



W.P.(MD).No.14271 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.14271 of 2016

and

W.M.P.(MD).Nos.10594 and 10595 of 2016

The Correspondent,
Al-Ameen Urdhu Tamil High School,
Melur – 625 106,
Madurai District.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
College Road,
Chennai – 600 006.
- 3.The Joint Director of School Education,
(Secondary Education),
College Road,
Chennai – 600 006.



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4.The Chief Educational Officer,
Madurai,
Madurai District.

5.The District Educational Officer,
Madurai (North), Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the first respondent State Government in Letter No.16030/C.C.1(2)/2011-4 dated 22.01.2014, quash the same and further direct the respondents herein to sanction and approve forthwith the post of Junior Assistant w.e.f. 01.06.1991 as per G.O(Ms) No.340 Education (D1) Department dated 01.04.1992 and the service of the Appointee S.Saleem as Junior Assistant in the petitioners school and disburse the grant-in-aid towards his salary and other attendant benefits for the period from 01.06.1991 to 09.04.1996.

For Petitioner : Mr.K.Ragatheesh Kumar,
For M/s.Isaac Chambers.

For Respondents : Mr.V.Omprakash,
Government Advocate.



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ORDER

This Writ Petition is filed to quash the order dated 22.01.2014 and further direct the respondents herein to sanction and approve forthwith the post of Junior Assistant w.e.f. 01.06.1991 as per G.O.Ms.No.340 Education (D1) Department dated 01.04.1992 and approve the service of the Appointee S.Saleem as Junior Assistant in the petitioner's school and disburse the grant-in-aid towards his salary and other attendant benefits for the period from 01.06.1991 to 09.04.1996.

2. The petitioner School is a Private Aided Minority School and was initially established as a Middle School in the year 1965, then was upgraded as High School in the year 1987. The School is offering education from Standards VI to X in two Mediums viz., Tamil and English. The State Government granted grant-in-aid only for Tamil Medium sections. The School is having 850 students (both English and Tamil Medium combined). After upgradation to High School level, there was acute need for the post of Junior Assistant. By considering the work load, the petitioner School appointed one S.Saleem as Junior Assistant on 10.06.1987. He was possessing B.Sc., (Zoology) degree at



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the time of appointment. Later on, he obtained B.Ed., and M.A., degree in Political Science. The petitioner School submitted proposal to the second respondent Director seeking recognition / permission for upgradation of the School to High School. The second respondent Director also granted recognition for the said upgradation to High School for the academic year 1987-1988 vide proceedings dated **18.10.1988**. However, a typographical error crept in the said communication, wherein, instead of Standard 9, it was incorrectly said as from Standard 6 to Standard 9. Later on, the error was rectified by proceedings dated 11.11.1988. Later, the recognition of the School was extended for a period of three years that is from 11.06.1988 to 31.05.1991 vide proceedings dated 21.03.1990. Thereafter, the School submitted a representation to the Government to sanction and extend grant-in-aid towards salary for the teaching staffs namely, Headmaster-1, Graduate Teacher – 3, Tamil Pandits – 2, Secondary Grade Teacher – 7 and Non-Teaching posts viz., Junior Assistant – 1, Record Clerk – 1, Office Assistant – 1 for the High School level vide letter dated 06.08.1990. There were 527 students studying in the School at the time of representation. The State Government has fixed norms for sanction of teaching and non-teaching posts to the Schools with effect from 01.06.1991 vide G.O.Ms.No.340 Education (D1) Department dated 01.04.1992.



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The said Government Order stated that the Schools are entitled to get one post of Junior Assistant if the strength of the School exceeds 300. In pursuance thereof, the State Government sanctioned only 1 Headmaster, 1 BT Assistant and 1 Tamil Pandit posts to the petitioner School along with a few other Schools vide **G.O.Ms.No.447 Education (D1) Department dated 08.05.1992**. The petitioner School was upgraded as High School as early as in 1987-1988. The State Government ought to have sanctioned atleast one post of Junior Assistant, but the State Government did not sanction any non-teaching post including Junior Assistant posts. Hence, the petitioner School submitted representation dated 03.06.1992 to the State Government to sanction one post of Junior Assistant in the light of norms fixed in G.O.Ms.No.340 dated 01.04.1992. Since there was no response, the petitioner School filed W.P.No. 257 of 1996 before the Hon'ble Principal Seat of Madras High Court and the Hon'ble Court vide order dated 09.01.1996 directed the respondents to consider and pass orders. After careful consideration, the Government issued **G.O.Ms.No.281 (Education, Science and Technology (D1) Department) dated 10.04.1996** and sanctioned one Junior Assistant post and one Office Assistant post as per the norms prescribed under G.O.Ms.No.340 dated 01.04.1992. But the said posts were sanctioned from the date of the issuance of



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the Government Order and not with effect from 01.06.1991. Aggrieved over the same, the present Writ Petition is filed to quash the impugned order dated 22.01.2014 which declines to reconsider the said Government Order in G.O.Ms.No.218 dated 10.04.1996 and grant approval from the date of appointment from the date of appointment.

3. The respondents have filed a counter stating that the petitioner School had filed another W.P.No.5764 of 1997 seeking for a direction to sanction the post of Junior Assistant with effect from 01.06.1991 instead of 10.04.1996. However, this Court disposed of the Writ Petition. When the matter was under consideration, the petitioner School again filed W.P.No.3810 of 2006 seeking for a direction to the Government to dispose of the petitioner's representation dated 03.01.2004. This Court vide order dated 27.04.2006, was pleased to direct the State Government to consider and dispose of the representation. The Government after considering the representation in accordance to law, it was ordered that the request of the petitioner School for sanction of Junior Assistant with effect from 01.06.1991 was contrary to G.O.Ms.No.340 dated 01.04.1992. The request is against Rule 14A of the Tamil Nadu Recognized Private Schools Regulations Act, 1973. Now, it is the fourth round of litigation filed by the



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petitioner School. The respondents further submitted that fixing a date from which the post may be sanctioned by taking into considerations of the financial position of the Government is an administrative domain of the State Government. The petitioner School cannot compel the Government to sanction any post with effect from a particular date. It is also submitted that no Private School, whether minority or non-minority, established after 1991-1992, would be entitled to claim any aid from the State Government. Since the petitioner School is not receiving any grant to the post of Junior Assistant, cannot claim any post with effect from an earlier date and hence the **G.O.Ms.No.281 (Education, Science and Technology (D1) Department) dated 10.04.1996** is perfectly valid in the eyes of law. Therefore, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.K.Ragatheesh Kumar, for M/s.Isaac Chambers, learned counsel for the petitioner and Mr.V.Omprakash, learned Government Advocate, for the respondents and perused the records.

5. After hearing rival submission, this Court is of the considered opinion that as rightly pointed out by the respondents that the petitioner School was



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upgraded in the year 1987. The respondents granted recognition for the said upgradation from the academic year 1987-1988 vide proceedings dated 18.10.1988. While granting recognition it has been categorically stated in the recognition order that the petitioner School is not entitled to any grant-in-aid for the upgraded high school and the posts. Infact there were several similar requests from several Schools with regard to grant-in-aid to the teaching as well as non-teaching staffs. Hence the Government had issued G.O.Ms.No.447 dated 08.05.1992 granting permission to create post with grant-in-aid and the petitioner School is one of the beneficiaries, wherein, the petitioner School was granted sanctioned post with grant-in-aid for 1 Headmaster, 1 B.T. Assistant and 1 Tamil Pandit alone. The other posts which the School claimed, including the post of Junior Assistant in which the present candidate Saleem was appointed, was declined by the Government. Hence, there was no sanctioned post at all to the petitioner School to appoint the said Saleem as Junior Assistant. When there was no sanctioned post, then appointing any person in the said post and claiming grant-in-aid is illegal.

6. Moreover, the petitioner School cannot demand any grant-in-aid from the Government as rightly stated by the respondents. Grant-in-aid is not a right



or fundamental right or statutory right and the government have power to deny

the same as held in the case of G.Sahaevan Nair vs. Government of Tamil

Nadu, rep. by its Secretary [(2008) 4 MLJ 289], this Court has held follows:-

*"15. In view of several decisions of the Supreme Court, there can be no longer any doubt that even though there is a fundamental right to establish a minority institution by a religious or linguistic minority, such minority institution **cannot claim grant-in-aid either as a fundamental right or even as a statutory right, in the absence of any specific provision to that extent.** However, under Article 30(2) of the Constitution, it has the protection of not being discriminated against. If there is no provision for grant in aid to any institution, obviously there cannot be any discrimination because the minority institutions and the non-minority institutions are treated alike. It is in the above context, the validity of Section 14-A of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 incorporated by way of amending Act 11 of 1999 has been upheld by the Division Bench [(2006) 5 CTC 193]. However, in the present case, we are not called upon to determine the rights of the parties on that footing. In the present case, the questions are confined to the institutions which had been in existence before the cut-off date. Some of the institutions were receiving aid and the question relating to those institutions is regarding their right to claim aid in respect of additional posts. In respect of other institutions, the question is whether they were entitled to claim grant-in-aid. If any minority institution was entitled to receive such aid, but was denied such aid on account of any erroneous order, such order is obviously to be corrected and such institution established before the cut-off date can have the continued right of receiving such aid and the amended provision contained in Section 14-A cannot be put against such right merely on account of the fact that such institution had not received aid before the cut-off date."*



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7. In the case of State of Odisha and another vs. Anup Kumar Senapati and another [Civil Appeal No.7295 of 2019], in paragraph No.8, the Hon'ble Supreme Court had held that that **grant-in-aid cannot be claimed as a matter of right merely on completion of the prescribed period** and it is dependent upon fulfilment of various conditions.

8. Following the aforesaid judgments the Madras High Court has held writ of Mandamus will not lie against the provisions of the Act and the grant-in-aid is not a fundamental right and the same cannot be demanded in the case of State of Tamil Nadu and others Vs. the Correspondent St. Joseph's Middle School vide order dated 25.03.2021 in REV.APLC(MD)No.180 of 2018, wherein the Hon'ble Division Bench has elaborately dealt with the issue of grant-in-aid by referring to various Supreme Court judgments. The relevant portion is extracted hereunder:

15. While upholding Section 14-A of the Act, the Hon'ble Division Bench of this Court in Maria Grace Rural Middle School vs. The Government of Tamil Nadu [(2007) 2 MLJ 497], has also held that grant-in-aid is not a neither fundamental right. Therefore, once it is held that grant-in-aid is the not a fundamental right, obviously no mandamus would lie to compel the Government to grant such aid, when the statute so prohibits.

16. In the case in The State of Bihar v. Sachindra Narayan, [(2019) 3 SCC 803], the Hon'ble Supreme Court took note of the discretionary nature of a grant and



observed as under:- “The release of grant is in discretion of the grantor and cannot be forced by the grantee.”

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17. Similarly, the Hon'ble Supreme Court in *State of W.B. v. Subhas Kumar Chatterjee*, [(2010) 11 SCC 694], has observed thus: “No court can issue mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law.”

18. When the validity of the amended Act itself was upheld by the Courts, this Court is of the view that the Courts cannot issue a mandamus contrary to the provisions of the Act. **In the case of State of Odisha and another vs. Anup Kumar Senapati and another [Civil Appeal No.7295 of 2019], in paragraph No.8, the Hon'ble Supreme Court had held that that grant-in-aid cannot be claimed as a matter of right merely on completion of the prescribed period and it is dependent upon fulfilment of various conditions. In this case, recognition itself was granted to the respondent on the undertaken not to claim any grant-in-aid.** Besides, Section 14-A of the Act, totally prohibits such grant. Therefore, we are of the view that merely because grant-in-aid has been granted to some schools in contravention of the provisions of Section 14-A of the Act, no validity can be sought for others as that tantamount to claim equality on the basis of illegality. In the case of *Indore Development Authority* [(2006) 2 SCC 604], the Hon'ble Supreme Court has held that merely because some persons have been granted benefit illegally or by mistake, it does not create right upon the appellants to claim equality. In *Rajasthan State Industrial Development and Investment Corporation vs. Subhash Sindhi Cooperative Housing Society, and others* [(2013) 5 SCC 427], this Court has held as follows:-

"19.Even if the lands of other similarly situated persons have been released, the Society must satisfy the Court that it is similarly situated in all respects, and has an independent right to get the land released. Article 14 of the Constitution does no envisage negative equality, and it cannot be used to perpetuate any illegality."

19. In the case of *State of Orissa and another vs. Mamata Mohanty*, [(2011) 3 SCC 436], this Court has observed as follows:-

"56.It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide *Chandigarh Administration & Anr v. Jagjit Singh & Anr.*, AIR 1995 SC 705; *Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors.*, AIR 2003 SC 1241;



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M/s Anand Buttons Ltd. etc. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; Maharaj Krishan Bhatt & Anr. v. State of Jammu & Kashmir & Ors., (2008) 9 SCC 24; Upendra Narayan Singh, (2009) 5 SCC 65 and Union of India vs. Kartick Chandra Mondal [(2010) 2 SCC 422]."

20. In Union of India v. International Trading Co., [(2003) 5 SCC 437], the Supreme Court observed as under:

"13. What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. **A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong.** It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

21. Similarly in Vishal Properties (P) Ltd. v. State of U.P., [(2007) 11 SCC 172], the Supreme Court observed as follows:-

"13. Even otherwise, Article 14 is not meant to perpetuate an illegality. It provides for positive equality and not negative equality. Therefore, we are not bound to direct any authority to repeat the wrong action done by it earlier."

22. These principles were reiterated in a recent decision of the Supreme Court in RWMWI Borgoyary v. Union of India, [(2020) 15 SCC 546], wherein it was observed:

"13. The learned counsel for the appellants contended that non-consideration of the appellants for appointment as TEO is vitiated by hostile discrimination as two other persons who were similarly situated were appointed as TEOs and are continuing. It is trite law that the right to equality cannot be claimed in a case where a benefit has been given to



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a person contrary to law. If a mistake has been committed by the authorities in appointing few persons who were not eligible, a claim cannot be made by other ineligible persons seeking a direction to the authorities to appoint them in violation of the instructions. After referring to several judgments, this Court in *State of Odisha v. Anup Kumar Senapati* [State of Odisha v. Anup Kumar Senapati, (2019) 19 SCC 626] held that there is no concept of negative equality under Article 14 of the Constitution of India. The appellants cannot, as a matter of right, claim appointment on the basis of two ineligible persons being given the benefit and no direction can be given to the respondents to perpetuate illegality.”

23. Having regard to the above settled position of law, merely on the basis that some similarly placed institutions were already granted grant-in-aid illegally or by mistake, as held by the Hon'ble Apex Court, no one can claim equality. Admittedly, in this case, recognition itself was granted on the condition that no grant will be paid. Besides, the validity of Section 14-A is upheld. The said facts were not taken by us into consideration and the learned Single Judge. Merely because in the earlier round of litigation the respondent succeeded in making the petitioners to consider the request for grant-in-aid notwithstanding the voluntary undertaking given acknowledging the non-entitlement of grant-in-aid, the rigor of Section 14-A cannot be overlooked. The said provision does not facilitate such a benefit. It also takes its sweep, those cases, where orders were obtained from the Court. It is trite that Act can be retrospective. In any case, the respondent does not have the vested right, which is sought to be taken away. No doubt, the Hon'ble Apex Court in the case of *State of Uttar Pradesh and others vs. Pawan Kumar Divedi and others* [(2014) 9 SCC 692], had dealt that whether the State Government is liable for payment of salaries of Teachers and other employees. The said judgment may not be applicable to the facts of the present case, particularly grant of grant-in-aid was included as a condition by the Government while granting recognition. The amendment prohibits such grant after certain period.

24. Such view of the matter, we are of the view that the judgment, made in the writ appeal by us without considering the scope of Section 14-A of the Act and the condition, on which recognition was granted, is liable to reviewed. Accordingly, the review petition is ordered and the judgment of the learned Single Judge is hereby set aside. No costs.

9. The said judgment has dealt with the issue of grant-in-aid in the light of section 14A of the Tamil Nadu Private School Regulation Act also. The said



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section is extracted hereunder:

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[14-A. Grant not payable to new private schools and new class and course of instruction. - Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, no grant shall be paid to, -

(a) any private school established and any class or course of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992; (b) any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;

(c) any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and

(d) any class or course of instruction opened on or after the date of commencement of the academic year 1991-1992 in a private school in existence on the date of such commencement.

Explanation. - For the purpose of this section, private school includes a minority school.]

The said section was amended with retrospective effect from the academic year 1991-1992 through the Act 11 of 1999 i.e. from 01.06.1991. As per the aforesaid provision under sub clause (c) any school if not receiving any grant-in-aid before the academic year 1991-1992 then the same is not entitled to any grant-in-aid. In the present case the school was granted permission to run the school from 1983 without grant-in-aid and therefore as per the sub clause (c), the school is not entitled to grant-in-aid even thereafter. Following the said judgment this Court has passed orders in the following cases:



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- i. W.P.(MD)No.13138 of 2017 order dated 27.09.2022
- ii. W.P.(MD)No.7785 to 7788 of 2017 order dated 13.09.2022
- iii. W.P.(MD)Nos. 3136 of 2014 and 17152 of 2018 dated 13.09.2022
- iv. W.P.(MD)No.1628 of 2023 dated 25.01.2023
- v. W.P.(MD)No.1434 of 2023 dated 09.05.2023
- vi. W.P.(MD)No.5310 of 2019 dated 25.01.2023

10. In the present case the government has sanctioned 1 Headmaster, 1 BT Assistant and 1 Tamil Pandit through the **G.O.Ms.No.447 Education (D1) Department dated 08.05.1992**. Subsequently the government sanctioned one Junior Assistant and one Office Assistant post through **G.O.Ms.No.281 (Education, Science and Technology (D1) Department) dated 10.04.1996**. The said two G.O.s, namely G.O.Ms.No.447 dated 08.05.1992 and G.O.Ms.No. 281 dated 10.04.1996 are issued between 1991 to 1999 and the same is hit by the sub clause (c) of section 14A, since the provision is given retrospective effect. **When the said G.O. itself is illegal, the petitioner school is claiming over and above the said G.O. is totally illegal**. Hence the claim of the school to issue grant-in-aid from 01.06.1991 to 09.04.1996 is hit by section 14A. Therefore, the judgement rendered in the review application in REV.APLC(MD) No.180 of 2018 is squarely applicable in the present case. Therefore, the petitioner school is not entitled to any grant-in-aid the period



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from 01.06.1991 to 09.04.1996, since the same is hit by section 14A.

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11. This Court is of the considered opinion that, when the government has specifically granted permission for upgradation that too without grant-in-aid from 1988 onwards, then the school or the person appointed in the said post cannot claim grant-in-aid for the earlier period. The school appointment the said Saleem as Junior Assistant from 1987 onwards, the government granted permission for upgradation from 1988 and granted grant-in-aid from 10.04.1996 onwards. Then the said person has served as management employee during the 01.06.1991 to 09.04.1996 said period and not as government aided employee. Hence, the said person was working as management employee in an unsanctioned post and hence the school is not entitled to any financial assistant from government. The school or the said person is not having any constitutional right or any right to claim grant-in-aid.

12. Moreover, under Rule 6(2) of Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, the School is eligible for grant-in-aid only after sanctioning of the post. The said rule is extracted here under:



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"6. Payment of grant:

(1) Minority Schools may be paid grants subject to the orders and instructions issued by the Government from time to time. The rate at which, and the purpose for which, the grant may be paid shall be as specified in Annexure II appended to these rules.

(2) Payment of monthly staff grant shall be made only in respect of qualified and admissible teachers actually employed in minority schools whose appointments have been approved by the concerned authorities according to the number of posts sanctioned to the institutions concerned."

The Grant-in-Aid Code has categorically stated that schools may be paid grant-in-aid subject to the orders and instructions issued by the government from time to time. When the order of approval was not granted, then as per Rule 6(2) the school is not entitled to claim grant-in-aid. When the school was not having the post as on the date of appointment of the said Saleem, then the appointment is without any sanctioned post. Therefore, the petitioner School is not entitled to grant-in-aid for the said post. Hence, the impugned order is legally valid and the same is sustained.

13. The petitioner is claiming that some other schools or persons were granted benefits and the said plea is also answered in the aforesaid judgment wherein it is held that "a party cannot claim that since something wrong has



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been done in another case direction should be given for doing another wrong”.

Therefore, this Court is also of the considered opinion that Article 14 cannot be applicable to perpetuate the wrong benefits granted to some person. Hence, on this ground also the petitioner is not entitled to.

14. With the above observations, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

08.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To
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1. The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St. George,
Chennai – 600 009.
2. The Director of School Education,
College Road,
Chennai – 600 006.
3. The Joint Director of School Education,
(Secondary Education),
College Road,
Chennai – 600 006.
4. The Chief Educational Officer,
Madurai,
Madurai District.
5. The District Educational Officer,
Madurai (North), Madurai District.



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S.SRIMATHY, J.

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