



W.A.(MD)No.462 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.02.2026

PRONOUNCED ON : 27.02.2026

**CORAM:**

THE HONOURABLE **DR.JUSTICE G. JAYACHANDRAN**  
AND  
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**  
AND  
THE HONOURABLE **MR.JUSTICE K.K. RAMAKRISHNAN**

W.A.(MD)Nos.462 of 2014, 485 of 2018, 1231 of 2019, 919 of 2020,  
1420 of 2022, 1249 of 2025

and

W.P.(MD)Nos.3773 to 3775 of 2013

and

C.M.P.(MD)Nos.2904 of 2018, 5004 of 2020

**W.A.(MD)No.462 of 2014:**

Murugesan

... Appellant

Vs.

1. Tamil Nadu State Transport Corporation,  
Vannarapet, Tirunelveli,  
Through its Managing Director.

2. The General Manager (HR),  
Tamil Nadu State Transport Corporation,  
Tirunelveli Region,  
Vannarapet, Tirunelveli.

3. P. Muthukrishnan

... Respondents



*W.A.(MD)No.462 of 2014*

**PRAYER:-** Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 11.12.2013 in W.P.(MD)No.11556 of 2012 on the file of this Court.

For Appellant : Mr.T.Ponramkumar  
For Respondents : Mr.K.Sathiya Singh (R1 & R2)  
Standing Counsel

**W.A.(MD)No.485 of 2018:**

1.The Registrar,  
Madurai Kamaraj University,  
Madurai-625 021.

2.Syndicate Committee,  
Madurai Kamaraj University,  
Madurai-625 021.

... Appellants

Vs.

1.S.R.Maria Raja

2.The Principal Secretary to the Government,  
Higher Education Department,  
Government of Tamil Nadu,  
Secretariat, Chennai-9.

... Respondents

**PRAYER:-** Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 02.02.2017 in W.P.(MD)No.5309 of 2012 on the file of this Court.

For Appellant : Mr.Isaac Mohanlal (A1)  
Senior Counsel for  
M/s.Isaac Chambers  
For Respondents : Mr.T.S.Mohamed Mohideen (R1)  
Mr.Veera Kathiravan (R2)



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Additional Advocate General  
assisted by Mr.J.Ashok,  
Additional Government Pleader

**W.A.(MD)No.919 of 2020:**

- 1.Ayyasamy
- 2.Selvakumar
- 3.Muthurasu
- 4.Kottai Rajan
- 5.Kannan

... Appellants

Vs.

- 1.G.Karuppasamy
- 2.The Government of Tamilnadu,  
Rep by its Secretary,  
Highways and Minor Ports (Hk3) Department,  
Fort. St. George, Secretariat, Chennai - 600009.
- 3.The Chief Engineer (General),  
Highways Department,  
Chepauk, Chennai - 600 005.
- 4.The Superintending Engineer,  
Highways Department,  
Reserve Line Road,  
Palayamkottai,  
Tirunelveli - 627 002.
5. The Divisional Engineer,  
Highways Department,  
Sivakasi Sub Division,  
Virudhunagar Division,  
Virudhunagar District - 626 001.
6. Jothimurugan
7. Duraipandi



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8. Sanakaranarayanan

9. Sivaprakash

10. Padmanabhan

11. Haja Mohideen

12. Selvaraj

13. Kesavan

14. Vijayarajan

15. Radhakrishnan

16. Iyyaru

17. Rajagopal

18. Kumaresan

19. Pothiraj

20. Habiyathullah

21. Kumaresan

22. Renganathan

23. Natrajan

24. Murugapandi

25. Rajasekaran

26. Kannan



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27. Veerachamy

28. Radhakrishnan

29. Baskaran

30. William Subramani

31. Arumugakani

32. Balamurugan

33. Alagusamy

34. Karthikeyan

35. Muneeswaran

36. Murugan Senthilvel

37. Chinnathurai

38. Gurusamy

39. Muthukumar

40. Devasagayam

41. Karumalai

42. Kumar

43. Muniselvakumar

44. Malaiyarasan

45. Inbasekaran

46. Thiruppathiraj

47. Rengarajan

48. Ramachandran

49. Murugan

50. Kathiravan

51. Jeyapandi

52. Rajesh Kannan

53. Arulraja

54. Gopalakrishnan

55. Ashtarajan

56. Subburaj



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57. Rajendran  
58. Ravichandaran  
59. Vairavan  
60. Ramamoorthy  
61. Senthilvel  
62. Muneeswaran  
63. Dhanapal

... Respondents

**PRAYER:-** Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 05.02.2020 in W.P.(MD)No.18054 of 2014 on the file of this Court.

For Appellant : Mr.G.Prabhu Rajadurai  
For Respondents : Mr.A.Saravanan (R1)  
Mr.Veera Kathiravan (R2 to R5)  
Additional Advocate General  
assisted by Mr.J.Ashok,  
Additional Government Pleader

**W.A.(MD)No.1231 of 2019:**

- 1.The Chief Engineer (General),  
Highways Department,  
Chennai-05,  
Presently Re-designated as  
The Director General,  
Highways Department,  
Guindy, Chennai-25.
- 2.The Divisional Engineer,  
Highways Department,  
Theni.
- 3.The Assistant Divisional Engineer,  
Highways Department,  
Bodi.

... Appellants



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Vs.

K.Pandian

... Respondent

**PRAYER:-** Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 26.09.2019 in W.P.(MD)No.7889 of 2010 on the file of this Court.

For Appellants : Mr.Veera Kathiravan  
Additional Advocate General  
assisted by Mr.J.Ashok,  
Additional Government Pleader  
For Respondent : Mr.M.Gnanagurunathan

**W.A.(MD)No.1420 of 2022:**

- 1.The Director General,  
Highways Department,  
Guindy,  
Chennai-600 025.
- 2.The Chief Engineer,  
Highways Department,  
Guindy,  
Chennai-600 025.
- 3.The Superintending Engineer,  
Highways, Construction and Maintenance,  
K.Pudur, Madurai.
- 4.The Divisional Engineer,  
Highways, Construction and Maintenance,  
K.Pudur, Madurai.

... Appellants

Vs.



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G.Dhanabalan

... Respondent

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**PRAYER:-** Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 07.12.2021 in W.P.(MD)No.9776 of 2021 on the file of this Court.

For Appellants : Mr.Veera Kathiravan  
Additional Advocate General  
assisted by Mr.J.Ashok,  
Additional Government Pleader  
For Respondent : Mr.T.Aswin Rajasimman

**W.A.(MD)No.1249 of 2025:**

1. M. Duraipandi
2. Padmanabhan
3. Hajamaitheen
4. S.Selvaraj
5. S.Vijayarajan
6. M.Radhakrishnan
7. M.Kumaresan
8. M.Habibathulla
9. V.Renganathan
10. G.Rajasekaran
11. G.William Subramani
12. G.Muneeswaran
13. S.Gurusamy
14. K.Muthukumar
15. S.Murugan
16. S.Gopala Krishnan
17. S.Astharajan
18. V.Subburaj
19. R.Vairavan,
20. V.Ramamoorthi

... Appellants

Vs.

1.G. Karuppasamy



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2. The Government of Tamilnadu,  
Rep by its Secretary,  
Highways and Minor Ports (Hk3) Department,  
Fort St.George, Secretariat, Chennai-600 009.
3. The Chief Engineer(General),  
Highways Department,  
Chepauk, Chennai-600 005.
4. The Superintending Engineer,  
Highways Department,  
Reserve Line Road,  
Palayamkottai, Tirunelveli-627 002.
5. The Divisional Engineer,  
Highways Department,  
Sivakasi Sub Division,  
Virudhunagar Division,  
Virudhungan District-626 001.
6. Jothimurugan
7. Ayyasamy
8. Selvakumar
9. Muthurasu
10. Kottai Rajan
11. Sanakaranarayanan
12. Sivaprakash
13. Kannan
14. Kesavan
15. Iyyaru
16. Rajagopal
17. Kumaresan
18. Pothiraj
19. Natarajan
20. Murugapandi
21. Kannan
22. Veerachamy
23. Radhakrishnan



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24. Baskaran
25. Arumugakani
26. Balamurugan
27. Alagusamy
28. Karthikeyan
29. Murugan Senthilvel
30. Chinnathurai
31. Devasagayam
32. Karumalai
33. Kumar
34. Muniselvakumar
35. Malaiyarasan
36. Inbasekaran
37. Thiruppathiraj
38. Rengarajan
39. Ramachandran
40. Kathiravan
41. Jeyapandi
42. Rajesh Kannan
43. Arulraja
44. Rajendran
45. Ravichandran
46. Senthilvel
47. Muneeswaran
48. Dhanapal

... Respondents

**PRAYER:-** Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 05.02.2020 in W.P.(MD)No. 18054 of 2014 on the file of this Court.

|                |                                  |
|----------------|----------------------------------|
| For Appellants | : Mr.G.Prabhu Rajadurai          |
| For Respondent | : Mr.Veera Kathiravan (R2 to R5) |
|                | Additional Advocate General      |
|                | assisted by Mr.J.Ashok,          |
|                | Additional Government Pleader    |

**W.P.(MD)No.3773 to 3775 of 2013:**



*W.A.(MD)No.462 of 2014*

M.Murugan Senthil Vel

... Petitioner in W.P.(MD)No.  
3773/2013

K.Rengarajaan

... Petitioner in W.P.(MD)No.  
3774/2013

M.Devasagayam

... Petitioner in W.P.(MD)No.  
3775/2013

Vs.

1.The Divisional Engineer (Production & Maintenance),  
Department of Highways,  
Virudhunagar-626 001.

2.The Assistant Divisional Engineer,  
Rajapalayam Sub Division,  
Department of Highways,  
Rajapalayam,  
Virudhuangar District.

... Respondents

PRAYER in W.P.(MD)No.3773/2013:- Writ Petition - filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records of the first respondent in .....201/2012/.....2 dated 14/02/2013 and quash the same as illegal and unlawful and further direct the respondents to place the petitioners name at No. 3 in the seniority list of road gangs fit for promotion to the post of Road inspector Grade II and further promote him as Road Inspector Grade II within a time frame as may be stipulated by this Court.

PRAYER W.P.(MD)No.3774 and 3775 2013:- Writ Petition - filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records of the first respondent in Ku.No.201/2012/Aa2 dated 14.02.2013 and quash the same as illegal and



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unlawful and further direct the respondents to place the petitioners name at No.3 and 1 in the seniority list of road gangs fit for promotion to the post of Road inspector Grade II and further promote him as Road Inspector Grade II within a time frame as may be stipulated by this Court.

In both petitions:

For Petitioner : No Appearance  
For Respondents : Veera Kathiravan  
Additional Advocate General  
assisted by Mr.J.Ashok,  
Additional Government Pleader

**COMMON JUDGMENT**

(Judgment of the Court was delivered by **DR.G.JAYACHANDRAN, J.**)

It is a case, where the writ petitioners, who have acquired their degree through correspondence and open universities scheme without undergoing formal education of 10+2+3, were denied of further promotion in view of the Government Orders passed consequent to judgment rendered by the Hon'ble Supreme Court in *Annamalai University vs. Secretary to Government [(2009) 4 SCC 590]*.

2.Prior to the above judgment and the consequential Government Orders, the pre-foundation course and foundation course offered by the Universities were considered as equivalent to 10<sup>th</sup> standard



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and 12<sup>th</sup> standard, respectively. When Madurai Kamarajar University sought for clarification regarding recognition of the one year foundation course of the open university, which is conducted by them, as equivalent to old II years S.S.L.C. Matriculation examination and two years foundation course as equivalent to pre-university course/+2 Higher Secondary examination for the purpose of employment in public service in the State of Tamil Nadu, the same was accepted by the Education Department and G.O.Ms.No.528, dated 18.05.1985 was issued. The relevant portion of the said Government Order is as below:

*“The Registrar, Madurai Kamaraj University, Madurai in his letter first read above has requested the Government to recognise the first year Foundation Course of the Open University system conducted by the above University as equivalent to the old II Years S.S.L.C. Matriculation examination and the second year Foundation Course as equivalent to Pre-University Course/12 year Higher Secondary Examination for purpose of employment in public services in this State.*

*2. The above request was examined in consultation with the Registrar University of Madras, Director of School Education and Tamil Nadu Public Service Commission, Madras. The Syndicate of University of Madras, at its meeting held on 27th February, 1984, resolved that the Foundation Course of the Open University system of Madurai Kamaraj University be recognized as equivalent to a pass in the plus 2 of the 10 plus 2 pattern for the purpose of admission to the*



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*degree course of the University of Madras subject to usual condition.*

*The Board of Higher Secondary Education has considered that there should be no objection to recognise the Pe-Foundation Course examination which corresponds to the 10th Standard Public Examination conducted by the Director of Government Examinations as an entrance qualification for admission to the first year Higher Secondary Course, i.e., standard 11. As regards Foundation Course, the Board has resolved to recognise this course as equivalent to the Higher Secondary Course in view of the fact that the Madras University has already recognised the course as an entrance qualification for admission to the degree course. The Tamil Nadu Public Service Commission, Madras which was consulted in the matter has expressed a view, after taking into account the opinion of the University of Madras and Director of School Education, that a pass in the Foundation Course of the Madurai Kamaraj University- Open University be recognized as equivalent to a pass in the Higher Secondary Course of the Tamil Nadu Government. The Commission is also of the view that a pass in the Pre-Foundation Course of the Madurai Kamaraj University - Open University may be recognized as equivalent to a pass in the 10 years S.S.L.C. Public Examinations of Tamil Nadu Government for purpose of employment into Public Services in this State.*

*3. The Government after careful consideration direct that the Pre-Foundation Course of the Madurai Kamaraj University - Open University be recognised as equivalent to the 10 years S.S.L.C. of the Tamil Nadu Government for purpose of entry into Public Services in this State. The Government also direct that the two years Foundation*



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*Course of the Madurai Kamaraj University - Open University be recognised as equivalent to Higher Secondary (Plus 2) course of the Tamil Nadu Government for purpose of entry into Public Service in this State.”*

3. On the strength of this Government Order, several persons, who were not able to undergo formal education by joining Schools, got themselves qualified and acquired even PG degrees and above. While so, the issue, whether conferring master degrees without undergoing the required three years graduate degree or formal education of 10+2, came up for consideration in *Annamalai University's* case (cited supra). After considering the UGC Act and Regulations, the Hon'ble Supreme Court, declared that offering Foundation and Pre-Foundation course by the University as equivalent to 10<sup>th</sup> standard and 12<sup>th</sup> standard examinations conducted by State Board, is contrary to UGC Act and Regulations. Hence, held that any degree obtained without successful completion of 12 years of schooling through an examination conducted by the Board/University is invalid for consideration of any appointment.

The relevant portion of the said judgment is extracted as below:

*“40. UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the*



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*Constitution of India whereas Open University Act was enacted by the Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of Open University Act shows that the formal system of education had not been able to provide an effective means to equalize educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.*

.....

*42.The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-Section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the co- ordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of the UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub- section (2) thereof.*

.....

*50.The UGC Act, thus, having been enacted by the Parliament in terms of Entry 66 of List I of the Seventh Schedule to the Constitution of India would prevail over the Open University Act.”*



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4. Consequent to the judgment of the Hon'ble Supreme Court, the Tamil Nadu Government, issued G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009 stating that the earlier Government Order, treating the degree conferred by the Open Universities in Tamil Nadu, as recognized on par with the degree conferred by the Universities under Regular stream for the sake of employment, stands withdrawn and degrees without 10+2+Board certificate are not entitled for public employment.

5. In view of the Judgment of the Hon'ble Supreme Court rendered in *Annamalai Universities's* case and clarificatory Government Order in G.O.Ms.No.107 dated 18.08.2009, and letter of the Government dated 03.12.2010, there were spate of litigations and orders passed by the Court regarding interpretation and implementation of the Supreme Court order. As a result, G.O.Ms.No.144, (Personnel and Administrative Reforms (M) Department), dated 20.11.2017 was issued referring all the earlier Government Orders and taking into consideration the recommendation of the equivalency Committee, which has confirmed



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that pre-foundation course and foundation course offered by various Universities in the State, are not equivalent to SSLC and HSC (+2), respectively.

6.In the said circumstances, when a batch of writ appeals in W.A.(MD)No.462 of 2014 etc., came up for consideration, before the Hon'ble Division Bench on 13.07.2023, their Lordships after noticing cleavage of opinion between two Division Bench judgments, sought for constitution of a Larger Bench for resolution of the legal issue involved. As a result, on the direction of the Hon'ble Chief Justice, the Full Bench has been constituted to address the issue.

**Order of reference dated 13.07.2023:**

7.Before advertng to the other facts, the order of reference dated 13.07.2023 passed in W.A.(MD)No.462 of 2014, is extracted below:

*“4.Upon hearing the submissions of the parties before us, we find that this identical issue, relating to whether the foundation course undergone by the petitioner/other similarly placed aspirants, can be equatable to a +2 course, has been the subject matter of various Government Orders over time.*



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*5. In G.O.Ms.No.107, dated 18.08.2009, at paragraph 4, the State has equated the two year foundation course to the +2 course. This position, as available in public domain, continued till the passing of G.O.Ms.No.144 dated 20.11.2017, Personal and Administrative Reforms (M) Department. It is for the first time in that Government Order, at Sl.No.7, that one finds reference to a Letter bearing No.33448/M2/2010-4, Personal and Administrative Reforms (M) Department, dated 03.12.2010.*

*6. That letter, which has been extracted at para 4 of G.O.Ms.No.144, reads thus:*

*“4. Based on the orders issued in the Government order fifth read above, the recognition of the Pre-foundation and the two year Foundation Courses awarded by various Open Universities were clarified in the letter seventh read above to the effect that-*

*“A degree awarded by the Open Universities after passing Pre-Foundation Course and two year Foundation Course through Open University cannot be of employment/promotion in Public Services, since such Pre-foundation Course and two year Foundation Course are not contemplated in the University Grants Commission Regulations.*

*Therefore, those who obtained a degree under Open University System after passing the Pre-foundation Course and two year Foundation Course without passing 10th standard and +2 examination do not satisfy the conditions laid in G.O.(Ms)No. 107, Personal and Administrative Reforms (M) Department, dated 18.08.2009 which is in consonance with the orders of Supreme*



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*Court of India.”*

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*The above clarification was followed from the date of issue of orders in the Government Order fifth read above.”*

*7.The above letter has been issued on the heels of G.O.Ms.No.107 and according to G.O.Ms.No.144, has been applied from the date of issue of G.O.(Ms).No.107 dated 18.08.2009. Thus, the position appears to be that, though a benefit was granted under G.O.Ms.No.107 dated 18.08.2009, it was immediately withdrawn by issuance of letter dated 03.12.2010. It is unclear as to whether the aforesaid letter is unavailable in public domain.*

*8.The above paragraphs capture the background to the matter. The parties place before us two series of orders. In one series, that is 2011 SCC Online Mad 209 (Order dated 10.02.2011), CDJ 2019 MHC 2929 (Order dated 19.07.2019), CDJ 2021 MHC 3466 (Order dated 15.04.2021) and W.A. (MD)No.471 of 2021 (order dated 20.07.2021), Division Benches of this Court have taken a view that the benefit granted under G.O.(Ms).No.107 stands nullified by G.O.Ms.No.144 dated 20.11.2017 and a foundation course cannot be equated to High Secondary Course. Reference is made to letter dated 03.12.2010.*

*9.In a recent decision of a Division Bench reported in 2022 SCC OnLine Mad 6177, a Division Bench has taken a view that G.O.Ms.No.144 dated 20.11.2017, would operate prospectively. Thus, appointments made prior to 20.11.2017 have been held to be entitled to the benefit granted under G.O.Ms.No.107 dated 18.08.2009 and*



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*other similar Government Orders passed for earlier periods as well.*

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*10. Since there is a cleavage of opinion between the decision as referred to in paragraphs 6 and 7 supra, the Registry is directed to place this file before the Honourable The Chief Justice for constitution of a Larger Bench for resolution of the legal issues involved.”*

8. Following the order of reference in W.A.(MD) No.462 of 2014 to the larger bench, Writ Appeals, 1) W.A.(MD)No.485 of 2018, 2) W.A.(MD) No.919 of 2020, 3) W.A.(MD)No.1420 of 2022, 4) W.A.(MD)No.1249 of 2025 5) W.A.(MD)No.1231 of 2019 6) W.P.(MD) No. 3773 of 2013 7) W.P.(MD) No.3774 of 2013 and 8) W.P.(MD) No. 3775 of 2013 involving similar issue were tagged together to be heard along with W.A.(MD)No.462/2014. The two sets of orders expressing divergent views cited in the order of reference are:-

**Set I:**

*i) T.L.Muthukumar and others –vs- Reg.Gen, High Court, Madras and another[(2011) 2 MLJ 785];*

*ii) Mohamed Hasan Rafayee –vs- TNPSC, Rep.by its Chairman [CDJ 2019 MHC 2929];*

*iii) S.Palanikumar –vs- The Additional Chief Secretary to Govt &*



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others [CDJ 2021 MHC 3466].

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## **SET II**

*P.Thavam and others –vs- State of Tamilnadu and others [2022 SCC OnLine Mad 6177].*

9.On examining the cases cited, we find that *L.Muthukumar's* case cited supra, is the case, where the petitioners sought for issuance of certiorarified Mandamus calling for the records in G.O.Ms.107, Personnel & Administrative Reforms Department, dated 18.08.2009. The Division Bench of this court considering the dictum of the Supreme Court laid down in *Annamalai University's* case, held as below:-

*“9.The short question that falls for consideration in this case is as to “whether a candidate, who obtained B.A./B.Sc./B.Com. Degree without successfully completing 12 years schooling can be a ground for promotion to the higher post on the basis of having qualification of graduation degree, that too through correspondence course”.*

....

*12. Clause 2 of 1985 Regulations was considered by the Supreme Court in the case of Annamalai University rep. by Registrar - Vs - Secy. to Govt. Infn. and Toursm Dept. and Ors. (2009 (4) SCC 590). In that case, the question of interpretation*



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*and application of 1985 Regulations vis-a-vis Section 26 of the UGC Act, 1956 and the Indira Gandhi National Open University Act, 1985 (for short 'Open University Act') fell for consideration. The facts of that case was that the legality of the appointment of one Ramesh to the post of Principal in the Film and Television Institute was challenged on the ground that he did not have the requisite essential qualification for the post of Principal. The challenge to the appointment was that he did not possess the basic graduation degree and thus the post-graduate degree conferred on him by the appellant, Annamalai University, is invalid in law. Admittedly, the said candidate, Ramesh, was holding a Diploma in Film Technology and directly obtained M.A. degree through Open University System in an examination held by the aforementioned University. A Division Bench of this Court held that the M.A. Degree obtained by the said candidate through Open University System without their being a first Bachelor's Degree was not a valid one. The matter ultimately went to the Supreme Court. Their Lordships' upholding the decision of the High Court held as under :-*

*33.Indisputably, the fact that the appellant - University had been granting postgraduate degrees to the candidates concerned although they had not completed three years' course in violation of the Regulation 2 of the 1985 Regulations came to the notice of the UGC as also IGNOU officials. A meeting was held in March 2004. It was agreed in the said meeting that the admission to the Masters' Degree Programme under the OUS without requiring the three years*



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*graduate degree qualification be discontinued with effect from July, 2004 as would appear from a letter issued by the IGNOU to the Vice-Chancellor of the appellant - University, the relevant portion whereof reads as under:-*

*In the meeting, both the undersigned as Chairman DEC and Chairman UGC had emphasized the need to discontinue the Master's Degree Programme without requiring 3 years graduate degree qualification under Open education stream, which is in practice in some Universities of Tamil Nadu.*

*We drew your kind attention to the UGC regulation 1985 regarding the minimum standard of instructions for the grant of the first degree through non-formal/distance education dated 25th November, 1985 according to which no student shall be eligible to seek admission to the Master's Degree Programme who has not completed first degree course of three years duration. This clearly stipulates that the practice of admitting students of Master's Degree Programme who have not undergone 3 years undergraduate programme successfully is against the provisions of the above regulation. In view of this, it was agreed in the meeting of March 11, 2004 that new admission to the Master's Degree Programme under open education scheme as prevailing in some Universities in Tamil Nadu should be discontinued with effect from the forthcoming session starting from July 2004. I would feel grateful to receive your confirmation on this matter."*

*It is also worth to quote para 40, 42 and 50 of the judgment, which reads as under :-*

*40.UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas Open University Act was enacted by*



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*the Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of Open University Act shows that the formal system of education had not been able to provide an effective means to equalize educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.*

\* \* \* \* \*

*42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by it in terms of clauses (e), (f), (g) and (h) of Sub-section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the co-ordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26 (1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of the UGC are all pervasive in respect of the matters specified in Clause (d) of Sub-section (1) of Section 12A and Clauses (a) and (c) of Sub-section (2) thereof.*

\* \* \* \* \*

*50. The UGC Act, thus, having been enacted by the Parliament in terms of Entry 66 of List I of the Seventh Schedule to the Constitution of India would prevail over the Open University Act.*



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*14. From a perusal of Clause 2 of the 1985 Regulations and the ratio decided by the Supreme Court as quoted hereinbefore, it is manifest that for the purpose of obtaining a Post Graduate Degree a candidate has to satisfy and comply the mandatory requirements provided therein. According to the rule, no candidate shall be eligible for award of first degree unless he has successfully completed 12 years schooling. Similarly, no student shall be eligible to seek admission to the Masters course in any faculty, who has not successfully pursued the first degree course of three years duration.*

*15. In the instant case, the question is as to whether a candidate after obtaining such a degree from an Open University without completing 12 years schooling can claim, as a matter of right, promotion to the higher post, ignoring the service conditions prescribed under the service rules.*

*19. Admittedly, the petitioners, although, obtained the first degree by correspondence course without having the basic +2 qualification. Such degree having not been recognized under the Rules framed by the High Court in exercise of powers conferred under Article 229 of the Constitution of India, the petitioners cannot claim promotion on that basis.”*

10. In the case of *Mohamed Hasan Rafayee* cited supra, the letter of the Secretary to the Government dated 03.12.2010 clarifying G.O.Ms.No.107, dated 18.08.2009 came under challenge. The Division Bench of this court after tracing the reason for issuing the clarificatory



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letter, held as below:-

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*“8. The question that which falls for consideration is whether the proceedings in letter No.33448/M/2010-4 P&AR (M) Department, deserves to be struck down or not and whether the petitioner who has passed in the foundation course is entitled to be considered for a Government job on the basis of the degree which he obtained on the basis of the foundation course which according to the petitioner is equivalent to a pass in +2 examination.*

....

*27. Similarly another Division Bench of this Court in Writ Appeal No.805 of 2014 in the case of The Chairman Vs. V.Kanimozhi, observed as under:-*

*5.2. Coming to the first issue, we would like to extract the relevant passage of the Government Order passed in G.O. (Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009, which reads as under:*

*The above recommendations were carefully examined by the Government and accordingly Government accepted the recommendations of Equivalence Committee and issue orders, that the Diplomas/Degrees/ Post Graduation after possession of Xth Std., Higher Secondary (+2) obtained through Open Universities alone considered for appointment/ promotion in Public Services." On a reading of the above said paragraph, it is clear that a diploma/ degree/post graduation can only be considered for appointment in public services after a candidate possesses Xth Standard as well as Higher Secondary (+ 2). This Government Order passed has been*





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*petition only against the letter bearing No.33448/M/2010-4 P&AR (M) Department. dated 03.12.2010, which clarifies G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, without challenging the G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009.*

*29.A perusal of G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, shows that the Government had accepted the Equivalence Committee which recommended that, persons having obtained degree in BA/Bsc without possession of +2 (HSC) shall not be considered on par with the persons having passed +2 (HSC) for the purpose of appointment in public service or promotion in public service.*

*30.In fact, no clarification was necessary at all. The Government order automatically excluded the pre-foundation course or the two year foundation course obtained through the Open University for the purpose of appointment in public service or for promotion in public service.”*

11.For better understanding of the issue, the clarificatory letter of the Secretary to Government, dated 03.12.2010, which contains the entire narration of facts and obtained the seal of validity by the Division Bench of this Court in the *Mohammad Hasan Rafayee's* case is extracted below:-

*“Sub:Recruitment (Direct) Posts included in Combined Subordinate*



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*Services Examination -I, 2008 Candidates qualification*

*Certain clarification called for-Regarding.*

*Ref: 1. Your letter No. 3268/QTD-82/2010, dated 12.07.2010.*

*2. Government letter No. 33448/M/2010-1. Personnel and Administrative Reforms (M) Department, dated 15.09.2010.*

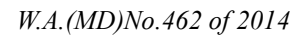
*3. Order of Hon'ble High Court of Madras in W.P.No. 13574 of 2010, dated 08.09.2010.*

*4. Your letter No. 3268/OTD-B2/2010, dated 10.11.2010.*

\*\*\*\*\*

*I am directed to invite your attention to the references cited and to state that you have requested to issue clarification as to whether the qualification possessed by the individual as per the orders issued in G.O.(Ms). No. 528, Personnel and Administrative Reforms (Per-R) Department, dated 18.05.1985 can be recognised as the qualification prescribed in G.O. (Ms).No. 107, Personnell and Administrative Reforms (M) Department, dated 18.08.2009.*

*2. In this connection, I am directed to state that based on the recommendation of the Equivalence Committee that a degree obtained through Open University System is not equivalent to +2 and in consonance of the orders of the High Court of Madras and Supreme Court of India, the Govt. issued orders in G.O.(Ms). No. 107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 recognising the Diploma/Degree/Post Graduate Degree obtained through Open University System after passing the S.S.L.C and Higher Secondary Education (10 and +2) for the purpose of employment / promotion. Subsequently, orders were also issued in G.O. (Ms). No. 116,*



3. *The Hon'ble Supreme Court of India in Civil Appeal No. 4173 of 2008 and Civil Appeal Nos. 4189-4191 of 2008 in its judgment dated 25-02-2009 has observed as below: -*

*"17. Indisputably, UGC in exercise of the powers conferred upon it by clause (f) of sub-section (1) of Section 26 of the U.G.C Act, made the 1985 regulations. A notification in this behalf was published by the U.G.C on 25-11-1985. It, however was given effect from 01-01-1986.*

*“ 2. Admission/Students (1) No student shall be eligible for admission to the 1st Degree Course through non-formal /distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board / University. In case there is no previous academic record, he shall be eligible for admission if he has passed an entrance test conducted by the University provided that he is not below the age of 21 years on July 1 of the year of admission.*

(2) No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A. / B.Sc., /B.Com. (General / Honours Special) degree as the case may be :



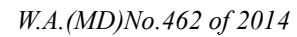
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*Provided that no student shall be eligible to seek admission to the Master's Course in these faculties, who has not successfully pursued the first Degree Course of three years duration:*

*Provided further that, as a transitory measure where the Universities are unable to change over to a three year degree course, they may award a BA/B.Sc., B.Com. (Pass) degree on successful completion of two years course, but that no student of this stream shall be eligible for admission to the Master's course unless he has undergone a further one year bridge course and passed the same. The three year degree course after 10 +2 stage should in no case be termed as B.A./B.Sc./B.Com (Pass) degree.....”*

*The Supreme Court also observed, "Was the alternative system envisaged under the Open University Act was in substitution of the formal system is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and informal system is in the mode and manner in which education is imparted. U.G.C Act, was enacted for effectuating co-ordination and determination of standards in Universities. The purport and object for which it was enacted must be given full effect. The provision of the U.G.C Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by U.G.C. The standards and the co-ordination of work or*



*“The provisions of UGC Act are not in conflict with the provisions of Open University Act. It is beyond any cavil of doubt that UGC Act shall prevail over Open University Act”*

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

*“26.1 Similarly, the direction issued by the Government under G.O.(Ms). No.216, dated 26-08-1997 must be understood in the context in which such order was issued It can only mean that the degrees obtained through the Open University System are considered equivalent to a traditional degree obtained through regular system, provided that such degrees are in conformity with the relevant*



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*statutory provisions including Rules and Regulations holding the field.*

*It can never be countenanced that the Government consciously intended to recognize a degree of M.A., through Open University System without the benefit of the foundation degree or the basic degree as equivalent to a recognized degree, even though the UGC Regulations never contemplated such a course. Since the UGC Regulations were in place, it cannot be assumed that the Government in fact intended to depart from the Regulations issued by the UGC which have the status of a subordinate legislation under a Central statute relatable to laying down of the norms and standards as contained in Entry 66 of the Union List. Therefore, recognition of a degree from the Open University system could be only on the anvil that such degree must be in accordance with the Regulations of the UGC and not in direct conflict with such Regulations. The expression in the Rules that for the purpose of eligibility of a person to be appointed as a Principal, he must be in possession of a degree of recognized University cannot be stretched to include "Master's degree" obtained from Annamalai University by appearing at one time examination without the benefit of a previous "first degree".*

*5.The Supreme Court of India and High Court of Madras have clarified in the judgement that the University Grants Commission guidelines have to be followed to maintain the standard of education. For admission into the first year of the degree course under Open University System, the University Grants Commission has stipulated that a person must be over 21 years of age and must pass in the Entrance Examination. As this is not followed by many of the Open Universities, and as the Equivalence Committee in its resolution dated 24.09.2007 did not recognize the degree obtained through Open*



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*University as equivalent to +2, in consonance with the Orders of Supreme Court, G.O.(Ms). No. 107 Personnel and Administrative Reforms (M) Department, dated 18.08.2009 were issued that the degree obtained after passing S.S.L.C. and +2 alone will be recognized for the purpose of employment / promotion in Public Service.*

*6. In view of the above, the following clarifications are issued :-*

*(1) Pre-foundation Course and two year Foundation Course through Open University A degree awarded by the Open Universities after passing cannot be recognised a degree as per University Grants Commission norms for the purpose of employment / promotion in Public Services, since such Pre-Foundation Course and 2 year Foundation Course are not contemplated in the University Grants Commission Regulations.*

*2) Therefore, those who obtained a degree under Open University System after passing the Pre-Foundation Course and two year Foundation course without passing 10th Standard and +2 examination, do not satisfy the conditions laid in G.O.(Ms). No.107, P&AR (M) Department, dated 18.08.2009 which is in consonance with the orders of Supreme Court of India.”*

12.The Government subsequently, in view of the recommendation of the equivalence committee, had issued G.O.Ms.No. 144, dated 20.11.2017 reiterating the clarification already made in G.O.



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(Ms) No.107 dated 18.08.2009 and the letter dated 03.12.2010.

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13.The said G.O.(Ms)No.144, Personnel and Administrative Department, dated 20.11.2017 reads as below:-

*“PERSONNEL AND ADMINISTRATIVE REFORMS (M) DEPARTMENT*

*G.O.(Ms.)No.144*

*Dated: 20.11.2017*

ஹேவிளம்பி வருடம், கார்த்திகை 4,  
திருவள்ளூர் ஆண்டு-2048.

Read:

1. *G.O.(Ms.) No.528, Personnel and Administrative Reforms (Per.R) Department, dated 18.05.1985.*
2. *G.O. (Ms.) No.1110, Education (HS.2) Department, dated 17.09.1985.*
3. *G.O.(Ms.)No.219, Personnel and Administrative Reforms (Per.R) Department, dated 30.03.1988.*
4. *G.O.(Ms.) No.50, Personnel. and Administrative Reforms (Per.R) Department, dated 21:02.1997.*
5. *G.O.(Ms.)No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009.*
6. *G.O.(Ms.)No.116, Personnel and Administrative Reforms (M) Department, dated 18.08.2010.*
7. *Letter No.33448/M2/2010-4, Personnel and Administrative Reforms (M) Department, dated 03.12.2010.*
8. *From the Secretary, Tamil Nadu Public Service Commission, D.O. letter No.8705/RND-F/2015, dated 29.01.2016.*
9. *From the Secretary, Tamil Nadu Public Service Commission, D.O. letter No.5140/RND-F/2017, dated 01.11.2017.*



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**ORDER:**

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*In the Government Orders first and second read above, orders have been Issued that the Pre-foundation Course and the two years Foundation Course of the Madurai Kamaraj University Open University be recognized as equivalent to 10 years of SSLC and Higher Secondary Course (+2) of the Tamil Nadu Government respectively, for the purpose of entry Into Public Services In this State.*

*2. In the Government orders third and fourth read above, the Two Years Foundation Course and One Year Foundation Course conducted by the Annamalai University have been considered as equivalent to +2 and 11 years SSLC respectively for the purpose of entry Into Public Services in this State.*

*3. In the Government orders fifth and sixth read above, orders have been issued that the degree obtained after passing SSLC and +2 alone will be recognized for the purpose of employment / promotion in Public Services and that those who possess a Post Graduate Degree through Open University System without obtaining a basic degree cannot be considered as possessing a Post Graduate Degree for appointment to Public Services.*

*4. Based on the orders Issued in the Government order fifth read above, the recognition of the Pre-foundation and the two year Foundation Courses awarded by various Open Universities were clarified in the letter seventh read above to the effect that-*

*"A degree awarded by the Open Universities after passing Pre-foundation Course and two year Foundation Course through Open University cannot be recognized as degree as per University Grants Commission norms for the purpose of employment/promotion.*



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*In Public Services, since such Pre-foundation Course and two year Foundation Course are not contemplated in the University Grants Commission Regulations.*

*Therefore, those who obtained a degree under Open University System after passing the Pre-foundation Course and two year Foundation Course without passing 10th standard and +2 examination do not satisfy the conditions laid in G.O.(Ms).No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 which is in consonance with the orders of Supreme Court of India".*

*The above clarification was followed from the date of issue of orders in the Government Order fifth read above.*

*5.In the meantime, the Equivalence Committee in its recommendations in the letter eighth and ninth read above has also resolved that the Pre-foundation Course and the Foundation / Bridge Courses awarded by various Universities cannot be recognized as equivalent to SSLC and Higher Secondary Course (+2). The recommendations of the Equivalence Committee are in consonance with the clarification issued in the letter seventh read above, hence, the Pre-foundation Course and the Foundation / Bridge Courses awarded by various Universities cannot be recognized as equivalent to SSLC and Higher Secondary Course (+2).*

*6.As the recommendations of the Equivalence Committee confirms the clarification that the Pre-foundation Course and Foundation Course offered by various Universities in the State are not equivalent to SSLC and Higher Secondary Course (+2) respectively, Government emphasise to follow the clarification issued in the Government letter seventh read above scrupulously."*

*14.In the case of Managing Director, TNHB and another –vs-*



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N.Nagamuthu, the Division Bench of this Court having set aside the order of the learned Single Judge, held as below:-

*“7.In the light of the said Government Order, the finding rendered by the learned Writ Court that G.O.Ms.No.528, will continue to aid and assist the candidates like the first respondent, does not lay down the correct legal principle. A pre~foundation course or a foundation course or a bridge course, probably for three to six months, can at no stretch of imagination, be construed to be equivalent to 10+2 of formal school education.*

*8.Therefore, we do not agree with the view expressed by the learned Single Bench on the effect of various Government Orders. So far as the relief granted to the first respondent is concerned, we do not propose to disturb the relief, because the order of reversion has been quashed for the reason that the first respondent has continued in the promoted post and further promoted and retired as Junior Assistant.*

*9.Thus while vacating all the findings rendered by the learned Single Bench in the impugned order, dated 21.12.2018, we sustain the ultimate relief granted by the learned Writ Court in quashing the reversion order and making it clear that the pre~foundation course or foundation course or bridge course offered by any University cannot be treated as equivalent to SSLC or Higher Secondary Course (+2).”*

15.While the Courts are being consistent in holding after the



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judgment of the Supreme Court judgement in *Annamalai University's* case and passing of G.O.(Ms)107, dated 18.08.2009, that one year pre-foundation course and two years foundation course are not equivalent to 10<sup>th</sup> standard and 12<sup>th</sup> standard respectively and G.O's and letter dated 03.12.2010 issued clarifying G.O.Ms.No.107 cannot be given restrospective effect. A deviation in the interpretation of G.O.Ms.No. 144, dated 20.11.2017 in *Thanvam's* case, came to be deliverd. In that judgment, it has been held as follows:

*24.This Court is of the considered opinion that the government had recognized the pre-foundation course vide G.O.Ms.No.528, P and AR Department, dated 18.05.1985 and the said G.O. was in existence from 1985 onwards, subsequently there was a challenge to the open university degree and the High Court has held open university degree is not valid and pre-foundation course as not valid. When it was considered valid for the past twenty four years, then it was declared as invalid, the persons who are affected from this shift / change of qualification ought to be protected. As rightly pointed out by the appellants, the Government has taken eight long years after issuance of G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009, to issue G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017. It is only in G.O.Ms.No. 144, Personnel and Administrative Reforms (M) Department, dated*



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20.11.2017 the government has declared that the pre foundation course is not recognized equivalent to the pre-foundation course. The G.O.Ms. No. 107, Personnel and Administrative Reforms Department, dated 18.08.2009, has only accepted the recommendations of the Equivalence Committee. As rightly pointed out by the learned Counsel appearing for the appellants, the government has passed G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 wherein it has been categorically held that the pre-foundation course as invalid. If it is so, then the date of issuance of the said G.O. Ms. No. 144 ought to be held as the cutoff date. Moreover, the prefoundation course was closed down in the year 2012. In short the pre-foundation course was recognized in the year 1985, then in the year 2009 it was held by High Court that pre-foundation course is not equivalent, then equivalence committee has reported it is not equivalent, the government accepted the report in 2009 and finally it was declared in the year 2017. Hence, the mischief of invalidity has been eradicated in phased manner. Therefore, this Court is of the considered opinion that the cutoff date, is the date of issuance of G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 i.e. 20.11.2017.

.....

26.Since all the appellants had completed the pre-foundation course prior to 20.11.2017, this Court is of the considered opinion that the appellants are entitled to



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*promotion. After dismissal of the writ petitions, the respondents have reverted the appellants to their original post of Gang Mazdoor. Since writ appeals are allowed the appellants are entitled to promotion. Therefore, the respondents are directed to confer the promotion to all the appellants. The impugned order challenged in the Writ Appeals are set aside and consequently the impugned orders of de-promotion challenged in the Writ Petitions are set aside. The respondents are directed to implement the judgment within a period of four weeks from the date of receipt of a copy of this judgment.”*

16. When this judgment was cited in a review petition, the Division Bench considered it and passed the following order in Rev Application (MD) No: 73/2022 in W.A.(MD) No.1052 of 2020.

*“3.Mr.R.Baskaran, learned Additional Advocate General appearing for the review petitioners would invite our attention to the order, dated 03.04.2019, wherein the first ground that is taken for rejection of the approval is the absence of a equivalence declaration on the Pre-Foundation Course. The learned Additional Advocate General would also invite our attention to G.O.(Ms).No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, wherein it has been made clear that the Pre-Foundation Course and the Foundation Course for two years, conducted by the Universities are not equivalent to S.S.L.C., and Higher Secondary Course respectively. Once the Government had passed an order even in 2017 declaring that these courses are not equivalent to S.S.L.C., and Higher Secondary Course, the said Ignatius is not*



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*qualified to be appointed on the date when he was appointed to the Post.*

*4. Ms.Amala, learned counsel would however contend that G.O.Ms.No.144, has been held to be prospective. Therefore, any person who had completed the Course prior to passing of G.O.Ms.No.144, would be eligible for appointment.*

*5. We are unable to agree with the said contention. If a Course is declared as not equivalent, any person who has completed the said Course will become disqualified from the date of such declaration and the date on which the said person obtained the qualification is wholly irrelevant. She would also rely upon a judgment of the Division Bench wherein it was held that G.O.Ms.No. 144, would be prospective. If the Government Order is prospective, the cut off date would be 20.11.2017. If any person appointed to the Post prior to 20.11.2017, the said appointment would be valid. It will not mean that a person who obtained the qualification prior to 20.11.2017 could be appointed after that, on the ground that his qualification is equivalent to S.S.L.C or Higher Secondary Course. Non consideration of this very vital aspect, in our opinion is an error on the face of the record which would vitiate the entire proceedings. Hence, we find that the review application has to be allowed. Accordingly, it is allowed. Consequentially, the writ appeal will stand allowed and the writ petition will stand dismissed. No Costs. Consequently, connected miscellaneous petition is closed.”*

17.In short in *P.Thavam's* case, the Division Bench of this Court, pushed further the cut-off date of validating appointments or



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promotions gained by persons holding pre-qualification and qualification certificate prior to 20.11.2017. One fact we note is that all the judgements referred above are consistent in holding that, in view of the dictum laid down by the Hon'ble Supreme Court in *Annamalai University's* case the decision of the Government, that pre-foundation and foundation courses offered by the University is not equal to 10<sup>th</sup> standard and 12<sup>th</sup> standard examinations conducted by the Board/University,, is valid and no benefit based on the G.O.Ms.No.528 dated 18.05.1985 will enure to the persons in employment or promotions. The divergent view is only regarding the cutoff date from which the said decision will come into effect.

18.According to the Learned Additional Advocate General Mr.Veerakathiravan representing the State, and the learned Counsel Mr.Prabhu Rajadurai, the law declared by the Supreme Court under Article 141 of the Constitution of India comes into effect from the date of the order. In this case, the judgement in *Annamalai University's* case was delivered on 25.01.2009. In effect, from that day onwards, no benefit can be claimed on the strength of Pre-Foundation and Foundation certificates. Any Under-Graduation degree or Post-Graduation degree obtained without 10<sup>th</sup> and 12<sup>th</sup> certificate offered by Board/University



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under regular schooling system, shall not be considered as valid degree for appointment or further promotions.

19.The Government Orders issued subsequently are consequential to the law declared by the Supreme Court. For sake of clarity, subsequent Government Orders, letters and Circulars were issued, therefore, it is not correct to say that only after issuance of G.O.Ms.No. 144, dated 20.11.2017, they are ineligible.

20.The Special Rules of the Departments in the State, while prescribing 10<sup>th</sup> standard or 12<sup>th</sup> standard as qualification for the post, had always stated that a pass in 10<sup>th</sup> or 12<sup>th</sup> standard of recognised school and the expression 'recognised school' had been explained as the school approved by the Government of Tamilnadu for which recognition accorded under the Tamilnadu Education Code.

21.After introduction of Open University System of education, to enable the persons, who had no opportunity of undergoing formal education under regular education system, to acquire academic qualification like Under Graduation degree and Post Graduation degree,



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some of the Universities offered one year Pre-Foundation course and two years Foundation courses and sought for equalency. The same was granted by the Government after getting approval of Equalency Committee. In the said peculiar circumstances, G.O.Ms.No.528, dated 18.05.1985 came to be issued in response to the letter from Registrar, Madurai Kamaraj University, Madurai. Any benefit acquired on the strength of this G.O., is protected upto the date of judgement rendered in *Annamalai University's* case that is till 25.02.2009 and not thereafter. The consequential clarificatory Government Orders by no means can extend the validity of the Pre-Foundation and Foundation Course. The prospect of the persons not possessing 10<sup>th</sup> or 12<sup>th</sup> standard certificates from recognised School is not foreclosed. They can write the examinations privately and acquire the certificates. The Education Code provides for such private studies. The expression used in UGC Act, regarding conduct of 'Entrance Examination' before enrolling a candidate in direct UG course or PG course not same or similar to the Pre-Foundation course or Foundation course, which has been held to be invalid by the Supreme Court.

22.The contention that G.O.Ms.No.107, dated 18.08.2009 and



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subsequent letter of the Secretary, P &AR Department, dated 03.12.2010 will not have the force of law and only after issuance of G.O.Ms.No.144, P &AR Department, dated 20.11.2017, the decision of the Government that Pre-Foundation course and Foundation course are not equivalent to 10<sup>th</sup> Standard and 12<sup>th</sup> Standard, can be given effect, is legally unsustainable. The contention that G.O.Ms.No.144, dated 20.11.2017 cannot be given retrospective effect is due to the improper appreciation of spirit of the Government Order. In fact, the said G.O.Ms.No.144 issued to explain the decision by the Hon'ble Supreme Court in *Annamalai University's* case. It is not issued to give retrospective effect of the decision laid by the Supreme Court. The benefits enjoyed by the candidates, based on their possession of Pre-Foundation course and Foundation Course certificates, will not be disturbed in any manner. Only few promotions without acquiring the regular certificate offered by the school Education department after G.O.Ms.No.107, dated 25.02.2007 are now prohibited.

23.Per contra, the learned counsel appearing for the private individuals referring Para No.24 of the judgment rendered in *P.Thavam's* case, reiterated that declaring that Pre-Foundation and Foundation course



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as invalid, never given effect immediately and it was effectuated and reached finality only on issuance of G.O.Ms.No.144, dated 20.11.2017. It was contended that all the candidates, who completed Pre-Foundation and Foundation Course prior to 20.11.2017 must be considered for promotion.

24.To buttress his argument that no retrospective effect should be given to a statute, the learned counsel for the private individuals relied upon the case in ***Govind Das and others vs. The Income Tax Officer and another*** [1976 (1) SCC 906], in which it has been held as follows:

*“11.Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Ed.) and reiterated in several decisions of this Court as well as English Courts is that "all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective" and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is*



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*expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.*

25. Referring the Full Bench of this Court in ***Nadar Thanga Shubha Lazman Vs. The State of Tamil Nadu*** [2014 (3) CTC 433], this Court in the case of ***The Director of School Education, College Road, Chennai and others vs. L.R.Meena*** [2017 SCC Online Mad 21610], in Para No.9, held as follows:

*“.....the question, which was referred to the Larger Bench was whether the Equivalence Certificate issued by the Committee constituted by the Government declaring that the Degree obtained from one University Is equivalent to the Degree obtained from yet another University is only prospective in operation and whether the view taken by the Division Bench of this Court in the case of N. Geetha v. The State of Tamil Nadu, W.A. (MD) No. 312 of 2013, dated 01.07.2013, is correct. The Larger Bench held that any Degree Certificate issued by the University or Educational Institution will have its validity from the date of issuance.”*

26. The Full Bench in ***P.Raji vs. The Secretary, Bar Council of Tamilnadu & Puducherry*** [CDJ 2018 MHC 3869], considered the question regarding application for enrollment as Advocate in the role of State Bar Council can be declined or kept in abeyance on the ground that



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the petitioner cleared 10<sup>th</sup> Higher Secondary and 12<sup>th</sup> board examination properly without attending regular classes in a recognised school. The Full Bench of this Court, in *Raji's* case, after discussing the Advocates Act, Bar Council Rules and Legal Education Rules, has held that;

*“40. A candidate, who may have passed the Higher Secondary Course Certificate Examination (+2) without clearing the Secondary School Leaving Certificate Examination (+10) or alternatively a candidate, who may have straightaway graduated under the Open University System without clearing the Secondary School Leaving Certificate Examination and the Higher Secondary Course Certificate Examination, or either, as the case might be, would not be eligible for admission.”*

27.Considering the two conflicting views of the Division Bench of this Court rendered in ***S.R.Deepak vs. The Tamil Nadu Dr.Ambedkar Law University and another*** [2016-2-L.W. 64 (Mad) and in ***Theerthagiri vs. The Director of School Education and others*** [(2016) 5 L.W. 573 (Mad)], the Full Bench had clarified and held as below:

*“53. It is reiterated that Rule 5(a) of the Legal Education Rules read with the first proviso and the Explanation makes a graduate degree from a university whose LLB degree is recognized by the Bar Council of India for enrolment upon*



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*completion of a regular course, including a course through correspondence or distance mode, a mandatory eligibility criteria for admission to the Three Year LLB course. However, those who obtain graduate degree through an Open University system without having the basic qualification i.e., without obtaining 10 +2 certificates and/or in other words Secondary and/or Senior Secondary certificate or equivalent from a Board authorised to confer such certificates are not eligible for admission to the Three Year Law course. Similarly, a candidate who may have cleared +2 (Senior Secondary course) would not be eligible for admission in the Integrated Degree Program if he has obtained the certificate through an Open University system without having the basic qualification for prosecuting +2 course, which is a Secondary certificate.*

*54. With the greatest of respect to the Division Bench deciding S.R.Deepak, supra, we are unable to agree that a candidate who obtains the Secondary Certificate or Higher Secondary Certificate without prosecuting a regular course would be ineligible for admission to the Three Year LLB Course, even though the candidate might have obtained a Secondary Certificate and a Higher Secondary Certificate from a recognized Board authorized to issue such certificates and have graduated from a recognized university whose degree in Law is recognized by the Bar Council of India for enrolment by successfully completing a regular course.*



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55. *There is a difference between open universities and other universities and/or boards, in that some of these open universities enable candidates, who do not have the basic qualifications, to obtain higher qualifications straightaway. By prosecuting studies through open universities, it may be possible for a candidate to obtain a Post Graduate Degree or a Three Year LLB Degree without being a graduate or to obtain a graduate degree without having the Senior Secondary School Certificate. In our view, the Bar Council of India, in its wisdom, framed the Legal Education Rules making a graduate degree upon prosecution of a regular course from a university, whose degree in Law is recognized by the Bar Council of India, a mandatory eligibility criteria.”*

**Conclusion:**

28. On examination of the above judgments and the relevant Government Orders, Circulars and clarificatory letters, we are of the considered view that G.O.Ms.No.528, (P&AR) Department, dated 15.05.1985 is the reflection and restatement of the TNPSC recognising Pre-Foundation and Foundation courses offered by the respective Universities as equivalent to 10<sup>th</sup> standard and 12<sup>th</sup> standard offered by the State Board /Universities.



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29. Therefore, the effect of G.O.Ms.No.528, dated 18.05.1985 will hold good only till the declaration of law by the Hon'ble Supreme Court in *Annamalai University's* case invalidating degrees obtained by the candidates who have not in possession of regular 10<sup>th</sup> and 12<sup>th</sup> standard certificates. Invalidation has come to effect on the date of judgment, since the pronouncement of the Hon'ble Supreme Court is the law of the land under Article 141 of the Constitution of India. All other subsequent Government Orders, viz., starting from G.O.No.107, dated 18.08.2009 are clarificatory in nature. For convenience sake, the Government has taken a decision that the date of issuance of G.O.Ms.No. 107, will be the cut-off date for freezing the benefits of direction B.A., or M.A., to the candidates, who did not possess 10<sup>th</sup> and 12<sup>th</sup> standard certificates issued by the respective Board.

30. Reading of the G.Os and the clarificatory letter makes it clear that never the Government had postponed the implementation of the Hon'ble Supreme Court Judgment. If any such interpretation is given, it will be in violation of the Article 141 of the Constitution of India and the judgment of the Hon'ble Supreme Court. Therefore, we hold that the view expressed in *P.Thavam's* case that the effect of invalidating



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Pre-Foundation and Foundation course will be only from 20.11.2017, is erroneous. No benefit can be claimed by the candidates based on their Pre-Foundation and Foundation course certificates after the issuance of G.O.Ms.No.107, which is a formal declaration and restatement of the Hon'ble Supreme Court decision.

31.To sum up, from the date of judgment rendered in *Annamalai University* case by the Hon'ble Supreme Court (ie., 25.02.2009), the persons possessing Pre-Foundation and Foundation certificates as equivalent to 10<sup>th</sup> and 12<sup>th</sup> standard, are ineligible for any appointment or promotion.

32.Those, who were already appointed or promoted before the date of this judgment shall not be disturbed. However, they cannot have the advantage of the pre-qualification certificate and qualification certificate for further promotion from that date onwards.

33.Whoever, had subsequently obtained 10<sup>th</sup> standard and 12<sup>th</sup> standard certificates through private studies offered by the School Education Board, from that day onwards, they are entitled for



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promotions.

34.G.O.Ms.No.107, followed by the clarification letter of the P & AR Department, dated 03.12.2010, are clarificatory in nature and therefore, by no means that will extend the date of effect of judgment rendered by the Supreme Court, which is the law of the land.

35.With the above clarification regarding the cut-off date for implementing the order, the matters are remitted back to the concerned Bench for appropriate decision on merits.

**[G.J., J.] & [S.S.Y., J] & [K.K.R.K., J.]**  
**27.02.2026**

Index :Yes  
Internet :Yes  
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To

1.The Director General,  
Highways Department,  
Guindy, Chennai-600 025.

2.The Chief Engineer,

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Highways Department,  
Guindy, Chennai-600 025.

- 3.The Superintending Engineer,  
Highways, Construction and Maintenance,  
K.Pudur, Madurai.
- 4.The Divisional Engineer,  
Highways, Construction and Maintenance,  
K.Pudur, Madurai.



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*W.A.(MD)No.462 of 2014*

**DR.G. JAYACHANDRAN, J.**  
**AND**  
**S.SRIMATHY, J.**  
**AND**  
**K.K. RAMAKRISHNAN, J.**

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W.A.(MD)Nos.462 of 2014 etc., batch

27.02.2026