the above, the most important discrepancy that is noticed is the approval of the Vice Chancellor in a isolated tabulated sheets containing only the names of the transferees. The Vice Chancellor signatures had been obtained under caption "approved" without any proceedings along with the tabulated sheets indicative of the Vice Chancellor initiating the process of transfers and involved in the decision making in that regard. Thus, the so called approval of the transfers by

the Vice Chancellor raises more questions than answers. As doubted by the learned Senior Counsel Mr.R.Singaravelan, there is nothing to reassure or indicate that the Vice Chancellor's participation in the process of en masse transfers from the files produced for perusal of this Court. The only plausible inference could be drawn in this regard is the Letter of the Vice Chancellor, dated 23.05.2020 addressed to the Principal Secretary to Government, seeking concurrence for the proposed transfers under various heads.

35. It is an admitted position that the Vice Chancellor is the competent authority and he alone is empowered under the University Regulation VII for transfer of the faculty members and if such power is exercised, the records must disclose that there was participation of the Vice Chancellor in the decision making process and such participation alone would satisfy the procedure contemplated in the regulation. As rightly contended by the learned Senior Counsel for the petitioners merely signing on the dotted lines ipso facto would not disclose application of mind or participation of the Vice Chancellor in the decision making process.

36. As far as the cases on hand are concerned nothing in the file that disclose that the administrative requirements had been considered by the Vice Chancellor for posting the faculty members in various positions as the signature has been uniformly obtained in a loose tabulated sheet without an iota of indication in the sheet whether the Vice Chancellor was aware of the transfer proceedings and the connected details.

37. In the respective transfer orders issued to these writ petitioners among others, the following statement is mentioned.

"The transfer and posting orders appended in the annexure re issued with the approval of the Vice Chancellor based on the administrative reasons as per item No.7(2)(d) of the Statutes of ASR Chapter III of TNAU to take immediate effect."

38. As per the above statement, the relevant provisions in the Statutes of The Tamil Nadu Agricultural University reads as under:

Chapter III

7. Vice-Chancellor:

(1) ...

...

(2) In addition to the powers and duties mentioned in section 12 of the Act, the Vice Chancellor shall exercise the following powers and privileges:-

- (a).....
- (b)....
- (c)....
- (d) to transfer personnel from one post to another in the interest of the University without affecting their emoluments and service conditions.

39. As far as ASR Chapter III is concerned, the competent authority for transfer of these writ petitioners is mentioned as Vice Chancellor of the University. When specific power has been conferred on the Vice Chancellor and such power has been exercised, there must be minimum participation while discharging the said exercise by the Vice Chancellor. This is not to mean that for every transfer of faculty or administrative decision, the Vice Chancellor has to put his entire heart and soul in the decision making process. When en masse transfer is being effected particularly during the turbulent times of Covid crisis, what is expected of the competent authority is his effective participation in the decision making exercise demonstrating his involvement, otherwise, the orders of transfer would not pass the test of judicial scrutiny. as the same would be construed as orders not passed by the competent authority.

40. In the opinion of this Court the orders of transfer must disclose that the competent authority was behind the transfers not only in form but its substance as well. A reference to the approval of the Vice Chancellor in the orders of transfer must be supported by the relevant documents. In the absence of any modicum of participation on the part of Vice Chancellor, the impugned orders are liable to be declared as not having been passed legally, meeting the mandatory procedural requirements in terms of the University statute and regulations. This Court is unable to persuade itself to accept the disjunctive tabulated sheets containing the names of the transferees and the signatures of the Vice Chancellor underneath the column "Approved" as valid material for sustaining the orders of transfer. The contention that the transfer orders are not passed in terms of the procedure contemplated in the Statute governing the University administration is to be held as well founded, borne out by the records. Citations relied on by the learned senior Counsel for the petitioners on this legal issue would fully support the present case in terms of factual matrix as revealed and discovered from the files produced by the University.

41. In the absence of any material to show that the proposal of en masse transfer emanated from the desk of the Vice Chancellor, the impugned transfer orders are to be held as having passed in contravention of the statutory regulations.

Therefore, no amount of inference in favour of the University stand with reference to the Letter of the Vice Chencellor dated 23.05.2020 seeking concurrence from the Government for the transfers would vouch for the fact of the Vice Chancellor's participative role in the impugned action of the University, as revealed from the records.

42. On behalf of the University, several citations have been compiled and submitted as to the limited scope of judicial review of this Court in the matters of transfer. However, in view of the conclusion on the basis of the above factual and legal narrative, this Court did not find that the decisions were of any aid to the University. As the Writ Petitions are allowed on the basis of common legal grounds urged by the petitioners, the individual merits questioning the respective transfers would be a redundant exercise and hence not addressed.

43. For the above said reasons, all the Writ Petitions are allowed and the impugned orders in No.A1/5753-PAPK/2020 dated 20.06.2020 passed by the 3rd respondent, No.A1/5753-TPMK/2020 dated 20.06.2020 passed by the 3rd respondent, No.A1/5753-CARDS/2020 dated 31.07.2020 passed by the 1st respondent, No.A1/5753-PAT/2020 dated 31.07.2020 passed by the 2nd respondent, No.A1/5753-HOR/2020 dated 31.07.2020 passed by the 2nd respondent, No.A1/12842/2020 dated 25.09.2020 passed by the 2nd respondent respectively, are hereby set aside as illegal and void. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Agricultural Production
Commissioner and Principal Secretary
to Government,
Wallajah Road, PWD Estate,
Chepauk, Triplicane,
Chennai - 600 005.

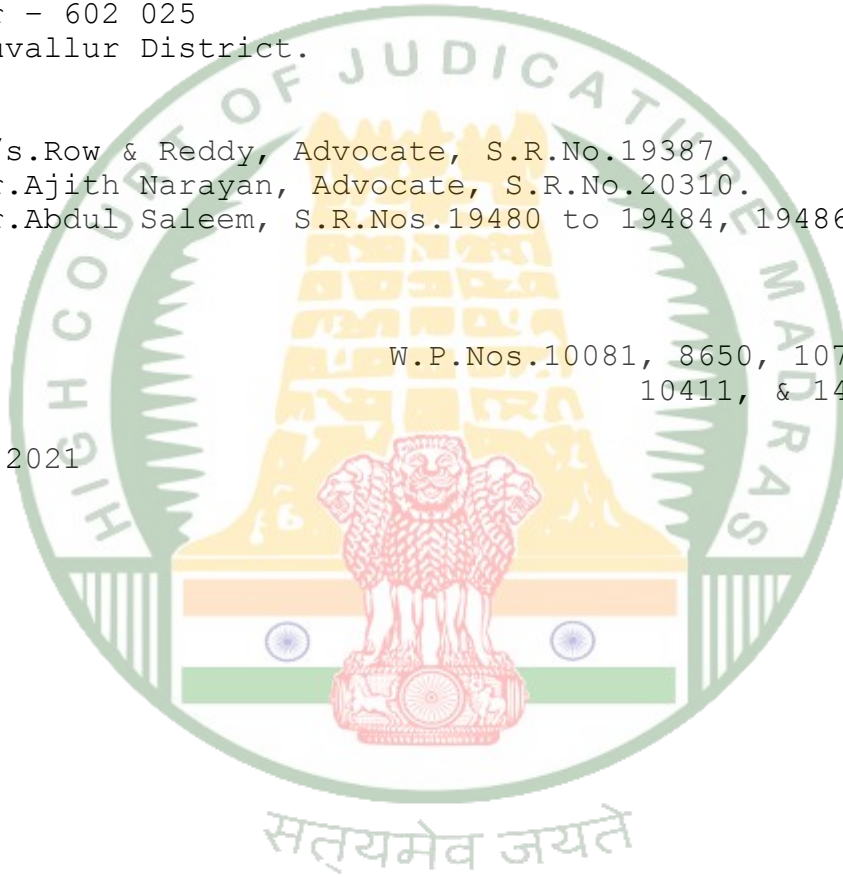
2. The Vice Chancellor,
Tamil Nadu Agricultural University,
Lawley Road,
Coimbatore - 641 003.

3. The Registrar,
Tamil Nadu Agricultural University,
Lawley Road, Coimbatore - 641 003.
4. The Head of Department of Pulses,
Tamil Nadu Agricultural University,
Lawley Road,
Coimbatore - 641 003.
5. The Professor and Head,
Tamil Nadu Agricultural University,
Rice Research Station,
Tirur - 602 025
Thiruvallur District.

+1cc to M/s.Row & Reddy, Advocate, S.R.No.19387.
+1cc to Mr.Ajith Narayan, Advocate, S.R.No.20310.
+7cc to Mr.Abdul Saleem, S.R.Nos.19480 to 19484, 19486 & 19388.

Order in
W.P.Nos.10081, 8650, 10753, 10757,
10411, & 14200 of 2020

SKY (CO)
CSR 17.04.2021



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