



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 11.12.2023

ORDERS PRONOUNCED ON : 19.12.2023

CORAM :

**THE HON'BLE MR. SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

Writ Petition Nos.819 of 2021, 10589 of 2018 and 26641 of 2023 &
W.M.P.Nos.18396, 18398, 879, 882 and 9971 of 2021,
12547 and 12548 of 2018, 14766 of 2022, 26079 and 26080 of 2023

W.P.No.819 of 2021:

1.A.Ramu
2.S.Srinivasan
3.N.Ponnusamy
4.A.Pachamuthu
5.P.Elayaraja
6.M.Sugumar
7.A.M.Shankar

... Petitioners

Versus

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



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

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

3.The Principal Secretary
Personnel and Administrative Reforms Department
Fort St.George
Chennai – 600 006.

... Respondents

W.P.No.10589 of 2018:

- 1.A.Venkadesan
- 2.M.Ramamurthy
- 3.S.Sethuranganathan
- 4.Sudhir John
- 5.P.Agastiyar
- 6.K.Sekar
- 7.A.Sarala Devi
- 8.A.M.Govindaraj
- 9.V.Murugan
- 10.N.Raju
- 11.V.Mageswaran
- 12.M.Thangarasu
- 13.M.Marimuthu
- 14.M.Selvam
- 15.R.Dhanasekaran
- 16.K.R.Karunanithi
- 17.R.Sivakumar

... Petitioners

Versus

1. The Government of Tamil Nadu,
Represented by Principal Secretary,
School Education Department
Fort St.George, Chennai – 600 009.



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

WEB COPY

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

3.The Joint Director of School Education (Higher Secondary)
College Road DPI Compound
Chennai – 600 006.

4.G.Ilango

5.M.Jambu

6.P.Elayaraja

(R6 impleaded vide order of this Court
dated 21.08.2023 made in W.M.P.No.25080 of 2019)

... Respondents

W.P.No.26641 of 2023:

1.R.Sekar

2.R.Murali

3.K.Allimuthu

4.R.Mahendiran

5.A.Madalaimuthu

... Petitioners

Versus

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

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



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

3. The Principal Secretary
Human Resource Management Department
Fort St. George
Chennai – 600 006.

... Respondents

Prayer in W.P.No.819 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in Rule 2(b) (i) of Special Rules for Tamil Nadu Higher Secondary Educational Service comprised in G.O.Ms.No.14, School Education Department, dated 30.01.2020 in so far as the fixation of ratio of 2:7 amongst the feeder categories for appointment to the post of Higher Secondary Headmaster is concerned and quash the same and consequently direct the respondents herein to re-fix the ratio as 1:8 amongst feeder categories based upon the cadre strength of the feeder categories of High School Headmasters and PG Assistants.

Prayer in W.P.No.10589 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in relation to rule 2(b)(i) of Tamil Nadu Higher Secondary Service Rule, issued in G.O.Ms.No.138, School Education (SE 2(u)) Department, dated 08.07.2018 and as re-issued in G.O.Ms.No.14 School Education Department dated 30.01.2020 and quash the same in so far as it modified the ratio 2:7 in the place of 2:5:2 for the post of Head Master Higher Secondary School is concerned and in so far as the petitioners are concerned and issue a consequential direction to the respondents



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

WEB COPY

to allot one vacancy in the post of Head Master Higher Secondary School among the two vacancies meant for the vanished category of P.G.Assistant (SCERT) and Physical Directors (SCERT) and to ensure the proportion of 3:6 vacancies between Headmaster, High School, the petitioners and P.G.Assistants – Direct Recruits, for filling up the post of Head Master Higher Secondary School by way of recruitment by transfer and promotion.

(Prayer amended vide order of this Court dated 21.08.2023 made in W.M.P.No.14761 of 2022)

Prayer in W.P.No.26641 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in Rule 2(b)(i) of Special Rules for Tamil Nadu Higher Secondary Educational Service comprised in G.O.Ms.No.14, School Education (SE2(1)) Department dated 30.01.2020 in so far as the fixation of ratio of 2:7 amongst the feeder categories for appointment to the post of Higher Secondary Headmaster is concerned and quash the same and consequently direct the respondents herein to re-fix the ratio as 1:9 amongst feeder categories based upon the cadre strength of the feeder categories of High School Headmasters and PG Assistants.

In W.P.No.819 of 2021:

For the Petitioners

: Mrs.Dakshayani Reddy
Senior Counsel
for Ms.Suneetha



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

WEB COPY

For the Respondents

: Mrs.R.Anitha
Special Government Pleader,
for RR-1 to 3

In W.P.No.10589 of 2018:

For the Petitioners

: Mr.R.Saseetharan

For the Respondents

: Mrs.R.Anitha
Special Government Pleader,
for RR-1 to 3
Ms.L.Parvin Banu
for RR4 & 5

In W.P.No.26641 of 2023:

For the Petitioners

: Mr.P.Ganesan
for Mr.C.Vediappan

For the Respondents

: Mrs.R.Anitha
Special Government Pleader

COMMON JUDGMENT

(Judgment made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

The prayer in all these Writ Petitions are either similar or opposed to each other and as such are taken up together for disposal by way of this common Judgment.



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

WEB COPY

2.The brief facts leading to the filing of these Writ Petitions are, there are posts of Headmaster and Headmistress in the Higher Secondary Schools in the Tamil Nadu Higher Secondary Educational Service under the 1st respondent Department, viz., the School Education Department, Government of Tamil Nadu. The said posts are Class I posts in the scale of pay of Rs.15,600/- - Rs.39,100/- + GP Rs.5400/- . Recruitment to the said post is governed by the Rules framed under the Proviso to Article 309 of the Constitution of India, vide G.O.Ms.No.14, School Education (SE2(1)) Department dated 30.01.2020, known as '*Special Rules for the Tamil Nadu Higher Secondary Educational Service*'. As per the same, appointment to the said post is firstly by way of transfer from the category of Headmasters/Headmistress of Government High Schools in Class V of the Tamil Nadu School Education Service and secondly by way of promotion from Class II and Class III of the Tamil Nadu Higher Secondary Educational Service. Class II consists of the Post Graduate Assistants in academic subjects and the Post Graduate Assistants in languages. Class III consists of District Inspector of Physical Education, and Physical Directors of Higher Secondary Schools. Rule 2 (b) provides a quota for both



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

modes of recruitment i.e., by transfer and promotion in the ratio of 2:7. It is

essential to extract Rule 2 (b)(i), which reads as follows:-

“2 (b) (i) Vacancies arising in Class I of the service shall be filled up so as to ensure that the proportion of appointment in the service in the said Class by recruitment by transfer and by promotion from categories of Class II and Class III taken together respectively be in the ratio of 2:7 and the cycle for such appointment shall be as follows:-

By recruitment by transfer from Class V of the Tamil Nadu School Educational Service (Headmaster / Headmistress of Government High Schools)- 01
By promotion from Class II and Class III - 01
By promotion from Class II and Class III - 01
By promotion from Class II and Class III - 01
By recruitment by transfer from Class V of the Tamil Nadu School Educational Service (Headmaster / Headmistress of Government High Schools) - 01
By promotion from Class II and Class III - 01
By promotion from Class II and Class III- 01
By promotion from Class II and Class III - 01
By promotion from Class II and Class III - 01

Provided that if no sufficient number of qualified and suitable candidates are available for appointment by a particular method, such vacancies shall be filled in by the other method prescribed;

Provided further that promotion shall be made from combined seniority list of categories in Class II and Class III.

(ii) Fifty percent of the substantive vacancies in Class II and category 2 of Class III of the service



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

WEB COPY

shall be filled or reserved to be filled by direct recruitment; and remaining fifty percent shall be filled or reserved to be filled by recruitment by transfer.

Provided that fifty percent of the substantive vacancies in category 1, 'Post Graduate Assistant in Academic Subjects' under Class-II of the Service shall be filled by direct recruitment and out of this, ten percent shall be filled from among the qualified Secondary Grade Teachers and other Teachers with Secondary Grade scale of pay viz. Craft Instructors, Art Masters, Music Teachers, Physical Education Teachers and Pre-Vocational Instructors (Full time) working in Government Higher Secondary Schools, Government High Schools and Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under the Local Bodies (Municipal Corporation or Municipality or Panchayat Union); and all recognized Aided Managements.

Provided further that fifty percent of the substantive vacancies in category 2, 'Post Graduate Assistant in Languages', under Class II of the Service shall be filled by direct recruitment and out of this, ten percent shall be filled from among the qualified Secondary Grade Teachers and other Teachers with Secondary Grade scale of pay viz. Craft Instructors, Art Masters, Music Teachers, Physical Education Teachers and Pre-Vocational Instructors (Full time) working in Government Higher Secondary Schools, Government High Schools and Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under the Local Bodies (Municipal Corporation or Municipality or Panchayat Union); and all recognized Aided Managements.

Provided also that if sufficient number of



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

WEB COPY

suitable Secondary Grade Teachers and other Teachers with Secondary Grade Scale of Pay working in the type of schools specified in the aforesaid provisos are not available for direct recruitment, such vacancies shall be filled up from other candidates available for selection in open market.

Provided also that 2% of the total number of substantive vacancies of all subjects and languages put together in category 1 (Post Graduate Assistant in Academic subjects) and category 2 (Post Graduate Assistant in Languages) under Class II, shall be reserved for appointment by recruitment by transfer from among those staff, who are qualified in the Tamil Nadu Ministerial Service working in the School Education Department (i.e.) "Superintendent, Assistant/Steno-Typist and Junior Assistant/Typist without fixing subject wise reservation.

(c) Promotion, recruitment by transfer and by transfer to all the Classes in the Service shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal."

3.Originally, vide G.O.Ms.No.1620, Education (HS.2) Department dated 18.10.1988, by accepting the recommendation made by the authorities, the Government fixed the ratio as 2:5. Thereafter, once again the process to re-look of the ratio was taken up in the year 2018. In view of up-gradation of several High Schools, the Government, taking into account the increase in the cadre strength of the post of Post Graduate Assistants and decrease in the cadre



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

strength of High School Headmasters, modified the quota as 2:7 vide G.O.Ms.No.1620, Education (HS.2) Department dated 18.10.1988. Thereafter when the present impugned Special Rules were framed vide G.O.Ms.No.14, School Education Department dated 30.01.2020, the said ratio of 2:7 was carried. Feeling aggrieved, the Teachers from both cadre viz., Post Graduate Assistants as well as High School Headmasters are before this Court.

4.Heard, *Mrs.Dakshayani Reddy*, learned Senior Counsel appearing for the petitioners in W.P.No.819 of 2021, *Mr.R.Saseetharan*, learned counsel appearing for the petitioners in W.P.No.10589 of 2018, *Mr.P.Ganesan*, learned counsel appearing for the petitioners in W.P.No.26641 of 2023, *Mrs.R.Anitha*, learned Special Government Pleader appearing for the respondents 1 to 3 and *Ms.L.Parvin Banu*, learned counsel appearing for the respondents 4 & 5.

5.*Mrs.Dakshayani Reddy*, learned Senior Counsel leading the arguments on behalf of the Post Graduate Assistants would submit that fixation of quota between the two feeder categories cannot be arbitrary. As a matter of fact, G.O.(Ms.)No.1069, Personnel and Administrative Reforms (Personnel-M)



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

Department 13.10.1984 governs the feild. Paragraph No.2 of the said

Government Order reads as follows:-

“2.The Government after careful consideration and in consultation with the Tamil Nadu Public Service Commission order as follows:

(i) If the scales of pay of the feeder categories are similar, for purposes of promotion a percentage for each feeder category may be prescribed, taking into consideration the cadre strength of each of the feeder categories. A cycle for promotion may also be prescribed.

(ii) If the scales of pay of the feeder categories are different, then persons holding posts carrying a higher scale of pay in the feeder category should be considered first and that, if no qualified and suitable persons are available in that post, the cases of persons holding posts carrying the next higher scale of pay in the feeder category should be considered.

.....”

Therefore, she would submit that the quota which is fixed should be commensurate with the respective cadre strength. A huge number of High Schools have been upgraded as Higher Secondary Schools and the cadre strength of Post Graduate Assistants in the various disciplines have also grown manifold. As a matter of fact, both the posts carry the same scale of pay. As on



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

the year 2021, the cadre strength in respect of Post Graduate Assistants is 28,054 and the cadre strength of High School Headmasters is 2896. Considering the same when the proposal was put up by the Director of School Education by his communication had recommended 1:7. The correct ratio would only be 1:9 whereas it was fixed by the above said Government Order as 2:7, which is now carried on by the impugned Government Order in Rule 2 (b) (i) as quoted above.

6.The learned Senior Counsel taking through the comparison table filed in the case would submit that it takes on an average of 16 – 17 years for Post Graduate Assistants to be promoted as Higher Secondary Headmasters, whereas the High School Headmasters get promotion as Higher Secondary Headmaster between 7 – 8 years. She would also point out that the number of Post Graduate Assistants had even retired without even a single promotion. When promotional opportunities have to be properly given and when the cadre strength is to be considered for fixing the ratio between the two categories, the present ratio which is fixed by the impugned rule is arbitrary and is accordingly is liable to be struck down and the respondents are liable to re-fix the same.



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

WEB COPY

7.The learned counsel appearing on behalf of the petitioners in W.P.Nos 10589 of 2018 and 26641 of 2023 would also adopt the submissions of *Mrs.Dakshayani Reddy*, learned Senior Counsel.

8.In contrast, *Mr. R. Saseedharan*, learned counsel appearing on behalf of the High School Headmasters would submit that the High School Headmasters even though got promotion after 7 – 8 years, prior to that they had to put in about 17 – 20 years as BT Assistants and in all, it takes on an average of 25 – 28 years for them to reach the level of Higher Secondary Headmasters, which is slower when compared to that of PG Assistants and therefore, they are the persons who are more affected on behalf of the decrease in quota. According to him, the original ratio 2:5 was only the correct ratio and 2:7 does injustice to them and their promotional opportunities are affected.

9.Opposing both the submissions, *Mrs.R.Anitha*, learned Special Government Pleader would submit that it is true that the Government has to take into account the respective cadre strength while fixing the quota, not in



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

mathematical precision, but as a broad guideline. The Government taking into account the respective increase in the cadre strength for the post of Post Graduate Assistants and decrease in the cadre High School Headmasters had accordingly modified the quota as 2:7 vide G.O.Ms.No.1620, Education (HS.2) Department dated 18.10.1988 which was only now carried in the rules. It is for the Government to periodically undertake the revision, considering the grievances of the employees and the requirement of the service and other administrative considerations. The ratio fixed is not in a manner so as to totally take away the promotional rights of either categories, but by way of proper balancing, the quota is fixed.

10.We have considered the rival submissions made by the learned counsel on either side and perused the material records.

11.At the outset, it is true that the cadre strength of the respective category have to be taken into account while fixing the quota and it should not be lopsided or unfair to one category. At the same time we are in agreement with the submissions of the learned Special Government Pleader that while the



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

cadre strength is the guiding factor and can be a major guiding factor also, that does not mean that the quota can only be fixed with mathematical precision of the respective cadre strength. In this regard, the arguments of the learned Senior Counsel is premised as if the grant of promotional opportunities is the only factor and purpose of recruiting from more than one category of posts and as such is flawed. The Government as an employer frames the recruitment rules and the method of recruitment. While so it takes into consideration, (i) the boosting of morale of the cadre by providing them further career progression; (ii) the importance and nature of the post and the duties to be discharged ; (iii) a mix of the administratively experienced High School Headmasters and fresh Post Graduate Teachers, who will come with refreshing ideas about the administration of Schools. The cadre is made to be a mix of both and the utmost important factor is the public interest and the effective combination of the different types of personnel who would man in the cadre. Therefore, while grant of promotional opportunities is one of the factors(a major factor too), it is not the sole factor depending on which the ratio has to be fixed. If the Government decides that a bit more of administratively experienced hands should man the post, it will be open for them to frame the rules accordingly. At



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

the same time, care has to be taken not to demoralize the other cadre of Post Graduate Assistants. Nor it can be totally divesting promotional opportunities which will not stand scrutiny of Article 14 and 16 of the Constitution of India. Viewed from that angle, the fixation of the quota in the ratio of 2:7 cannot be said to be arbitrary or whimsical or leading to complete loss of promotional opportunities to either of the side. Therefore, we do not find merits in the claim of both sides, viz., Post Graduate Assistants or the High School Headmasters.

12. Thus, the challenge to the ratio by both sides is rejected. However, we hasten to add that the present order will not in any manner preclude the respondents 1 to 3 themselves in undertaking periodical review and re-fixing the cadre strength depending on their administrative exigencies and needs. In that regard, it would also be open for both sides to make representations, if they choose to do so.

13. In the result, the Writ Petitions are disposed of on the following terms:



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

WEB COPY

(I) Rule 2 (b) (i) Special Rules for Tamil Nadu Higher Secondary Educational Institutions comprised in G.O.14, School Education Department dated 30.01.2020, in so far as the fixation of ratio of 2:7 among the feeder categories for appointment to the post of Higher Secondary Headmaster is declared as valid and in accordance with law,

(ii) It would be open for the respondents 1 to 3 to periodically revisit or review the quota between the feeder categories by taking into account the relevant factors and all the Writ Petitioners will be at liberty to make representations, whenever the respondents 1 to 3 take up the exercise of revisiting the quota and grievances of both sides can also be taken into account, while re-doing the exercise;

(iii) No costs. Consequently connected miscellaneous petitions are closed.

(S.V.G., C.J.,)

(D.B.C., J.,)

19.12.2023

Index : Yes

Speaking order

Neutral Citation : Yes

Jer



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

WEB COPY

To

1. The Principal Secretary
Government of Tamil Nadu,
School Education Department
Fort St.George
Chennai – 600 009.

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

3.The Principal Secretary
Personnel and Administrative Reforms Department
Fort St.George
Chennai – 600 006.

4.The Joint Director of School Education (Higher Secondary)
College Road DPI Compound
Chennai – 600 006.

5.The Principal Secretary
Human Resource Management Department
Fort St.George
Chennai – 600 006.



WEB COPY



Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

**THE HON'BLE CHIEF JUSTICE
and
D.BHARATHA CHAKRAVARTHY, J.,**

Jer

Pre-Delivery Order made in
Writ Petition Nos.819 of 2021, 10589 of 2018
and 26641 of 2023

19.12.2023