



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 25.11.2021
DELIVERED ON : 14.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P (MD)No.4255 of 2016

and

W.M.P (MD)No.3791 of 2016

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S.Padma Ammal

... Petitioner

Vs.

1.The State represented by
The Principal Secretary to Government,
School Education Department,
Fort.St.George,
Chennai 600 009.

2.The Director of School Education,
College Road,
Chennai 600 006.

3.The Chief Educational Officer,
Madurai 625 002.

4.The District Educational Officer,
Melur 625 106,
Madurai District.

5.The Head Master,
Government Higher Secondary School,
Samayanallur 625 402.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent made in G.O.(MS).No.69 School Education (M.1) Department dated 18.04.2013 and the impugned order made in Government Letter No.34248/School Education 3(1)/2015-1 dated 02.11.2015 and quash them and to direct the respondent to extend the petitioner the benefit of G.O.(MS).No.258 School Education (M.1) Department dated 06.09.2010 which was implemented in pursuance of the order dated 14.07.2009 of the Hon'ble Division Bench in W.P.No.8747 of 2009 and in accordance with G.O.(MS).No.62 Finance (CMPC) Department dated 09.03.2015.



For Petitioner : Mr.B.Alagarsamy
For Respondents : Mr.N.Ramesh Arumugam
Government Advocate (Civil Side)

O R D E R

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This writ petition has been filed to call for the records of the first respondent made in G.O.(Ms).No.69 School Education (M.1) Department, dated 18.04.2013 and to quash the impugned order made in Government Letter No.34248/School Education 3(1)/2015-1 dated 02.11.2015 and to direct the respondent to extend the petitioner the benefit of G.O.(Ms).No.258 School Education (M.1) Department dated 06.09.2010 which was implemented in pursuance of the order, dated 14.07.2009 of the Hon'ble Division Bench in W.P.No.8747 of 2009 and in accordance with G.O.(Ms).No.62 Finance (CMPC) Department, dated 09.03.2015.

2. The brief facts of the case are that the petitioner was appointed as Secondary Grade Teacher on 01.09.1986 and was awarded Selection / Special Grades after completion of 10 - 20 years of service on 01.09.1996 and 01.09.2006 respectively and retired on superannuation on 31.12.2009 as Secondary Grade Teacher in the Government Higher Secondary School, Samayanallur, Madurai District without any promotion. The contention of the petitioner is that the Secondary Grade Teachers appointed in High/Higher Secondary Schools have no opportunity to get promotion based on their Secondary Grade qualification and seniority. Once a Secondary Grade Teacher is appointed in the High/Higher Secondary Schools, he will retire as a Secondary Grade Teacher without any promotion in the same cadre by rendering 25 to 35 years of service. But in the Elementary Education, Secondary Grade Teachers had the chance of getting promotion as Primary School Headmasters and Middle School Headmasters. Before the introduction of the Fifth Pay Commission recommendation, both the Secondary Grade Teachers working in High/Higher Secondary Schools and Primary School Headmasters were given the same time scale of pay benefits upto 01.06.1988. But after the introduction of the Fifth Pay Commission recommendation, the Secondary Grade Teachers who were holding the post of Primary School Headmasters in Elementary Education, were given higher time scale of pay than that of the Secondary Grade Teachers working in High/Higher Secondary Schools. In the Fifth Pay Commission, the following time scale of pay was given to the following posts as given below:

"Secondary Grade Primary School Headmasters:-

Ordinary Grade... Rs.1400-50-2300-60-2600

Selection Grade... Rs.1640-60-2600-75-2900

Special Grade... Rs.2000-60-2300-75-3200



Secondary Grade Teachers in High/Higher Secondary Schools:-

Ordinary Grade... Rs.1200-30-1560-40-2040

Selection Grade... Rs.1400-50-2300-60-2600

WEB COPY Special Grade... Rs.1640-60-2600-75-2900"

3. Hence, there was a disparity between the similarly situated persons viz., the Primary School Secondary Grade Teacher and High / Higher Secondary School Secondary Grade Teacher. In order to remove the disparity, the Government issued G.O.(Ms).No.216 Finance (Pay Cell) Department, dated 22.03.1993. The operative portion of the said Government Order in para 3(ii) reads as follows:-

"3(ii) : In respect of Secondary Grade Teachers in High Schools there is no promotion post for them as on 28-03-1990 (in the date of issue of the Government Order second read above) although there is promotion post in Primary Schools. As measure of uniformity in respect of all Secondary Grade Teachers, Government direct that the teachers should be made eligible for Selection/Special Grades as in Annexure-I in the Government Order second read above."

4. Among the others, one, Thiru.N.Govindarajan, a Special Grade Secondary Grade Teacher in Government Higher Secondary School, Kundadam, Erode District, had filed O.A.No.8276 of 1997 before the Hon'ble Tamil Nadu Administrative Tribunal praying to direct the respondents to refix his time scale of pay as Rs.2000-60-2300-75-3200 and also to direct to pay the arrears and consequential benefits with effect from 01-06-1988. The Hon'ble Tribunal allowed the said petition, vide order dated 07.10.1998 against which, the respondents preferred the writ petition in W.P.No.8747 of 2009 and the Hon'ble Division Bench dismissed the writ petition on 14.07.2009 with cost and confirmed the order of the Tribunal. The respondents preferred a Special Leave Petition in C.C.No.2746 of 2010 and the same was dismissed on 23.04.2010. Consequently, the respondents implemented the order by G.O.(Ms).No.258 School Education (M.1) Department, dated 06.09.2010 restricting the benefit only to Thiru.N.Govindarajan who was the applicant in the original application. Since the petitioner is similarly placed, he has come up with this writ petition.

5. In the meanwhile, the first respondent issued a blanket G.O. (Ms).No.69 School Education (M.1) Department, dated 18.04.2013 stating in para 6(1) that the benefits conferred in G.O.(Ms).No.258 School Education (M.1) Department, dated 06.09.2010 be extended only

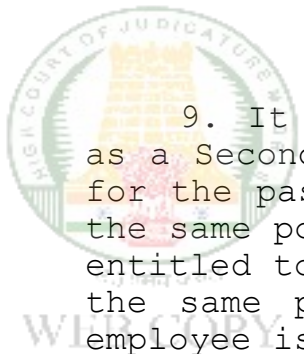


to 2570 Secondary Grade Teachers i.e., 2044 individuals in Government High/Higher Secondary Schools and 526 individuals in Aided Schools stated in Annexure I and II of the Government Order.

6. The petitioner had preferred the writ petition in W.P.(MD) No.14266 of 2012, to direct the respondent to extend the benefit of G.O.(Ms).No.258. The said writ petition was disposed of, vide order dated 17.04.2013, wherein, it has followed the observation made in a batch of writ petitions filed in W.P. (MD) No. 9713 of 2011 and connected batches. After receiving the order, the petitioner submitted the representation, dated 20.06.2013 with all the service particulars along with the xerox copy of the order by registered post to extend the benefit conferred in G.O.(Ms).No.258 and G.O.(Ms).No.216. Since the same was not implemented the petitioner issued a contempt notice. Thereafter, the respondent issued an impugned order in Government Letter No.34248/School Education 3(1)/2015-1, dated 02.11.2015 stating in para 2 (iii) that "The Respondents had willingly joined Government High School service and therefore, they thereafter belonged to a separate class known as Secondary Education Service. On their absorption in Government Service they ceased to be a part of the cadre Teachers serving were counted for the purpose of Union. Merely because their part services were counted for the purpose of protecting their pay and awarding Selection or specific grade, it cannot be said that they continued to belong to the same old cadre. The very basis on which the Tribunal proceeded was wrong and therefore its decision stands vitiated" had rejected the petitioner's claim assuming that the petitioner's claim is to fix her pay on a par with the pay of Headmasters of primary schools.

7. The learned counsel for the petitioner relied on the judgment in ***W.P.No.8747 of 2009 (The state of Tamil Nadu Rep. By Director of School Education (Higher Secondary) Chennai-6 and others -VS- N.Govindarajan and another)*** and explained that the said writ petition was dismissed by imposing cost on the Government. In the judgment of the Hon'ble Supreme Court in C.A.No.4582 of 1992 (Director of School Education -VS- A.N.Kandasamy and another reported in (1998) 8 SCC 26) it was held that the petitioner is entitled to G.O.(Ms).No.216. Relied on the said judgment, the petitioner is claiming the same benefits. The respondents have not filed any suit, writ or appeal. However, the respondents relied on the impugned order wherein it has declined the benefit of granting the selection grade for the entire service of the petitioner.

8. Heard Mr.B.Alagarsamy, learned counsel for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate (Civil Side) for the respondents and perused the records.



9. It is seen from the records that the petitioner is serving as a Secondary Grade Teacher in a High School without any promotion for the past 25 years. If the Government employee is stagnating in the same post without any promotion, then the Government employee is entitled to selection grade. If the employee is still stagnating in the same position without promotion for more than 20 years, the employee is entitled to Special Grade Pay. In the present case, the petitioner was granted Selection Grade and Special Grade for 10-20 years. Now, the petitioner is claiming to calculate the entire period and fix the scale of pay that is applicable to the Primary School Headmaster and grant Selection Grade and Special Grade. In short, the petitioner is seeking promotion as a Primary School Headmaster as well as Selection Grade and Special Grade. The Government employee is either entitled to promotion or Selection Grade and Special Grade and not for both.

10. This Court has considered regarding the issue of Selection Grade/Special Grade elaborately in W.P.(MD)No.3186 of 2016 and the same is extracted hereunder:

1. The concept of selection / special grade is that the government employees are entitled to "selection grade" if the person is **stagnating is the same post without promotion** for 10 years and entitled to "special grade" if the person is **stagnating is the same post without promotion** for 20 years. The **G.O. Ms. No. 666** Finance (Pay Commission) dated 27.06.1989 was issued cancelling the selection / special grade. Thereafter the scheme of granting selection / special grade was reintroduced vide **G.O. Ms. No. 304** Finance (Pay Commission) Department dated 28.03.1990. In partial modification in paragraph 9 of the G.O. 666, the G.O. 304 was issued granting the selection / special grade.

2. In Education Department **prior to 01.06.1988** the post of Secondary Grade Teacher and Primary School Headmaster in Government Schools and Panchayat Union Schools are interchangeable and considered as same post. The grade pay of the Secondary Grade Teacher and the grade pay of the Primary School Headmaster are same, with an additional special pay to the Headmaster. **After 01.06.1988** the post of Headmaster is a promotion post and in V pay Commission the Headmaster were paid Rs.1400-2600 without special pay and the Secondary Grade Teacher were paid 1200-2040. The teachers who had worked in the Panchayat Schools / Government Schools in Secondary Grade Post were



allowed to serve as Headmaster of Primary School with extra allowance to the post of Headmaster post. After 01.06.1988 the post of Headmaster is made as promotion post. Therefore a claim was submitted to add the service of Secondary Grade Post and Headmaster of Primary School for calculating the selection grade and special grade. The government issued **G.O. Ms. No. 1381** Education Department dated 05.10.1990 wherein selection / special grade was granted to teachers who were holding the HM post on 01.06.1988 be awarded selection / special grade in the revised scales on or after 01.06.1988 by computing the "Secondary Grade Teacher and Primary School HM prior to 01.06.1988". The G.O. also states that "at the post of HM carries higher scale of pay above that of the Secondary Grade Teachers, those promoted as HM **after 01.06.1988** shall be allowed fixation of pay in the post of HM as provided under Fundamental Rules 22B. The persons promoted after 01.06.1988 opposed to fix under Fundamental Rules 22B and they prayed to grant selection / special grade as granted to HM by taking both secondary grade service and HM post. Since the same was declined, those persons filed petition before Tribunal in O.A. No. 2899, 3009 and 3010 of 1989 and the Tribunal has held that the classification is wrong and set aside the paragraph 3 and 4 of the G.O. Ms. No. 1381.

3. Hence the Government issued a **G.O. Ms. No. 300** Education, Science and Technology Department dated 07.04.1994 wherein the grant of selection / special grade in G.O. 1381 was quashed and the benefit already disbursed were ordered for recovery. In the G.O. it has been categorically stated that the service of HM post alone will be taken for granting selection / special grade. In other words, the Secondary Grade post will not be taken into account while counting the service for Primary School HM. Unfortunately, the G.O. Ms. No.300 dated 07.04.1994 was not brought to the knowledge of this Court at the earliest point of time and there was total mess in this issue.

4. In the meanwhile, the government issued **G.O. Ms. No. 216** Finance (Pay Commission) Department dated 22.03.1993, extending the selection / special grade to the "Secondary Grade Teachers in Middle School", since they will not be having any promotional opportunities.



It is pertinent to note that the G.O. is not stating to calculate both the Secondary Grade post + Primary School HM post to grant selection / special grade. It simply states to grant selection / special grade to Secondary Grade Teachers working in Middle School, since they are not having promotional opportunities. Until this period the issue was settled, however later point of time this G.O. 216 dated 22.03.1993 was misinterpreted.

5. Thereafter, the issue started exploding when the teachers in order to retain the wrong benefits granted under G.O. 1381 (which G.O. was quashed by Tribunal) started filing writ petitions and the wrong started perpetuating. Writ petition was filed in W.P. No. 8079 / 2005 and vide order dated 28.04.2008 the writ petitions were allowed. In another writ petition vide order dated 18.04.2001 the government was directed to consider the claim. Since several writ petitions were filed and allowed, helplessness gripped the government. Hence pending writ petitions the government issued **G.O. Ms. No. 207** School Education (G2) Department dated 30.09.2008 and G.O. states that pension benefits shall be granted and the government would incur an additional expenditure of Rs.1,87,93,225/- and this is subject to the out come of the pending writ petitions.

6. Then the issue turned to an extreme level wherein the **G.O. Ms. No. 210** School Education (G2) Department dated 14.08.2009 was issued. In this the teachers prayed to calculate the **Secondary Grade Post service + Primary School HM service and thereafter fix the service in Middle School HM post and grant Selection / Special Grade**. The said G.O. granted the benefits to the persons mentioned in the G.O. Then in **G.O. Ms. No. 190** School Education (G1) Department dated 12.07.2010 was issued extending to some more persons by taking the **Secondary Grade post + Primary School HM and grant selection / special grade in Middle School HM post**. A correction G.O. was issued in **G.O. Ms. No. 230** School Education (G1) Department dated 10.08.2010. Then **G.O. Ms. No. 146** School Education (G1) Department dated 19.06.2012 was issued to some more persons to calculate **Secondary Grade post + Primary School HM was taken to grant Middle School HM selection / special grade**. In this G.O. it has been stated that more than six crores would be the financial implications for the



260 teachers. As pointed out supra the employee is entitled to selection / special grade if a person is "**stagnating**" in the same post. But now the teachers would be promoted as Primary School HM, then also they will demand to calculate the period of service in Primary School HM post. Then again the person would be promoted to Middle School HM, then also the person will demand to calculate both the secondary grade service + primary school HM and fix the same in Middle School HM post and grant selection / special grade. In short the entire service should be taken into account to grant selection / special grade. **That too "along with promotion", that is the high light of the issue.**

7. Thereafter numerous government orders were passed. This Court has passed an order in W.P. No. 29644 / 2003 and 29645 / 2003 dated 21.03.2008 covering 61 persons and to implement the order the **G.O. Ms. No. 234** School Education (G2) Department dated 10.09.2009 was issued wherein, the **Secondary Grade post + Primary School HM** was calculated. Again based on court's order **G.O. Ms. No. 270** School Education (G2) Department dated 20.09.2010 was issued. Likewise based on court's order, **G.O. Ms. No. 216** School Education (G2) Department dated 30.12.2011, **G.O. Ms. No. 270** School Education (G2) Department dated 20.09.2010, **G.O. Ms. No. 179** School Education (Elementary2) Department dated 06.09.2013, **G.O. Ms. No. 180** School Education (S.E.3(1)) Department dated 06.09.2013, **G.O. Ms. No. 181** School Education (S.E.3(1)) Department dated 20.09.2010 were issued, wherein the **Secondary Grade post + Primary School HM** was calculated.

8. These G.O. were passed in a fond hope that this issue will come to an end, but the issue could not see the end at all, inspite of so many G.O.s

9. This Court has allowed several petitions and the government finally filed review application in Rev. Appl. No. 227 / 2015 and the same was referred to Full Bench. The review application was taken up along with several writ appeals and writ petitions, wherein it was held the issue cannot be reagitated again and has held that the benefits shall be notionally calculated and the monetary benefits shall be payable on and from 01.03.2017.



10. This Court rejected the claims in several petitions and one such case is the order dated 09.12.2015 passed in W.A. (MD) No. 312 / 2011 in Division Bench headed by Justice V. Ramasubramanian and Justice N. Kirubakaran has held in paragraph 5, "that the employees who were in service in 1997-1998 as well as in the year 2002 did not rise a little finger either at the time of when the original applications were filed in the year 1997-1998 or at the time when the original application were allowed by the Tribunal in the year 2002". And rejected the dead and stale claims.

11. Thereafter the Rev. Appl. (MD) No. 35 / 2018 dated 19.03.2018, W.A. 34 / 2017 dated 03.01.2019 and W.A. 73 / 2016 dated 03.01.2019 was passed dismissing the review applications / writ appeals filed by the government.

12. Under this background the present two writ petitions are considered. In W.P.(MD)No.3186/2016 the petitioner has attained superannuation and retired in the year 2006 and has filed the present writ petition in the year 2016, after a lapse of 10 years from the date of retirement. The petitioner in W.P.(MD) No.3187/2016 attained superannuation and retired in the year 2006 and has filed the present writ petition in the year 2016, after a lapse of 10 years from the date of retirement. Hence this Court following the order dated 09.12.2015 passed in W.A. (MD) No. 312 / 2011, rejects the claim of the petitioner on the ground of delay and laches, since the dead and stale claims cannot be entertained.

13. The petitioners relied on G.O. Ms. No. 210, 190 and 146 and these G.O.s are passed in order to implement the orders of this Court. The petitioners ought to establish their right based on any provisions of law, rules, regulations and any government order passed based on the any policy decision of the government. In other words, if the government order is passed on the basis of the policy decision of the government i.e. G.O. passed in rem is applicable to all. The petitioners cannot claim any right to any government order which were passed in order to obey the orders of the Court i.e. government order passed to person specific / "in persona" cannot be cited to claim any right. In fact several writ petitions are



filed citing the G.O.s which were passed to obey the orders of this Court, if that is discouraged then pendency of the writ petitions would be considerably reduced.

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14. This Court is of the considered opinion each case ought to be dealt with on its own merits. In the present case, the writ petitioner in W.P.(MD) No.3186/2016 was regularized on 08.07.1977 in School Assistant Teacher post, had received Selection Grade on 08.07.1987 in the School Assistant Teacher post. Then promoted as Middle School HM on 12.10.1988. Then the petitioner received Selection Grade on 12.10.1998 in the post of Middle School HM. Then the petitioner is eligible for Special Grade on 12.10.2008, but since the petitioner retired on 30.04.2006, two years before the eligibility for Special Grade. Now the petitioner is seeking to take the two years from School Assistant Teacher post and grant Special Grade in the post of Middle School HM. Incidentally the petitioner has already received Selection Grade in the post of School Assistant Post. If the claim of the petitioner is accepted then the claim would be two selection grade for the same period which is absolutely illegal claim. Moreover as stated supra the selection / special grade cannot be granted once the promotion is granted to the petitioner. Therefore for the issue "whether the petitioner is eligible to get selection grade and special grade, even after promoted to the promotion post", this Court is of the definite opinion that "the claim is illegal and unjust enrichment".

15. The petitioner in W.P.(MD) No. 3187 / 2016 was appointed as B.T. Assistant on 11.01.1982, received Selection Grade in the B.T. Assistant post on 10.01.1992 and the said disbursement selection grade itself is wrong, since the petitioner was already promoted as Middle School HM on 21.12.1988. If the 1988 is taken as promotion date, then the petitioner is eligible for selection grade in the Middle School HM post on 21.12.1998, since the earlier selection grade fixation is wrong, this selection grade was not granted to the petitioner. The petitioner would be eligible for special grade on 21.12.2008, but the same was not granted, since two years prior to eligibility for special grade the petitioner retired from service on 20.12.2006. Moreover as stated supra the



selection / special grade cannot be granted once the promotion is granted to the petitioner. Therefore for the issue "whether the petitioner is eligible to get selection grade and special grade, even after promoted to the promotion post", this Court is of the definite opinion that "the claim is illegal and unjust enrichment".

16. The teachers are seeking to grant selection grade and special grade by calculating the service in Secondary Grade Teacher post and the **promoted post** of Primary School Headmaster. Also claiming to calculate the Secondary Grade post and Primary School Headmaster post along with the Middle School Headmaster post and grant special grade. **In short the teachers are claiming both the promotion and as well as selection grade and special grade for their entire service.** The concept has entirely changed by this plea to calculate the entire service including the promotion post. The claim to grant Selection Grade / Special Grade after availing promotion is illegal and unjust enrichment. The basic concept of Selection Grade / Special Grade is tampered with to obtain illegal claim. The very concept of granting selection grade and special grade is killed by these kind of writ petitions. This Court is of the considered opinion that the **teachers are either eligible for promotion or for Selection / Special Grade and the teachers are not eligible for both.**

17. For the reasons stated above the writ petitioners are not entitled to the benefits of the G.O. 210 dated 14.08.2009 and the writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

11. In the present case the petitioner was appointed as Secondary Grade Teacher on 01.09.1986 and was awarded Selection Grade on 01.09.1996 and Special Grade on 01.09.2006 in the post of Secondary Grade Teacher. Since the petitioner was stagnating in the post of Secondary Grade Teacher without promotion, the petitioner was granted selection grade and special grade. In such circumstances the petitioner cannot claim that even though he was not promoted as Primary School HM, he should be granted promotion scale of pay and fix selection grade pay of Primary School HM and special grade pay of Primary School HM. The petitioner retired on superannuation on 31.12.2009. If any person had rendered service in the same post and stagnating in the same post without any promotion for 30 years, then



a stagnation increment is eligible. The petitioner would be entitled to the benefits of stagnation increment if the petitioner had serviced 30 years in the Secondary Grade post without promotion as per G.O.(Ms).No.241 Finance (PC) Department, dated, 01.04.1981 and G.O.(Ms).No.562 Finance PC Department, dated, 28.09.1998. In the present case the petitioner had not stagnated for 30 years and hence he is not entitled to the 30 years increment. The petitioner is not eligible for any other benefits as claimed by the petitioner more so is not eligible for the benefits of G.O.(Ms).No.258 and 62 as claimed in the prayer. Hence the petition is devoid of merits and is liable to be dismissed.

12. The Secondary Grade Teachers who are working in Elementary Education Department are entitled to promotion and the Secondary Grade Teachers who are working in School Education Department are not entitled to promotion. Hence, they should be conferred promotion of Primary School Headmaster and fix Primary School Headmaster salary, Selection Grade and Special Grade for Primary School Headmaster. When the petitioner was already granted the Selection Grade and Special Grade in the post of Secondary Grade Teacher, the claim of the petitioner would amount to unjust enrichment. The concept of Selection Grade and Special Grade itself was an incentive to boost the teacher who was stagnating without promotion for more than 20 years. When that is already granted in the post of Secondary Grade Teacher, the claim of the petitioner to grant the Selection Grade and Special Grade in the post of Primary School Headmaster will never arise. The petitioner is seeking promotion as the Primary School Headmaster and Selection Grade / Special Grade in the Primary School Headmaster post which is unknown to the service jurisprudence. Hence the claim of the petitioner is absolutely illegal and the writ petition deserves to be dismissed.

13. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)



mga

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Principal Secretary to Government,
School Education Department,
Fort.St.George,
Chennai 600 009.

2.The Director of School Education,
College Road,
Chennai 600 006.

3.The Chief Educational Officer,
Madurai 625 002.

4.The District Educational Officer,
Melur 625 106,
Madurai District.

+1 CC to M/s.B.ALAGARSAMY, Advocate (SR-25485[F] dated 14/06/2022)

+1 CC to M/s.SPL.GP (SR-25817[F] dated 15/06/2022)

Pre-delivery Order made in

W.P. (MD)No.4255 of 2016

14.06.2022

SS(23/06/2022) 13P 8C