

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-07-2009

CORAM

THE HONOURABLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT PETITION NO.4947 OF 2001

R. Jeeva

... Petitioner

Vs.

1. The Director of Elementary Education,  
College Road, Madras - 6.
  2. The District Elementary Educational Officer,  
Madurai, Madurai District.
  3. The Assistant Elementary Educational Officer,  
T.Kallupatti, Madurai District.
  4. S. Geetha Ramani
  5. The Secretary, Sri.V.K.V.Salai Middle School,  
Kopinayakkan Patti, T.Kallupatti,  
Periyar Taluk, Madurai District.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus calling for the records of the first and second respondents in relation to O.M.No.40341/EG2/2000, dated 16.2.2001 and in N.K.No.10712/A2/2000 dated 29.12.2000 respectively and quash the same and consequently issue a direction to the first and second respondents to approve the petitioner's promotion as Middle School Headmaster in the 4<sup>th</sup> respondent management school with effect from 16.11.2000 with service and monetary benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents 1 to 3: Mr.K.Balakrishnan,  
Addl. Govt. Pleader

For 4<sup>th</sup> Respondent : Mr.R.Govindaraj

For 5<sup>th</sup> Respondent : Mr.S.Senthilnathan

## O R D E R

The prayer in this writ petition is to quash the order dated 29.12.2000, passed by the second respondent and the order dated 16.2.2001, passed by the first respondent, and direct the respondents 1 and 2 to approve the petitioner's promotion as Middle School Headmaster in the 5<sup>th</sup> respondent School with effect from 16.11.2000, with monetary and service benefits.

2. The case of the petitioner is as follows:

(a) Petitioner was appointed as Secondary Grade Teacher on 15.11.1990 in the 5<sup>th</sup> respondent management School and the said appointment was approved by the educational authorities. The 5<sup>th</sup> respondent School is a Private Aided Recognised School, governed under the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, and the Rules framed thereunder.

(b) Petitioner passed B.A. Degree in the year 1994 and B.Ed in the year 1996. She has also passed M.A. Degree. According to the petitioner, she having completed more than five years of experience as Teacher, she is entitled to be promoted as Middle School Headmistress in the 5<sup>th</sup> respondent management School in the vacancy arose from 1.6.1996, in terms of Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as 'the Rules').

(c) The 5<sup>th</sup> respondent School filled up the post by appointing one S.Subbanandan, by order dated 23.6.1996, through direct recruitment. The 5<sup>th</sup> respondent failed to get prior permission to fill up the post by direct recruitment, which is required under Rule 15(4) of the Rules, particularly when qualified candidates are available in the 5<sup>th</sup> respondent School itself for being promoted as Headmaster.

(d) The said order dated 23.6.1996 was challenged by the petitioner in W.P.No.8843 of 1997 before this Court. The 4<sup>th</sup> respondent also filed W.P.No.9915 of 1996 and challenged the very same order dated 23.6.1996. Both the writ petitions were partly allowed by common order dated 22.9.2000 and the management was directed to fill up the post of Headmaster in accordance with the rules within three months.

(e) The petitioner submitted representation to the management on 11.10.2000 stating that she is eligible for being promoted as Headmistress. The management assessed the merit and ability of the petitioner and 4<sup>th</sup> respondent and by resolution dated 16.11.2000, selected the petitioner and the petitioner was promoted and appointed as Headmistress by order dated 16.11.2000. The petitioner also joined in the said post on 20.11.2000.

(f) The 5<sup>th</sup> respondent submitted proposal for approval of the promotion and appointment of petitioner as Headmistress before the second respondent on 6.12.2000. The second respondent by proceeding dated 29.12.2000 stated that no document was produced to prove that the 4<sup>th</sup> respondent is less meritorious. Further the 4<sup>th</sup> respondent is senior than the petitioner.

(g) The management filed appeal before the first respondent by contending that the order passed by the second respondent is in violation of Rules 15(4) and 15(6), Annexure-V of the Rules, and therefore the second respondent was not right in relying upon G.O.Ms.No.400, Education Science and Technology Department, dated 25.5.1995. The first respondent rejected the appeal filed by the management on 16.2.2001.

(h) Having aggrieved over the said orders passed by the second respondent dated 29.12.2000, confirmed by the first respondent by order dated 16.2.2001, the petitioner has filed the present writ petition contending that the impugned orders are in violation of Rule 15(4), as well as the common order passed by this Court in W.P.Nos.9915 of 1996 and 8843 of 1997 dated 22.9.2000 as the rule contemplates selection of Headmaster on the ground of merit and ability, and seniority can be considered only when merit and ability are approximately equal. It is also contended that the second respondent was not justified in relying upon G.O.Ms.No.400 Education, Science and Technology Department, dated 25.5.1995 while statutory rule viz., Rule 15(4) and 15(6) will prevail over any executive instructions issued by the Government. The School Committee having exercised its powers in terms of the above said rules, it is not open to the respondents 1 and 2 to disapprove the same and give direction to appoint the 4<sup>th</sup> respondent as Headmistress.

3. The second respondent filed counter affidavit by stating that the 5<sup>th</sup> respondent management considered the interse claims of the petitioner and the 4<sup>th</sup> respondent, giving weightage to their experience as well as extra curricular activities and not considered the seniority. The 4<sup>th</sup> respondent is the senior-most secondary grade teacher and she should have been appointed as Headmistress instead of the petitioner, in accordance with G.O.Ms.No.400 Education Science and Technology Department, dated 25.5.1995, wherein the Government ordered to give preference to the seniority while giving promotion. The second respondent has taken into account Rule 15(4) as well as G.O.Ms.No.400, dated 25.5.1995, as well as the fact that the petitioner was originally appointed as Full Time Vocational Instructor and appointed as Secondary Grade Teacher only on 18.12.1991, and that, in the cadre of Secondary Grade, the 4<sup>th</sup> respondent is senior than the petitioner.

4. The 4<sup>th</sup> respondent filed counter affidavit by stating that when the vacancy arose in the 5<sup>th</sup> respondent School, the petitioner



did not possess the requisite qualification of five years of teaching experience as secondary grade teacher and she also had not passed B.Ed degree by then. The petitioner completed five years of service as secondary grade teacher only on 14.11.1995 and acquired B.Ed degree only in December, 1995. The vacancy having arose with effect from 1.6.1995, the 4<sup>th</sup> respondent was the fully qualified person available in the school, eligible to be promoted. The 4<sup>th</sup> respondent was appointed as Vocational Instructor in the 5<sup>th</sup> respondent School on 18.6.1979, acquired B.Ed qualification in the year 1992, and was posted as Secondary Grade Teacher in the 5<sup>th</sup> respondent School on 18.12.1991. It is also stated in the counter affidavit that on the date of vacancy, she being fully qualified, she ought to have been considered by the 5<sup>th</sup> respondent management, however direct recruitment was made, which was set aside by this Court. It is also stated that the qualifications and merits of the contending teachers were not properly considered and in fact the proof of the 4<sup>th</sup> respondent's qualifications have not been verified and only on 8.1.2001 the 4<sup>th</sup> respondent was directed to produce all the documents pertaining to educational qualifications and therefore on 16.11.2000 the School Committee could not have compared the merit and ability of the petitioner as well as 4<sup>th</sup> respondent. It is also stated in the counter affidavit that in the School Committee resolution dated 16.11.2000 it is wrongly stated that the 4<sup>th</sup> respondent passed B.A. and B.Ed degrees in two attempts, whereas the petitioner passed B.A.. and B.Ed. degrees in single attempt in first class, both in theory and practical. Thus, it is contended by the 4<sup>th</sup> respondent that the School Committee has not applied its mind at all while assessing the merit and ability of the contending parties and the same is in violation of Rule 15(4) of the Rules. It is also contended that the School Committee of the 5<sup>th</sup> respondent School was also not constituted in accordance with Rule 12(3) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

5. The 5<sup>th</sup> respondent filed counter affidavit by contending that the promotion order given to the petitioner was not approved by the second respondent relying G.O.Ms.No.400 Education, Science and Technology Department, dated 25.5.1995 and the management filed appeal before the first respondent on 31.1.2001 and the same was also rejected by the first respondent, which is contrary to Rule 15(4) and 15(6) of the Rules. The management considered the merit and ability of the petitioner and the 4<sup>th</sup> respondent on 16.11.2000 and the School Committee considered the claim of all the eligible persons, which was ordered to be considered by the order of this Court dated 22.9.2000. The petitioner as well as the 4<sup>th</sup> respondent were found eligible with respect to qualifications including experience. The power of selection having been vested with the School Committee, the respondents 1 and 2 have no jurisdiction to give direction to the management to promote the 4<sup>th</sup> respondent as Headmistress based on seniority alone. In effect, the 5<sup>th</sup> respondent supports the case of the petitioner.

6. Reply affidavit was filed by the petitioner stating that on the date of consideration of the claims of the petitioner and the 4<sup>th</sup> respondent, petitioner was fully qualified. The direction issued by the first respondent through the impugned order dated 16.2.2001 is contrary to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

7. The learned counsel appearing for the petitioner submitted that the impugned orders are unsustainable as the respondents 1 and 2 have no jurisdiction to give direction to the 5<sup>th</sup> respondent to select and promote the 4<sup>th</sup> respondent as Headmistress on the basis of the seniority. The Constitution of the School Committee of the 5<sup>th</sup> respondent School is valid since the amendment issued to Rule 12(3) of the Rules was stayed by this Court and only on 11.12.2003 the amendment was upheld by the Division Bench of this Court in the decision reported in 2004 (1) LW 324 (The Coimbatore District Aided Secondary and Higher Secondary School Managements' Association v. State of Tamil Nadu & Others) and therefore the 4<sup>th</sup> respondent cannot contend that the School Committee functioned in the year 2001 was not in accordance with Rule 12(3). The learned counsel further submitted that this Court by common order dated 22.9.2000 having given direction to the management to fill up the post of the Headmaster in accordance with rules within three months, the date of vacancy is immaterial and the cause of action to fill up the post of Headmaster of the school arose within three months from 22.9.2000. The learned counsel also submitted that the petitioner is serving as Headmistress all these years and she is paid only secondary grade scale of pay due to non-approval of the Headmistress post.

8. The learned counsel appearing for the 4<sup>th</sup> respondent submitted that the School Committee while allegedly assessing the merit and ability of the petitioner and the 4<sup>th</sup> respondent, had erroneously gave a finding that the 4<sup>th</sup> respondent passed B.A. and B.Ed., degrees in second attempt and the petitioner has passed B.A., B.Ed., and M.A., M.Ed., degrees in first attempt. The said finding is contrary to the educational degrees awarded to the 4<sup>th</sup> respondent. In support of his contention the learned counsel produced the provisional certificate of B.A. Degree dated 19.8.1994 and B.Ed degree dated 15.12.1994, both issued by the Madurai Kamaraj University. Thus the School Committee has assessed the merit and ability even without having the certificates of the petitioner and the 4<sup>th</sup> respondent. The learned counsel also pointed out the stand of the 5<sup>th</sup> respondent in the counter affidavit that the certificates of the 4<sup>th</sup> respondent were called for on 8.1.2001. The learned counsel ultimately submitted that the said fact clearly establishes the casual and lethargic manner in which the merits and ability of the petitioner and the 4<sup>th</sup> respondent were assessed.

9. The learned counsel for the 5<sup>th</sup> respondent submitted that the merits and ability of the petitioner as well as the 4<sup>th</sup> respondent

were assessed by the School Committee properly and considered and the petitioner was found more meritorious than the 4<sup>th</sup> respondent and therefore the School Committee passed resolution to promote the petitioner as Headmistress and there is no illegality in the said order.

10. Heard the learned Additional Government Pleader also for the respondents 1 to 3.

11. I have considered the submissions made by the learned counsel appearing for the petitioner as well as learned counsels appearing for the respective respondents.

12. The point for consideration in this writ petition is, whether the 5<sup>th</sup> respondent management school has complied with the earlier common order dated 22.9.2000, passed by this Court in W.P.Nos.9915 of 1996 and 8843 of 1997 and followed Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

13. The petitioner as well as the 4<sup>th</sup> respondent filed the above writ petitions and challenged the appointment of one S.Subbanandan as Headmaster of the 5<sup>th</sup> respondent School. Taking note of the Rules 15 (4) and 15(6) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, which are admittedly governing the filling up of the promotion post in the 5<sup>th</sup> respondent private aided School, this Court ordered that the claims of the petitioners in those cases viz., writ petitioner and the 4<sup>th</sup> respondent herein, shall be considered on merits and in accordance with the statutory provisions. The writ petition was allowed by setting aside the promotion given to the said S.Subbanandan as Headmaster of the 5<sup>th</sup> respondent School by proceeding dated 23.6.1996 and the School was directed to fill up the post of Headmaster in accordance with the Rules, within three months.

14. Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, reads as follows:

"Rule 15(4) (i) Promotion shall be made on grounds of merit and ability seniority being considered only when merit and ability are approximately equal.

(ii) Appointments to the various categories of teachers shall be made by the following methods:-

(i) Promotion among the qualified teachers in that school.

(ii) If no qualified and suitable candidate is available by method (i) above,-



(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers.

(b) Appointment of teachers from any other school.

(c) Direct recruitment.

In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain the prior permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teacher Training Institutions setting out the reasons for such appointment. In respect of corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this rule.

(d) Appointment to the post of Headmaster of Higher Secondary School shall be made by the method specified in clause (ii) either from the category of Headmasters of High Schools or Teachers Training Institutes or from the category of Post Graduate Assistants in academic subjects or Post-Graduate Assistants in Languages provided they possess the prescribed qualifications."

The above said Rule clearly establishes the fact that promotion shall be made on the basis of merit and ability and seniority will be considered only when merit and ability are approximately equal and while assessing the merit and ability of the candidates, the School Committee is bound to record the merits and demerits of the candidates i.e, the Committee resolution must show that the selected candidate is more meritorious and superior in ability than the person, who is not selected.

(a) The said position is explained in the Division Bench Judgment of this Court reported in (1994) 1 MLJ 130 (Jeyaselvi v. Government of Tamil Nadu). The writ appeal before the Division Bench arose against the order of the learned single Judge cancelling the selection on the ground that merit and ability of each of the candidates were not assessed and recorded by the School Committee. The contention of the appellant therein was that the School Committee having found the appellant as superior in merit and ability than the other candidate, the learned single Judge ought not to have set aside the promotion and remit the matter for fresh consideration to record reasons. Negating the said contention in paragraph 4 the Division Bench held as follows:

"4. .... In this regard, it may be pointed out that Sub-rule (4) of Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules (1974) specifically states that promotions shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal. Therefore, in order to satisfy or to act in accordance with sub-rule (4) of Rule 15 of the Rules, the committee must place on its records or the proceedings of the committee must disclose that the selected candidate is more meritorious and is also superior in his ability than the one who is not selected. If we have to accept the contention of the learned counsel for the appellant, then, we will be giving an unbridled power to the Selection Committee, which can arbitrarily say, of the two candidates appearing before it, one is more meritorious and another is less meritorious without any basis whatsoever. Such arbitrary exercise of power cannot be permitted or upheld as Art.14 of Constitution strikes at such arbitrary exercise of power. Therefore, it is necessary for the Selection Committee to record the grounds of merit and ability on the basis of which it has made the selection. This interpretation of ours also accords with the very scheme of the Act and the Rules. It may be pointed out here that every decision of the Selection Committee is made appealable to the Appellate Authority. If the Selection Committee is not required to state the grounds on which the selection is made, it is not possible to hold on what basis, the Appellate Authority should consider the validity of the order passed by the Selection Committee, unless it be that Selection Committee gives the grounds for coming to the conclusion that the selected candidate is more meritorious and is superior in his ability than the one who is not selected. We have already re-produced the relevant portion of the Supreme Court's decision relied upon by the learned counsel for the appellant in National Institute of Mental Health & Neuro Sciences v. Dr.K.Kalyanaraman, AIR 1992 SC 1806: 1992 Lab.I.C. 1800: (1992) 2 SCC 461. That decision proceeds on the basis that if there are no Rules, it is not necessary for the Selection Committee to pass a considered order and when the Rule provides that it must make the selection on the ground of merit



and ability, the Selection Committee is required to state what are those grounds on which a candidate is selected in preference to the one who is not selected. It is also relevant to notice that the Supreme Court in the aforesaid case was dealing with the case in which the decision of a Selection Committee was not made appealable. Therefore, we are of the view that the ultimate decision arrived at by the learned single Judge is just and proper and as such, it does not call for interference. Consequently, it follows that this writ appeal must fail. It is accordingly dismissed."

(b) The same was followed by another Division Bench of this Court in the decision reported in 2007 WLR 258 (P.Thurai Pandian v. K.Subramanian & 4 Others) wherein in para 17 it is held thus

"17. .... We have already referred to Rule 15(4) which amply shows that promotion shall be made on the basis of merit and ability and seniority would be considered only when merit and ability are approximately equal. Likewise, we have also referred to relevant provisions of the Act and Rules relating to constitution and functioning of School Committee. In other words, the statute recognised the role of the School Committee as paramount in the administration of school."

(c) The Supreme Court in the decision reported in (2007) 6 SCC 382 : 2008 (1) LW 763 (S.Sethuraman v. R.Venkataraman) in paragraphs 16 and 17 held as follows:

"16. The terms and conditions of service of the teachers of an aided school are governed by the Act and the rules framed thereunder. The Managing Committee of the school in terms of Rule 15 of the Rules are enjoined with a duty to fill up the post of Headmaster primarily on the basis of "merit and ability". Indisputably, the Committee while appointing a person must take into consideration the merit and ability of the candidate alone and only when the respective merit and ability of two candidates are equal, seniority will have some role to play. Respondent 1 is senior to the appellant only by 13 days. At the relevant point of time, the appellant had passed the prescribed Accounts test for Headmasters conducted by the Tamil Nadu Public Service

Commission in the year 1989. Before us various other factors have been placed for the purpose of showing that apart from the fact that the appellant was more qualified, Respondent 1 having regard to his past services should not have been considered suitable for appointment to the said post.

17. While exercising the appellate jurisdiction, the appellate authority has indisputably a plenary power. It may not only consider the respective educational qualifications and other activities of the respective candidates for the purpose of arriving at a decision as to which of the two candidates had better merit and ability, but it should exercise its jurisdiction keeping in view the views of the Managing Committee. If two views are possible, ordinarily, the view of the Managing Committee should be allowed to prevail."

(d) A learned single Judge of this Court in the decision reported in 1991 WLR 694 (P.Rajendran v. The Government of Tamil Nadu) in paragraph 9 held as follows:

"9. .... it is seen that under R.15(4) the appointment to the post of Headmaster is by process of selection, merit and ability is the criteria and seniority will count only where merit and ability are approximately equal. Therefore, the Management is not bound to appoint a person merely because, he is senior in service. They can take note of the merit and ability of the respective candidates, who aspire for the post of Headmaster. ...."

(e) Following the above judgments, in W.P.Nos.4467 and 3455 of 2004, by common order dated 6.3.2008, I gave direction to select B.T Assistant (History) post in a private aided school. The said decision was affirmed in W.A.No.517 and 518 of 2008 dated 28.4.2008 by observing as follows:

"..... The learned single Judge had rightly directed the authorities to fill up the B.T.Assistant (History) post strictly in accordance with Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, considering the merit and ability of two candidates are found approximately equal, then seniority has to be considered for selecting a

person as B.T.Assistant (History) under the said rule. We are in entire agreement with the order of the learned single Judge. The writ appeals are dismissed."

15. The learned counsel for the 4<sup>th</sup> respondent has rightly contended that the School Committee committed a patent error while considering the qualifications possessed by the 4<sup>th</sup> respondent. It is not in dispute that the 4<sup>th</sup> respondent has passed B.A. and B.Ed., degrees from Madurai Kamaraj University in first attempt. The petitioner secured second class in theory and first class in practical in B.Ed degree. However, the School Committee in its resolution recorded that the 4<sup>th</sup> respondent has passed the said degrees in two attempts. The said error committed by the School Committee is an error apparent on the face of the record. The learned counsel for the 5<sup>th</sup> respondent is unable to explain the said error committed by the School Committee, which is reflected in the School Committee resolution. Further, the service register of the 4<sup>th</sup> respondent was with the second respondent on 16.11.2000 as per the averments in the counter affidavit filed by the 4<sup>th</sup> respondent. The same is not denied by the 5<sup>th</sup> respondent. Thus, the decision of the School Committee is contrary to records and without considering the relevant facts, but considered the irrelevant facts while arriving at the decision. In view of the said illegality committed by the School Committee while assessing and recording the merits and ability of the petitioner as well as the 4<sup>th</sup> respondent, pursuant to which the petitioner was given promotion as Headmistress of the School, the decision of the School Committee cannot be sustained.

16. As held by the Division Bench of this Court in the above referred decision and the School Committee having been vested with the power to select and appoint teachers and other persons employed in private School under section 18 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, which is also constituted under section 12 of the Act, the School Committee shall consider all the aspects while exercising its powers during selection of the Headmaster of the School in terms of Rule 15(4) read with 15(6).

17. The relevant facts having not been considered by the School Committee, the selection and promotion of the petitioner as Headmistress cannot be sustained. The reason stated by the respondents 1 and 2, though not be treated as valid reason to reject the approval of appointment of the petitioner, in view of my above finding that the School Committee having not applied its mind and assessed the merits and ability of the petitioner and the 4<sup>th</sup> respondent properly, the selection and promotion of the petitioner as Headmistress even by 16.11.2000 is to be held illegal.

18. In fine, the writ petition is disposed of with direction to the 5<sup>th</sup> respondent to make fresh selection to the post of Headmaster



of the 5<sup>th</sup> respondent private School in accordance with the statutory rule, within a period of two months from the date of receipt of copy of this order. No costs.

vr

Sd/-  
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

To

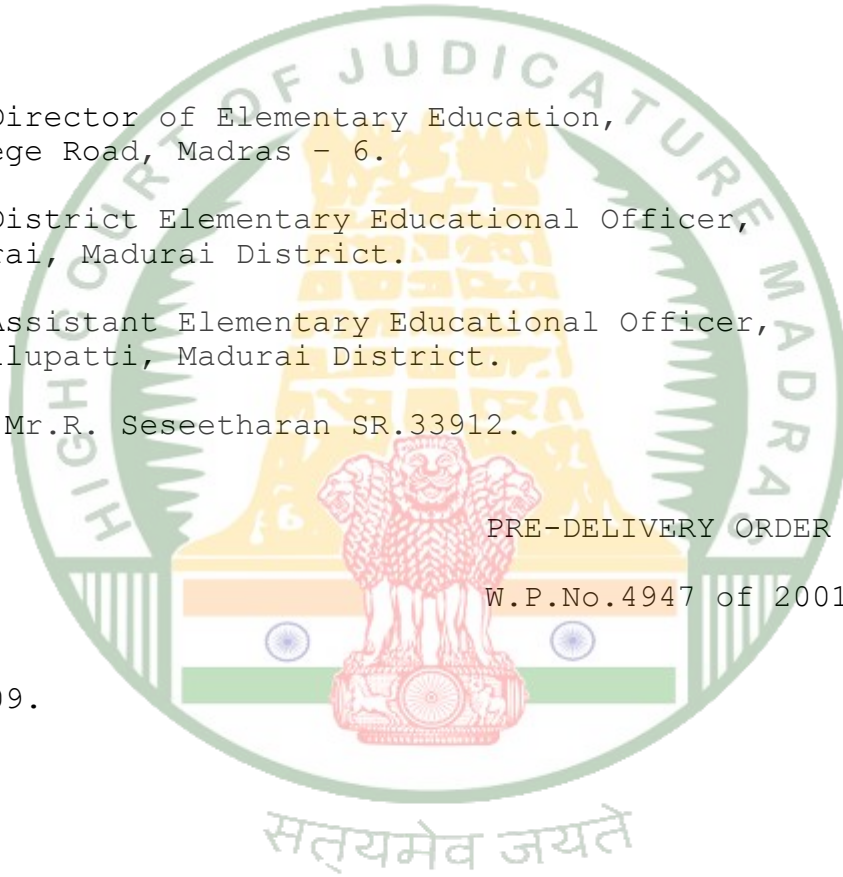
1. The Director of Elementary Education,  
College Road, Madras - 6.
2. The District Elementary Educational Officer,  
Madurai, Madurai District.
3. The Assistant Elementary Educational Officer,  
T.Kallupatti, Madurai District.

+ 1 cc to Mr.R. Seseetharan SR.33912.

PRE-DELIVERY ORDER IN

W.P.No.4947 of 2001

CKN (CO)  
EU 1.8.2009.



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