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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved	10.01.2022
Pronounced	12.01.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.32624 of 2019
and
W.M.P.No.33013 of 2019

M.Vasantharajan

... Petitioner

vs

1. The Registrar,
The Tamil Nadu Dr.J.Jayalalitha Fisheries University,
Vettar River View Campus,
Nagapattinam-611 002.

2. The Principal Secretary to Government,
The Government of Tamil Nadu,
Animal Husbandry (Diary and Fishery),
Chennai.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents to consider the application of the petitioner dated 31.07.2019 and as per the interview dated 12.09.2019 conducted by the Respondents and appoint the petitioner to the post of Assistant Professor of Fisheries Biology and Resource Management in Most Backward Community quota in Tamil Nadu Dr.J.Jayalalitha Fisheries University (the first respondent) forthwith

For Petitioner : Mr.S.Hameed Ismail

For R1 : Mr.V.Vijay Shankar

For R2 : Mr.L.S.M.Hasan Fizal,
Government Advocate

ORDER

This writ petition has been filed by the petitioner for a mandamus to direct the respondent to consider the application of the petitioner dated 31.07.2019 and as per the interview dated 12.09.2019 conducted by the respondents to appoint the petitioner to the post of Assistant Professor of Fisheries Biology and Resource Management in Most Backward Community quota in Tamil Nadu Dr.J.Jayalalitha Fisheries University (the first respondent) forthwith.



2. The case of the petitioner is that the respondent had issued Notification Advertisement No.03/2019 for the year 2019 on 27.06.2019 and invited applications for qualified persons to the post of Assistant Professor in the Fisheries Department.

3. It is the case of the petitioner, that the petitioner belongs to the Most Backward Class (MBC) and that one seat was reserved for the candidate belonging to the aforesaid community on account of the backlog of vacancies.

4. The learned counsel for the petitioner submits that different set of qualifications have been prescribed in the said notification and that the petitioner satisfied qualification B which reads as under:-

B. For the candidates having Master's degree, National Eligibility Test (NET) conducted by the ASRB, UGC, CSIR or similar test, accredited by the UGC shall remain compulsory along with one publication in NAAS (National Academy of Agricultural Sciences, New Delhi) rated referred journal for recruitment to the post of Assistant Professor and equivalent in the disciplines in which NET is conducted.

5. The petitioner was called for an interview. It is submitted that the petitioner was however not selected and preference was only given to the candidate possessing Ph.D., as per the qualification in C which reads as under:-

C. Essentiality of NET can be waived off, for the candidates holding the Ph.D., degree provided it has been done with course work as prescribed by the UGC Regulations 2009, and the candidate has at least two full length publications having NAAS rating not less than 4, on the last day of submission of application. Those candidates with Ph.D., degree without course work will not qualify for NET exemption.

6. He further submits that similar advertisement was issued for the succeeding vide Advertisement No.1/2020 dated 06.12.2020 wherein again similar criteria B in Advertisement No.03/2019 dated 27.06.2019 was prescribed.



7. He therefore submits that though as per the advertisement a person holding a Ph.D., and Master's Degree in additional National Eligibility Test (NET) / National Academy of Agricultural Sciences, New Delhi (NAAS) are treated on par, the respondents have selected only persons holding Ph.D., in the relevant field. It is submitted that such preference is arbitrary and violates Article 14, 16 and 21 of the Constitution of India.

8. He further submits that University Grants Commission (UGC) has itself clarified by its Notification dated 18.07.2018 bearing reference No.F.1-2/2017(EC/PS) that Ph.D., shall be a mandatory qualification for direct recruitment to the post of Assistant Professor in Universities only with effect from 01.07.2021. He therefore submits that the respondent in their counter have also relied upon the same, stating that preference will be given only to persons holding Ph.D., with high order research background.

9. Defending the stand of the Government, the learned counsel for the respondent submits that the advertisement itself makes it clear that though the persons holding Bachelor of Fisheries Science (B.F. Sc) and Master of Fisheries Science (M.F. Sc) with additional qualification and those possessing Ph.D., are eligible to participate in the recruitment procedure. Preference will be given to those having Ph.D.

10. It is submitted that the advertisement makes it clear that Ph.D., in the relevant discipline with good academic performance with two publications in Journals with NAAS rating above six(6) with working experience in sponsored research projects in the level of SRF or JRF in any organization and those willing to work anywhere in the State would be given preference.

11. It is further submitted that when persons with higher qualifications are available, there is no necessity to select a person with lesser qualification. It is therefore submitted that no fault can be found with the rejection of the petitioner's application / candidature to the post of Assistant Professor (Fisheries Biology and Resource Management) during 2019-2020 recruitment.

12. In the counter of the first respondent stated as follows:

"7.a. As per the UGC (admitted by the petitioner in his affidavit in para 4), the Ph.D has been fixed as the minimum eligibility for candidates applying for the post of Asst.Professor Post in the country with effect from 01.07.2021. It can be understood that, from 01.07.2021 all the Asst Professors, entering into the



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service in the University will be possessing Ph.D and it is mandatory for all the persons in the service in the University under teaching should be with Ph.D. This can be further clarified that, anyone who has entered before that date (01.07.2021) also should possess Ph.D as of or after 01.07.2021. This would make the persons without Ph.D to go for Ph.D after entering into the service.

- b. As per the University service Regulations the newly appointed Asst Professors will be on probation for 2 years and therefore they can opt for any kind of leave without any loss to their service only after two years. If any person enters into service without Ph.D would have to wait until Nov.2021 to go for Ph.D and can join for their Ph.D only in 2022. They will acquire their Ph.D only in 2025 or later. This means, although the minimum entry qualification would be Ph.D, those who enter without Ph.D now would remain inferior to the new entrants in 2021 and further until they acquire their Ph.D.
- c. Ph.D degree being minimum 3 years duration, those who could enter without Ph.D degree must be away on either deputation or study leave or leave on loss of pay to complete their Ph.D studies, which would make the university to lose the services of the concerned candidates for 3 or sometime more than 3 years, which this University has already experienced. Since the posts are officiated by these candidates posting temporary staff or persons on leave vacancy is not in practice in this University. Therefore anyone going for higher studies after entry into the University would cause a vacuum in the teachers' position in the University.
- d. The presently prescribed University Grants Commission (UGC) recommendations, as stated supra for the revision of pay for teachers in the colleges and Universities, it was clearly mentioned that those possessing Ph.D would climb up the ladder of elevation much faster than those without Ph.D. This would compel or press



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the persons in service to acquire PhD if not with Ph.D and that would lead to a handicap for the University as their services would be unavailable for 3 or 4 years (sometime for 5 years also) which would give a great hardship in the regular functioning of the University.

- e. Further the University is offering many PG and PhD programmes now (Lis in Annexure II). These PG and PhD students can be taught only by PhD holders or teachers without PhD, but with minimum 5 years of experience. But they can be guided only by the teachers with PhD qualification and high order research background. This mandates only PhD holders as teachers for a University like TNJFU. In order to cater to the needs of these PhD students the PhD holders are preferred for the posts of Asst Professor.
- f. The PhD holders with their research experience and high order reserch works can submit and obtain research funding from various funding agencies as most of the funding agencies demand only persons possessing PhD to submit the proposals. As it is obvious in any University, PhD holders can easily get into collaborative research with other organizations in and outside India.
- g. The presence of PhD holders not only help the PG and PhD students but also help the University in getting high quality research projects and other support from funding agencies, which the non-PhD holders can bring only after 5 to 8 years of their service.
- h. Above all, the PhD holders are now available in sufficient numbers and while people with desired qualifications are available, mere possession of minimum qualification for eligibility cannot claim the right of selection in any selection process."

13. The learned counsel for the respondent further submits that the respondents are entitled to select persons with higher qualification which has been recognized by Central Government. In this connection, attention was invited to the following case:-



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- i. Government of Andhra Pradesh Vs. P.Dilip Kumar and another
(1993) 2 SCC 310
- ii. Union of India and another Vs. T.Sundararaman and others
(1997) 4 SCC 664
- iii. Visveswararajah Technological University and another Vs. Krishnendu Halder and others
(2011) 4 SCC 606

14. The learned counsel for the respondent further submitted that the petitioner was appointed on contract basis and relieved from the respondent university on 31.05.2018 and thereafter participated in the recruitment call for vide Advertisement No.03/2019 dated 27.06.2019 for the Post of Assistant Professors for Fisheries Biology and Resource Management.

15. He further submits that in 2019 recruitment, the petitioner was not selected and therefore participated in the ensuing selection announced vide advertisement No.1/2020 dated 06.12.2020 where three vacancies were reserved for the Post of Assistant Professors for Fisheries Biology and Resource Management which were the left over vacancy which could not be filled up due to the policy of the respondent to recruit only persons holding Ph.D., qualification.

16. He further submits that the rejection of the petitioner is not arbitrary in manner in as much as in the subsequent selection during 2020 in terms of advertisement No. 01/2020 dated 06.12.2020, the respondents have now admitted 3 persons without Ph.D., and have been selected by the respondent.

17. By way of rejoinder, the learned counsel for the petitioner submits that, if an opportunity is given to the petitioner who has worked with the respondent on contract basis for over three years, the petitioner will be able to pursue and complete the Ph.D. It is therefore submitted that there should be some level playing for qualified persons with adequate experience and persons with fresh Ph.D., should not be denied of a chance to serve the respondent.

18. It is further submitted that the interview procedure has resulted in unfair discrimination between those possessing Ph.D., and those not possessing Ph.D. He therefore submits that the conditions of UGC Regulations cannot be unfairly imposed on the petitioner to deny appointment to the post when the petitioner applied for the post.

19. The learned counsel for the respondents submits that during 2019-2020 selection which is the subject matter of the present writ petition, though the person with Post



Graduate with NET qualification was eligible to participate in the selection process, a policy decision was taken by the respondents to select only persons with Ph.D., and therefore, the petitioner was not selected.

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20. After the case was argued on 24.08.2021, the learned counsel for the respondents was directed to file an affidavit on behalf of the first respondent as to whether in the ensuing selection announced vide advertisement No.1/2020 dated 06.12.2020, any person with qualifications lesser than Ph.D., was selected or not. The first respondent has now filed an affidavit to that effect. Relevant portion of the Affidavit dated 26.08.2021 filed on behalf of the first respondent reads as under:

"3. In so far as the 2019 recruitment of Assistant Professors which is the subject matter of challenge in this W.P. is concerned, it is respectfully submitted that there were total 33 posts advertised in various disciplines. In so far as "Fisheries Biology and Resource Management" for which category alone the petitioner is eligible, 4 posts were advertised. At that time, the Selection Committee had taken a conscious decision that only Ph.D., holders should be considered for appointment. Therefore 15 candidates all possessing PhD., were alone selected and appointed including one in the discipline of "Fisheries Biology and Resource Management". It is respectfully submitted that no one without Ph.D., was appointed in this selection.

4. In so far as 2020 recruitment of Assistant Professors is concerned, the actual selection took place in January/February 2021. A number of representations were received by the University that this was the last chance for candidates without Ph.D., to get appointment as Assistant Professor, as with effect from 01.07.2021, it was mandatory to have Ph.D., for appointment as Assistant Professor. Therefore, in the 2020-2021 selection, the Selection Committee felt that all candidates possessing the required qualification, even though they do not possess Ph.D., may be considered.

5. It is submitted that a total number of 22 posts were advertised (including 16



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backlog vacancies) and 90 applications were received. Out of this, only 40 candidates possessed the required eligibility criterion and the said 40 candidates were called for interview. Out of the 40, 22 candidates were selected and some were without Ph.D., also.

6. Out of the total 22, in the discipline of "Fisheries Biology and Resource Management", for the three posts advertised, ten applications were received including that of the petitioner. Five persons were found eligible and out of the five, after short listing on the basis of the marks awarded under various heads such as Research, Training, Publication and Experience, etc., and after interview, three candidates were appointed. All the three candidates did not have Ph.D., and possessed only MFSc degree. The petitioner was also considered but having regard to the comparative merit and total marks awarded he was not selected.

7. It is therefore prayed that this Hon'ble Court may be pleased to take note of the above factors and dismiss the Writ Petition."

21. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents. The Hon'ble Supreme Court in the case of Government of Andhra Pradesh Vs. P.Dhilipkumar (1993) 2 SCC 310, has held as under:

"13. The matter may be looked at from another viewpoint. The word 'preference' as understood in ordinary parlance means preferring or choosing as more desirable, favouring or conferring a prior right. What then is the purpose and object sought to be achieved by the insertion of the preference clause in the rule? There is no doubt that preference was sought to be granted under Note 1 to post-graduates in the larger interest of the administration. How would the interest of the administration be served by granting preference to post-graduates? It is obvious that it was thought that on account of their higher mental equipment the quality of performance that the State will receive from highly qualified engineers would be better and of a high order. In



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other words the State considered it necessary to strengthen the engineering service by recruiting post-graduates to the extent available so that the State may benefit from their higher educational qualifications and better performance."

22. The above view was reiterated by the Hon'ble Supreme Court in Union of India and another vs. T.Sundararaman and others (1997) 4 SCC 664 held as under:-

"In the case of M.P.Public Service Commission V. Navnit Kumar Potdar this Court has upheld shortlisting of candidates on some rational and reasonable basis. In that case, for the purpose of shortlisting, a longer period of experience than the minimum prescribed was used as a criterion by the Public Service Commission for calling candidates for an interview. This was upheld by this Court. In the case of Govt. of A.P. Vs. P.Dilip Kumar also this Court said that it is always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration."

23. This view was also reiterated by the Hon'ble Supreme Court in Visveswaraiah Technological University and another Vs. Krishnendu Halder and others (2011) 4 SCC 606 which reads as under:-

"13. The object of the State or University fixing eligibility criteria higher than those fixed by AICTE, is twofold. The first and foremost is to maintain excellence in higher education and ensure that there is no deterioration in the quality of candidates participating in professional engineering courses. The second is to enable the State to shortlist the applicants for admission in an effective manner, when there are more applicants than available seats. Once the power of the State and the examining body, to fix higher qualifications is recognized, the rules and regulations made by them prescribing qualifications higher than the minimum suggested by AICTE, will be binding and will be applicable in the respective State, unless AICTE itself subsequently modifies its norms by increasing the eligibility criteria beyond



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those fixed by the University and the State. It should be noted that the eligibility criteria fixed by the State and the University increased the standards only marginally, that is, 5% over the percentage fixed by AICTE. It cannot be said that the higher standards fixed by the State or University are abnormally high or unattainable by normal students, so as to require a downward revision, when there are unfilled seats. During the hearing it was mentioned that AICTE itself has revised the eligibility criteria. Be that as it may.

14. The respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained unfilled. They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates, paras 41(v) and (vi) of Adhiyaman would come into play and automatically the lower minimum standards prescribed by AICTE alone would apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench in decision in Preeti Srivastava (Dr) and the decision of the larger Bench in S.V.Bratheep which explains the observations in Adhiyaman in the correct perspective. We summarise below the position, emerging from these decisions:

- (i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the central body/AICTE. The term "adversely affect the standards" refers to lowering of the norms laid down by the Central body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the central body/AICTE.
- (ii) The observation in para 41(vi) of Adhiyaman to the effect that where seats remain unfilled, the State authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.



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(iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained."

24. The over all facts and circumstances of the case indicates that the respondents had taken up the policy decision to select only those candidates who possessed Ph.D., though or a person with P.G in the relevant discipline were considered fit for being appointed as Assistant Professor of Fisheries Biology and Resource Management and were allowed to participate in the selection process. Persons with P.G. without Ph.D., were also thus entitled to participate in the selection process as long as they possessed a certificate in the National Eligibility Test (NET). They had requisite qualification as the petitioner had relevant U.G. and P.G. and with National Eligibility Test (NET).

25. The recruitment notice itself merely specified that person with Ph.D., will be considered as more desirable. Apart from the above following criteria was prescribed:-

"For the candidates having Master's degree, National Eligibility Test (NET) conducted by the ASRB, UGC, CSIR or similar test accredited by the UGC shall remain compulsory along with one publication in NAAS (National Academy of Agricultural Sciences, New Delhi) rated referred journal for recruitment to the post of Assistant Professor and equivalent in the disciplines in which NET is conducted. Essentiality of NET can be waived off, for the candidates holding the Ph.D degree provided it has been done with course work as prescribed by the UGC Regulations 2009, and the candidates has at least two full length publications having NAAS rating not less than 4, on the last day of submission of application. Those candidates with Ph.D, degree without course work will not qualify for NET exemption."



26. This criteria was reiterated in the subsequent recruitment for the year 2020 to fill up the vacancy which could not be filled up during the year 2019 recruitment as the respondents did not get adequate number of candidates with Ph.D., qualification. Post facto after the case was reserved for passing order, a copy of communication of UGC dated 12.10.2021 was filed. Paragraph 2 of the said clarification bearing reference F.No.9-1/2010(PS/Misc)pt.Vol-II reads as under:

"The UGC, in view of COVID-19 pandemic, has decided to extend the date of applicability of Ph.D. as mandatory qualification for direct recruitment of Assistant professors from 01.07.2021 to 01.07.2023. Accordingly, an Amendment to the aforesaid Regulations has been notified in the Gazette on 11.10.2021."

27. Therefore, the point for consideration in this Writ Petition is whether the respondents having taken a policy decision during the recruitment year 2019, that only persons with Ph.D., qualification will be preferred can take a different stand in the ensuing selection called for during 2020 and select persons with P.G. in the relevant discipline with NET qualification and whether the petitioner is having opted to participate in the ensuing selection / recruitment called vide Advertisement No.1/2020 dated 06.12.2020 can still maintain this writ petition after having not qualified during the selection of 2020 notification.

28. The relevant portion from the advertisement No.03/2019 dated 27.06.2019 has been referred to supra paragraph: 4 & 5.

29. As per the aforesaid advertisement, candidates with Ph.D., in the discipline with good academic performance are to be preferred under the caption desirable in the aforesaid recruitment notice reads as under:

Desirable:

1. PhD in the relevant discipline with good academic performance.
2. Two publications in Journals with NAAS rating above 6.
3. Working experience in sponsored research projects in the level of SRF or JRF in any organization.
4. Willing to work any where in the State.

30. In the selection process pursuant to the above recruitment/selection advertisement, the petitioner was also



short listed and called for an interview vide Interview Call Letter dated 29.08.2019 but was not selected only on the ground that the petitioner did not possess Ph.D.

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31. It appears that there were not enough candidates for being filling up of the vacancies among the candidates belonging to MBC/DNC for the Fisheries, Biology and Resource Management with Ph.D. In the succeeding advertisement for 2020 for the said post announced again. There were two vacancies for the candidates belonging to MBC/DNC in the Advertisement dated 06.12.2020 vide advertisement No.1/2020 of the Tamil Nadu Dr.J.Jayalalithaa Fisheries Univeristy, the petitioner participated in it after filing the present writ petition on 18.11.2019.

32. Even in this advertisement also similar qualifications was prescribed as in 2019 selection and it has been stated that the candidates with Ph.D., in the discipline with good academic performance were to be preferred under the caption "Desirable". The caption "Desirable" in both the advertisements are similar.

33. The respondents in their additional counter, content of which has been extracted above have admitted that considering the number of representations received that this was the last chance of candidate without Ph.D were to be appointed as an Assistant Professor as with effect from 01.07.2021, decision was taken to select candidates without Ph.D. has deviated.

34. It has been further stated that about ten applications including that of the petitioner were received for the three posts, out of which five candidates were found eligible and three of them were selected and that all the three who were selected did not possess Ph.D and possessed in the M.F.Sc., degree (Master of Fisheries Science in Fisheries Resource Management).

35. The petitioner possessed the requisite qualification and eligibility in terms of earlier recruitment Advertisement No.3/2019 dated 27.06.2019 and called for by the first respondent for the post of "Assistant Professor". The rights of the petitioner to be appointed cannot be diluted if there were no other qualified candidates during 2019 unless the petitioner himself suffered from any other disqualification.

36. Further having prescribed the minimum qualification in recruitment Advertisement No.3/2019 dated 27.06.2019, it was not open for the first respondent to reject the candidature merely because of the petitioner because the petitioner did not possess Ph.D.



37. Further, the petitioner has served the first respondent University on contract basis earlier and was therefore entitled to a preference is being selected and appointed when no other candidates were available with higher qualification in 2019.

38. This Court is of the view that denial of appointment to the petitioner has to be held capricious and arbitrary. The fact that the respondents have appointed once again the candidates without Ph.D shows that the exercise was arbitrary. The petitioner ought to have been selected / appointed to the post of Assistant Professor in terms of the Tamil Nadu Dr.J.Jayalalithaa Fisheries University pursuant to 2019 Notification.

39. Since, the decision to not to select the petitioner is arbitrary as the petitioner was otherwise eligible to be appointed to the post of Assistant Professor in Fisheries Biology and Resource Management, during 2019, the present Writ Petition deserves to be allowed.

40. Merely because the petitioner also decided to participate in the ensuing selection process pursuant to Advertisement No.01/2020 dated 06.12.2020 of the first respondent (Tamil Nadu Dr.J.Jayalalitha Fisheries University) cannot be to the disadvantage of the petitioner.

41. There is no merits in the defence of the respondents. Denial of appointment in pursuant to Advertisement No.3/2019 vide order dated 27.06.2019 is arbitrary and contrary to Article 14,16 and 21 of the Constitution of India.

42. In the light of the above discussion, the writ petition stands allowed with a consequential relief to the petitioner. The respondent is directed to issue appropriate appointment letter to the petitioner by creating a supernumerary post by 16.02.2022.

43. The petitioner however would not be entitled to any salary for the period prior to the aforesaid date. The petitioner shall be treated as a person senior to the person who has already been appointed pursuant to Advertisement No.01/2020 dated 06.12.2020.

44. This writ petition stands allowed with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

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To

1. The Registrar,
The Tamil Nadu Dr.J.Jayalalitha Fisheries University,
Vettar River View Campus,
Nagapattinam-611 002.

2. The Principal Secretary to Government,
The Government of Tamil Nadu,
Animal Husbandry (Diary and Fishery),
Chennai.

+1 cc to Mr.V.Vijay Shankar, Advocate Sr.NO. 2623

W.P.No.32624 of 2019

and

W.M.P.No.33013 of 2019

pch (CO)

A.SK(08.02.2022)