



WP.(MD).No.21964 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.09.2023

PRONOUNCED ON : 02.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.21964 of 2023

and

W.M.P.(MD)No.18316 of 2023

A.Jasintha

... Petitioner

Vs.

- 1.The Principal Accountant General (A&E),
O/o. The Principal Accountant General (A& E),
Tamil Nadu,
No.361, Anna Salai,
Chennai – 18.
- 2.The Senior Accounts Officer/Pen23,
O/o. The Principal Accountant General (A& E),
Tamil Nadu,
No.361, Anna Salai,
Chennai – 18.
- 3.The Chief Educational Officer,
CEO Office Campus,
Pudukottai - 622001.



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4.The District Educational Officer (Secondary),
CEO Office Campus,
Pudukottai - 622001.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings in Pen23/1/Pt.10100/23-24 dated 20.06.2023 and quash the same as illegal and consequentially to direct the respondents to grant family pension to the petitioner arising out of the State Government civil service of petitioner's deceased father Late.Adaikalasamy within the period.

For Petitioner	: Mr.H.Mohammed Imran M/s.Ajmal Associates
For R1 & R2	: Mrs.S.Mahalakshmi
For R3 & R4	: Mr.N.Ramesh Arumugam, Government Advocate

ORDER

The prayer in the writ petition is as follows :-

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent in his proceedings in Pen23/1/Pt. 10100/23-24 dated 20.06.2023 and to direct the respondents to grant family pension to the petitioner arising out of the State



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Government civil service of petitioner's deceased father

WEB COPY *Late.Adaikalasamy.*

'Yatra naryastu pujoyante ramante tatra Devata,

Yatraitaastu na pujayante sarvaastatrafalaah kriyaah'

– Manusmruthi

**'Where women are honored, divinity blossoms there and where
women are dishonored all action no matter how noble remain
unfruitful'**

2.Prelude :-

The concern about the position of deserted women in India has neither been adequate nor satisfactory. The Government of Tamil Nadu vide G.O.Ms.No.325 of Department of Finance (Pension) dated 28.11.2011 has introduced a pension scheme for the unmarried/divorced/widowed daughters of Government Employees. The said G.O. is a measure of social security targeted on women who are considered as destitutes. An unmarried/divorced/widowed daughter of a Government employee is considered a destitute, if she is without any



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regular income with less than a monthly income of Rs.2,550/-. The instant case is the case of a daughter seeking family pension arising out of State Government civil service of the petitioner's deceased father late. Adaikalasamy.

3.The factual matrix of the case :-

The petitioner's father late. Adaikalasamy worked as PG Assistant till his superannuation on 30.06.1993. Till his date of death on 08.05.2019, he was sanctioned with civil pension for his service as BT Assistant. After his demise, his wife late. Mary was sanctioned with family pension and she was receiving the same till her death on 06.04.2020. After the demise of Mrs.Mary, the petitioner being the deserted daughter of late Adaikalasamy applied for the family pension vide her proposal, which was forwarded to the second respondent by the fourth respondent. In response to her proposal, the second respondent passed the impugned order addressed to the fourth respondent vide proceedings dated 20.06.2023 rejecting the petitioner's claim for family pension on the ground that as per G.O.Ms.No.325 dated 28.11.2011 only unmarried/divorced/widowed daughters are eligible to receive family



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pension. The petitioner since being a deserted daughter, she is not eligible for family pension. Challenging the same, this writ petition came to be filed.

4. Heard Mr.H.Mohammed Imran, learned counsel for M/s.Ajmal Associates, appearing for the petitioner, Mrs.S.Mahalakshmi, learned counsel appearing for the respondents 1 and 2, Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 3 and 4 and perused the entire materials available on record.

5.Submissions :-

5.1.The learned counsel for the petitioner Mr.Mohammed Imran submitted that the petitioner was married to one Charles in the year 2005. They lived together for two years until he deserted the petitioner in the year 2007. He was mentally unstable and he was from Srilanka. Hence, without information, the petitioner's husband left for Srilanka. Thereafter, she had been living with her parents till their death.



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5.2. The learned counsel vehemently submitted that a daughter who was deserted by the husband, is in no way different from a divorced daughter. The only thing different between the two categories of women is the legal proceeding of divorce and nomenclature. That apart both categories of women face similar kind of situation in life and continue to suffer without support in life. The petitioner and her mother solely depend on their family pension amount for livelihood. That apart they have no source of income. But to the shock of the petitioner, after the demise of her mother, the respondents have discontinued the disbursement of family pension in view of the impugned order dated 20.06.2023. Though the petitioner has a brother and four sisters, they are all married and living separately with their respective families. The competent Authority has issued a certificate of deserted woman to the petitioner. However, the same has not been considered by the respondents and has rejected her claim. If the impugned order is allowed to sustain that would cause great deprivation and difficulty to the petitioner and the same is arbitrary and violative of Article 14 of Constitution of India. Considering the age, the petitioner is already 53 years old and she is qualified with only 3rd standard and that she could



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not be able to work on account of her various health issues. It is necessary that the impugned order be quashed and on that basis, he pressed for allowing the writ petition.

5.3.The respondents 1 and 2 have filed counter affidavit and the learned counsel appearing for the respondents 1 and 2 vehemently submitted that the Rule position for grant of family pension to daughters is provided in Rule 49(13)(b) of Tamil Nadu Pension Rules, 1978. According to the said Rule, family in relation to a Government servant means, in case of unmarried daughter, who has not attained the age of 25 years. Rule 49(6) mandates that the period for which, family pension is payable to an unmarried daughter is until the age of 25 years or until she get married, whichever is earlier. Provided that she is a daughter of Government servant born after retirement from the marriage solemnized before or after retirement of a Government servant, is suffering from any disorder or disability of mind or is physically crippled or disabled, whether such handicap manifests before or after retirement or death while in service of a Government servant, so as to render her unable to earn living even after attaining the age of 25 years, the family pension



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shall be payable to her for life. However, such daughter is not be eligible for family pension from the date on which, she gets married. That apart vide letter No.117755/Pension/90-3 Fin (Pen) Department dated 29.01.1991, the Government has clarified that there is no provision in the Tamil Nadu Pension Rules to deal with desertion cases. Hence, the benefit of G.O.Ms.No.327 Finance (Pension) Department dated 30.08.2001, would cover only the case of unmarried/divorced/widow daughters of Government servants/pensioners beyond the age of 25 years subject to the condition that the monthly income is less than Rs.2,550/- per month and the same cannot be extended to a deserted daughter. On that basis, he pressed for dismissal of the writ petition.

6.The learned Government Advocate appearing for the respondents 3 and 4 categorically stated that contrary to G.O.Ms.No.325 of Finance (Pension) dated 28.11.2011, if the benefit of the same is extended to deserted women that would open up a pandora box resulting in filing of hundreds of similar cases causing burden to the Government and on that basis, he pressed for dismissal of writ petition.



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7.The learned counsel for the respondents relied upon the Hon'ble Division Bench of this Court in the case of ***State of Tamil Nadu and another v. N.Santhanalakshmi*** reported in ***1995 1 L.W. 750*** which has dealt with the case of a deserted women and relevant portion of which is extracted as follows:-

*“5. On behalf of the appellants, apart from referring to the relevant provisions of the [Hindu Marriage Act, 1955](#), particularly [Section 15](#) of the Act, our attention has also been drawn with reference to the scope and purport of the word 'deserted' women in the light of the exposition of a law by Courts on the subject and particularly placing reliance upon the decision of the Supreme Court (*Bipinchandra v. Prabhavathi*). It would be useful to advert to the exposition of the law relating to desertion -- both statutory and case law in the context of marital status and law governing Hindu marriages. The explanation to [Section 13\(1\)](#) of the Act defines the expression 'desertion' to mean the desertion of the applicant before a Court by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the wilful neglect of the applicant before the Country by the other party to the marriage. This explanation was found earlier incorporated as explanation to [Section 10\(1\)\(a\)](#) prior to 1976 of the Act. The*



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essence of desertion as judicial understood and declared is intentional and total as well as permanent for saking and abandonment of one spouse by the other without the other's consent and without reasonable cause. In effect, it is a total repudiation of the obligation of marriage or an abandonment of the deserted spouse with an intention to bring the cohabitation permanently to an end : Bipinchandra v. Prabhavathi; : Lachhman Uttam Chand Kirpalani v. Meena, : Rohinikumari v. Narendra Singh).It is really the conduct as a whole consisting of total disregard of the fundamental obligations of matrimony that was held to constitute an intention to desert and an act of desertion. Though, once it is found that one of the spouses has been in desertion, the presumption is that the desertion continued and it is not necessary for the deserted spouse actually take steps to bring the deserting spouse back to the matrimonial home, with the coming to an end of the matrimonial status by the grant of a decree for divorce and dissolution of marriage by the Competent Court of Law, the whole basis for claiming any rights by one spouse against the other spouse collapse and the permanent snapping of the marital ties between the spouses also puts an end irretrievably the marital obligations between such parties and the very claim or concept of desertion thereupon becomes a misnomer and rendered wholly inapplicable and inappropriate between such parties. As a



matter of fact 'widows' is also a special category with 10 seats reserved therefor. Can a deserted woman after the death of her husband claim to be a deserted woman only and not a widow. Reservation or no reservation a widow, after the death of her husband, cannot avail of her earlier position as a deserted woman even though she has no living husband. Similarly divorced woman, can be in no better a position to claim the status of a deserted woman after the dissolution of the marriage by a Competent Court of Law. Thus; the subsistence of marital relationship is a sine qua non for sustaining the plea of desertion.

6. Considered in the context and petition of law, as above, the case on hand presents no difficulty to arrive at the only and inevitable conclusion that on and after 15.4.1994 when the marriage of the respondent with her husband C.P. Easwaramoorthy was dissolved by the grant of a decree for divorce at the instance of the respondent and with the tacit consent expressed before the Civil Court by her husband, the respondent cannot any longer after the Court's decree be claimed to be a deserted woman, there was no question her being entitled to any marital obligations from her erstwhile husband and vice versa after the decree divorce was granted. Consequently, we are unable to persuade ourselves to accept the plea on behalf of the respondent. For the same reason, we



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are unable to share the view expressed by the learned Single Judge in the judgment under appeal.

7. Since the direction to allot one seat for M.B.B.S. for the academic year 1995-96 to the respondent came to be issued only on the ground that the respondent was entitled to be considered as against the seats reserved under the special categories for 'deserted women' but wrongly omitted to be so considered, the question of granting any relief or sustaining the direction issued by the learned Single Judge does not arise at all. But at the same time, the learned Senior Counsel for the respondent by relying upon the decision reported in A.I.R. 1989 S.C. 972 ([Council of Scientific and Industrial Research v. K.G.S. Bhatt](#)) contended that the relief granted may not be interfered with. That was a case wherein the respondent before the Apex Court, a highly qualified Engineer was found unreasonably left without opportunity for promotion for about twenty years and made to suffer and stagnated also in the same scale from inception for twenty years due to defective promotion policy and the learned Judges thought fit not to interfere with the relief, granted by the Administrative Tribunal concerned, and that too while dealing with an appeal under [Article 136](#) of the Constitution of India. This is made clear by the observations of the Apex Court in paragraphs 12 to 14 of the reported decision wherein it is found stated that the Supreme Court exercises power under [Article 136](#) only



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when there is supreme need and even if legal flaws might be electronically detected in the order or the Tribunal or Court, the Apex Court will not interfere unless there is manifest injustice or substantial question of public importance. On the merits of the matter before Their Lordships also it has been stated as hereunder:--

"14. In the instant case, as already noticed that respondent-1 has suffered and stagnated for about twenty years in the same scale from inception due to defective promotional policy. Therefore, we decline to interfere with the relief granted by the Tribunal although we do not agree with the views expressed on the scope of Bye-law 71(b)(ii)".

Therefore, we are of the view that there is no comparison whatsoever of the case before the Supreme Court with the one before us either on the merits of the claims or the absolutely discretionary nature of the appellate jurisdiction under [Article 136](#) of the Constitution of India. The case before us involves a substantial question of law on which there could be very little room for any doubt and public interest is also very much concerned. It is not that the respondent has been admitted as such and has undergone or is undergoing the course also. The jurisdiction exercised by us is that of the first and regular Appellate Court and, therefore, there is not scope for allowing the direction issued by the learned Single Judge directing the giving of one seat in the next academic year being allowed to



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stand without interference on any consideration of mere sympathies or abstract, and technical concepts of justice ignoring real and substantial justice. Moreover, it will not be keeping within the bounds of law and it is also not permissible to issue such a direction ignoring the fact as to what would be the rules of admission for the academic year 1995-96. A direction to admit to a course can be issued only when the petitioner is not only qualified and is also eligible as per the rules governing the admission and such eligibility has been ignored and the admission is denied unjustly and illegally.”

8.The learned counsel submitted that the said case is squarely applicable to this case, this writ petition is to be dismissed.

Analysis:-

9.'Desertion' is a ground for divorce under Section 13(1)(b) of Hindu Marriage Act, 1955. The word 'desertion' means abandonment or withdrawal from one's attendance from a co-habitation that exists. Though the said word is not defined in the Act deliberately, the concept of desertion varies from time to time, place to place and country to country. It is an ever dynamic concept. The Hon'ble Supreme Court in the case of ***Savitri Pandey v. Prem Chandra Pandey*** reported in **2002 (2)**



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SCC 73 has observed that *“Desertion', for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. “*

10.The desertion is complete only when the factum '*deserendi*' that is the factum of separation and the *animus deserendi* that is the intention to desert co-exist. The Nagpur Bench of Bombay High Court, in the case of ***Union of India and another v. Usha Eknath Patil*** reported in ***2018(4) Maharashtra Law Journal*** has dealt with the case of family pension to deserted women and the relevant portion of which is extracted as follows:-

“21. There cannot be any debate about this proposition. Here, Clause 19 (b), mentioned supra, includes not only a widowed or divorced daughter but also unmarried daughter. The said clause also entitles adopted son or daughter to



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family pension. Clause therefore is wide and looks after welfare of family of deceased employee. Clauses 4 and 5 (highlighted portion, supra) of office memorandum dated 11/09/2013 show the intention of Railways not to leave a destitute woman without any means of livelihood. This object and intention can not be defeated in present facts.

22. In present facts, though customary divorce on 21/7/1992 may not be legally recognized, facts show that from said date Usha was not residing with her husband and was therefore member of family of her deceased father. She was therefore a destitute residing with her mother Vatsala who expired on 28/12/1999. When the provision entitles unmarried or a divorced or a widowed daughter to family pension, we find that Usha is definitely covered thereunder.”

11.This Court in the case of ***Jegathambaal v. The Local Audit Officer and another*** in ***W.P.(MD)No.2969 of 2021*** dated 23.06.2022 has dealt with a similar case and the relevant portion of which is extracted as follows:-

“6.The deceased employee had also affirmed to the sworn declaration stating that as on 07.08.2018, the petitioner herein was under his care and custody, since she was deserted by her husband. Thus, it could be said that the petitioner



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herein was maintained by the deceased employee as on the date of his death and therefore, could be termed as “eligible divorced daughter who completed 25 years of age”. The petitioner herein is also now maintaining her physically challenged child and therefore, I am constrained to extend liberal interpretation to the eligibility criteria for divorced daughter under Board Proceedings No.52 dated 02.03.2018. 7.It could be relevant to point out here that a decree of divorce for the petitioner was granted in six months after the date of death of the employee and hence, there is a strong presumption that she was under the care and custody of her father at the time of his death. In this background, I am of the view that the petitioner would be entitled for family pension.”

12.The judgment passed by the Hon'ble Division Bench of this Court relied on by the learned counsel for the respondents 1 and 2 may not be applicable to the facts and circumstances of this case because the said case was with respect to the allotment of medical seat to a deserted women. However, the case on hand is a typical case wherein the petitioner has asked for family pension for her survival.



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13.The learned counsel appearing for the petitioner pressed that the primary objective of the family pension policy is to provide financial security to daughters who may not have independent sources of income particularly for divorced daughters and widow daughters and the deserted daughters should not be excluded from such benefit. G.O.Ms.No.325 is a product of legislative or administrative intent and it reflect the policy decision of the Government of the State to provide family pension to specific categories of daughters who are destitutes. These policies aim to provide financial support to certain categories of family members who may face economic hardships upon the demise of the guardian. When the policy of the Government is to extend support to the family in lurch, a deserted daughter should not be excluded from the benefit of the said G.O. The most vulnerable section of women in society are the deserted ones.

14.A quick review of the existing G.O.Ms.No.325 Finance (Pension) Department dated 28.11.2011 would reveal that the same failed to cover “deserted women”. Though the various social security schemes of the State almost covered grandmothers, mothers, daughters, the young



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and middle aged women are left in lurch. The desertion is a result of conflict induced by the members of a family disengaging the women from household commitments. There is a very little data available on the concept of desertion and singlehood. The concept of desertion has never been addressed in the manner of widows/divorcees. The cause of desertion has to be understood from the point of view of Social enclosure. This is a typical case where the petitioner being a deserted wife of a Srilankan husband, who has been taken care by her pensionary father and thereafter, who was living under the shades of her mother who continued to receive the family pension who is left in lurch at the age of 53 on the demise of her mother on the refusal of the competent Authority to disburse family pension to her on the ground that the deserted daughter is not covered in G.O.Ms.No.325 dated 28.11.2011. The impugned order has served as a severe blow on the life and livelihood of the petitioner subjecting her to abject poverty and dismay. Having no one to take care, it is the State's responsibilities to save her existence.

Epilogue :-

15.Desertion could be understood only by exclusively diagnosing



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the processes that lead to deprivation. The desertion is a conflict induced by the families disengagement and a family necessarily need not be a “husband” alone. In India, the reasons for disengagement would also include poverty, objections syndrome, remaining unmarried, dowry abuse, domestic violence, etc. Time has changed remarkably by initiating efforts in seeing women as agents for change rather seeing them only as victims. The number of women stepping out of family relations in hope of better life after being subjected to extreme domestic violence is at increasing rate. The social stigma and isolation faced by the single deserted women has to be done away consciously by a systemic and rational approach in empowering them.

16. In a largest democratic country like ours, respective State and Central Governments are instruments of people which have the bounden duty to secure all citizens with life and livelihood and the most significant of all the duties of a State is to secure and protect our “women“, especially women disengaged by their respective families, i.e. deserted women with or without children. The old saying, 'where women are honoured, divinity blossoms there' is not an empty formality for a



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Society to cherish by ensuring that each and every woman of this land is safe.

17.The doctrine of equality guaranteed by Article 14 and Article 15(1)(2)(3) and 16(2) guarantees equal protection and nondiscrimination to the women. Article 15(3) clearly lay down that the equality principle shall not prevent the State from making special provisions for women.

18.To quote Honourable Justice Prabha Sridevan (retired) “*right over her body, right to physical integrity is guaranteed by our supreme lex, our constitution*”. I add a woman's right to live and right to seek the support of the State for her livelihood is guaranteed by our Supreme Lex as well. The power of judicial review would extend to determine the correctness of a policy decision of the State when it is found that there is sufficient material to prove that taking a particular policy decision within the four corners of Article 14 of Constitution has resulted in discrimination of a particular category of beneficiaries. The State action must not be arbitrary and discriminatory and it should not be guided by any extraneous considerations which opposes equality. As in this case,



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the State intends to extend the benefit of family pension to the unmarried/widowed/divorced daughters of deceased family pensioners who are beyond the age of 25 years. The benefit of the same ought to have been extended to deserted daughters as well. The concept of equality enshrined in Article 14 of the Constitution is the positive concept and any administrative action based on any Government order which violates equality will definitely come for scrutiny before the Courts. Such action though may be purely an executive action based on the Government order if arbitrary may be set aside. Though Article 16 permits the valid classification, the same must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some part differential consideration/treatment over the others.

19.The Hon'ble Apex Court in the case of ***All Manipur Association by its Secretary v. State of Manipur*** reported in ***AIR 2019 SC 338*** has held that “*A classification to be valid must necessarily satisfy two tests. Firstly the distinguishing rational has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be*



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achieved. The test for the valid classification may be summarized as the distinction based on a classification founded on an intelligible differentia, which has the rational relationship with object sought to be achieved”.

20.As far as the instant case is concerned, the objective sought to be achieved is to extend the benefit of family pension to the destitute daughters of deceased pensioners who are beyond the age of 25 years with effect from 28.11.2011. When the object sought to be achieved is to extend the benefit of family pension to destitute daughters, the classification of daughters into unmarried daughters/widowed daughters/divorced daughters thereby excluding the benefit of family pension to deserted daughters, who would fall under the category of destitutes is absolutely arbitrary and discriminative. The right of livelihood is an integral facet of right to live. The word 'law' which figures in Article 21 of Constitution should be just, fair and reasonable. Hence, G.O.Ms.No.325 Finance (Pension) Department dated 28.11.2011 to be just fair and reasonable should be given a liberal interpretation.



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21.In the instant case, after proper verification, the Tahsildar, Thirumayam Taluk, Pudukottai District has already issued a deserted woman certificate dated 16.07.2022 in Certificate No.TN-2720220703101.

22.In view of the same, I am inclined to quash the impugned order of the first respondent and thereafter, remand back the file of the petitioner to the respondents, directing them to give liberal interpretation to the mandates of G.O.Ms.No.350 Finance (Pension) Department dated 28.11.2011 and sanction family pension to the petitioner in terms of the above discussion within a period of twelve weeks from the date of receipt of copy of this order.

23.Accordingly, the Writ Petition stand allowed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

02.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

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To

- 1.The Chief Educational Officer,
CEO Office campus,
Pudukottai - 622001.
- 2.The District Educational Officer (Secondary),
CEO Office Campus,
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L.VICTORIA GOWRI, J.

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