



W.P.(MD)Nos.9906 of 2017,
26684 of 2019 & 3085 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
24.11.2022	06.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)Nos. 9906 of 2017, 26684 of 2019 &
3085 of 2021**

and

**W.M.P.(MD)Nos.7589, 7590 of 2017,
23009 of 2019, 2463 & 2464 of 2021**

W.P.(MD)No. 9906 of 2017

A. Santhi

... Petitioner

Vs.

1. The Chief Educational Officer,
Tuticorin District,
Tuticorin.
2. The District Elementary Educational Officer,
Tuticorin,
Tuticorin District.
3. The Correspondent,
Eka Ratchakar Sabai Middle School,
Mukkuperi, Alwar Thirunagari,
Tuticorin.
4. S. Maduram



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5. R.S.P. Masak Ponsekar

6. The Additional Elementary Educational Officer,
Alwar Union, at Thenthiruparai,
Tiruchendur Taluk,
Tuticorin District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records relating to the impugned order, Letter No.1/2017 dated 20.03.2017 passed by the 3rd respondent and to quash the same.

For Petitioner	: Mr.Joseph Thatheus Jerome
For R-1, 2 & 6	: M/s.D.Farjana Ghoushia, Special Government Pleader
For R-3 & 4	: T.A.Ebenezer
For R-5	: No appearance

W.P.(MD)No. 26684 of 2019

The Correspondent,
Eka Ratchakar Sabai Middle School,
Mukkuperi, Alwar Thirunagari,
Tuticorin.

... Petitioner

vs.

1. The Chief Educational Officer,
Thoothukudi,
Thoothukudi District.



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2. The District Educational Officer,
Tiruchendur,
Thoothukudi District.

3. The Block Educational Officer,
Alwarthirunagari,
At Thenthiruperai,
Thoothukudi District.

4. A. Shanthi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, Calling for the records relating to the order passed by the 2nd respondent in his proceedings in Na.Ka.No.4169/A4/2018, signed on 14.11.2019 and quash the same and consequent direction may be issued to the 1st and 2nd respondents to approve the reduction of rank of 4th respondent to the post of BT Assistant from the post of Headmistress and approve the promotion of J.Thatheyus Michael Jeyaraj as Head Master from 24.9.2018 within stipulated time

For Petitioner : T.A.Ebenezer

For R-1 to R-3 : M/s.D.Farjana Ghoushia,
Special Government Pleader

For R-4 : Mr.Joseph Thatheus Jerome



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W.P.(MD)No.3085 of 2021

1. A. Shanthi

... Petitioner

vs.

1. The Chief Educational Officer,
Tuticorin District,
Tuticorin.

2. The District Educational Officer,
Tiruchendur Education District,
Tiruchendur, Tuticorin District.

3. The Correspondent,
Eka Ratchakar Sabai Middle School,
Mukkuperi, Alwar Thirunagari,
Eral Taluk, Tuticorin.

4. G.Mathew Jebasingh,
Correspondent,
Eka Ratchakar Sabai Middle School,
Mukkuperi, Alwar Thirunagari,
Eral Taluk, Tuticorin.

5. The Block Educational Officer,
Alwarthirunagari,
At Thenthiruperai,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order of punishment dated 24.09.2018 passed by the 3rd respondent and to quash the same.



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For Petitioner : Mr.Joseph Thatheus Jerome
For R-1, 2 & 5 : M/s.D.Farjana Ghoushia,
Special Government Pleader
For R-3 & R-4 : T.A.Ebenezer

COMMON ORDER

The ***W.P.(M)No.9906 of 2017*** is filed by A. Santhi to quash the impugned charge memo, dated 20.03.2017 issued in Letter No.1/2017 passed by the 3rd respondent. The ***W.P.(MD)No.3085 of 2021*** is filed by A.Santhi challenging the order of punishment dated 24.09.2018 passed by the 3rd respondent, whereby the school had reverted the petitioner from HM post to B.T. Assistant post and on the same day promoted one J.Thatheyus Michael Jeyaraj to the said post. The ***W.P.(MD)No. 26684 of 2019*** is filed by Eka Ratchakar Sabai Middle School to quash the proceedings of the 2nd respondent in Na.Ka.No. 4169/A4/2018 dated 14.11.2019 and consequently direct the 1st and 2nd respondents to approve the reduction of rank of 4th respondent to the post of BT Assistant from the post of Headmistress and approve the promotion of J.Thatheyus Michael Jeyaraj as Headmaster from 24.9.2018.



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2. The issues involved in these Writ Petitions are connected to each other and hence all the writ petitions are taken up and this common order is passed.

3. The brief facts as stated in the affidavit filed in ***W.P.(MD)No.9906 of 2017*** are that Mr.Arumainayagam Sattampillai is the founder of the 3rd respondent, Eka Ratchakar Sabai Middle School, Tuticorin, who was born in the year 1828 and he is the father of the petitioner/A.Santhi. The petitioner is serving as Headmistress in the 3rd respondent school since 04.06.1992 and has put in more than 30 years of service. The said management is private aided institution running 3 schools in the Tuticorin District independent to each other and managed by the Correspondents and receiving grant-in-aid.

4. The 3rd respondent school has issued a charge memo, dated 20.03.2017, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The said rule is applicable to the Government servants only. Since the petitioner is not a government servant, the said Rule is not applicable to



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the petitioner. The Tamil Nadu Recognized Private Schools (Regulation) Act and Rules framed under Article 309 of the Constitution of India is applicable to the petitioner's case.

5. It is further stated that, one S.Ravi, (Tamil Teacher) has committed a rape of 7th Standard student and on receiving a complaint dated 13.06.2013 from the said student, the petitioner has forwarded the same to the 3rd respondent for further action. Thereafter, the said Ravi along with P.Rajan (Science Teacher) and J.Franklin (PET Teacher-Transfer) had colluded and threatened the petitioner on 04.08.2015 and abused her by using filthy language. Hence, the petitioner had lodged a criminal complaint in Crime No.179 of 2015 for the offences under Sections 294(b), 506(ii) of IPC read with Section 4 of Tamil Nadu Prohibition of Woman Harassment Act, 2002, on the file of the Nazareth Police Station. Thereafter, the accused persons along with the 3rd respondent had approached the petitioner to withdraw the criminal complaint. When the petitioner refused to do so, the 3rd respondent warned the petitioner with dire consequences. One such consequence is the impugned charge memo dated 20.03.2017 and the vague



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charges are as follows:

(i). ***The first charge*** against the petitioner is, she had marked attendance for 172 students while actually only 110 students were present. But, the petitioner had marked attendance for 62 students who were not actually present. Further, on 14.07.2016 there were totally 211 students and attendance were marked for 140 students, wherein only 120 students were actually present and had marked attendance for 20 students who were not actually present and thereby had recorded false information.

(ii). ***The second charge*** is, the petitioner had been in practice of making the students of the school to clean the Tank and the Church through the Health club in the school.

(iii). ***The third charge*** is, on 14.07.2016, when the Assistant Elementary Education Officer, Tiruchendur, visited the school, the petitioner left the premises of the school without prior permission and without informing to the management.

(iv). ***The fourth charge*** is, for the academic year 2016-2017, the petitioner has submitted a false attendance of students, thereby has caused additional financial burden to the Government.



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(v). *The fifth charge* is, the petitioner has reported in Dinakaran Newspaper that one Dharmaraj student of the school had admitted in the Government hospital, because the petitioner attacked the said student.

6. On receiving the charge memo, the petitioner has submitted an explanation on 01.04.2017. After receipt of the same the 3rd respondent, vide proceedings dated 19.04.2017 has rejected the explanation of the petitioner as not acceptable. Thereafter, vide proceedings dated 02.05.2017 the 3rd respondent had appointed the Enquiry Officer. In the meanwhile, the petitioner had requested to serve a copy of the basic report of the charges vide letter dated 11.05.2017, but the same was not served. On 19.05.2017 the respondent issued a notice to the petitioner to appear before the enquiry officer on 22.05.2017. The contention of the petitioner is that the charges are vague, bald, bereft of any material. In spite of the same, the 3rd respondent has appointed one R.S.P.Masak Ponselkar as Enquiry officer, which is illegal. Challenging the charge memo, the ***W.P(MD)No. 9906 of 2017*** is filed.



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7. At the time of admission this Court has granted interim stay of the charge memo, vide order, dated 25.05.2017 in W.M.P(MD)No. 7589 of 2017. Aggrieved over the interim order, the management has preferred writ appeal in W.A.(MD)No.875 of 2017, wherein the Hon'ble Division Bench of this Court permitted the school to continue the domestic enquiry, but directed not to pass final order vide order, dated 04.07.2017. In flagrant violation of the order of this Court, the then Correspondent had passed final order and imposed punishment on 08.08.2017. But subsequently the management recalled the final order, vide order, dated 08.09.2017. In the meanwhile, the writ petitioner has filed a contempt petition in Cont.P.(MD)No. 1539 of 2017, the Correspondent prayed for apology and the same was accepted, the Contempt Petition was closed on 25.11.2017.

8. When the above litigation was pending, the school prevented the petitioner from discharging the duties. Hence the teacher had filed another writ petition in W.P.(MD)No.43 of 2018 praying to permit the petitioner to continue her service as Headmistress, wherein it was represented before the Court by the School Management that the petitioner would be allowed to continue as



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Headmistress. Based on such submission, the writ petition was disposed of, vide Order, dated 18.01.2018. The school management had taken offensive of the above litigations, had issued suspension order the very next day i.e. on 19.01.2018 and issued another charge memo dated 17.02.2018 alleging that the petitioner trespassed into the school, has committed destruction of glass & documents, spoke over phone during class hours etc.

9. In the meanwhile, W.A.(MD)No.875 of 2017 was disposed of in similar lines of the interim order, vide order dated 16.02.2018. The writ petitioner challenged the suspension order in W.P.(MD)No.8467 of 2018. Another writ petition in W.P.(MD)No.17201 of 2018 was filed for a direction to reinstate the petitioner. In the meanwhile, Enquiry Officer was appointed to conduct domestic enquiry for the second charge memo and the enquiry officer forced the petitioner to participate in the enquiry without providing basic documents. Hence the petitioner submitted explanation dated 13.03.2018 simply denying the charges. In the enquiry the management marked Ex.M1 to M11, but none of the documents were circulated to the petitioner. The petitioner attended enquiry on 08.08.2018, 10.08.2018 and 13.08.2018 and demanded the basic documents, since the same



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was not granted, the petitioner protested. Thereafter the enquiry officer passed an exparte order dated 16.08.2018 and the same was served to the petitioner along with second show cause notice dated 27.08.2018, which is challenged in W.P. (MD)No.19390 of 2018 and there is no stay. Pending writ petition the petitioner had submitted reply dated 05.09.2018. Since there is no impediment for passing final orders in the 2nd charge memo and the 3rd respondent had passed the impugned proceeding dated 24.09.2018 reverting the petitioner from HM to B.T. Assistant and the same is challenged in ***W.P.(MD)No.3085 of 2021***. Simultaneously the school promoted the senior teacher, namely J.Thatheyus Michael Jeyaraj as Headmaster on 24.09.2018. Since there is no interim order and the post is filled by another teacher, left with no other remedy the writ petitioner has joined in the reverted post from 09.12.2018. In this writ petition one of the contentions of the petitioner is that the 3rd respondent school was not conferred with the minority status as per G.O.Ms.No.648, dated 03.08.1994 and G.O.Ms.No.375 dated 12.10.1998, hence the 3rd respondent has no power to initiate disciplinary proceedings.



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10. The school has submitted a proposal to approve the promotion of the senior teacher J.Thatheyus Michael Jeyaraj, however, the official respondents have returned the same, vide order, dated 13.02.2019. But the school has again submitted a proposal for approval of promotion on 18.03.2019 and also submitted the proposal for approval of reversion of the writ petitioner on 28.03.2019. Since the proposals were not considered, the school has filed a writ petition in W.P.(MD)No.10451 of 2019 for direction to dispose of the proposals. Pending writ petition, the official respondents have rejected the approval stating that there is no sanctioned B.T. Assistant post available in the school and also directed the school to pay salary to the writ petitioner. Aggrieved over the said rejection order the school management had filed ***W.P.(MD)No.26684 of 2019***, to quash the order of DEO dated 14.11.2019 and to approve the order of punishment of reverting the said A.Santhi from HM to B.T. Assistant and to approve the promotion of J.Thatheyus Michael Jeyaraj as Headmaster, from 24.09.2018. The contention of the school is that the writ petitioner is involved in grave misconduct and she showed bogus students' strength and got free text books from the Government. The official respondents have filed counter in ***W.P.(MD)No.26684 of 2019*** stating



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that the school has not obtained any order for converting the post of secondary grade teacher. Therefore, the proposal submitted by the school to revert the writ petitioner was rejected since the school was not having any BT Assistant post. The claim of the teacher, that the school is not possessing minority status was denied by the official respondent by stating that the school is having minority status and the Education Department is treating the school as minority school. The school has initiated a disciplinary proceeding and the teacher had filed writ petitions and obtained an interim order of stay. Aggrieved over the same, the school has preferred an appeal, where it was directed to conduct enquiry and specifically directed not to pass final orders. The school has violated the interim orders and pass final orders. Since there were litigations among the parties, upgradation of secondary grade post under G.O.No.79, School Education dated 14.06.2002 cannot be invoked and the official respondents prayed to pass appropriate orders.

11. Heard Mr.Joseph Thatheus Jerome, the Learned Counsel appearing for the writ petitioner Teacher, M/s.D.Farjana Ghoushia, the Learned



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Special Government Pleader appearing for the Education Department and T.A.Ebenezer, the Learned Counsel appearing for the School Management and perused the material documents available on record.

12. The *W.P.(M)No.9906 of 2017* is filed challenging the charge memo, dated 20.03.2017 and the charge against the petitioner is that on 23.06.2016 the petitioner has marked attendance for 172 students while actually only 110 students were present, thereby 62 students who were not actually present. Likewise, on 14.07.2016, there were only 211 students and the attendance were marked for 140 students, wherein only 120 students were actually present, thereby 20 students were given attendance who were not actually present. The contention of the school management is that this 1st charge is issued based on the direction of the Educational Authorities. The contention of the educational authorities is that since the petitioner has shown excess students and received excess grant from the Government, thereby caused loss to the Government. But, the said charge was completely denied by the petitioner. The petitioner has submitted an explanation stating that the petitioner being a



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Headmistress, she is actually taking information from the respective class teachers and submitting the records to the official respondents. The petitioner is serving as HM and was assigned the work of the class teacher for standard VIIIA alone and there is no dispute for the standard VIIIA, from which it would be evident that the petitioner had not committed any mistake. If at all any action ought to be taken for this lapse, the action ought to be taken against the respective class teachers and not against the petitioner. After hearing the rival submission this Court is of the considered opinion that the petitioner may be responsible for lack of supervision over the class teachers, but the action should be taken against the class teachers also. The petitioner alone may not be liable. The petitioner may be liable along with other class teachers also. Hence the truncated and discriminatory action taken against the petitioner, would indicate the bias attitude of the school.

13. As far as the 2nd charge is concerned, the petitioner has indulged the students to clean the Church, Water Tank through the Health Club in the school. The petitioner has submitted an explanation stating that the Tank and



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Church belong to the same school, it is only on the instruction of the management, the students were directed to undertake the cleaning. The students who were interested to contribute for the God's service were asked to do the service. Further the church is administrated by the same management who is running the school and the management only had directed the students to do the service, that too only on their own interest. If the students refused to do any service to God, they will not be forced. The petitioner has no role in making any students to do any such work. When the petitioner was studying in the same school, the petitioner too had participated in the service on the petitioner's own wish as part of the religious obligation. This Court is of the considered opinion this charge cannot be construed as misconduct. Moreover, there is liberty to the students to refuse to do the service work. If at all any action ought to be taken, then action ought to be taken against the management and the teachers, therefore this Court is inclined to interfere with the punishment.

14. As far as the 3rd charge is concerned, the charge against the petitioner is she left the school without giving any leave letter and without



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informing to the management of the school. The petitioner has submitted an explanation, stating on 14.07.2016 the petitioner had worked until noon thereafter, after informing to the Manager over mobile phone and also left leave letter seeking casual leave to the management. The casual leave was also duly entered in the casual leave register. Hence, the same cannot be construed as misconduct. Further on 14.07.2016 after making casual leave, the petitioner along with another staff namely, D.Anna Nesam went to the District Child Protection Office, Tuticorin, for getting permission for the Hostel to the petitioner's school. One Mr.James, from the office of the District Child Protection office had informed on 13.07.2016 to appear before him on 14.06.2016. This fact is known to the management. On perusing the records, it is seen that there is entry in the causal leave register and therefore, this Court is of the considered opinion that the charge against the petitioner would amount to victimizing the petitioner. Even if it the allegation is true, then the punishment is disproportionate.

15. As far as the 4th charge is concerned, on 14.07.2016 the attendance for the Class 1 to 8 was 127. The attendance present is 88 + 58 + 146.



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Further, for the academic year 2016-2017 by sending false statistics to the Government, the petitioner has caused additional financial burden to the Government. For which, the petitioner has submitted an explanation stating for each and every Term the students' strength was taken into account, thereafter, the free books were collected for the said students from the authorities. For which, the petitioner has relied on three tabulations which would indicate the petitioner has never received any excess books. Even, if the allegation is taken as true, if any excess books the same would be returned to the authorities properly. The said tabulations were verified by the Assistant Elementary Education Officer, Thoothukudi and he affixed his signature. Therefore, this Court is of the considered opinion that this charge is not substantiated by any evidence.

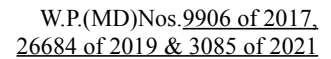
16. The 5th charge is that the petitioner had informed to the Dinakaran Newspaper about the school stating one Dharmaraj had been admitted to the Government Hospital because of the attack made by the Headmistress. For which, the petitioner has submitted an explanation stating that the said Dharmaraj and Sivamurugan who are students in the said school had damaged the



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petitioner's vehicle on 28.02.2017 at the instigation of Mr.Rajan, who is a teacher working in the same school. The petitioner further submitted that the said Rajan along with Ravi and Franklin had abused the petitioner and acted rudely against the petitioner in open class room. Hence, the petitioner has preferred a complaint, dated 06.08.2015 against them and the same was registered in Crime No.179 of 2015 for the offences under Sections 294(b), 506(ii) of IPC and Section 4 of TNPWH Act, 2002. Infact the said Dharmaraj, himself has confessed before the police that the petitioner had never beaten the said Dharmaraj. These facts would indicate that the petitioner has not committed any such mistake as stated in the charge memo. Moreover, when there are rival allegations, the petitioner alone cannot be allowed to face the charges. The school management is silent regarding the serious allegation made by the petitioner against the teachers indulging in crimes against girl students. Therefore, this Court is of the considered opinion that the action taken by the school management against the petitioner would have the traces of vindictiveness.



18. As far the 1st charge memo dated 20.03.2017 is concerned, there is an interim stay of the charge memo, which was modified directing the school management not to pass final orders. Since this Court has held as stated supra that the petitioner has failed to exercise the supervisor power and has directed the school to impose a punishment of stoppage of increment for three months without cumulative effect, the writ petition ***W.P.(MD)No.9906 of 2017 is allowed in***



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above terms.

19. As far as the second charge memo dated 17.02.2018 is concerned, the school has conducted an enquiry and imposed the impugned punishment of reduction in rank from HM to B.T. Assistant through order dated 24.09.2018, which is challenged in ***W.P.(MD)No.3085 of 2021***. As far as the 2nd charge memo is concerned, all the charges are bald, vague. None of the charges states the date, time of the alleged incidents. The charges are extracted hereunder:

1. That the petitioner is under suspension, but trespassed into the school on 15.02.2018.
2. That the petitioner destroyed the glass and documents of the school and taken away.
3. That the petitioner is well aware that the school is minority, but preferred complaint that the school is not possessing minority status
4. That the petitioner came late and left the school without intimation
5. That the petitioner used to speak over phone during school hours
6. That the petitioner abused co-teachers with filthy language
7. That the petitioner protested against the school using political parties support.
8. That the petitioner preferred various false complaints before the Police Department and Educational Department.



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9. That the petitioner preferred false complaint that the petitioner was not allowed to discharge his duty as HM, inspite of such permission given by the school.

20. On the bare perusal of the charges, it would be evident that the charges are vague and bald. Admittedly no time or date mentioned in the charge memo. For such vague charges the respondents cannot expect the petitioner to submit explanation and contest the charges. As far as the charge that the petitioner had preferred a complaint alleging that “the school is not a minority institution” is concerned, the petitioner may be wrong in preferring such complaint, more so when the school was started by her father. For this action of the petitioner, the petitioner ought to seek forgiveness to her father. Having said so, it is also to be noted that since the school management has made some false allegation against the teacher, the teacher has made such false allegation against the school. Even then the punishment of reduction in rank is disproportionate and the consequence would be to remit the case to the school management to impose minor punishment, but in order to give quietus to the prolonged litigations between the



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teacher and the school management, this Court is directing the school management, to impose punishment of stoppage of increment for one year without cumulative effect.

21. When this Court has held that the punishment is disproportionate and had directed the school management to impose minor punishment, then the punishment of reduction from HM to B.T. Assistant is liable to be set aside. Hence the impugned order of punishment is quashed. Then consequently the promotion granted to the said J.Thatheyus Michael Jeyaraj from the Secondary Grade post to HM is also quashed. Hence the school management is not entitled to the relief of approval. Hence the ***W.P.(MD)No.26684 of 2019*** filed by the school is liable to be dismissed.

22. Since the petitioner has not served as HM for the period from 24.09.2018, the petitioner is not entitled to salary to the post of HM and also cannot be granted continuity in the post of HM. However, the petitioner is entitled



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to salary and continuity to the post of HM from the date of this order. The said teacher J.Thatheyus Michael Jeyaraj is entitled to salary and continuity of service to the post of HM from 24.09.2018 and until the date of this order.

23. In the result, the ***W.P.(MD)No.9906 of 2017 is disposed of*** by imposing a punishment of stoppage of increment of three months without cumulative effect. ***The W.P.(MD)No.3085 of 2017 stands allowed*** by modifying the punishment of reduction of rank from HM to B.T. Assistant to stoppage of increment for one year without cumulative effect. The ***W.P.(MD)No.26684 of 2019*** filed by the School ***stands dismissed***. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

1. The Chief Educational Officer,
Tuticorin District,
Tuticorin.
2. The District Elementary Educational Officer,
Tuticorin,
Tuticorin District.
3. The Additional Elementary Educational Officer,
Alwar Union, at Thenthiruparai,
Tiruchendur Taluk,
Tuticorin District.



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S.SRIMATHY, J

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Common Order made in
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