



W.P.No.29572 of 2022 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.29572, 29616, 29619, 29622,
29626, 29627, 29631 & 29633 of 2022
and 34983, 35851 & 35854 of 2023
and 11026, 11079, 11088, 11096, 11149, 11157, 11259, 11270, 11438,
11523, 14583, 14584, 14585, 14587, 14589, 14591 to 14596 of 2024
and
W.M.P.Nos.28962, 28964, 28994, 28995, 28999, 29000, 29004, 29006,
29013, 29014, 29017, 29018, 29023, 29024, 29026, 29027 of 2022

W.P.No.29572 of 2022 :-

R.Parimalakanthi

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Finance (Pay Cell) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. Bharathiyar University,
Rep. by its Registrar,
Coimbatore – 641 046.

3. The Registrar,
Bharathiyar University,
Coimbatore – 641 046.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent in connection with the order of the third respondent in his proceedings Ka.Na.P12/Audit Objection/2022 dated 16.09.2022 (Impugned Order-I) following his earlier order in his Proc.No.E2/2020/28900-3 dated 11.03.2020 (Impugned Order-II) and the Clarification letter of the first respondent in Letter No.38566/Pay Cell/2009-I dated 06.08.2009 (Impugned order-III) and quash the all and direct the second and third respondents to refix the pay and allowances of the petitioner based on the pay fixed at Rs.12090 with Grade Pay Rs.4600 notionally with effect from 30.05.2009 and monetary benefit from 02.06.2009 in the revised pay scales pay Bank-2 of Rs.9300-34800 by extending the benefit of G.O.Ms.No.234, Finance (Pay Cell) dated 01.06.2009 and further direct the second and third respondents to pay all the withheld service and monetary benefits to the petitioner.

For Petitioner : Mr.R.Singaravelan
for Mr.P.A.Arvinth Viveks
For Respondents
For R1 : Mrs.C.N.G.Niraimathi
Special Counsel for Finance Dept
For R2 & R3 : No appearance

COMMON ORDER

These writ petitions have been filed with two set of prayers.

First set of writ petitions have been filed challenging the order of recovery and another set of writ petitions have been filed for direction



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directing the respondents to fix the salary and other benefits as per the sixth pay commission and also as per the government order in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010.

2. The prayers sought for in all the writ petitions are one and the same as such, this Court is inclined to pass common order.

3. All the petitioners are working in the revenue department, agricultural department and school education department. The first respondent issued a government order in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 thereby ordered that the incumbents recruited as Junior Assistants from among the Contract Assistants/ Agricultural Officer and any other similar categories of posts recruited by the Tamil Nadu Public Service Commission in the same batch prior to 01.06.2009, and who joined or appointment on or after 01.06.2009 due to administrative reasons, by duly allowing the fitment benefits to the individual employees concerned as a special case.

4. In view of the above government order, the employees' association and individuals made representation to the respondents to



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give effect the same to the petitioners as they are eligible to get benefits of the G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010.

Though the petitioners were appointed after 01.06.2009, there was a delay in issuance of appointment order immediately after their selection. Due to administrative delay, they were issued appointment order belatedly. However, the respondents failed to give concession in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 to the petitioners.

5. Similarly placed persons submitted representation to extend the benefits under the said government order. However, their requests were not considered as such, they were approached this Court by filing various writ petitions. This Court held that delay in appointment due to administrative reasons, cannot be deprived of the benefits of the government order and allowed the writ petitions. It was also confirmed by the Hon'ble Division Bench of this Court by dismissing the writ appeals filed by the respondents.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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7. Insofar as other petitioners, who have challenged the order of recovery and reduction of their pay scale are concerned, they were originally recruited and appointed as Junior Assistant-cum-Typist in the year 2001. After their regularization, they were promoted to Assistant Section Officer. Though they were eligible for promotion in the year 2005, the process for their promotion was initiated in the year 2009 and promote only after 01.06.2009. Based on the sixth Central government pay commission recommendation, the Government of Tamil Nadu revised the scale of pay and allowances of State government employees and passed order in G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009, by notifying the Tamil Nadu Revised Scales of Pay Rules 2009.

8. Accordingly, the petitioners had exercise their option for the revised scale of pay and their basic pay was revised as Rs.12,090/- with grade pay of Rs.4,600/- notionally with effect from 30.05.2009 with monetary benefit from 02.06.2009 and monetary benefits from their date of promotion. However, their revised pay scale was objected by the audit objection in the year 2011-12, on the ground that an option letter for revised scale of pay must be given between 01.01.2006 to 31.05.2009.



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Further, the audit objections were made after lapse of several years.

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9. That apart, as per the government order in G.O.Ms.No.234 Finance (Pay cell) Department dated 01.06.2009, revising the scale of pay notionally with effect from 01.01.2006 with monetary benefits from 01.01.2007. As per Rule 4(1) of the Tamil Nadu Revised Scales of Pay Rules 2009, the fixation of pay of employees in the revised pay structure shall be fixed by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 by putting pay protection to the petitioners in service prior to 01.01.2006.

10. Thereafter, the government had constituted one man commission to examine the anomalies created in the revision of pay of employees/ teachers and based on the recommendation of the one man commission, the government had issued order in G.O.Ms.No.340 Finance (Pay cell) Department dated 26.08.2010, to give effect to the recommendations of the one man commission with effect from 01.01.2006.

11. Some of the petitioners were appointed to the post of Typist



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cum Steno Typist as per the notification No.135/2007 issued by the Tamil Nadu Public Service Commission. Though the selection and verification process were completed on 11.12.2008 itself, due to administrative reasons, they were not issued appointment order. They were issued appointment order only after 01.06.2009.

12. While dealing with the similar issue this Court held that in principle, the petitioners' claim that they should be treated on par with others, who were also selected in the same process of recruitment, appears to be lawful. It is the duty of the government to remove pay anomaly, if they have reasons to believe that the disparity was due to some administrative delay. The decision of the government in the case of Junior Assistants/Agricultural Officers is a formal expression of the policy of the government in matters relating to re-fixation of salary on par with persons selected by the same process but appointed after a particular date due to administrative delay. Therefore, there is a strong reason to treat a particular category of cases differently and the above government order cannot be ignored and the government cannot reject the case of the petitioners ignoring the decision already taken.



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13. In fact, the above government order was passed based on one man commission report to remove pay anomaly. Various Division Bench of this Court also confirmed the order passed by the learned Single Judge. Aggrieved by the same, the respondents filed appeal before the Hon'ble Supreme Court of India in S.L.P(C) Diary Nos.6536 of 2024 and the same were also dismissed by an order dated 18.03.2024.

14. The learned Special Counsel appearing for the first respondent submitted that all the petitioners, who were seeking direction to extend the benefits in the government order in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010, were appointed only after 01.06.2009. She also produced list of the petitioners along with their respective date of appointment. Therefore, the government order in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010, is not at all applicable to them. The Hon'ble Division Bench of this Court dismissed the writ appeals without considering these aspect and as such the first respondent filed review and it is pending before the Madurai Bench of this Court.

15. The above contention cannot be countenanced on the ground



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that already the issue dealt with by the various single and Division Bench of this Court and also confirmed by the Hon'ble Supreme Court of India.

The recruitment process started much earlier to the date fixed by the government order as 01.06.2009. It is relevant to extract the government order in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010 as follows :-

“2) Some of the employees Associations/Individual employees have represented before the One Man Commission constituted to examine the anomalies if any, in the recommendations of Official Committee, 2009 that the Junior Assistants who were recruited through Tamil Nadu Public Service Commission have been intimated in the month of May, 2009 regarding their allotment of Government departments and also informed to await for further communication from the appointing authority concerned. Accordingly, some Heads of Departments have issued appointment orders to some of the individuals to join as Junior Assistants in the month of May and June, 2009. In some cases, though the individuals were given appointment order in the month of May, 2009 itself, the Contract Assistants who were in service from 2003 onwards were relieved by the departments lately. which has resulted in their joining in the post of Junior Assistant at a later date beyond 31--5--



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2009. The Associations/individual employees have pointed out that the delay in relieving them is due to administrative reasons and therefore they have requested to equate their pay on par with the individuals who joined/ appointed prior to 1-6-2009. Likewise, the Agricultural Officers working in Seed Certification, Agriculture Department and Horticulture have also represented before the One Man Commission that the Tamil Nadu Public Service Commission has published their Selection list in March, 2009 and the services of the Agricultural Officers selected were placed at the disposal of the Regional Joint Directors and some of the Joint Directors have issued posting orders prior to 1-6-2009 and in some cases at a later date beyond 31-5-2009 due to which their pay has been fixed at the minimum of Pay Band and Grade Pay and thereby they happened to draw lesser pay when compared to some of their juniors in Tamil Nadu Public Service Commission seniority list. The Associations have therefore requested to rectify the anomaly and grant equal pay on par with their counterparts in the same batch who joined duty prior to 1-6-2009.

3) The One Man Commission has examined and observed that the disparity in pay of Junior Assistants/ Agricultural Officers recruited by the Tamil Nadu Public Service Commission in March 2009 and May, 2009 and



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who joined on or after 1-6-2009 has arisen due to delay in relieving the individual employees by the departments concerned where they were working as Contract Assistants and in the case of Agricultural Officers, the delay in joining duty is due to the issue of posting orders issued by the Regional Joint Directors of Agriculture which is purely administrative delay and not the fault of the individuals. Hence, considering the above peculiar circumstances and also taking into account the fact that some of the juniors happened to draw more pay than their seniors (as per their seniority list of Tamil Nadu Public Service Commission) by way of fitment benefit due to their joining prior to 01-06-2009 and the seniors joining duty after 01-06-2009 due to administrative reasons, the Commission has therefore recommended to compensate the monetary loss incurred by the employees recruited by Tamil Nadu Public Service Commission in March, 2009 and May, 2009 in the same batch but appointed on a date after 01-6-2009 due to administrative reasons by relaxing Rule-9 of the Tamil Nadu Revised Scales of Pay Rules, 2009 in favour of the incumbents.

4) 4) The Government has carefully examined the above recommendations of the One Man Commission and decided to rectify the anomaly as pointed out by the One Man Commission. Accordingly, Government direct that



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in exercise of the powers conferred under Rule-13 of the Tamil Nadu Revised Scales of Pay Rules, 2009 relax the Rule-9 of the Tamil Nadu Revised Scales of Pay Rules, 2009 in favour of the incumbents recruited as Junior Assistants from among the Contract Assistants / Agricultural Officers and any other similar categories of posts recruited by the Tamil Nadu Public Service Commission in the same batch prior to 1-6-2009 and joined / appointed on a subsequent date on or after 1-6-2009 due to administrative reasons duly allowing the fitment benefit to the individual employees concerned as a special case. However, Government direct that the above fixation benefit shall be given notional effect from the date of appointment of the individual employees concerned with monetary benefit from 1-8-2010.

5) Based on the above general orders, the Heads of Departments / Pay fixing authorities concerned are requested to re-fix the pay of the individual employees concerned by issuing separate Office Proceedings in this regard immediately.

6) The above orders allowing fitment benefit is not applicable to the new recruits in whose cases the selection list have been issued by the Tamil Nadu Public Service Commission/Employment Exchanges and consequent appointment orders issued by the Heads of



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Departments after 1-6-2009 i.e. after the date of issue of notification of the Tamil Nadu Revised Scales of Pay Rules, 2009 in the G.O.first read above. In such cases, the new recruits are entitled to have their pay fixed only at the minimum of the Pay Band plus Grade Pay applicable to the respective posts.”

16. Mere reading of the above government order revealed that, it is not restricted to the Junior Assistants/Agricultural Officers and it is also applicable to those who were recruited in the same batch and appointed after 01.06.2009. The government of Tamil Nadu under Rule 13 of the Tamil Nadu Revised Scales of Pay Rules relaxed the Rule 9 of the Tamil Nadu Revised Scales of Pay Rules, 2009 in favour of the incumbents recruited as Junior Assistants from among the Contract Assistants/ Agricultural Officers and any other similar categories of post recruited by the Tamil Nadu Public Service Commission in the very same batch. Further, when the Hon'ble Single bench and also the Division Bench of this Court held that similarly placed persons are entitled for the benefits as per the government order in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010, there is absolutely no reason to apply different yardstick to the petitioners herein.



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17. Insofar as the petitioners in W.P.Nos.29572, 29616, 29619, 29622, 29626, 29627, 29631 & 29633 of 2022 are concerned, they were granted retrospective promotion by the Syndicate and the university with effect from 30.05.2009 and the same was approved by the third respondent by the proceeding dated 14.06.2012, with a view to overcome the defect said to have been found by the audit objection of the year 2011-2012. The said audit objection and subsequent objections cannot be sustained and it is not valid. Therefore, the petitioners were granted retrospective promotion and the question of delay in exercising the option within the cut-off dated doesn't arise, since the petitioners are deemed to have opted for the revised scale of pay from the retrospective date of promotions i.e., 30.05.2009. Therefore, the third respondent has no authority to revise the scale of pay on the basis of the government letter dated 06.08.2009 that too after the period of thirteen years.

18. As far as the audit objection is concerned, the learned Senior Counsel appearing for the petitioners relied upon the judgment of this Court in *Rev.Appl.(MD).No.170 of 2022* dated **28.04.2023** in the case *E.Roseline Lobo Vs. S.Maharaja*, which held as follows :-



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“15. The Local Fund Audit Department is governed by the provisions of the Tamil Nadu Local Fund Audit Act, 2014 [hereinafter referred to as 'the Act']. The Act provides for an effective and efficient audit system to all local authorities, including an University established by a State Legislature. Under the Act, the Executive Authority of the Local Fund Audit is liable to prepare and present Accounts for audit to the Director of Local Fund Audit [hereinafter referred to as 'the Director'], who in turn is vested with the powers to require production of Accounts from the Executive Authority. Failure to produce such Accounts insisted by the Director, a penalty is provided for under the Act. Thereafter, the Director is required to complete the audit Accounts within a period of 6 months, after verifying the correctness of the Accounts and certify the annual Accounts and send the same to the Executive Authority.

16. The authority of the Director to cause an audit and his jurisdiction and the extent to which the objections could be raised during the course of audit is stipulated under Section 12 of Act, read with Rule 12 of the Tamil Nadu Local Fund Audit Rules, 2016. For the sake of convenience, these provisions are extracted hereunder.

"Section 12 - The Director shall include in the audit report:- (a) any payment which appears to have been made contrary to any law or order of the Government; (b) the amount of any deficiency or loss which appears to have



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been caused by the negligence or misconduct of any person in the performance of his duties; (c) any case of misappropriation or improper utilisation of the fund; (d) the amount, if any, received which ought to have been brought into account but not brought into account; and (e) any other material impropriety or irregularity observed in the audit."

"Rule 12 - Contents of the Audit Report — (1) Unless otherwise provided in these rules, the contents of the audit reports of the local authorities or local funds shall be in such manner as may be prescribed by the Director . The instructions issued by the Director from time to time with regard to the form of audit report , drafting of audit para, compilation of audit report, contents of the audit report, and the enclosures to the audit report shall be followed unless otherwise specified in the Act or in these rules.

(2) There shall be seven separate parts in the audit reports, — Part-1: containing review of annual accounts, financial statements, balance sheet and its Schedules, income and expenditure statement, receipts and charges and cash flow statements. Part-2: containing the following details of objections in receipts or revenue items:- (a) clear cases of loss of receipt shall be incorporated; (b) cases in which the amount if any received which ought to have been brought into account but not brought into account by any person; (c) cases of misappropriation of collections made; and (d) cases of any deficiency or loss of money due to short



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realization or non-realization of dues which appears to have been caused by the negligence or misconduct of any person. Part-3: containing the following details of objections in payment or expenditure:- (a) clear cases of excess payment shall be incorporated; (b) cases of improper utilization of funds; (c) cases of payments which appears to be contrary to the Act or rules; (d) cases of any deficiency or loss of any property, stock and the similar items; and (e) cases of avoidable expenditure. Part-4: containing the details of objections relating to grants, loans and the similar items; utilized for execution of works or schemes. Part-5: containing the details of observations and objections relating to deposits and advances. Part-6: containing the details of observations and objections relating to Provident fund, contributory pension scheme and other miscellaneous funds. Part-7: containing computation of audit fees due, result of audit and details of pending objections and any other facts noticed during the course of audit which adversely affect the finances of the institution. (3) The Director shall issue orders modifying the contents of audit report as and when found necessary. (4) The Director or issuing authority shall be liable to issue the audit report within three months after completion of audit."

17. As per the aforesaid provisions, the Director will be well within his power to conduct an audit and raise



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objections with regard to any illegal payments, any deficiency or loss caused by negligence or misconduct of any person, misappropriation or improper utilisation of the funds, omission of amounts in the Accounts and other material impropriety or irregular observation. Neither the Act nor the Rules authorize the Director to question any administrative decision taken by the Executive Authority, which is in accordance with law. If such powers to question the administrative decisions are exercised by the Director, it would amount to excessive exercise of powers, which is not provided for, under the Act. The Director is not an appellate body of the Executive Authority, but is required to act within the powers vested with him under the Act or the Rules.”

19. He also relied upon the judgment of this Court made in **W.A.No.224 of 2023 etc.**, batch, dated **20.10.2023** in the case of **Dr.R.Prabhakaran Vs. The Registrar and ors.**, in which the Hon'ble Division Bench of this Court held as follows:-

21. The decision referred to above makes it clear as daylight that even if the state government is a body that funds the University, the state government cannot under the guise of auditing the accounts of the University, interfere with the internal administration of the University, which power of the University includes the power to make appointments as well as promotions. The other decision



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relied upon by the learned counsel for the appellants is Sushil Kumar Tripathi v. Jagadguru Ram Bhadracharya Handicapped University and Ors., [AIR 2021 SC 5702], wherein, in similar circumstances, under the UGC Plan, assurance was obtained from the University to maintain and take over the liability of these posts after the plan period of the UGC. The Hon'ble Supreme Court held that the termination of the services of the appellant therein was incorrect and therefore, his services were to be continued as per the UGC plan. Further, in identical circumstances, in R. Soranam v. Manonmaniam Sundaranar University, in WP (MD) No. 3935 of 2012 decided on 20.09.2012 in respect of the very same UGC XI plan, this Court taking into consideration the guidelines of the UGC, which had stipulated that in order to get grant from the UGC, it is for the University to file an undertaking with respect to maintenance of the posts after the UGC XI Plan period, held that the University cannot after having benefited under the UGC plan and utilising the funds and grants made by the UGC, wriggle out of such an undertaking as was required under the guidelines of the UGC."

20. That apart, excess amount was not paid on account of misrepresentation or fraud committed by the petitioners. If the excess amount was made by the employer by applying a wrong principle for



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calculating the pay & allowances or on the basis of a particular interpretation of rule or order, which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable.

21. In view of the above discussions, the impugned orders in W.P.Nos. 29572, 29616, 29619, 29622, 29626, 29627, 29631 & 29633 of 2022 cannot be sustainable and liable to be quashed. Accordingly, impugned orders dated 11.03.2020 & 16.09.2022 passed by the third respondent and the Clarification letter dated 06.08.2009 issued by the first respondent, are hereby quashed. The second and third respondents are directed to refix the pay and scale of the petitioners with effect from 30.05.2009 by extending the benefits of government order in G.O.Ms.No.234 Finance (Pay Cell) dated 01.06.2009 and disburse the arrears of pay and other monetary benefits within a period of twelve weeks from the date of receipt of a copy of this Order.

22. Likewise, the impugned orders in W.P.Nos.14583, 14584, 14585, 14587, 14589, 14591 to 14596 of 2024, denying the benefits under the government order in G.O.Ms.No.340 Finance (Pay Cell)



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Department dated 26.08.2010, cannot be sustainable and liable to be quashed. Accordingly, the impugned orders dated 17.02.2022 passed by the second respondent are hereby quashed. The petitioners are eligible to get the benefits under the government order in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010. The respondents are directed to fix their salary by granting fitment benefit as per the government order in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010, within a period of twelve weeks from the date of receipt of a copy of this Order.

23. Insofar as the Writ Petitions in W.P.Nos.34983, 35851 & 35854 of 2023 & 11026, 11079, 11088, 11096, 11149, 11157, 11259, 11270, 11438, 11523 of 2024 are concerned, the petitioners are eligible to get the benefits under the government order in G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010. The respondents are directed to fix their salary by granting fitment benefit as per the sixth pay commission in view of the G.O.Ms.No.340 Finance (Pay Cell) Department dated 26.08.2010, within a period of twelve weeks from the date of receipt of a copy of this Order.

24. With the above directions, all the Writ Petitions are allowed.



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Consequently, connected miscellaneous petitions are closed. There shall
be no order as to costs.

18.07.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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To
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1. The Principal Secretary to Government,
State of Tamil Nadu,
Finance (Pay Cell) Department,
Secretariat, Fort St. George,
Chennai – 600 009.
2. Bharathiyar University,
Rep. by its Registrar,
Coimbatore – 641 046.
3. The Registrar,
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