



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.10.2022

DELIVERED ON : 13.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .Nos.8199, 9155 of 2017,

25303, 25455 of 2018,

247, 10154, 14761, 14762, 14763, 15336, 15404, 15325, 15337, 15399
of 2019, and 5882 of 2020

And

W.M.P. (MD) .Nos.6305, 6306, 6926, 6962, 6963 of 2017,

22915, 23042, 23043 of 2018,

197, 198, 2547, 7899, 11175, 11176, 11177, 11178, 11179, 11180,
11903, 11904, 11911, 11912, 11913, 11914, 12013, 12015, 12021,

12023, 14328, 14336 of 2019,

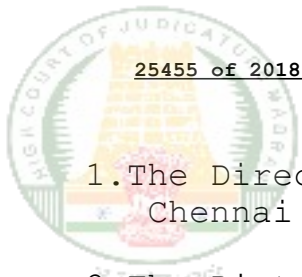
2056, 5096, 5097, 11310 of 2020,

15027, 15130, 15158, 17157 of 2021,

7851 of 2022

S.Senthilkumari	...	Petitioner	in WP(MD) . 8199/2017
M.Vasanthi	...	Petitioner	in WP(MD) . 9155/ 2017
S.Peter	...	Petitioner	in WP(MD) . 25303/ 2018
S.Peter	...	Petitioner	in WP(MD) . 25455/ 2018
V.Rajapandi	...	Petitioner	in WP(MD) . 247/ 2019
R.Radhakrishnan	...	Petitioner	in WP(MD) . 10154/ 2019
C.Veeramani	...	Petitioner	in WP(MD) . 14761/ 2019
S.Duraisamy	...	Petitioner	in WP(MD) . 14762/ 2019
K.Kumar	...	Petitioner	in WP(MD) . 14763/ 2019
K.Thangamani	...	Petitioner	in WP(MD) . 15336/ 2019
G.Chandra	...	Petitioner	in WP(MD) . 15404/ 2019
M.Srinivasan	...	Petitioner	in WP(MD) . 15325/ 2019
R.Arockiya Sahayaraj	...	Petitioner	in WP(MD) . 15337/ 2019
K.Anusuya	...	Petitioner	in WP(MD) . 15399/ 2019
M.Chinnadurai	...	Petitioner	in WP(MD) . 5882/ 2020

Vs



1.The Director of Elementary Education,
Chennai - 600 006.

2.The District Elementary Educational Officer,
RMS Road, Madurai - 1.

3.The Assistant Elementary Educational Officer,
Thirupparankundram Block,
Tirunagar, Madurai - 6.

4.The Additional Assistant Elementary Educational Officer,
Thirupparankundram Block,
Tirunagar, Madurai - 6.

5.Sivagnanam

6.Saratha

7.Tamil Nadu Junior Grade Teachers Welfare Association,
No.22, Senthil Nagar,
Old Perungalathur, Chennai - 600 063,
Represented by its President,
K.Thiyagarajan,
S/o.M.Kuppusamy.

... Respondents

*(R-7 is impleaded vide Court Order dated 09.12.2021 in W.M.P. (MD) .
No.6956 of 2017 in W.P. (MD).No.8199 of 2017).*

1.The Director of Elementary Education,
Chennai-600 006.

2.The District Elementary Educational Officer,
Tirunelveli.

3.The Assistant Elementary Educational Officer,
Palayamkottai, Tirunelveli District.

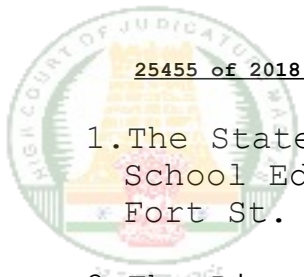
4.The Additional Assistant Elementary Educational Officer,
Palayamkottai Urban, Palayamkottai.

5. Madhupushpam

6. Valliyammal

7. Kasthuri

... Respondents in WP(MD) . 9155/ 2017



1.The State of Tamil Nadu Rep. by its Secretary to Govt.,
School Education Dept.,
Fort St. George, Chennai - 600 009.

2.The Director of Elementary Education,
DPI Complex, College Road, Chennai - 600 006.

3.The District Educational Officer,
O/o the District Educational Office,
Sivagangai District.

4.The Block Educational Officer O/o the Block Educational Office,
Ilayangudi Block,
Ilayangudi, Sivagangai District.

... Respondents in WP(MD). 25303/ 2018

1.The State of Tamilnadu Rep.By its Secretary to Government , School
Education Department ,
Fort.St.George, Chennai-9.

2.The Director of Elementary Education,
DPI Complex, College Road, Chennai-6.

3.The District Educational Officer,
O/o the District Educational Office,
Sivagangai District

4.The Block Educational Officer,
O/o the Block Educational Office,
Ilayangudi Block, Ilayangudi, Sivagangai District

5. N.Saathusundarsingh

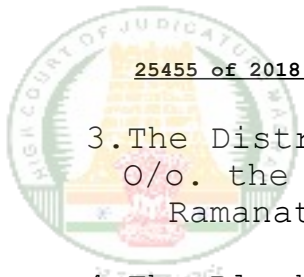
6.Tamilnadu Primary School Teachers Federation,
Rep by its General Secretary, S.Mayil

... Respondents in WP(MD). 25455/ 2018

(R6 is impleaded Vide WMP(MD).15578/19 in WP(MD)No.25455/18,
dated 13/12/2022)

1.The State of Tamilnadu,
Rep.By its Secretary to Govt.,
School Education Dept.,
Fort.St.George, Chennai-9.

2.The Director of Elementary Education,
DPI Complex, College Road, Chennai-6.



3.The District Educational Officer,
O/o. the District Educational Office, Mandabam,
Ramanathapuram, Ramanathapuram District.

4.The Block Educational Officer,
O/o. the Block Educational Office,
Kadaladi Union, Kadaladi, Ramanathapuram District.
(R3 and R4 Cause Title Amended Vide Court Order
Dated 13.12.2022 in WMP(MD).594/2019 in WP(MD).247/2019)

5. K.Kalaivani

... Respondents in WP(MD). 247/ 2019

1. The State of Tamilnadu Rep.By its Secretary to Govt., School
Education Dept., Fort.St.George, Chennai-9

2. The Director of Elementary Education, DPI Complex, College
Road, Chennai-6

3.The District Educational Officer,
O/o. the District Educational Office, Theni District.

4.The Block Educational Officer,
O/o the Block Educational Office, Bodinayakanur Block,
Theni District

5. M.Parvathi ... Respondents in WP(MD). 10154/ 2019

1. The State of Tamilnadu, Rep. by its Secretary to Govt., School
Education Department, Fort St. George, Chennai - 600 009

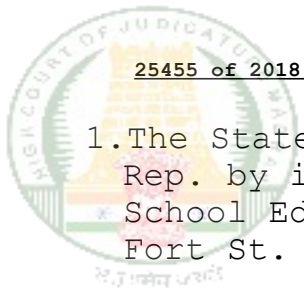
2. The Director of Elementary Education, DPI Complex, College
Road, Chennai - 600 006

3. The Chief Educational Officer O/o. the District Educational
Office, Pudukkottai District

4. The District Educational Officer, O/o. the District Educational
Office, Aranthangi, Pudukkottai District

5. The Block Educational Officer O/o. the Block Educational
Office, Aranthangi Block, Aranthangi, Pudukkottai District

... Respondents in WP(MD). 14761/ 2019



1.The State of Tamilnadu,
Rep. by its Secretary to Govt.,
School Education Department,
Fort St. George, Chennai - 600 009

2.The Director of Elementary Education,
DPI Complex, College Road, Chennai - 600 006

3.The Chief Educational Officer
O/o. the District Educational Office,
Pudukkottai District

4.The District Educational Officer,
O/o. the District Educational Office,
Aranthangi, Pudukkottai District

5.The Block Educational Officer
O/o. the Block Educational Office,
Aranthangi Block, Aranthangi,
Pudukkottai District

... Respondents in WP(MD). 14762/ 2019

1.The State of Tamilnadu,
Rep. by its Secretary to Govt.,
School Education Department,
Fort St. George, Chennai - 600 009

2.The Director of Elementary Education,
DPI Complex, College Road, Chennai - 600 006

3.The Chief Educational Officer
O/o. the District Educational Office,
Pudukkottai District

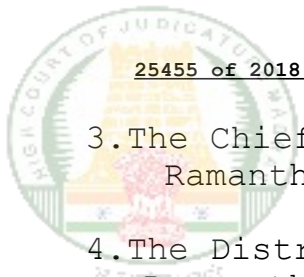
4.The District Educational Officer,
O/o. the District Educational Office,
Aranthangi, Pudukkottai District

5.The Block Educational Officer
O/o. the Block Educational Office,
Aranthangi Block, Aranthangi,
Pudukkottai District

... Respondents in WP(MD). 14763/ 2019

1. The State of Tamil Nadu Rep. by the Secretary to Govt., School
Education Dept., Fort St. George, Chennai

2.The Director of Elementary Education,
DPI Complex, College Road, Chennai



3.The Chief Educational Officer,
Ramanthapuram District, Ramanthapuram.

4.The District Educational Officer,
Ramanathapuram District, Ramanthapuram.

5.The Block Educational Officer -II,
Kadaladi Block, Kadaladi,
Ramanathapuram District

... Respondents in WP(MD). 15336/ 2019

1.The State of Tamilnadu ,
Rep. by its Secretary to Government,
School Education Department,
Fort St. George, Chennai-9

2.The Director of Elementary Education,
DPI Complex, College Road, Chennai-6

3. The District Educational Officer, O/o.The District Educational
Officer, Ilayangudi, Sivagangai District

4. The Block Educational Officer O/o.The Block Educational Office,
Ilayangudi Block, Ilayangudi, Sivagangai District

5. J.Selvi,
(R5 is Impleaded Vide Court Order Dated 22.03.2021 In
WMP(MD).19413 of 2019 in WP(MD)15404 of 2019)

... Respondents in WP(MD). 15404/ 2019

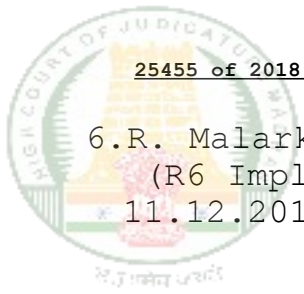
1.The State of Tamilnadu,
Rep. by the Secretary to Govt.,
School Education Department,
Fort St. George, Chennai

2.The Director of Elementary Education,
DPI Complex, College Road, Chennai

3.The Chief Educational Officer Pudukkottai District,
Pudukkottai

4.The District Educational Officer,
Pudukkottai District, Pudukkottai

5.The Block Educational Officer Manamelkudi Block,
Manamelkudi, Pudukkottai District.



6.R. Malarkodi

(R6 Impleaded as A Party of Respondent Vide Court Order

11.12.2019 in WMP(MD).15650/2019)

... Respondents in WP(MD). 15325/ 2019

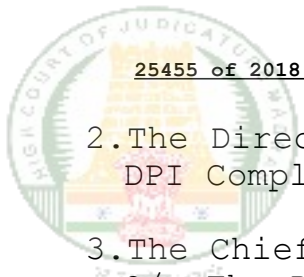
WEB COPY

- 1.The State of Tamilnadu,
Rep. by the Secretary to Govt.,
School Education Department, Fort St. George, Chennai
 - 2.The Director of Elementary Education,
DPI Complex, College Road, Chennai
 - 3.The Chief Educational Officer Trichy District,
Trichy
 - 4.The District Educational Officer,
Trichy District, Trichy
 - 5.The Block Educational Officer Lalgudi Block,
Lalgudi, Trichy District
- ... Respondents in WP(MD). 15337/ 2019

- 1.The State of Tamilnadu
Rep. by its Secretary to Government,
School Education Department, Fort St. George, Chennai-9
- 2.The Director of Elementary Education,
DPI Complex, College Road, Chennai-6
- 3.The District Educational Officer,
O/o.The District Educational Office,
Ilayangudi, Sivagangai District
- 4.The Block Educational Officer
O/o.The Block Educational Office,
Ilayangudi Block, Ilayangudi, Sivagangai District
5. J.Selvi
(R5 is Impleaded Vide Court Order Dated 22.03.2021 In
WMP(MD).19418/2019 in WP(MD).15399/2019)

... Respondents in WP(MD). 15399/ 2019

- 1.The State of Tamil Nadu Rep. by its Secretary to Govt.,
School Education Dept., Fort St.George, Chennai-09



- 2.The Director of Elementary Education,
DPI Complex, College Road, Chennai-6
- 3.The Chief Educational Officer,
O/o.The District Educational Office, Pudukottai District
- 4.The District Educational Officer,
O/o.The District Educational Office,
Aranthangi, Pudukottai District
- 5.The Block Educational Officer,
O/o.The Block Educational Office,
Thiruvarangulam Union, Pudukottai District

... Respondents in WP(MD). 5882/ 2020

PRAYER in WP(MD). 8199/2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the proceedings of the impugned order in Na.Ka.No.006983/D1/2017 dated 31.03.2017 on the file of the first respondent and quash the same insofar as the inclusion of the B.T.Assistants in the panel for the promotion to the post of Middle School Headmaster.

Prayer in WP(MD). 9155/ 2017 :

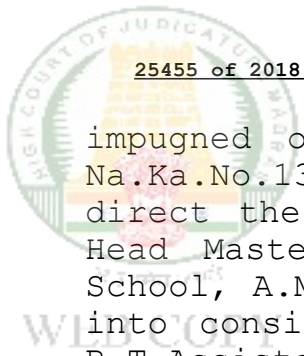
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of certiorari direction in the nature of a writ calling for the records relating to the proceedings of the impugned order in Na.Ka.No.006983/D1/2017 date 31.03.2017 on the file of the 1st respondent and quash the same in so far as the inclusion of the BT Assistants in the panel for the promotion to the post of middle school headmaster.

Prayer in WP(MD). 25303/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus to direct the respondents to promote the petitioner as Middle School Head Master in the available vacancy at Panchayat Union Middle School, A.Meyyanenthal, Ilanyangudi Union, Sivagangai District taking into consideration of the petitioners seniority in the cadre of B.T.Assistant in accordance with the 2nd proviso to Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016

Prayer in WP(MD). 25455/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari and Mandamus calling for the records relating to the



impugned order passed by the 3rd respondent in his proceedings Na.Ka.No.1307 / A1 / 2018 dated 20/12/2018 and consequentially to direct the respondents to promote the petitioner as Middle School Head Master in the available vacancy at Panchayat Union Middle School, A.Meyyanenthal, Ilayankudi Union, Sivagangai District taking into consideration of the petitioner's seniority in the cadre of B.T.Assistant in accordance with the 2nd proviso to Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

Prayer in WP(MD) . 247/ 2019 :

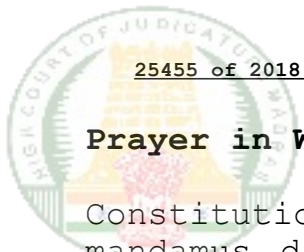
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings Na.Ka.No.6840 / Aa2 / 2018 dated 27/12/2018 and consequentially to direct the respondents to promote the petitioner as Middle School Head Master in the available vacancy at Panchayat Union Middle school, A.Meyyanenthal, Ilayankudi Union, Sivagangai District taking into consideration of the petitioners seniority in the cadre of B.T.Assistant in accordance with the 2nd proviso to Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

Prayer in WP(MD) . 10154/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus to direct the respondents to promote the petitioner as Middle School Head Master in the available vacancy either at the place of Panchayat Union Middle School, Krattupatti, Bodinayakanur Union, Theni District or at the panchayat Union middle school, Kariyappakoundan Patti, Bodinayakanur Union, Theni District taking into consideration of the petitioners seniority in the cadre of B.T.Assistant in accordance with the 2nd proviso to Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

Prayer in WP(MD) . 14761/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus direct the respondents to promote the petitioner as Head Master of the Middle School taking into consideration of the petitioners seniority in the cadre of B.T.Assistant in accordance with Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 within the period that may be stipulated by this Honble Court.



Prayer in WP(MD) . 14762/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus direct the respondents to promote the petitioner as Head Master of the Middle School taking into consideration of the petitioners seniority in the cadre of B.T.Assistant in accordance with Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 within the period that may be stipulated by this Honble Court.

Prayer in WP(MD) . 14763/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus direct the respondents to promote the petitioner as Head Master of the Middle School taking into consideration of the petitioners seniority in the cadre of B.T.Assistant in accordance with Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 within the period that may be stipulated by this Honble Court.

Prayer in WP(MD) . 15336/ 2019 :

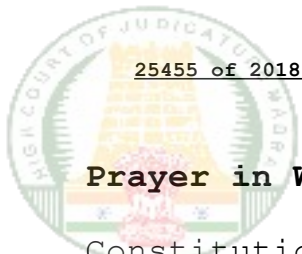
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to promote the petitioner as Middle School Headmaster in Kadaladi Block, Kadaladi, Ramanathapuram District taking into consideration of the petitioners seniority in the cadre of B.T.Assistant in the light of Section 41 of the Tamil Nadu Government Servants (Conditions of Service)Act, 2016 within a time frame that may be stipulated by this Honourable Court

Prayer in WP(MD) . 15404/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To Direct the respondents to promote the petitioner as Head Master of the Middle School taking into consideration of the petitioners seniority in the cadre of B.T.Assistant in accordance with Section 41 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016

Prayer in WP(MD) . 15325/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the respondents to promote the petitioner as Middle School Headmaster in Manamelkudi Block, Manamelkudi, Pudukkottai district taking into consideration of the petitioners seniority in the cadre of B.T. Assistant in the light of Section 41 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 within a time frame that may be stipulated by this Honble Court.



Prayer in WP(MD). 15337/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the respondents to promote the petitioner as Middle School Headmaster in Lalgudi Block, Lalgudi, Trichy District taking into consideration of the petitioners seniority in the cadre of B.T. Assistant in the light of Section 41 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 within a time frame that may be stipulated by this Honble Court.

Prayer in WP(MD). 15399/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To Direct the respondents to promote the petitioner as Head Master of the Middle School taking into consideration of the petitioners seniority in the cadre of B.T.Assistant in accordance with Section 41 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016

Prayer in WP(MD). 5882/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To direct the respondents to promote the petitioner as head Master of the Middle School taking into consideration of the petitioners seniority in the cadre of B.T.Assistant in accordance with second proviso to Section 41(1) of the Tamil Nadu Govt. Servants (Conditions of Service) Act, 2016.

(in WP(MD). 8199/2017)

For Petitioner : Mr.G.Prabhu Rajadurai

For R-1 to R-4 : Mr.S.Kameswaran,
Government Advocate.

For R-5 to R-7 : Mr.F.Deepak

Advocates appearance for the cases
in

WP(MD).5882/2020, WP(MD).15399/2019, WP(MD).25303/2018,
WP(MD).14762/2019 , WP(MD).14763/2019, WP(MD).15404/2019, WP(MD).
10154/2019, WP(MD).14761/2019

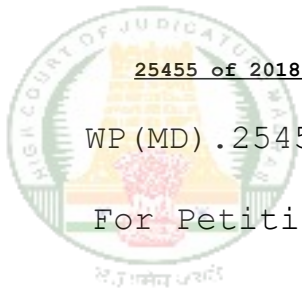
For Petitioner : Mr.H.Md.Imran for M/s.Ajmal
Associates

For Respondents : Mr.S.Kameswaran
Govt.Advocate

: **MR.V.PANNERSELVAM**

(*) For R5

**in WP(MD) Nos.15399 & 15404 of
2019**



WP (MD) .25455/2018

For Petitioner : Mr.H.Md.Imran
for M/s.Ajmal Associates
For Respondents : Mr.S.Kameswaran
Govt.Advocate FOR R1 TO R4
MR.V.PANNERSELVAM FOR R5

WP (MD) .9155/2017

For Petitioner : MR.G.PRABHU RAJADURAI
For Respondents : Mr.S.Kameswaran
Govt.Advocate FOR R1 TO R4
NO APPEARANCE FOR R5 TO R7

WP (MD) .15336/2019

For Petitioner : Mr.M.PRABU
For Respondents : Mr.S.Kameswaran
Govt.Advocate FOR R1 TO R5

WP (MD) .15325/2019

For Petitioner : MR.K.GURUNATHAN
For Respondents : Mr.S.Kameswaran
Govt.Advocate FOR R1 TO R5
MR.M.SHANMUGA SUNDARAM FOR R6

WP (MD) .15337/2019

For Petitioner : MR. K.GURUNATHAN
For Respondents : Mr.S.Kameswaran
Govt.Advocate FOR R1 TO R5



WP (MD) .247/2019

For Petitioner : Mr.H.Md.Imran for M/s.Ajmal Associates

For Respondents : Mr.S.Kameswaran

Govt.Advocate FOR R1 TO R4

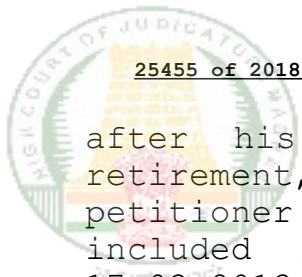
(*)MR.V. PANNERSELVAM

for R5

COMMON O R D E R

The Writ Petition in W.P.(MD).No.8199 of 2017 is filed to quash the order dated 31.03.2017 on the file of the first respondent, insofar as the inclusion of the B.T. Assistants in the panel for the promotion to the post of Middle School Headmaster.

2. The brief facts as stated in the affidavit are that the petitioner completed S.S.L.C in the year 1985 and underwent Secondary Grade Teacher Training and completed in the year 1985. The petitioner was appointed as Secondary Grade Teacher on 07.12.1990. In the year 2004, the petitioner completed B.Lit. (Tamil) and was appointed as Tamil Pandit on 06.11.2007. The contention of the petitioner is that in order to accommodate another person in the said post, the petitioner was posted as Primary School Headmistress. On 17.08.2015, after the retirement of one Vijayakumar as Tamil Pandit, the petitioner was promoted to the said post. Presently, the petitioner was working as Tamil Pandit. The further contention of the petitioner is that the petitioner is entitled to be promoted as Middle School Headmistress. As far as Panchayat Union Schools are concerned, each Panchayat Union is a unit for the purpose of appointment and promotion. The said service is governed by the Tamil Nadu Elementary Educational Subordinate Service Rules which is a Special Rules. Under the said Rule, the post of Tamil Pandit is placed under Category II of Class I of the said Special Rules. In view of the petitioner's qualification, she is eligible to be promoted as Headmistress in the Panchayat Union Middle School. The post of Headmaster in Panchayat Union Middle School is placed under Category-I of Class-I of the said Special Rules. In the year 2011, when the panel for promotion to the post of Middle School Headmaster was prepared, persons working as B.T. Assistants were also included. The petitioner's predecessor in the post of Tamil Pandit in the Union, one Mr.S.Vijayakumar filed Writ Petition in W.P.(MD).No.5781 of 2011 challenging the said inclusion of B.T. Assistant and there was an interim order dated 17.06.2011, where, such promotion would be subject to the result of the Writ Petition. In view of the same, no promotion was granted. But subsequently, the said Vijayakumar



after his retirement, withdrew the Writ Petition. After his retirement, the petitioner was promoted as Tamil Pandit. As the petitioner apprehended that the B.T. Assistants would once again be included in the panel, he submitted a representation dated 17.03.2013 not to consider the B.T. Assistants for promotion. But through the impugned proceedings dated 31.03.2017, the first respondent directed the eligible B.T. Assistants to be included in the panel. The B.T. Assistants were appointed in the year 2004 on consolidated pay and were brought under time scale of pay in the year 2006. In any case, the post of B.T. Assistants are not made as a feeder category to the promotion as Middle School Headmaster in the Special Rules and in such circumstances, it is not proper to place B.T. Assistants in the seniority list.

3. The respondents filed counter in the Writ Petition filed by the said Vijayakumar, stating that the B.T. Assistants were included by virtue of G.O.Ms.No.400 Education, Science and Technology Department dated 25.05.1995. However the petitioner submitted that the said Government Order seeks to amend the Special Rules to include B.T. Assistants in the feeder category along with other categories but, till today the Special Rules are not amended. Hence, the inclusion of B.T. Assistants in the panel is illegal and hence the petitioner prays to quash the impugned order dated 31.03.2017, wherein, it has included the B.T. Assistants in the panel.

4. In the meanwhile, the Tamil Nadu Junior Grade Teachers Welfare Association has filed an impleading petition in W.M.P.(MD). No.6956 of 2017 in W.P.(MD).No.8199 of 2017 and the same was allowed vide order dated 09.12.2021. The contention of the Association is that the Association is formed to protect the interest of its members who were working as Teachers in the Elementary Education. This impleading petition is filed in as much as the prayer in the Writ Petition is against the interest of B.T. Assistants working in the Elementary Education with reference to their promotional opportunity to the post of Middle School Headmaster. The Elementary Education is governed by the provisions of Tamil Nadu Elementary Education Act, 1920 and Rules made thereunder. The Elementary Education covers from Standards I to V and VI to VIII and they are called as Lower Elementary or Primary stage covering Standards I to V, Higher Elementary Stage covering Standards VI to VIII. The Tamil Nadu State Government enacted Tamil Nadu Compulsory Education Act, 1994 and made Elementary Education as compulsory until the age of 14. Thereafter, the Central Government enacted Right of Children to Free and Compulsory Education Act, 2009 which also made Elementary Education as compulsory until 14 years of age. The Elementary Education is governed by the Special Rules namely, Tamil Nadu Elementary Education Subordinate Service Rules notified in G.O.Ms.No. 1383 Education Department dated 23.08.1988. The categories of posts in the Rules include Secondary Grade Teacher,

Primary School Headmaster, Tamil Pandit, Middle School Headmaster and Assistant Elementary Educational Officer apart from Physical Education Teachers and Pre-Vocational Instructors. As per Special Rules, the post of Tamil Pandit comes under Class-1 Category-II and the post of Primary School Headmaster comes under Class-3 Category-I. Both the post of Primary School Headmaster and Tamil Pandit are feeder categories for promotion to the post of Middle School Headmaster. The Middle School section of Elementary Education is handled by Secondary Grade Teachers/Tamil Pandits and B.T. Middle School Headmaster. In view of advancement in syllabus, it is required to take classes with degree holders in the subjects. Accordingly, an implementation of SSA scheme, the State Government issued orders to upgrade the Secondary Grade Assistant post for Standards VI to VIII as B.T. Assistants, as and when vacancy arose due to retirement of incumbent Secondary Grade Teachers. Therefore, all the teaching posts for the standards VI to VIII being upgraded into B.T. Assistant posts, apart from Tamil Pandit. The B.T. Assistants are inducted as teachers either by promotion or by direct recruitment. The B.T. Assistants teachers being on par with Tamil Pandit / B.T. Assistant (Tamil) become feeder category for the promotion of Middle School Headmaster. The Government issued orders in G.O.Ms.No.166 School Education Department dated 07.06.1999 as per which the B.T. Assistants are entitled for promotion to Middle School Headmaster. The panel for Middle School Headmaster is prepared as per the guidelines G.O.Ms.No.166 as per which the seniority is prepared between Primary School Headmaster, Tamil Pandit and B.T. Assistants by taking the seniority from the date of appointment in the feeder category. The contention of the Association is that the impugned order challenged in this Writ Petition is directed to prepare panel by including B.T. Assistants, but the impugned order is stayed by order dated 27.04.2017. The State Government issued G.O.Ms.No.256 School Education Department dated 19.04.2017 for conducting promotion / transfer counselling to be conducted on 22.04.2017, because of the stay, the same could not be conducted. The B.T. Assistants appointed in the Elementary Education cannot be deprived of their right of promotion to the post of Middle School Headmaster. Hence, the Association prayed to vacate the interim order.

5. The official respondents have filed vacate stay petition along with counter in W.M.P.(MD)No.11310 of 2020 in W.P.(MD)No.5882 of 2020. In the counter, the respondents have stated that the main grievance of the B.T. Assistant is that though B.T. Assistant are normally promoted as Middle School Headmaster but the Elementary School HM are given priority for the promotion to the post of Middle School HM when compared with B.T. Assistants as per G.O.Ms.No.166. The claim of the B.T. Assistant that the G.O.Ms.No.166 has granted temporary relaxation to Rule 36(a) is erroneous. The ambit and scope of the said G.O.Ms. No.166 is that the salary to the feeder category post to Middle School HM i.e. B.T. Assistants and Elementary School



HM are identical. But due to the introduction of pay commission, the pay structure was modified for Middle School HM as 1640-2900, for Tamil Pandits / B.T. Assistants / Primary School HM as Rs.1400-2600. But in G.O.Ms.No.427 Finance Department dated 28.08.1998 the salary to the Middle School HM was fixed as 5900-9900, for B.T. Assistant and Tamil Pandits was fixed as 5500-9000/-, whereas the Elementary School HM was fixed as 5300-8300/-, Secondary Grade Teachers / Vocational Teacher / Physical Education Teacher 4500-7000. Hence, in order to set right the above anomaly as well as to maintain status quo the government relaxed the Rule 36(a) of the Tamil Nadu State and Subordinate Service Rules and directed to prepare panel based on date of joining the feeder category without taking into account the higher pay scale. The government issued G.O.Ms.No.1383 Education (PSUI) Department dated 23.04.1988 was necessitated only on absorption of panchayat union teachers and certain categories of non-teaching staff on the Panchayat Union School as government servants with effect from 01.06.1981 and in order to regulate the service conditions of such absorbed staff the special rules were framed. The service rules state as follows:

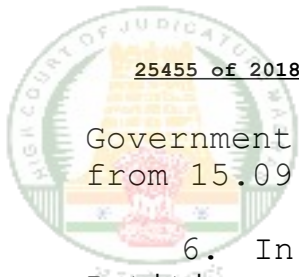
- Class I : 1. HM of Middle School (B.Ed. Grade)
2. Language Pandits Grade (Tamil and Language Pandits Grade -I (other than Tamil))
- Class II : 1. HM of Middle School (Secondary Grade)
- Class III: 1. HM of Primary School (Secondary Grade)
2. Secondary Grade Teachers

1.Appointment: Appointment to the various classes and categories shall be made as follows:

Class I

- (i) By promotion from Class II of the service or class III of the service
- (ii) Transfer from category 2 language Pandits Grade I of the said service provided that if no B.Ed. or Language Pandit Grade I teacher is available.

The service rules contemplate promotion to the post of Middle School HM (B.Ed. Grade) from Middle School HM (Secondary Grade), HM Primary Schools, Secondary Grade Teachers and language Pandits Grade I (Tamil) and (other than Tamil). Hence to avoid confusion the government issued G.O.Ms.No.166 paving way for promotion to the post of Middle School HM from the feeder categories of Elementary School HM and B.T. Assistants by drawing panel. Thereafter as per the instructions of the Head of the Department of Elementary Education in Na.Ka.No.36679 / D3/2008 dated 18.11.2008 the seniority panel was prepared by including the Primary School HM, Tamil Pandits, B.T. Assistants. As per G.O.Ms.No.43 Personnel and Administrative Reforms (S) Department dated 15.03.2017 the Government withdrew the operations of section I and II of the Tamil Nadu State and Subordinate Service Rules with the enactment of the Tamil Nadu



Government Servants (Conditions of Service) Act 2016 with effect from 15.09.2016. Hence prayed to dismiss the writ petition.

6. In the meanwhile, several B.T. Assistants had filed Writ Petitions with a prayer of Mandamus directing the respondents to consider and promote the B.T. Assistants by invoking Section 41 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016. The section 41 is Pari Materia to Rule 36(a) of the Tamil Nadu Subordinate Service Rules. Under Section 41, if the salary is higher than the other post in the feeder category, then the persons who are receiving higher salary ought to be considered for promotion first. The B.T. Assistants are receiving more salary than the Secondary Grade Teachers and the difference is only Rs.200/-. Hence, the B.T. Assistants are supporting the impugned order which directed to include the B.T. Assistants in the feeder category.

7. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the records.

8. Initially the Secondary Grade Teachers and Primary School HM are the feeder category to be promoted as Middle School Headmaster. Thereafter, the Tamil Nadu Government in order to promote "Tamil" language has granted promotional opportunities to Tamil Pandit Grade I and Grade II, which were included in the feeder category along with the Secondary Grade Teachers. Subsequently the B.T. Assistants were included in the feeder category through G.O.Ms.No.166 School Education Department dated 07.06.1999. It is pertinent to state that B.T. Assistants were included along with the already existing feeder category consisting of along with the Secondary Grade Teachers, Primary School HM and Tamil Pandits. In other words the B.T. Assistants are late entrant in the feeder category. In the year 2002, the Tamil Nadu Government in order to upgrade the Standard of Education, issued G.O.Ms.No.79 School Education (U1) Department dated 14.06.2002, wherein it is stated that whenever the Secondary Grade post becomes vacant, the same would be upgraded as B.T. Assistants post. Admittedly, there was difference in salary of Secondary Grade Teachers and B.T. Assistants to the tune of Rs.200/-. In order to overcome the effect of Rule 36(a) of the Tamil Nadu Subordinate Service Rules, the Government issued G.O.Ms.No. 166 School Education Department dated 07.06.1999. The Government Order considers the post as equal inspite of salary difference. The said Government Order was put to challenge in W.P.(MD)No. 9261 of 2013 and the same was upheld vide order dated 05.07.2013 in the case of S. Vijayakumar Vs. the Secretary to Government of Tamil Nadu, School Education Department and others. The relevant portion is extracted hereunder:

"48. Relaxation of proviso 36(a) has been done properly to overcome the difficulties and on the principle of "just and equitable"; Power of relaxation conferred on the Governor under Rule 48 of the Tamil Nadu State and Subordinate



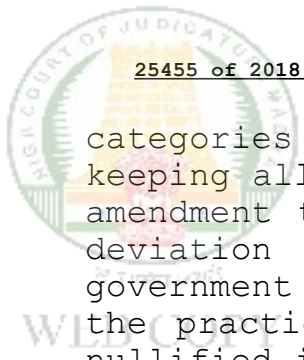
Service Rules is an exceptional power and that the same has been exercised to avoid discrimination in the matter of promotion to the post of Middle School Headmasters/Headmistresses (B.Ed., Grade) and by relaxation of the said rule, all the feeder categories, can get equal opportunities, for promotion and thus, the chances of one group of the feeder category post, taking away all the promotional posts, leaving the rest high and dry is avoided; the exercise of the power under Rule 48 of the Tamil Nadu State and Subordinate Service Rules is in consonance with the principle of "just and equitable" and the impugned G.O.Ms.No.166 satisfies the test of reasonableness, fair and equitable distribution and does not suffer from any arbitrariness on the touchstone of equality enshrined in the Constitution of India.

49. It should be further noted that by relaxing proviso to rule 36(a), the essential qualifications prescribed for the post of Middle School Headmasters/Headmistresses (B.Ed., Grade) is not relaxed, rule 48 of the Tamil Nadu State and Subordinate Service Rules, provides for relaxation of any provision in the general rules or special rules in favour of "any class of persons" and it is the domain of the Governor to relax the rigour of the general rules to any person or class of persons. Relaxation of rule 36(a) of the Tamil Nadu State and Subordinate Services, does not nullify the special rules framed for the educational subordinate service, as all the three feeder category posts are already eligible to be considered for promotion to the post of Middle School Headmasters/Headmistresses (B.Ed., Grade). Therefore, relaxation of proviso 36(a) of the above said rules, to Elementary School Headmasters/ Headmistresses, which is also one of the feeder category posts, as per the special rules, for promotion as Middle School Headmasters/Headmistresses (B.Ed., Grade), cannot be said to have been made arbitrarily. The difficulties that would have arisen, had there been a change in the method of promotion, after the marginal pay revision, have been wiped out and the long and continuous procedure followed in Education Department, has been sustained. The power given in the rules can be exercised by a general administrative order or a special administrative order by the Governor of Tamil Nadu and thus the above said G.O., issued by the Governor is valid."

9. The Secondary Grade Teachers are opposing the inclusion of B.T. Assistants in the panel, since their chance to promotion would be less. Whereas, the B.T. Assistants claim is that they should be placed above the Secondary Grade Teachers in the seniority panel and grant promotion to them first. Thereafter, if there is vacancy, then

the Secondary Grade Teachers shall be accommodated in the promotional post. For the contention of the B.T. Assistants, the Learned Counsels rely on Rule 36(a) of the Tamil Nadu Subordinate Service Rules and submits since there is difference in pay as per the said Rule the B.T. Assistants ought to be placed first in the seniority list and thereafter the Secondary Grade Teachers are to be placed below. The G.O.Ms.No.166, School Education Department, dated 07.06.1999, has been given effect from 01.01.1996 onwards and that preparation of a combined seniority of Tamil Pandits /Headmasters/ Headmistresses of Middle Schools (Secondary Grade)/Headmasters/ Headmistress of Primary Schools/Graduate Teacher in Elementary Education Department in the State of Tamil Nadu was in vogue for nearly 17 years. Seniority is prepared on the basis of general seniority of Elementary School Headmasters/Tamil Teachers / B.Ed. qualified Teachers, without considering the difference in the scale of pay between the different categories and the date of joining in the feeder category post is the date taken into consideration for the purpose of preparing the combined seniority and that the said procedure cannot be unsettled. Exemption from applicability of rule 36(a) of the Tamil Nadu State and Subordinate Service Rules, has been made in favour of a class of persons, Viz., Elementary School Headmasters, on the basis of the principle 'just and equitable' as per rule. The rule 48 of the Tamil Nadu State and Subordinate Service Rules, enabling the Governor to relax the applicability of any of the general rules or special rules to any person or class of persons and the same is sustainable in law. Hence claim of the B.T. Assistants is not sustainable and is liable to be rejected. Moreover, since the Government has enacted G.O.Ms.No.166 and the same was upheld by the learned Single Judge of this Court, which has attained finality. The parties cannot contest that the Secondary Grade should be placed below the B.T. Assistants. Hence the claim of the B.T. Assistants to place above Secondary Grade Teachers is rejected.

10. The next contention that was raised is that the Tamil Nadu Subordinate Service Rules was repealed and subsequently the Government has enacted the Tamil Nadu Government Servants Conditions of Service Act, 2016 which came into effect on 15.09.2016. In this Act, the earlier Rule 36(a) is Pari Materia same under Section 41 of the Act. Since the Act has been enacted in the year 2016 and the Subordinate Service Rules was repealed, subsequent to this enactment, G.O.Ms.No.166 loses its validity. In such circumstances, atleast from the year 2016 onwards, the B.T. Assistants should be kept ahead of all the Secondary Grade Teachers and promote the B.T. Assistants first. This contention was refuted by the Learned Counsels appearing for the Secondary Grade Teachers and submitted that subsequently, the Government has enacted the Tamil Nadu Elementary Education Subordinate Service Rules, 2020 which is a Special Rules came into effect on 30.01.2020 and has brought both Secondary Grade Teachers and B.T. Assistants as feeder



categories for the promotion of Middle School Headmaster and by keeping all the contenders as "feeder category". From the subsequent amendment through Rules 2020, it would be evident that there is no deviation from the policy decision of the government. Because the government has not issued any government order after the Act 2016, the practice that was prevailing for the past 17 years cannot be nullified immediately on enactment of Act 2016. This Court is of the considered opinion that the subsequent amendment of the government by keeping all the contenders in feeder category would clearly indicate the intention of the government that there is no deviation in the policy decision of the government. Even then there is a grey area from 2016 to 2020 and the government ought to issue clarification.

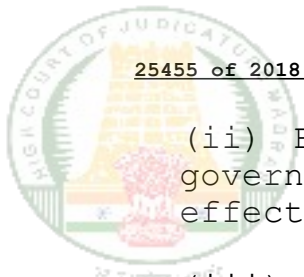
11. The next contention of the Learned Counsel appearing for the Secondary Grade Teachers are that the B.T. Assistants (Tamil) alone was included in G.O.Ms.No.166 and the B.T. Assistants other subjects was never included in the panel at all and relied on the contents of the Government Order and the same is extracted hereunder:

- | | |
|-------------------------------------|----------------|
| 1. நடுநிலைப்பள்ளி தலைமையாசிரியர் | ரூ.5900 - 9900 |
| 2. மட்டதாரி ஆசிரியர் - தமிழாசிரியர் | ரூ.5500 - 9000 |
| 3. தொடக்கப்பள்ளி தலைமையாசிரியர் | ரூ.5300 - 8300 |
| 4. இடைநிலை ஆசிரியர் - கைத்தொழில் - | |
| 5. உடற்கல்வி ஆசிரியர் | ரூ.4500 - 7000 |

This contention of the Secondary Grade Teachers were refuted by the B.T. Assistants and submitted that the G.O. in Serial No.2 only says "Graduate teachers-Tamil Teachers", which means Graduate Teachers including all subjects and Tamil Teachers of all categories like Tamil Pandits etc are included. It cannot be read as "Graduate Teaches on Tamil" alone. To substantiate this the Serial No.4 was referred, wherein it is stated as Secondary Grade Teachers - Craft Teachers -Physical Education Teachers. If the Serial No.2 and 4 are compared, it would be evident that the Graduate Teachers means includes subjects other than Tamil also. From referring the above serial 2 and 4, there is no clarity and based on this the issue raised in this writ petition cannot be resolved.

12. From the above discussions, the period of disputes can be divided into three.

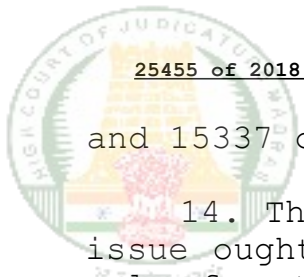
- (i) The period from 07.06.1999 (the date of G.O.Ms.No.166) to 15.09.2016 (the date of Act 2016 came into effect) is covered by the relaxation granted under G.O.Ms.No.166, the validity of the G.O.Ms.No.166 was upheld, which has attained finality and for this period there is no dispute as stated supra.



(ii) From the period from 15.09.2016 to 30.01.2020 where the government has not issued any government order to nullify the effect of the section 41 of Act 2016.

(iii) From 30.01.2020 onwards the period is covered by Act 2020 wherein the government has issued Special Rules by keeping all the contenders under feeder category. Since the Act has been enacted making Secondary Grade Teachers, Primary School HM, B.T. Assistants and other post as feeder categories, the Special Act is legally sustainable. Any General Act would be applicable, if there is no Special Act covering the subject. If the Special Act covers the subject, then the Special Act will prevail over the General Act. In the present case, from 2020 the Government has enacted Tamil Nadu Elementary Education Subordinate Service Act, 2020 which came into effect from 30.01.2020. Therefore, this Act will prevail over the Tamil Nadu Government Servants Conditions of Service Act, 2016. However a feeble attempt was made by the B.T. Assistants by stating that there is "no inconsistency" between the General Act and the Special Rules and the section 68 of Act 2016 cannot be invoked. The section 68 states that "if any provision of this Act is inconsistent with any provision of the special rules applicable to any particular service, the special rules shall, in respect of that service, prevail over the provisions of this Act". The contention of the B.T. Assistants cannot be accepted, admittedly there is inconsistent. Since the feeder category had included all the stake holders irrespective of their salaries and hence by invoking section 68, the Special Rules will prevail over the General Act. Hence there is no dispute for this period as well.

13. In Writ Petition W.P.(MD).Nos.15325 and 15337 of 2019, the learned counsel appearing for the petitioners submitted that the petitioners were serving as Secondary Grade Teacher. Thereafter, promoted as Primary School Headmaster then as B.T. Assistant. If the petitioners are kept under the seniority list of Secondary Grade Teacher post, then based on the date of appointment to the said post, they will be senior than in the post of B.T. Assistants. Atleast if the petitioners are kept under the seniority list of Primary School Headmaster post, then based on the date of appointment to the said post, they will be senior than in the post of B.T. Assistants. Therefore, the learned counsel prayed to keep the writ petitioners under Secondary Grade Teacher or Primary School Headmaster seniority list, so that, his name will be above his juniors. The said plea cannot be accepted. Once the petitioners have accepted the B.T. Assistant post on promotion, then the date of joining B.T. Assistant promoted post will be the date for fixing his seniority. Hence, the claim of the writ petitioner cannot be entertained, the petitioners cannot be allowed to ride three horses. Therefore, the prayer of the writ petitioners in W.P.(MD).Nos.15325



and 15337 of 2019 and similarly placed persons are rejected

14. Therefore, this Court is of the considered opinion that the issue ought to be remitted back to the Government for clarification only for the period from 2016 to 2020. Therefore, this Court is directing the Government to clarify the following:

a) The Government shall clarify whether G.O.Ms.No.166 is prevailing during the period 2016-2020. If not prevailing the government is at liberty to issue government order by giving retrospective effect for the said period.

b) Until the Government is clarifying the issue, the respondents shall not precipitate the issue by granting any promotions by nullifying the effect of G.O.Ms.No.166. In other words, the G.O.Ms.No.166 shall be followed until the Government is clarifying the issue. Since all these years, G.O.Ms.No.166 was followed for granting promotion. If the effect of G.O.Ms.No.166 is taken away suddenly, there will be commotion in the Department.

c) The Government shall clarify the same within a period of eight (8) weeks from the date of receipt of a copy of this order.

15. Before parting with the judgment this Court observes, originally the Middle School HM (Secondary Grade), HM Primary Schools, Secondary Grade Teachers and language Pandits Grade I (Tamil) and (other than Tamil) were constituting feeder category. Subsequently the B.T. Assistants were included since they had less opportunity for promotion. The subsequent entrant claiming to oust the other categories is like the story of camels, when accommodated the camels would occupy the entire area and throw the other inmates from the place.

16. The Government ought to have taken earnest effort to protect the other categories when there was an enactment of the Tamil Nadu Government Servants (Conditions of Service) Act 2016. The government ought to have inserted a clause in the 2016 Act itself, "that section 41 is not applicable where ever there is deviation or relaxation of the applicability of the said section". At least while enacting the Tamil Nadu Elementary Education Subordinate Service Rules, 2020 the government ought to have inserted a clause "that section 41 is not applicable to this service rules". If this is enacted there would be more clarity in the issue. Hence this Court is of the fond hope that the government would come out with clarification in this issue and also hope retrospective effect would be given so that the entire issue would be settled.



17. With the above observations, the writ petitions are disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

() Incorporated in WP(MD) Nos. 15399 & 15404 of 2019 and WP(MD) Nos. 8199 of 2017 etc Batch dated 13.12.2022 as per the order dated 13.02.2023**

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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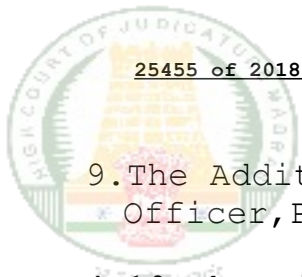
Sub Assistant Registrar (CS)

Nsr

To

(*) To be Substituted to the order already despatched on 09.01.2023

1. The Secretary to Govt.,
State of Tamil Nadu,
School Education Dept.,
Fort St. George, Chennai - 600 009.
2. The Director of Elementary Education,
Chennai - 600 006.
3. The District Elementary Educational Officer,
RMS Road, Madurai - 1.
4. The Assistant Elementary Educational Officer,
Thirupparankundram Block,
Tirunagar, Madurai - 5.
5. The Additional Assistant Elementary Educational Officer,
Thirupparankundram Block,
Tirunagar, Madurai - 6.
6. The President,
Tamil Nadu Junior Grade Teachers Welfare Association,
No. 22, Senthil Nagar,
Old Perungalathur, Chennai - 600 063.
7. The District Elementary Educational Officer, Tirunelveli.
8. The Assistant Elementary Educational Officer, Palayamkottai,
Tirunelveli District.



9. The Additional Assistant Elementary Educational Officer, Palayamkottai Urban, Palayamkottai.

4.10. The District Educational Officer,
O/o the District Educational Office,
Sivagangai District.

11. The General Secretary,
Tamilnadu Primary School Teachers Federation,
Muktha Runnisa Begam Street,
Ellis Road, Chennai-2.

12. The District Educational Officer,
O/o. the District Educational Office, Mandabam,
Ramanathapuram, Ramanathapuram District.

13. The District Educational Officer, Theni District.

14. The Chief Educational Officer, Pudukottai.

15. The District Educational Officer, Pudukottai.

16. The Chief Educational Officer, Ramanathapuram.

17. The Chief Educational Officer, Trichy.

18. The District Educational Officer, Trichy.

19. The Block Educational Officer,
O/o the Block Educational Office, Ilayangudi Block,
Ilayangudi, Sivagangai District.

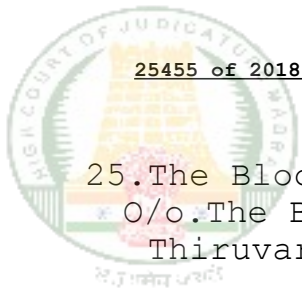
20. The Block Educational Officer,
O/o. the Block Educational Office,
Kadaladi Union, Kadaladi, Ramanathapuram District.

21. The Block Educational Officer,
O/o the Block Educational Office, Bodinayakanur Block,
Theni District

22. The Block Educational Officer,
O/o. the Block Educational Office,
Aranthangi Block, Aranthangi, Pudukottai District.

23. The Block Educational Officer Manamelkudi Block,
Manamelkudi, Pudukkottai District.

24. The Block Educational Officer,
Lalgudi, Trichy.



25.The Block Educational Officer,
O/o.The Block Educational Office,
Thiruvarangulam Union, Pudukottai District.

+1 CC to M/s.F.DEEPAK, Advocate (SR-61517[F] dated 13/12/2022)

+1 CC to M/s.M.PRABU, Advocate (SR-61597[F] dated 13/12/2022)

+1 CC to M/s.SPL.GP (SR-61867[F] dated 14/12/2022)

+2 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-61982,SR-61983[F] dated 14/12/2022)

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-62317[F] dated 15/12/2022)

+15 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-61793[F] dated 14/12/2022)

+2 CC to M/s.K.GURUNATHAN, Advocate (SR-61760,61757[F] dated 13/12/2022)

W.P. (MD) .Nos.8199, 9155 of 2017,
25303, 25455 of 2018,
247, 10154, 14761, 14762,
14763, 15336, 15404, 15325, 15337,
15399 of 2019
and 5882 of 2020
13.12.2022

RD(04/01/2023) 25P 49C

RD(27/02/2023) 25P 49C