



W.P.Nos.17632 of 2022 etc., batch

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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**DATED: 29.08.2022**

**CORAM:**

**THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR**

**W.P.Nos.17632, 18158, 17500, 17608, 17213, 17698, 17768, 17205, 17622,**  
**and 13728 of 2022**  
**and WMP.No.16903, 16873, 16502, 16985, 17060, 16493, 16899 and 13017**  
**of 2022**

**W.P.No.17632 of 2022**

- 1.V.Murugesan
- 2.K.Kumar
- 3.M.Nagarajan
- 4.C.Subramanian

.. Petitioners

vs.

- 1.The State of Tamil Nadu,  
Rep by its Principal Secretary to Government,  
School Education Department,  
Fort St.George, Chennai-9.

- 2.The Commissioner of School Education,  
Directorate of School Education,  
DPI Campus, College Road, Chennai-600 006.

- 3.The Joint Director of School Education (Higher Secondary),  
DPI Campus, College Road,  
Chennai-600 006.

.. Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to call the petitioners for Special Transfer Counselling for the post of High School Headmasters soon after 12.07.2022 when the promotion



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counselling for the post of Higher Secondary School is scheduled to be held and before the promotion counselling for the post of High School Headmasters is scheduled to be held on 13.07.2022, pursuant to the proceedings of the second respondent having Ref.No. Na.Ka.No.35593C2/E2/2022 dated 30.06.2022.

**For Petitioners**

W.P.No.17632, 18158, 17500  
17213, 17698, 17768, 17205,  
17622 of 2022

: Mrs.Nalini Chidambaram,  
Senior Counsel for  
Mrs.C.Uma

W.P.Nos.17608 &  
13728 of 2022

: Mrs.Dakshayani Reddy

**For Respondents**

: Mr.S.Silambanan,  
Additional Advocate General  
assisted by  
Mr.T.Chezhiyan,  
Additional Government Pleader

**COMMON ORDER**

The respective learned Senior Counsel for the petitioners and the learned counsel for the petitioners have raised the following common grounds before this Court:

(i) The writ petitioners are working as High School Headmasters in their respective Stations and the respondents have revised the seniority based on Roster System, which is contrary to the decision of the Hon'ble Division Bench of this Court in *W.P.Nos.998 of 2017 etc., batch dated 15.11.2019 [K.Raja and Others v. The Additional Chief Secretary to Government, Highways*



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**and Minor Ports Department, Fort St.George, Chennai-600 009], as**

**WEB CONFIRMED by the Hon'ble Supreme Court, vide order dated 06.07.2020 in**

**SLP (C) Nos.2861-2876 of 2020**, wherein Section 40 of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016 has been struck down and therefore, following the decision of the Hon'ble Supreme Court, the respondents have to draw the seniority list based on merit in the competitive examination and not on roster system.

(ii) The respondents have proposed to conduct promotion counselling, vide impugned order dated 30.06.2022 before conducting transfer counselling to the existing Higher Secondary School Headmasters. The said issue has been covered by a Division Bench decision of this Court in **W.P.(MD)No.23772 of 2018 dated 13.03.2019 [K.K.Ramesh v. Union of India and Others]**, wherein the Division Bench taking into consideration that on account of increase in the retirement age of the teachers to 60 years and that some of the teachers, who are awaiting for promotions, are at the verge of their retirement, had directed the respondents to hold general transfer counselling before promotion counselling for the year 2020-2021. In the light of the Division Bench decision of this Court, the respondents are directed to conduct



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transfer counselling to the petitioners and thereafter, to conduct promotion counselling for the post of Higher Secondary School Headmasters.

(iii) The respondents did not permit the petitioners to participate in the Transfer Counselling on the ground of restriction of one year for participating in the Transfer Counselling, which is totally illegal and arbitrary, since the petitioners were promoted in the year March 2022 and therefore, relied upon the earlier decision of this Court in W.P.Nos.3081, 3089 and 3122 of 2022 dated 15.03.2022 and submitted that the petitioners are entitled to participate in the Transfer Counselling, without insisting on one year restriction period.

2. Mr.S.Silambanan, learned Additional Advocate General assisted by Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents has produced the written instructions dated 29.08.2022 in Letter No.3062025/S-Spl/202201, from the Secretary to the Government, Human Resources Development, Government of Tamil Nadu, Secretariat, Chennai-9 stating that as against the judgment of the Hon'ble Supreme Court, the Government has filed an application in SLP(C) Diary No.18737 of 2021 and the same is pending before the Hon'ble Supreme Court, without any interim



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3. In the light of the above, both the parties have agreed that based on the decision of the Hon'ble Supreme Court dated 06.07.2020 in SLP (C) Nos.2861-2876 of 2020, the respondents have to draw the seniority list based on merit in the competitive examinations and not on roster system, subject to the outcome of the order to be passed in the pending application before the Hon'ble Supreme Court. The learned Additional Advocate General has not disputed the legal submission made by the learned counsel for the petitioners. Therefore, if any seniority list is drawn by the respondents based on merit in the competitive examinations, the same shall be subject to the outcome of the order to be passed by the Hon'ble Supreme Court in the pending application.

4. As regards the prayer for conducting of Transfer Counselling before promotion counselling is concerned, it is submitted by the learned counsel for the petitioners that the order of the Division Bench of this Court in W.P.(MD)No.23772 of 2018 dated 13.03.2019 has been complied with for the year 2020-2021 and the said decision has been followed by a learned Single Judge of this Court in a batch of writ petitions in W.P.(MD)Nos.3354 of 2021



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etc., batch dated 10.03.2021. The learned Additional Advocate General has

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not disputed the judgment passed by the Division Bench of this Court in W.P.(MD)No.23772 of 2018 dated 13.03.2019 and therefore, following the same, appropriate decision will be taken by the respondents based on the said judgment of the Division Bench of this Court. Further according to the learned Additional Advocate General, it is only a Supplementary Transfer Counselling, which is a continuance of the seniority list drawn for the year 2021-2022 and therefore, if it is permitted, the respondents will redo the entire exercise for Transfer Counselling for the year 2021-2022. This Court finds considerable force in the submission of the learned Additional Advocate General and accepting the same, the contentions of the petitioners are liable to be rejected.

5. Insofar as one year ban for participating in the transfer counselling is concerned, the learned Additional Advocate General has submitted that the earlier order of this Court dated 15.03.2022 in W.P.Nos.3081, 3089 and 3122 of 2022 will not be applicable to the facts of the present cases. In G.O.(Ms)No.76, School Education [SE5(1)] Department dated 17.12.2021, there was no restriction of one year for participating the transfer counselling



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and therefore, writ petitions were filed and while the writ petitions are pending, amendment notification in G.O.Ms.No.15, School Education Department dated 10.02.2022 was issued and this Court, considering the fact that writ petitions were filed prior to the amendment notification, has allowed the petitioners to participate in the counselling and therefore, the said order will not be applicable to the facts of the present cases and therefore, the said contention is liable to be rejected.

6. In the light of the above, this Court passes the following order:

(i) In the light of the Division Bench decision of this Court in ***W.P.No.Nos.998 of 2017 etc., batch dated 15.11.2019 [K.Raja and Others v. The Additional Chief Secretary to Government, Highways and Minor Ports Department, Fort St.George, Chennai-600 009], as confirmed by the Hon'ble Supreme Court vide order dated 06.07.2020 in SLP (C) Nos.2861-2876 of 2020***, the respondents shall draw the seniority list for the post of Post Graduate Assistants for the academic year 2021-2022, based on merit in the competitive examination and the same shall be subject to further orders to be passed by the Hon'ble Supreme Court in the pending application in SLP(C) Diary No.18737 of 2021.



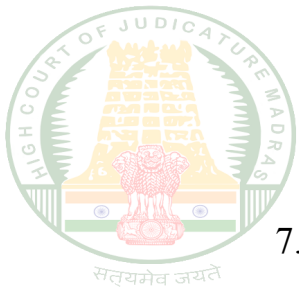
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**WEB COPY**(ii) In the light of the Division Bench decision of this Court in ***W.P.(MD)No.23772 of 2018 dated 13.03.2019 [K.K.Ramesh v. Union of India and Others]***, the respondents are directed to conduct the Supplementary Transfer Counselling for the Headmasters of Higher Secondary School and the petitioners are entitled to participate in the ensuing Supplementary Transfer Counselling for the Headmasters of Higher Secondary School and thereafter, vacancies shall be filled up for the promotional post.

(iii) Insofar as one year restriction to participate in the Special Transfer counselling is concerned, the claim of the petitioners are rejected, since the present Supplementary Transfer Counselling is a continuation of the earlier notification.

(iv) The respondents are directed to take necessary steps to finalize the seniority list for the post of Post Graduate Assistants for the academic year 2021-2022 and issue fresh notification, as early as possible without any further delay.





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7. These Writ Petitions stands disposed of with the above directions.

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Index : Yes / No

Internet : Yes / No

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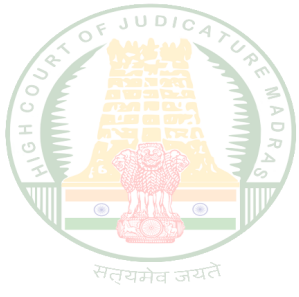
1. The Principal Secretary to Government,  
The State of Tamil Nadu,  
School Education Department,  
Fort St. George, Chennai-9.

2. The Commissioner of School Education,  
Directorate of School Education,  
DPI Campus, College Road, Chennai-600 006.

3. The Joint Director of School Education (Higher Secondary),  
DPI Campus, College Road,  
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**D.KRISHNAKUMAR, J.**

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