

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.20734 of 2018 & 18841 of 2018

and

W.M.P.Nos.22215, 22216, 24357, 24388 of 2018 and 5300 of 2019

W.P.No.20734 of 2018

Swaathi Priya G

..Petitioner

vs

1.State of Tamil Nadu,
Represented by Secretary, Education Department,
Fort St.George, Chennai – 600 001

2.Teacher Recruitment Board,
Represented by its Chairman,
4th Floor, EVK Sampath Maaligai
DPI Campus, College Road,
Chennai – 600 006

3.Tamil Nadu Ambedkar Law University,
Represented by its Vice-Chancellor,
Poompozhil, 5, Dr.D.G.S.Dinakaran Salai
Chennai – 600 028

4.University Grants Commission,
Represented by its Chairperson,
Bahadur Shah Zafar Marg
New Delhi – 110 002

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records and quashing Notification No.2/2018 dated 18.07.2018 issued by the 2nd respondent herein

and consequently direct the 1st and 2nd and 3rd respondent to issue a notification providing reservation for Scheduled Tribe for the position of Assistant Professors (Criminal Law) in Government Law Colleges as per Section 27 of the Tamil Nadu Government Servants (Condition of Services) Act 2016 r/w 4th Respondent's Guidelines for strict implementation of reservation policy of the Government in Universities Deemed to be Universities, colleges and other grant-in-aid institutions and centres 2006.

W.P.No.18841 of 2018

K.Gunanidhi

..Petitioner

vs

1.The Member Secretary,
Teachers Recruitment Board,
EVK Sampath Maaligai
DPI Complex,
College Road
Chennai – 600 006

2.The Secretary to Government
Law Department
Secretariat,
Fort St.George,
Chennai – 600 009

3.The Director of Legal Studies,
Kilpauk, Chennai – 600 010.

4.The Vice Chancellor,
The Tamil Nadu Dr.Ambedkar Law University,
Poonpozhil, No.5, Dr.DGS Dinakaran Salai,
Chennai – 28.

5.The Registrar,
The Tamil Nadu Dr.Ambedkar Law University,
Poonpozhil, No.5, Dr.DGS Dinakaran Salai,
Chennai – 28.

6.The University Grants Commission,
Bahadur Shah Zafar Marg, New Delhi – 110 002

7.The National Commission for
Scheduled Castes, 5th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.
(R4 to R7 are impleaded vide order dt 08.04.2019
made in WMP.No.6477/2019 in W.P.No.18841/2018)

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in his Notification No.2/2018 dated 18.07.2018 and quash the same consequently direct the 1st respondent to issue fresh notification by providing reservation to the Scheduled Tribe candidate in the subject of Labour Law and Administrative Law.

For Petitioner:-

(in W.P.No.20734 of 2018) : Mr.S.Ayyadurai
for Mr.R.Prabudoss

(in W.P.No.18841 of 2018) : Mr.R.Singaravelan, Senior counsel
for M/s.R.Jayaprakash

For Respondents in W.P.No.20734 of 2018:-

For R1 : Mr.A.Rajaperumal
Additional Government Pleader

For R2 : M/s.Narmadha Sampath, Additional Advocate General
Assisted by Mr.C.Munusamy
Special Government Pleader

For R3 : Mr.S.R.Rajagopal, Additional Advocate General
Assisted by Mr.V.Vasanthakumar

For R4 : Mr.B.Rabumanohar

For Respondents in W.P.No.18841 of 2018:

For R1 :M/s.Narmadha Sampath, Additional Advocate General
Assisted by Mr.C.Munusamy
Special Government Pleader

For R2 & R3 : Mr.P.H.Aravind Pandian
Additional Advocate General
Assisted by M/s.P.Kavitha,
Government Advocate

For R4 & R5 : Mr.S.R.Rajagopal
Additional Advocate General
Assisted by Mr.V.Vasanthakumar

For R6 : Mr.P.R.Gopi Nathan

COMMON ORDER

Dr.B.R.Ambedkar said "However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However, bad a Constitution may be, if those implementing it are good, it will prove to be good".

The shocking information brought to the notice of this Court is that not even one Scheduled Tribe candidate is appointed as Law Professor in Tamil Government Law Colleges and Dr.Ambedkar Law University across the State after independence and for the past 72 years under the Rule of Reservation. With these background, this Court has to adjudicate the issues and find the solutions in order to extend social justice to the oppressed and depressed class of citizen of our great Nation.

2. The question of Legal importance advanced in these writ petitions are that, whether the respondents have followed the Rules of Reservation with reference to Section 27 of the Tamil Nadu Government Servants(Conditions of Service)Act, 2016 as well as the 200 point roster system as contemplated in Schedule V of the said Act.

3. The second question raised is that whether the division of subjects without following the 200 point roster in its real letter and spirit can be allowed to be implemented, which is otherwise in violation of the Rule of Reservation as contemplated under Section 27 as well as Schedule V of the Act.

4. Thirdly, whether an affiliated Law College of the Law University is empowered to take such academic decision of implementing division of subjects without any approval or without any consultation with the Law University.

5. Lastly, whether the Rule of Reservations as per Law had been followed in earlier Recruitments conducted during the year 2014 as well as during the year 2011.

6. In view of the fact that the implementation of Rule of Reservation itself is under challenge in these writ petitions, which is of Constitutional importance.

7. The relief sought for in W.P.No.18841 of 2018 is to quash the Recruitment Notification No.2/2018 dated 18.07.2018 and to direct the 1st respondent to issue fresh Notification by providing Reservation to the Scheduled Tribe candidate in the subject of Labour Law and Administrative Law.

8. The relief sought for in W.P.No.27034 of 2018 is also to quash the Notification No.2 of 2018 and to direct the respondents to issue a fresh Notification providing Reservation for Scheduled Tribe for the Post of Assistant Professors (Criminal Law) in Government Law Colleges as per Section 27 of the Tamil Nadu Government Servants(Conditions of Service)Act read with the guidelines issued by the 4th respondent for strict implementation of Reservation Policy of the Government in University.

9. The writ petitioner in W.P.No.18841 of 2018 namely M/s.K.Gunanidhi belongs to Scheduled Tribe community.

10. It is stated that due to her sincere efforts and hard work, she completed B.A., B.L., integrated regular law degree course and thereafter completed Master's Degree in Law(M.L.,) in the Branch of Labour Law and Administrative Law in Government Law College, Trichy. The writ petitioner also passed National Eligibility Test, which is a requisite qualifications for appointment

to the Post of Lecturer in Government Law Colleges. The writ petitioner is a practicing Advocate before the District Court, Trichy and serving as Guest Faculty of Teaching in the Government Law Colleges from the year 2012 onwards. Thus, the writ petitioner is fully qualified and eligible for appointment to the Post of Lecturers(Senior scale) now redesignated as Assistant Professors and Lecturers Seniors Scale (Pre-Law) redesignated as Assistant Professor for Government Law Colleges in the State of Tamil Nadu.

11. Initially, the 1st respondent had issued a Notification dated 22.07.2014, inviting applications for Direct Recruitment to fill up the Post of Lecturers(Senior Scale) and Lecturers Senior Scale(Pre-Law) for Government Law Colleges at Tamil Nadu. The total number of vacancies notified during the year 2014 was 50 posts earmarked for all categories including the Reserved categories of B.c., M.B.C., S.C except the category, which the writ petitioner belongs to namely in the Scheduled Tribe. The writ petitioner is the only person applied in the category of Scheduled Tribe. The writ petitioner challenged the above Notification issued during the year 2014 in W.P.No.25118 of 2014 and the writ petition was admitted and an interim order was granted on 28.10.2014 as under:

"Notice of motion returnable in four weeks. Private Notice is also permitted.

Any appointment made to the Post of Lecturer in Labour and Administration Law, will be subject to the result of the writ petition."

12. The said writ petition is still pending. However, pursuant to the above selection, all appointments were made and selected persons are serving more than four years. Again, the writ petitioner filed W.P.No.23404 of 2014 for a direction to direct the respondents to appoint the petitioner for the Post of Lecturer(Senior Scale) in Government Law Colleges under the Reserved category of Scheduled Tribe. The writ petitioner submitted a representation on 05.07.2015, this Court passed an order on 03.08.2015 as under:

"Though the petitioner prayed for a larger relief, this Court, in the light of the above facts and circumstances, directs the second respondent to consider the petitioner's representation dated 05.07.2015 on merits and in accordance with Law after providing her an opportunity of personal hearing and pass orders within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. The writ petition is disposed of accordingly. No costs."

13. On compliance of the above direction, the 2nd respondent provided an opportunity of personal hearing and in vide Letter dated 31.10.2015, stating that as and when 50th turn is reached in the subject concerned for the post of

Lecturers(Senior Scale), vacancy will be notified by the Teachers Recruitment Board for Scheduled Tribe Community in future recruitments”.

14. It is an admitted fact that no Scheduled Tribe candidate has been appointed in the Post of Lecturer till today in Government Law Colleges in the State of Tamil Nadu after independence. The previous Recruitments Notifications were issued by the 1st respondent during the years 2006, 2010, 2014 and subject wise vacancies were notified and nobody belongs to Scheduled Tribe was appointed in Government Law Colleges till today.

15. Under these circumstances, the current Notifications, which is impugned, has been issued in Notification No.2/2018 dated 18.07.2018, inviting applications for Direct Recruitment to fill up the Post of Assistant Professors / Assistant Professors(Pre-Law) in Government Law Colleges - 2017-2018. The total number of vacancies notified subject wise is 186(including 14 Backlog vacancies in the category of B.C, M.B.C, S.C, persons except the Scheduled Tribe category.

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16. The contention of the writ petitioner is that the respondents are not following the Rule of Reservation as per Section 27 of the Tamil Nadu Government Servants(Condition of Service) Act, 2016 and as well as the Schedule V of the Act.

17. It is further contended that the Law laid down by the Apex Court reported in **2006(8) SCC 212(M.Nagaraj and Others -vs- The Union of India)** is flagrantly violated by the respondents in the matter of adopting the Reservation Policy guaranteed to the Depressed Class persons. The 200 point roster system is completely violated. The misinterpretations of 200 point roster system by the respondents led to violations in the matter of implementing the Rule of Reservation.

18. As far as the writ petitioner in W.P.No.20734 of 2018, the writ petitioner namely, M/s.Swaathi Priya G, is concerned, it is stated that this writ petitioner is also a Scheduled Tribe Candidate and completed her Master's Degree in Criminal Law and cleared TNSET.

19. The main contention of the writ petitioner is that she is fully qualified for appointment to the Post of Assistant Professor in the subject of Criminal Law. As per the impugned Notification, at paragraph 3, details of the Reservations are provided, which reads as follows:-

"8.....It is stated communal reservation is as per Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The reservation is then stated as follows-

(i) General – 31%

(ii) BC(Other than muslim) – 26.5%

(iii) MC Muslim – 3.5%

(iv) MBC (De-notified communities) MBC/DNC – 20%

(v) Scheduled castes – 18(3% reserved for Arundathiyars)

(vi) Scheduled Tribes – 1%

9. However, a perusal of the notification establishes that while in para 3 of the Notification it states that there is 1% reservation for ST, a breakup of the number of seats available shows that not a single position notified is reserved for an ST candidate. It state that not a single position, be it current or backlog vacancy have been reserved for ST candidates.”

20. It is contended that there is a contradiction between three of the Notification and the Table of current and Backlog Notifications notified. Paragraph 3 states that 1% has been reserved for ST candidates but the tables showing the split up of vacancies across the different departments clearly shows that not a single vacancy has been reserved for an ST candidate.

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21. The petitioner states that violation of Section 27 of the Tamil Nadu Government Servants(Conditions of Service) Act 2016 and the actions of the respondents are in clear violation of Article 16(4) and Article 16(4A) of the Constitution of India.

22. At the outset, the petitioner contends that the Rule of Reservation has not been followed as per Section 27 of the Act cited supra as well as in consonance with the judgments of the Hon'ble Supreme Court of India in the light of the Constitutional provisions.

23. It is necessary at the first instance to understand the status of the Government Law Colleges across the State of Tamil Nadu with reference to the Provisions of the Tamil Nadu Dr.Ambedkar Law University Act 1996[hereinafter referred to as "Law University Act 1996"]

24. Section 1(3)(a) enumerates that "every Law college specified in the Schedule which are deemed to be affiliated to the University under this Act".

25. Section 2(a) of the Act defines "affiliated college" means a college or institution situated within the University area and affiliated to the University, a college deemed to be affiliated to the University and an autonomous college".

26. Section 2(e) of the Act defined as "college" means a college or institution established or maintained by or affiliated, to the University and providing any course of study or training in law for admission to the examination; for degrees, diplomas or other academic distinctions of the University".

27. Section 4 of the Act stipulates the object of the University. Section 5 of the Act enumerates Powers and functions of University.

28. Section 5(v) states that "to affiliate colleges to the University under conditions prescribed and to withdraw such affiliations". Section 5(vii) states that "to hold examinations and to confer degrees, titles, diplomas and other academic distinctions on persons who shall have pursued an approved course of study in the University, University college or any college affiliated or deemed to be affiliated to the University under this Act and shall have passed the prescribed examinations of the University subject to such conditions as the University may determine." Section 5(xv) of the Act states that "to create academic, technical, administrative ministerial and other posts and to make appointments thereto"

29. Section 23 of the Act provides Powers of Syndicate. Section 23(13) states that "to prescribe the qualifications of teachers in the University departments and University colleges and the affiliated colleges in the State". Section 23(17) states that "to cause an inspection of all colleges and other institutions affiliated or to be affiliated to the University and to take such action as may be deemed necessary."

30. Chapter V of the Act deals with Statutes, Ordinances and Regulations.

Section 38(10) stipulates that “the qualifications of the teachers and other persons employed by the Universities and affiliated colleges or institutions.”

Section 38(14) states that “the conditions of affiliations of Colleges to the University”.

31. Importantly Chapter VIII of the Act deals with Conditions of Service. Section 52 of the Act deals with Rule of Reservation as applicable to the Appointments in the Service under the Government shall be followed.

32. Regulations are issued for affiliations and approval of Colleges. The grant of affiliation, Procedure for getting affiliations are also enumerated.

33. Clause 39 of the Regulations speaks about Inspection. 39(a) states that University on its own motion or under the directions of the State Government shall order inspection of any College at any time. 39(b) (4) provides maintenance of academic standards”.

34. On a perusal of the entire provisions, it is unambiguously enumerated that the University is responsible for maintenance of academic standards and have to conduct inspections in the event of any complaint or otherwise. The affiliated colleges are bound to prescribe the academic standards, subjects etc., as per norms prescribed by the Law University under the provisions of the “Act

1996” and the Regulations thereon. Even in respect of division of subjects or prescriptions of new subjects or otherwise, an approval from the Law University is certainly required. The academic changes in the pattern of Education and curriculum, which all are to be done with the consultation with the Law University as well as with the approval of the Law University concerned. It is not as if the Government Law Colleges themselves can conduct the courses or prescribe division of subjects or otherwise at their own volition. Once the Government Law Colleges are affiliated with the Law University under the Act, then they are bound by the provisions of the Act as well as the Regulations thereon in respect of conducting courses, prescription of subjects, conduct of examinations and other related procedures. Ultimately, the Law University is the authority to award degrees to the students, who all are studying in Government Law colleges across the State of Tamil Nadu. Thus, the unilateral decision in respect of academic changes cannot be undertaken without the consultation of Law University and with its approval.

35. Keeping the above provisions in mind, let us now proceed with the Rule of Reservation, which is questioned by the writ petitioners in these writ petitions.

36. Reservations of appointments are provided under Section 27 of the Tamil Nadu Government Servants(Conditions of Service) Act, 2016[Amendment

Act No.30 of 2017, dated 20.07.2017].

37. Section 27 of the above said Act reads as under:-

"27. Where the special rules lay down that the principle of reservation of appointments shall apply to any service, class or category, selection for appointment thereto shall be made on the following basis:—

(a) The unit of selection for appointment, for the purpose of this section, shall be two hundred, of which thirty six shall be reserved for the Scheduled Castes including six offered to Arunthathiyars on preferential basis amongst the Scheduled Castes, two for the Scheduled Tribes, fifty three for the Backward Classes (other than Backward Class Muslims, Most Backward Classes and Denotified Communities), seven for the Backward Class Muslims, forty for the Most Backward Classes and the Denotified Communities and sixty two shall be filled on the basis of merit.

Provided that even after filling up of the required appointments or posts reserved for Arunthathiyars amongst the Scheduled Castes in Schedule-V, if more number of qualified Arunthathiyars are available, such excess number of candidates of Arunthathiyars shall be entitled to compete with the other Scheduled Castes in the inter-se-merit among them and if any appointment or post reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars.

["(b) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment, one per cent each shall be reserved for

persons with benchmark disabilities under categories (i), (ii) and (iii) and one per cent for persons with benchmark disabilities under categories (iv) and (v) both taken together, namely:-

(i) blindness and low vision;

(ii) deaf and hard of hearing;

(iii) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(iv) autism, intellectual disability, specific learning disability and mental illness;

(v) multiple disabilities from amongst persons under categories (i) to (iv) including deaf-blindness in the posts identified for each disabilities;

and the appointment shall be made in the turn and in the order of rotation specified in Schedule-VI;

(bb) Reservation for persons with benchmark disabilities shall be made in respect of posts identified by the Government in each department, under Section 33 of the Rights of Persons with Disabilities Act, 2016;

(bbb) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, such vacancy shall be filled up by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in a department is such that a given category of person cannot be employed, the

vacancies may be interchanged among the five categories with the prior approval of the Government.

(c) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment to Group 'C' posts, five per cent in each such category shall be reserved for Ex-servicemen and subject to availability of such candidates, the appointment shall be made in turn and in the order of rotation as specified in Schedule-VII:

Provided that if no qualified and suitable Ex-serviceman belonging to a particular category is available for selection for appointment against the reserved turn, such turn shall be filled up by a candidate other than an Ex-serviceman but belonging to the particular category and if no such candidates is available even in that category for selection for appointment against the reserved turn, such turn shall be carried forward as provided in clause (d).

(d) The claims of members of the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/Denotified Communities), Backward Class Muslims and the Most Backward Classes/Denotified Communities shall also be considered for the thirty one appointments, which shall be filled on the basis of merit and where a candidate belonging to a Scheduled Caste, Scheduled Tribe, Backward Class (Other than Most Backward Class/Denotified Community) Backward Class Muslims or Most Backward Class/Denotified Community is selected on the basis of merit, the number of posts reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/ Denotified Communities), Backward Class Muslims or the Most Backward Classes/ Denotified Communities, as the case may be, shall not in any way be affected.

(e) Selection for appointment under this section shall be made in the order of rotation specified in Schedule-V.

Explanation.—The vacancies arising on and from the 29th April 2009 shall be filled up as per Schedule-V and all selections for appointment shall be started afresh from serial number one in the said Schedule-V with effect on and from the said date.

(f) If qualified and suitable candidates belonging to any of the Backward Classes, Backward Class Muslims including the Most Backward Classes and Denotified Communities are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them, the turns so allotted shall lapse and the selection for appointment for the vacancies shall be made by the next turn in the order of rotation

Provided that if qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them in the cycle, the turns so allotted to them shall not lapse and the number of candidates to be selected in that recruitment shall be reduced by the number of candidates belonging to Scheduled Castes and Scheduled Tribes not available for selection against the turn allotted to them. The unfilled vacancies reserved for the Scheduled Castes and Scheduled Tribes to be filled by recruitment by transfer or by promotion shall be carried over to four consecutive recruitment years, namely, year of recruitment plus three subsequent recruitment years. The selection for appointment to the vacancies in the next recruitment shall be made first for the carried over turns and then the normal rotation shall be followed. If qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available

for selection for appointment by recruitment by transfer or by promotion even thereafter, the vacancies reserved for those categories shall first be de-reserved by obtaining the orders of the Government before filling them by candidates in the next turn in the order of rotation;

Provided further that the normal number of vacancies reserved for the candidates belonging to the Scheduled Castes and Scheduled Tribes and the carried forward vacancies as specified in the first proviso shall not exceed fifty per cent of the total number of vacancies for a particular recruitment. If there be two vacancies only, one of them shall be treated as a reserved vacancy. If there be one vacancy only, it shall be treated as unreserved. The surplus of the fifty per cent shall be carried forward to the subsequent recruitment, subject to the condition that the vacancies carried forward do not become time barred due to their continued existence for more than three years. Selection for appointment to the earliest carried forward vacancies shall be made first;

Provided also that in the case of selection for appointment by direct recruitment, with effect on and from the 1st April 1989, there shall be a ban on de-reservation of vacancies reserved for the candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities to be appointed by direct recruitment. But, the above ban on dereservation of vacancies shall not be applicable to the vacancies reserved for the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims and, therefore, if qualified and suitable candidates belonging to any of the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims are not available

for appointment, the turn so allotted to them shall lapse and the vacancy shall be filled by the next turn in the order of rotation. If sufficient number of qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities are not available for selection for appointment for the vacancies reserved for them by direct recruitment in the first attempt of recruitment, then, a second attempt shall be made for selection of the candidates belonging to the respective communities by direct recruitment in the same recruitment year or as early as possible before the next direct recruitment for selection of candidates against such vacancies. If the required number of candidates belonging to such communities are not available even then, the vacancies for which selection could not be made shall remain unfilled until the next recruitment year treating them as "backlog" vacancies. In the subsequent year, when direct recruitment is made for the vacancies of that year, namely, the current vacancies, the "backlog" vacancies shall also be announced for direct recruitment, keeping the vacancies of the particular recruitment year, namely, the current year vacancies and the "backlog" vacancies as two distinct groups as illustrated in Schedule-IX. The selection for appointment for the next direct recruitment shall be made first for the "backlog" vacancies and then the normal rotation shall be followed;

Provided also that, in exceptional cases, for posts in Groups "A" and "B" for which suitable candidates belonging to the Scheduled Castes, Scheduled Tribes, Most Backward Classes or Denotified Communities are not available against the respective reserved vacancies and the non-filling up of posts causes hardship for running the administration, the Government may grant exemption from

carrying forward of such vacancies and the procedure therefor shall be as specified in Schedule-IX;

Provided also that when a candidate selected for appointment against a vacancy for Scheduled Castes, Scheduled Tribes, Most Backward Classes / Denotified Communities, Backward Classes, Backward Class Muslims or General Turn, does not join duty in the post for which he is appointed or his provisional selection for that post is cancelled for any reason, a candidate in his place shall be appointed from the respective category and in accordance with the ranking from the reserve list;

Provided also that the candidates appointed from the reserve list shall be placed below all the candidates appointed from the regular list in the same order in which the vacancies have arisen;

Provided also that the reserve list shall be operated even against the vacancies caused due to the fact that the candidates have joined duty, but left thereafter while the reserve list is in force.

(g) Notwithstanding anything contained in this section and in the Special Rules for various State and Subordinate Services, the rule of reservation shall not apply to the appointments on compassionate grounds.

(h) Notwithstanding anything contained in this section, in order to restore the representation of Scheduled Castes and Scheduled Tribes in a service, where their representation is less than eighteen per cent and one per cent, respectively, each department shall furnish such vacancies treating them as shortfall vacancies of Scheduled Castes and Scheduled Tribes in the lowest level of posts in each of the Groups A,B,C and D, besides the posts of Junior Assistants, Typist and Steno-Typist Grade III in the Tamil Nadu Ministerial Service and the Tamil Nadu Judicial Ministerial Service, to

the Government and the Government, in turn, shall inform the same to the recruiting agencies for notifying the vacancies for direct recruitment as a one time measure;

Provided that reservation for Women, Differently abled person and Ex-servicemen shall not apply to the said recruitment.”

38. As per Section 27, Schedule V is to be followed for the purpose of implementing 200 point roster system. The 200 point roster system is to be implemented through Vertical Reservation as well as Horizontal Reservation. The reservations provided in Section 27 is to be followed with reference to Schedule V of the Act. These all are the undisputed facts and the respondents have no quarrel about the implementation of the Rule of Reservation in consonance with Section 27 as well as Schedule V of the Act.

39. However, the dispute arises whether the 200 point roster system has been implemented rightly and in consonance with the ingredients provided under Section 27 of the Act.

ARGUMENTS OF THE LEARNED COUNSEL FOR THE PETITIONERS:-

40. In this regard, the learned Senior counsel appearing on behalf of the writ petitioners argued as follows by enumerating the Notification issued during the year 2010-2011, after the implementation of 200 point roster system with

effect from the year 2009.

WRIT PETITION IN W.P.NO.25118 OF 2014:

The writ petitioner has filed a writ petition even in 2014 in W.P.No.25118 of 2014 questioning the non-allotment of any vacancy to a Scheduled Tribe candidates and the writ petition is still pending. In that writ petition, a counter affidavit was filed stating that turn for the ST is 500th turn under 200 point roster and 50th turn has not reached and that is the reason as to why no vacancy was allotted 86 ST candidate. The 200 point roster was introduced by way of Government Order in G.O.Ms.No.55 dated 08.04.2010 and the said GO @ page 21 of the consolidated typed set would reveal that the selection and recruitments, if any already made need not be re-opened and for the further selections / appointments the new roster has to be followed. Thus it is clear from the Government Order that only from the date of the Government i.e., on 08.04.2010, revised 200 point roster has to be followed and if so there cannot be any backlog vacancy at all for 2010-11 recruitment as it was the first recruitment after 2010-11 roster.

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2010-2011 NOTIFICATION:-

While so, it is not known as to how one backlog for SC General in Labour Law and Administrative Law, one backlog for MBC Women in Law of Contracts, one backlog vacancy for SC General in Law of Contracts, one backlog vacancy for

MBC Women for property law and one backlog vacancy for BC General in Crime and Torts and one backlog vacancy for MBC General in Crime and Torts and one backlog vacancy of SC General for Crime and Torts and one backlog vacancy for SC Women in Crime and Torts were allotted in 2010-11 recruitment totalling 8 vacancies.

41. The Constitutional and Statutory violations are enumerated as under by the learned Senior counsel appearing on behalf of the writ petitioners:

II. CONSTITUTIONAL AND STATUTORY VIOLATIONS:

a) Totally 8 backlog vacancies were allotted as above mentioned when as per G.O.Ms.No.55, 200 point roster has to be followed afresh and it is not known as to how the backlog vacancies have arisen that too without even mentioning the year of backlog vacancy. Even for the 1st recruitment after 200 point roster.

b) As per the 3rd proviso to Section 27 (f) of the Act there cannot be any backlog vacancy for BC category and the backlog vacancy is only meant for SC, ST and MBC alone. The allotment of backlog vacancy to Backward castes is thus ultravires.

c) As per the same proviso, whenever there is a backlog vacancy, a separate 2nd time notification shall be made for selection of candidates belonging to the respective categories by direct recruitment in the same recruitment year or

as early as possible before the next recruitment/selection as against those vacancies. But that is not done. Even in 2nd attempt, if those candidates are not available then those vacancies have to be left unfilled and they have to be carried forward to the next recruitment treating them as the backlog vacancies along with the next year recruitment. The backlog vacancies have to be filled up first and then only the regular recruitment has to follow. But, each and every time fresh notification is being issued whenever issuing any notification for backlog vacancies which should be done first before regular recruitment.

d) Article 16 (4-A) and 16 (4-B) of the Constitution of India mandates carry forward and filling up of backlog vacancies to SC and ST though not to MBC candidates and Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 has permitted carry forward for MBC Community and then in the recruitment for the backlog vacancies of those communities in the same year or at least in the next recruitment year which should precede the regular recruitment. Thus, the seniority of the candidates for backlog vacancies will be affected.

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In view of the above, it is indisputable settled position of law that allotment of nearly 8 vacancies to the so called backlog vacancies along with the regular recruitment without even mentioning the year of reservation of backlog vacancies is unconstitutional.

Further when the roster has started newly in the year 2010 as per G.O.Ms.No.55, there is no question of any backlog vacancy even for the 1st recruitment.

42. About the Vertical Vs Horizontal Reservations, it is contended as follows:-

(2007) 8 SCC 785, (2010) 12 SCC 204 and 2012 (7) MLJ 241:

That apart, the 200 point roster cannot be confused with rotation as the roster speaks about the substantial vertical reservation and the rotation speaks about not only the substantial reservation but also speaks about the horizontal reservation, namely, reservation for Ex-service men, physically handicapped and women.

As per the law laid down by the Hon'ble Apex Court particularly in **(2007) 8 SCC 785**, the vertical reservation cannot be sacrificed at all and whenever the percentage reserved for the horizontal reservation is satisfied even while allotting the candidates as per the percentage allotted for vertical reservation then there cannot be any separate reservation/allotment for horizontal reservation. Only in case of non-availability of candidates under horizontal reservation after filling up the vertical reservation candidates, the horizontal reservation candidates can be arranged to the extent of their percentage in the last of the list of the selected

candidates under each vertical category. To put it clearly, they can be arranged only in the last of the vertical reservation candidates under each category to satisfy their percentage and not in the middle, but in this case in the name of rotation vertical reservation is made meaningless by omitting the candidates scored more marks than the candidates of the horizontal reservation and fitting in the candidates of horizontal reservation candidates even over and above the candidates who scored more marks under vertical reservation. Thus the merit among the reserved candidates is given a go by. The 200 point rotation government order runs repugnant to the proviso to Rule 27 (f) of the Act and thus it is to be declared as unconstitutional and ultravires.

In (2007) 8 SCC 785, the Hon'ble Apex Court has held in the paragraph 9 as follows:-

"9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC

candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , *R.K. Sabharwal/v. State of Punjab* [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] , *Union of India v. Virpal Singh Chauhan* [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and *Ritesh R. Sah v. Dr. Y.L. Yamul* [(1996) 3 SCC 253] .) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal

reservation for women. Let us illustrate by an example:

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)"

In ***Public Service Commission, Uttaranchal Vs- Mamta Bisht & Others*** reported in (2010) 12 SCC 204 the Hon'ble Apex Court has followed the vertical reservation and distinguished in paragraph 13 as follows:-

"**13.** In fact, the High Court allowed the writ petition only on the ground that the horizontal reservation is also to be applied as vertical reservation in favour of reserved category candidates (social) as it held as under:

"In view of the above, Neetu Joshi (Sl. No. 9, Roll No. 12320) has wrongly been counted by Respondent 3/Commission against five seats reserved for Uttaranchal Women General Category as she has competed on her own merit

as general candidate and as the fifth candidate the petitioner should have been counted for Uttaranchal Women General Category seats.”

Then the Hon'ble Apex Court quoted Paragraph 9 of the Apex Court judgment in (2007) 8 SCC 785 as disposed of the matter which follows in the next paragraph.

In **2012 (7) MLJ 241**, this Hon'ble Court has held in Paragraph No.9, 10 and 14 as follows:-

“9..... I believe, it is, therefore, suffice to start from Indra Sawhney Vs. Union of India reported in 1992 Supp (3) SCC 217. In this case, among other things, the Hon'ble Supreme Court has held :

.....reservation under Article 16(4) do not operate on communal ground. Therefore if a member from reserved category gets selected in general category, his selection will not be counted against the quota limit provided to his class.....(Emphasis added). Further, the Court declared that the social reservations like reservations for O.B.Cs., S.Cs. and S.Ts., are vertical reservations whereas the Special reservations like reservations for women, physically challenged, etc., are horizontal reservations. While explaining as to how the horizontal reservation cuts across the vertical reservation, the Hon'ble Supreme Court in para 812 has held as follows:

" 812. All reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [(under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped (under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relating to clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same."

10. Similarly, the proper and correct method to fill up the open quota, vertical reservations and Special reservations such as reservations for women, physically handicapped etc., which are horizontal reservations, cutting across vertical reservations, were explained in Anil Kumar Gupta Vs. State of U.P. Reported in (1995) 5 SCC 173, wherein the Hon'ble Supreme Court has held as

follows: "The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.) [Emphasis supplied]"

Again in paragraph 14 extracted the methodology to follow the reservation as follows:-

"14.....After identifying the number of vacancies earmarked for various categories, the selection for each category has to be made purely based on merit following the method detailed below:

First Step:

(i) As against the number of vacancies identified for open quota, irrespective of caste, sex, physically challenged, etc., everyone should be allowed to compete based on merits.

(ii) The meritorious candidates should be first selected as against the above vacancies under open quota.

Second Step:

(iii) After completing the first step, moving on to the vertical reservation categories, selection has to be made for each category from amongst the remaining candidates belonging to the particular reserved category (vertical) based on merits.

Third Step:

(iv) After completing the second step, horizontal reservation which cuts across the vertical reservation has to be verified as to whether the required number of candidates who are otherwise entitled to be appointed under the horizontal reservation have been selected under the vertical reservation.

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(v) On such verification, if it is found that sufficient number of candidates to satisfy the special reservation (horizontal reservation) have not been selected, then required corresponding number of special reservation candidates shall have

to be taken and adjusted/accommodated as against social reservation categories by deleting the corresponding number of candidates therefrom.

(vi) Even while filling up the vacancies in the vertical reservation, if, sufficient number of candidates falling under the horizontal reservation have been appointed, then, there will be no more appointment exclusively under the horizontal reservation.

Caution:

(vii) At any rate, the candidates who were selected as against a post under open quota shall not be adjusted against the reserved quota under vertical reservations.

In ***V.Yamuna Devi & another – Vs- The Registrar General, High Court, Madras & Others*** reported in 2011 (1) CTC 469, the Hon'ble Division Bench in paragraph 36 held as follows:-

"36. On the reading of the said judgment, it is clear and categorical that the provision given for women, of course, as a matter of right, for appointment is horizontal, applicable to each and everyone of the reserved categories viz., SC/ST/MBC. etc. and the provision cannot be said to be vertical reservation which is on social basis. In fact, the Supreme Court held that while reservation in favour of physically handicapped, women, etc., is horizontal in nature, the

reservation made on the social basis viz., community-wise is vertical reservation. Therefore, in respect of horizontal reservation, there is no question of any separate zone of consideration required. It is relevant to point out that the said judgment was only a reproduction and explanation of the earlier judgment in *Indra Sawhney v. Union of India*, 1992 Suppl. (3) SCC 217, as it has been elicited in the said judgment itself. In such circumstances, the contention that different zone of consideration must be made for women candidates among the Scheduled Castes is totally misconceived and opposed to the established legal position.”

Thus there cannot be any rotation for horizontal reservation as the candidates of the same in case of short fall have to be arranged in the last. To put it in other words, the percentage reserved for vertical reservation and the marks scored by the candidates of vertical reservation cannot be sacrificed for implementing the horizontal reservation. In view of the above law laid down by the Hon'ble Apex Court, the rotation policy has to be declared as unconstitutional and ultravires as it should not be allowed to be followed as it goes directly against Section 27 of Tamil Nadu Government Servants (conditions of Service) Act, 2016 and also against the teeth of the dictum laid down by the Hon'ble Apex court in the above cases. If horizontal reservation also is started to be treated equally by following g rotation then the following two illegal consequences will arise, namely.

a) That the merit of the candidate under the particular category/community as per the Vertical reservation will have to be sacrificed for accommodating the candidates under horizontal reservation, which will lead to reservation within reservation affecting the seniority in future of the meritorious candidates of the same category on the basis of sex and birth which is to be held ultravires being violative of Article 16 (4) of the Constitution of India.

b) If the horizontal reservation is also given equal importance then the percentage of vacancies allotted for reservation will exceed even 100 % which is against the basic structure of the reservation policy and the law laid down by the Hon'ble Apex Court in Nagaraj Case reported in 2006 (8) SCC 212 and in Indira Swahney case reported in 1992 (3) Supp SCC 217.

43. With regard to the SUB-DIVISION OF SUBJECT INTO TWO OR THREE OR CREATION OF NEW BRANCH IN THE MIDDLE OF ROSTER, it is contended as follows:-

a) The third substantial contention in the writ petition is that the respondents without even any reason started a practice of dividing one subject into two or three subjects leading to utter confusion not only in respect of reservation and roster but also in respect of qualification for selection. As suddenly the subjects are divided there may not be any qualified candidates available exclusively possessing the Post Graduate and Ph.D degree in the

concerned sub-divided category/subject. The Candidates may be in possession of the combined subjects alone and then the non-availability of the qualified candidates will arise. Then the question of Equivalence committee will come and the result of the candidates in the particular subject may be kept in abeyance till a decision is taken by the Equivalence Committee which may pave the way to inconsistency and large scale corruption. With a view to avoid this problem and delay in selection in the interest of the students at large, the sub-division of the subjects has to be normally avoided unless and otherwise, it is unavoidably needed. I reliably learn that because of this, there may be a selection of lot of unqualified candidates in the past. If the records are called for, it will come to lime light.

b) **Non-Availability of the Candidates:-** Moreover, specialized candidates of a particular subjects may not be available if sub-division is made suddenly and if the candidates of combined subjects alone can then the sub-division is unnecessary which are motivated.

c) The sub-division of the subjects would upset the roster in the middle and it will affect the substantial right of the candidate entitled for reservation if it is started in the middle of the roster.

V. THE TAMIL NADU LEGAL EDUCATIONAL SERVICE:-

1. Constitution.- The service shall consist of the following classes and categories of officers, namely:-

Class	Category	Post
I.		Director of Legal Studies.
II.	1.	Lecturers(Selection grade)
	2.	Lecturers(Senior Scale)
	3.	Part-time Lecturers
III.		Librarian.

3. Reservation of appointments.- The rule of reservation of appointments (General rule 22) shall apply to the appointments to the service by direct recruitment to all the categories in the service. The appointments to each category shall be treated as a separate unit.

The present recruitment has been made by the TRB based on the above Rules. Unless and otherwise, the above mentioned Rule is amended, they cannot recruitment on subject-wise basis which is wholly against the concept of reservation.

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VI. ROLE OF THE LAW UNIVERSITY:-

When Law University is there to supervise all the law colleges affiliated to it, it is opposite to not that the Teachers Recruitment Board has become the

selection agency. As per Section 23 of the Tamil Nadu Dr.Ambedkar Law University Act, it is the syndicate alone has power to revise the selection process.

The section 23 of the act as follows:-

23. Syndicate shall have the power,-

- (1) to make statutes and amend or repeal the same;
- (2) to make ordinances and amend or repeal the same ;
- (3) to hold, control and administer the properties and funds of the University ;
- (4) to provide for instruction and training in such branches of learning in various fields of law as it may deem fit ;
- (5) to establish departments of study in the University in such discipline of learning in various fields of law as it may deem fit;
- (6) to provide for research and advancement and dissemination of knowledge in various fields of law;
- (7) to institute lecturerships, readerships, professorships and any other teaching posts required by the University;
- (8) to prescribe, in consultation with expert committees, to be appointed for the purpose, the conditions for affiliating colleges to the University or approval of institutions by the University and to withdraw such affiliation or approval;
- (9) to institute degrees, diplomas and other academic distinctions;

(10) to confer degrees, diplomas and other academic distinctions on persons who -

(a) shall have pursued an approved course of study or training in a college or in an approved institution, unless exempted there from in the manner prescribed by the statutes and shall have passed the examinations prescribed by the University; or

(b) shall have carried on research under conditions prescribed by the statutes;

(11) to confer honorary degrees or other honorary distinctions on the recommendation of not less than two thirds of the members of the Syndicate;

(12) to consider and take such action as it may deem fit on the annual report, the annual accounts and the financial estimates;

(13) to prescribe the qualifications of teachers in the University departments and University colleges and the affiliated colleges in the statutes;

(14) to appoint, on the recommendation of the Selection Committee of experts appointed for the purpose, University Lecturers, Professors, Readers and teachers, fix their emoluments, define their duties and the conditions of their service and provide for filling up of temporary vacancies;

(15) to make statutes specifying the mode of appointment of persons to administrative and other posts, provide for filling up of temporary vacancies and define their duties and their terms and conditions of service;

(16) to take disciplinary proceedings against the University Professor,

Readers, Lecturers, Teachers and other employees of the University in the manner prescribed by the statutes and to impose such penalties as may be specified in the statutes and to place them under suspension pending enquiry;

(17) to cause an inspection of all colleges, and other institutions affiliated or to be affiliated, to the University and to take such action as may be deemed necessary;

(18) to prescribe, the manner in which and the conditions subject to which, a college or institution may be designated as an autonomous college or institution and to cancel such designation;

(19) with the concurrence of the Government, to designate any college as an autonomous college and to cancel such designation;

(20) to recognise, on the report of inspection commission, any college or institution outside the University area;

(21) to raise on behalf of the University loans from the Central or any State Government or any corporation owned or controlled by the Central or any State Government or from the public;

(22) to borrow money for the purpose of the University with the approval of the Government on the security of the property of the University;

(23) to appoint examiners on the recommendation of the Boards of Studies and to fix their remuneration;

(24) to charge and collect such fees and as may be prescribed by the statutes;

(25) to conduct the University examination and approve and publish the results thereon;

(26) to appoint members to the Boards of Studies;

(27) to make ordinances, regarding the admission of students to the University or prescribing examinations to be recognised as equivalent to University examinations;

(28) to establish and maintain hostels;

(29) to recognise hostels not maintained by the University; and to suspend or withdraw recognition of any hostel which is not conducted in accordance with the conditions subject to which such hostel was recognised;

(30) to supervise the residence of the students of the University and to make arrangements for securing their health and well-being;

(31) to award fellowship, travelling fellowships, studentships, medals and prizes in accordance with the statutes;

(32) to manage any publication bureau, employment bureau and University sports or athletic clubs instituted by the University;

(33) to review the instruction and teaching of the University;

(34) to promote research within the University and to require reports from time to time of such research;

(35) to administer all properties and funds placed at the disposal of the University for specific purposes;

(36) to accept, on behalf of the University, endowments, bequests,

donations, grants and transfer of any movable and immovable property of the University made to it; and

(37) to delegate any other powers to the Vice-Chancellor, to a Committee from among its own members or to a Committee appointed in accordance with the statutes”

In view of the Section 23(5) of the Tamil Nadu Dr.Ambedkar Law University Act, only the University has power to take a decision regarding the sub-division of the subjects. The University has slipped from its responsibility without looking into any of the issues going on; that too when 186 posts of Assistant Professors for the law colleges being filled up.

ARGUMENTS OF THE LEARNED ADDITIONAL ADVOCATE

GENERAL:-

44. The Petitioner has filed the Writ Petition praying this Hon'ble Court to allow the above writ petition, directing the 1st respondent to issue fresh notification by providing reservation to the Scheduled Tribe candidate in the subject of Labour Law and Administrative Law and render justice.

45. TRB issued notification calling for application for the post of Assistant Professor(Law) in Government Law Colleges in Advertisement No.2/2018 dated 18.07.2018. The petitioner applied through on line for the post of Assistant Professor(Law) in Labour Law and Administrative Law.

46. Regarding the averment of the petitioner in para(1) of the submission, it is submitted that the Board issued notification calling for applications for the post of Assistant Professor(Law) / Assistant Professor(Pre-Law) as tabulated below:

S.No	Year of recruitment	Subject	Total vacancies notified
1	2010-2011	Lecturer(Senior Scale) Law & Lecturer Senior Scale(Pre-Law)	45
2	2014-2015	Lecturer(Senior Scale) Law & Lecturer Senior Scale(Pre-Law)	50
3	2017-2018	Assistant Professor and Assistant Professor(Pre-Law)	186
		Total	281

47. In the above recruitments, the roster points have not reached for Scheduled Tribe vacancies. Therefore, the Board as not selected any Scheduled Tribe candidates in the above recruitments.

48. Government issued G.O.Ms.No.55(P &A R) department dated 08.04.2010 introducing the 200 roster points for all further selection in Public services.

49. G.O.(Ms).No.34, Backward Classes, Most Backward Classes and Minorities Welfare Department, dated 2.5.2000, the Government issued orders

that the carry forward procedure available for SC, ST and MBC/DNC shall be extended to Backward Classes also in direct recruitment to the Posts in the Government of Tamil Nadu.(Copy enclosed)

50. Before the issue of G.O.(Ms).NO.55, Personnel and Administrative Reforms(S)Department, dated 8.4.2010 pertaining to the 200 point Roster, a notification dated 9.12.2006 was issued by the Teachers Recruitment Board for direct recruitment for 16 posts of Lecturer(Senior Scale) (Now re-designated as Assisant Professor). This notification was issued for Current Vacancies only.

51. In the above said recruitment, the following were the unfilled SC, MBC and BC vacancies.

S.No.	Subject	Turn Point	Vacancies
i.	Law of Contracts	MBC/DNC(W)	1

S.No.	Subject	Turn Point	Vacancies
ii.	Property Law	MBC/DNC(W)	1

S.No.	Subject	Turn Point	Vacancies
iii.	Crime and Torts	BC(G)	1
		SC(G)	1
		MBC/DNC(G)	1
		SC(W)	1
			4

Total Backlog vacancies Law = 6 posts

52. That apart from the above mentioned 6 Backlog vacancies, the

following SC Backlog Vacancies were furnished by the Tamil Nadu Public Service Commission since the selection prior to 2006 was done by the TNPSC.

(i) Law of Contracts - SC(G)-1

(ii) Property Law - SC(G)-1

(iii) Crime and Torts - SC(G)-1

(iv) Labour Law and
Administrative Law -SC(G)-1

(v) Economics -SC(G)-1

53. All the above mentioned 11 backlog vacancies were notified in the notification dated 30.3.2010 and Corrigendum dated 22.6.2011 issued by the Teachers Recruitment Board.

54. In the above said recruitment pursuant to the notification dated 30.3.2010 and Corrigendum dated 22.6.2011, the following were the unfilled SC, MBC and BC vacancies.

S.No.	Subject	Turn Point	Vacancies
i.	Law of Contracts	MBC/DNC(G)	1
		SC(G)	1
		SC(A)(W)	1
			3

S.No.	Subject	Turn Point	Vacancies
ii.	Property Law	MBC/DNC(G)	2
		SC(G)	1

		SC(A)(W)	1
		BC(G)	1
			5

S.No.	Subject	Turn Point	Vacancies
iii.	Crime and Torts	BC(G)	2
		SC(A)(W)	1
		MBC/DNC(G)	2
		SC(W)	1
			6

S.No.	Subject	Turn Point	Vacancies
iv.	Labour Law and Administrative Law	BC(G)	1
		MBC/DNC(G)	1
		SC(A)(W)	1
			3

S.No.	Subject	Turn Point	Vacancies
v.	Economics	SC(G)	1
		SC(A)(W)	1
		MBC/DNC(G)	1
			3

S.No.	Subject	Turn Point	Vacancies
vi.	English	SC(A)(W)	1
		MBC/DNC(G)	1
			2

S.No.	Subject	Turn Point	Vacancies
vii.	Sociology	SC(A)(W)	1
			1

S.No.	Subject	Turn Point	Vacancies
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viii.	History	SC(A)(W)	1
		MBC/DNC(G)	1
		BC(G)	1
			3

Total Backlog vacancies Law-17 + Pre-Law =26 posts

55. All the above mentioned 26 Backlog vacancies were notified in the notification dated 22.7.2014 issued by the Teachers Recruitment Board.

In the above said recruitment pursuant to the notification dated 22.7.2014, the following were the unfilled SC, MBC and BC vacancies.

S.No.	Subject	Turn Point	Vacancies
i.	Crime and Torts	MBC/DNC(W)	1
			1

S.No.	Subject	Turn Point	Vacancies
ii.	Labour Law and Administrative Law	SC(G)	1
			1

S.No.	Subject	Turn Point	Vacancies
iii.	Economics	SC(G)	2
		SC(A)(W)	1
		MBC/DNC(G)	1
			4

S.No.	Subject	Turn Point	Vacancies
iv.	English	SC(A)(W)	1
		MBC/DNC(G)	1
		BC(G)	1
		SC(G)	1
			4

S.No.	Subject	Turn Point	Vacancies
v.	Sociology	SC(A)(W)	1
		MBC/DNC(G)	1
		BC(G)	1
		SC(G)	1
			4

S.No.	Subject	Turn Point	Vacancies
vi.	History	SC(A)(W)	1
		MBC/DNC(G)	1
			2

Total Backlog vacancies Law-2 + Pre-Law – 14 = 16 posts

56. Since, there was no provision in the Tamil Nadu Government Servants(Conditions of Service)Act, 2016 to carry forward the BC Backlog vacancies, the above mentioned 2 BC(G) Backlog vacancies were not notified as Backlog vacancies in the next notification issued by the Teachers Recruitment Board on 18.7.2018. Apart from these 2 BC Backlog vacancies, the remaining 14 SC and MBC/DNC Backlog vacancies were notified as Backlog vacancies in the notification issued by the Teachers Recruitment Board on 18.7.2018.

57. Once backlog for SC General in Labour Law and Administrative Law, one backlog for MBC Women in Law of Contracts, one backlog vacancy for SC General in Law of Contracts, one backlog vacancy for MBC Women for property law and one backlog vacancy for BC General in Crime and Torts and one backlog vacancy for MBC General in Crime and Torts and one Backlog vacancy of SC

General for Crime and Torts and one backlog vacancy for SC Women in Crime and Torts were filled following due procedure of Law.

Constitutional and Statutory Violations:

a)	<p>Totally 8 backlog vacancies were allotted as above mentioned when as per G.O.Ms.No.55, 200 point roster has to be followed afresh and it is not known as to how the backlog vacancies have arisen that too without even mentioning the year of backlog vacancy.</p>	<p>Question raised by the petitioner:- After introduction of G.O.Ms.No.55 (PAR) Department dated 08.04.2011 the Board followed the above roster from 2010-2011 recruitment by starting the roster point from Sl.No.(1) only for Current Vacancies.</p> <p>In so far as "Backlog Vacancies" are concerned, they have to be necessarily carried forward as per the third provision to Rule 22(d) of the Tamil Nadu State and Subordinate Service Rules.</p>
(b)	<p>As per the 3rd proviso to Section 27(i) of the Act there cannot be any backlog vacancy for BC category and the backlog vacancy is only meant for SC, ST and MBC alone. The allotment of backlogs to Backward Castes is thus ultravires.</p>	<p>As per 3rd proviso to Section 27(i) of the Tamil Nadu Government Servants(Conditions of Service Act) 2016, Backlog vacancies can be carried forward only for SC, ST and MBC categories. However, this act was issued only on 15.09.2016.</p> <p>Prior to the Act, Government issued G.O.Ms.No.34 P & A R department dated 02.05.2010 where it is categorically stated that backlog vacancies in BC category also shall be carried forward along with the backlog vacancies of SC/ST/MBC etc.,</p> <p>The Board followed the above procedure till the recruitment 2014-2015. Subsequently after the issuance of Act, the Board revised the procedure and the Back Log vacancies reserved for MBC/SC/ST alone are carried forward to the subsequent recruitment.</p>

(c)	As per the same proviso, whenever there is a backlog vacancy, a separate 2 nd time notification shall be made for selection of candidates belonging to the respective categories by direct recruitment in the same recruitment year or as early as possible before the next recruitment / selection as against those vacancies. But that is not done.	Whenever the Board issues notification for a particular recruitment the backlog vacancies are indicated separately in the notification. The current vacancies are notified separately by indicating the Turn and Roster points are provided in the 3 rd Proviso to Rule 22(d) of the Tamil Nadu State and Subordinate Service Rules and 3 rd Proviso to Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.
(d)	Even in 2 nd attempt, if those candidates are not available then those vacancies have to be left unfilled and they have to be carried forward to the next recruitment treating them as the backlog vacancies along with the next year recruitment. The backlog vacancies have to be filled up first and then only the regular recruitment has to follow. But, each and every time only in fresh notification alone, the backlog is mentioned and recruitment is done.	This position is in conformity with the Hon'ble Supreme Court Judgment reported in (2011) 2 SCC 105. Backlog vacancies are carried forward to the respective community and the Backlog vacancies are filled first and the current vacancies are filled subsequently. Therefore, the averment of the petitioner that Backlog vacancies are not indicated in the notifications is incorrect.
(e)	Article 16(4-A) and 16(4-B) of the Constitution of India mandates carry forward and filling up of Backlog vacancies of SC and ST though not to MBC candidates.	As far as the reservation policy of Government provided in the 3 rd Proviso to Rule 22 (d) of the Tamil Nadu State and Subordinate Service Rules and 3 rd Proviso to Section 27(f) of the Tamil Nadu Government Servants(Conditions of Service)Act 2016 backlog vacancies are to be carried forwarded for MBC, SC / ST community.

58. Regarding the averment of the petitioner that the reservation policies of Government are classified as vertical reservation and Horizontal reservation, the reservation as per a communal roster are reserved under vertical reservation.

The categories 30% reservation for women 10% reservation for DW among 30% reservation for women and reservation for disabled are classified under Horizontal reservation.

59. In Horizontal reservation, the vacancies earmarked are fixed in the respective community in the vertical reservation. In the vertical reservation the vacancies reserved for one community cannot be interchanged and the Backlog vacancies if any should be carried forward in the same community.

60. Method of rotation and turns to be followed for Women are already prescribed in Rule 21(c) of the State and Subordinate Service Rules as also in Section 26(4) of the Tamil Nadu Government Servants(Conditions of Service)Act, 2016. The Board has to follow the order issued by Government in all recruitments.

61. Regarding the averment of the petitioner in para 7(c) that sub-division of subject into two or three and creation of a new branch in the Middle of the roster, it is submitted that the Board issued the Subject wise roster in the notification itself wherein the roster has been followed afresh. This system is followed in all recruitments. The Hon'ble Supreme Court in several occasions has held that subject wise roster has to be followed in so far as recruitments of Teaching Faculty in Universities are concerned. (1990) 4 SCC and (2004) 12 SCC

333 and also the Division Bench Judgment of Allahabad High Court in Vivekanand Tiwari Vs. Union of India.

62. The Board has scrupulously followed the Government Orders / Rules / Regulation framed by Government from time to time in all recruitments.

ARGUMENTS ADVANCED ON BEHALF OF THE TAMIL NADU

DR.AMBEDKAR LAW UNIVERSITY:-

63. It is contended that as far as the selection and recruitment in Government Law colleges are concerned, the Law University has no role to play.

64. It is contended that the powers of the Syndicate are stipulated in Section 23 and Section 23(Xiii) reads thus:-

“To supervise, and control the residence and regulate the discipline of the students of the University, and to make arrangements for promoting their health.”

65. Section 29 provides for Academic Senate. The powers and functions of the Academic Senate are spelt out in Section 30.

66. Chapter-VIII of the Act, speaks about of conditions of service and the same relates to faculties and other persons employed by the University and in respect of institutions maintained by the University.

67. In exercise of powers conferred under Section 65(4) transitory powers of a Vice Chancellor, the Statute has been drafted and the same is in force. The Statute applies only to the University and institution maintained by the University.

68. Chapter-IX of the Statute speaks about services of establishment of Tamil Nadu Dr. Ambedkar Law University and the process of recruitment and qualification. Under Chapter-VII of the Statute the Academic activities of the University viz., the faculties and departments are spelt out. The faculties are divided into 11 and 12 provides for department of distance education. Under each faculty departments (programme) are stipulated. The power to add or delete any faculty or the power to reconstitute faculties or add new faculty or delete any or rearrange or add any new department is given to this Syndicate.

69. On a harmonious construction of the provision of the Act and Statute, makes it abundant clear that the role of University over Government Law Colleges is only in respect of Academic control. The same cannot mean and interrupted to include that the University has role in the recruitment process.

70. The petitioner in the notes of submission, which is absent in the pleadings has contended that the Respondents have commenced the practice of dividing one subject into two or three subjects and thus the rule of reservation

and roaster, is disturbed and also in respect of qualification for selection at page 13 therein.

71. In page 18 therein, the petitioner contends that the University has power to take a decision regarding the sub-division of the subjects. In this regard, it is submitted that in the Minutes of meeting of PG Board of students held on 16.12.2006, it has been resolved to recommend the syndicate that the ML Branches shall be arranged in the following order and added accordingly.

- Branch I : Business Law**
- Branch II : Constitutional Law & Human Rights**
- Branch III : International Law & Organization**
- Branch IV : Intellectual Property Law**
- Branch V : Environmental Law & Legal Order**
- Branch VI : Criminal Law & Criminal Justice
Administration**
- Branch VII : सत्यमेव जयते Property Law**
- Branch VIII : Labour Law & Administrative Law**

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72. In furtherance of the said resolution, the Government colleges and institutions have treated these subjects in the manner stipulated therein. When the said manner in the resolution is compared to Chapter-VII of the Statue, it is seen that there is no infirmity as department under the faculty of constitution

Law; it's a department of Human Rights. Similarly, under faculty of International Law, apart from General International Law department of International Institution viz., Organizations, is a department. Similarly, faculty of Environmental Law, is to include Legal Order. Similarly, faculty of Criminal Law, which is a department of Criminal Law, includes Criminal Justice Administration likewise faculty of Labour Law is to be included the faculty of Labour Law department of Labour Law which comes under faculty of Business Law. There is no bifurcation of fresh subjects in page 108(Typed set filed by Petitioner in W.P.No.18841 of 2018) of the Notification as compared to the faculties. All these subjects existed in the past and not a creator for the notification.

Conclusions:-

73. Considering the arguments and the pleadings of the respective parties, this Court is of the opinion that as far as the Backlog vacancies are concerned, the arguments advanced by the learned Additional Advocate General on behalf of the Government is to be considered to the extent that prior to the issuance of the Government Servants(Conditions of Service) Act, 2016, the Backlog vacancies have to be necessarily carried forward as per the third proviso to Rule 22(d) of the Tamil Nadu State and Subordinate Service Rules. Thus, it is stated that in respect of the Backlog vacancies for B.C, the same was carried out in the Notifications of the year 2014.

74. As far as the Backlog vacancies for B.C category for the year 2010-2011 and 2014 are concerned, it is protected under the Proviso to Rule 22(d) of the Old Rules and there was no irregularity.

75. The next question to be addressed is that, whether the respondents have followed the Vertical and Horizontal Reservations as per the directions issued by the Hon'ble Supreme Court of India in the case of **Indira Swahney case reported in 1992 (3) Supp SCC 217**. The guiding principles are well enumerated in **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others, reported in 2007 8 SCC 785** [hereinafter referred to as "**Rajesh Kumar Daria**" case]. The guiding principles are well enumerated in "**Rajesh Kumar Daria**" case. The authorities competent have no option, but to follow the Vertical Reservation at the first instance and thereafter the Horizontal Reservation, so as to satisfy the entire Reservation Policy as a whole. Contrarily, simultaneous implementation of Vertical and Horizontal Reservations is impermissible. Once, the Vertical Reservation satisfies number of candidates to be appointed under the Horizontal Reservation, then no further reservation is to be provided over and above the quota provided under the Horizontal Reservation.

76. These principles are well enumerated by the Hon'ble Supreme Court of India in "**Rajesh Kumar Daria**" case in paragraphs 7, 8, 9 and 10 and the

same are extracted hereunder:-

"7. A provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in Anil Kumar Gupta v. State of U.P. [(1995) 5 SCC 173] thus: (SCC p. 185, para 18)

"The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas i.e. SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied—in case it is an overall horizontal reservation—no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.)"

(emphasis supplied)

8. We may also refer to two related aspects before considering the facts of this case. The first is about the description

of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be: "For SC: 30 posts, of which 9 posts are for women." We find that many a time this is wrongly described thus: "For SC: 21 posts for men and 9 posts for women, in all 30 posts." Obviously, there is, and there can be, no reservation category of "male" or "men".

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , *R.K. Sabharwal v. State of Punjab* [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] , *Union of India v. Virpal Singh Chauhan* [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC

813] and *Ritesh R. Sah v. Dr. Y.L. Yamul* [(1996) 3 SCC 253] .) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if

the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)

10. *In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 woman candidates, which was equal to the quota for "general category women". There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven woman candidates selected on their own merit (candidates at Sl. Nos. 2, 3, 4, 5, 9, 19, 21, 25, 31, 35 and 41 of the selection list) and another eleven (candidates at Sl. Nos. 54, 61, 62, 63, 66, 74, 75, 77, 78, 79 and 80 of the selection list) included under reservation quota for "general category women". This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.*

76(a). In the case of **Anil Kumar Gupta and others, Vs. State of U.P**

and others, reported in (1995) 5 SCC 173, the Hon'ble Supreme Court of India held as follows:-

"18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied — in case it is an overall horizontal reservation — no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.

19. In this connection, we must reiterate what this Court has said in Indra Sawhney [1992 Supp (3) SCC 217 : 1992 SCC (L&S)

Supp 1 : (1992) 22 ATC 385] . While holding that what may be called "horizontal reservation" can be provided under clause (1) of Article 16, the majority judgment administered the following caution in para 744:

"(B)ut at the same time, one thing is clear. It is in very exceptional situation — and not for all and sundry reasons — that any further reservations of whatever kind, should be provided under clause (1). In such cases, the State has to satisfy, if called upon, that making such a provision was necessary (in public interest) to redress the specific situation. The very presence of clause (4) should act as a damper upon the propensity to create further classes deserving special treatment. The reason for saying so is very simple. If reservations are made both under clause (4) as well as under clause (1), the vacancies available for free competition as well as reserved categories would be correspondingly whittled down and that is not a reasonable thing to do."

Though the said observations were made with reference to clauses (1) and (4) of Article 16, the same apply with equal force to clauses (1) and (4) of Article 15 as well. In this case, the reservation of fifteen per cent of seats for special categories was on very high side. As pointed out above, two categories out of them representing six per cent out of fifteen per cent are really reservations under Article 15(4), wrongly treated as reservations under Article 15(1). Even otherwise, the special reservation would be nine per cent. The respondents would be well advised to keep in mind the admonition administered by this Court and ensure that the special reservations (horizontal reservations) are kept at the minimum."

77. The above said 4 paragraphs are guiding principles for the purpose of implementation of Vertical Reservation and Horizontal Reservation and this apart, the respondents are bound to follow the Reservations as contemplated under Section 27 of the Act as well as Schedule V.

78. It is pertinent to note that the said Reservation is not followed on

account of the Divisions of subjects unilaterally done by the respondents without any consultation with the Law University and such a division of subjects now implemented as first time measure causes violation of the implementation of Rule of Reservation as the respondents have decided to follow the 200 point roster system afresh from point No.1.

79. Admittedly, 200 point roster system commenced from the year 2009 has not even ended with the point of 200. When the 200 point roster system is on the midway and if the authorities competent are allowed to break the implementation of 200 point roster system in the midway, then the opportunity for Scheduled Tribe communities are certainly denied and the same amounts to violation of the Constitutional provisions, more specifically, Article 16 and 16(4A).

80. For example, Earlier, Labour Law and Administrative Law was treated as one subject, so also, the International Law and Constitutional Law are treated as one subject. Without the consultation and approval of the Law University, the respondents have now decided to divide the two subjects into four subjects as International Law, Labour Law, Constitutional Law and Administrative Law. Number of vacancies are separately notified as far as the implementation of 200 point roster system is concerned, the respondents are now stating that they are implementing afresh from Point No.1. But the fact remains

that in respect of the two subjects, already, 200 point roster system commenced from the year 2009 onwards and the implementation of the Roster is in the midway. Thus, division of Subjects and implementing the 200 point roster system by abandoning the flow of implementation of 200 point roster system, then an opportunity to the Scheduled Tribe candidate as per the 200 point roster system in 50th place and 150th place would not come at all. As rightly said by the writ petitioner, even after 100 years, a Scheduled Tribe Candidate may not get an opportunity for appointment to the Post of Assistant Professor in Law. Such break of chain effected in implementation of 200 point roster system would cause prejudice to the interest of the Scheduled Tribe candidates as well as to the other community candidates on some occasions. The chain of reactions would result violation of the Constitutional mandates. The effect of division of subjects amounts to infringement of the rights of the reserved candidates, who all are waiting and longing to secure public employment under the Rule of Reservation.

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81. Division of subjects are inevitable. Subjects are to be divided on account of constant growth in the field of law. In an evolving field of law, it is necessary to effect the division of subjects. Tomorrow, the subjects of

International Law can be further divided to Private International Law and Public International Law, so also, the intellectual property Law can be divided into many subjects. All these academic developments are inevitable and necessarily is to be encouraged. This Court is of an opinion that nothing wrong in dividing the subjects. The academicians are free to effect division of subjects based on the developments in the field of Law. However, while affecting division of subjects, the authorities competent must ensure that the Rule of Reservation is not diluted and followed as per the statutes and in consonance with the Constitutional Principles, as far as the appointments are concerned.

82. Even, if the subjects are divided for the purpose of recruitment, these divided subjects can be unified, enabling the candidates to participate in the process of selection to the limited purpose of implementing the 200 point roster system. Once, the 200 point roster system ends, thereafter, the authorities may implement afresh by notifying the subjects independently.

83. For instance, if the subject of International Law and Constitutional Law is notified together, then Recruitments can be done by fitting the candidates by following the 200 point roster system and accordingly, selections can be done. Contrarily, if the respondents are allowed to adopt the 200 point roster system afresh from Point No.1, then whenever the subjects are divided they have to adopt the procedure of following the 200 point roster system afresh from Point

No.1, then the 50th roster to the Scheduled Tribe candidate would not come at all. The Scheduled Tribe candidate may not get an opportunity as per the 200 point roster system at all, unless 200 vacancies are notified in one recruitment. This will affect the roster system for the other communities also.

84. Under those circumstances, the very purpose and object of the implementation of 200 point roster system itself is defeated.

85. So also, the implementation of Vertical Reservation and Horizontal Reservation must be done strictly in accordance with the principles laid down by the Three Judges Bench of the Hon'ble Supreme Court of India in the case of **"Rajesh Kumar Daria"** case, the Hon'ble Supreme Court in clear terms held that "horizontal (special) reservation differs from vertical (social) reservation".

86. The Illustration provided also clarifies the method through which the Vertical and Horizontal Reservations are to be followed. It is clarified that "where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them, who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the

special reservation quota”.

87. When all these instances are very well settled by the Three Judges Bench of the Hon'ble Supreme Court of India, there is no reason for the respondents to engage any doubt in respect of the implementation of the Rule of Reservation, more specifically, Vertical and Horizontal Reservation as well as the 200 point roster system, which is to be followed as per Section 27 with reference to the Schedule V of the Act.

88. The main complaint raised by the writ petitioners are that the 8 Backlog vacancies notified in the earlier Recruitment and its details are not stated and the year in which the Backlog vacancies had arisen. However, it is answered by the learned Additional Advocate General that as far as the Backlog vacancies for B.C is concerned, they have adopted Rule 22(d) of the old Rules and till the new Act is enacted, the Backlog vacancies for B.C also were carried on. After implementation of the new Act of the year 2016, the respondents have not notified the Backlog vacancies for B.C including in the current Notification.

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89. The learned Senior counsel appearing on behalf of the writ petitioner disputed the said point by stating that the 8 Backlog vacancies were allotted in the Recruitment Notification of the year 2010-2011. The objection raised is that when the Government issued an order, implementing the 200 point roster

system afresh from the year 2009, the question of filling up of the Backlog vacancies in the Recruitment of the year 2010-2011 would not arise at all.

90. At the outset, the Backlog vacancies notified in the year 2010-2011 itself is invalid on account of the fact that the 200 point roster system afresh was implemented with effect from 08.04.2010. Thus, the Recruitment Notification issued after 08.04.2010 should not have any Backlog vacancy at all. Force in the argument is to be considered. When a new system of implementation of 200 point roster system has been introduced, then the question of Backlog vacancy does not arise at all as the existing vacancies are to be notified afresh and the 200 point roster system must be commenced from Point No.1. In the event of notifying the Backlog vacancies, the very purpose of implementation of the 200 point roster system afresh would be certainly defeated. If the Backlog vacancies are not filled up prior to the implementation of 200 point roster system with effect from 08.04.2010, then those vacancies are to be pooled together and the 200 point roster system is to be implemented afresh from Point No.1 as far as the Recruitment of the year 2010-2011 is concerned. Thus, the error crept in from the Recruitment of the year 2010-2011. The Rule of Reservation, more specifically, with reference to Section 27 of the Act and 200 point roster system is concerned, chain of actions are very important and if the chain is broken, then the Rule of Reservations is violated. The chain to be followed with reference to Schedule V is of paramount importance. Chain can never be broken during

midway and thereafter, there is no possibility of continuance in respect of the broken chain. The broken chain if at all is to be corrected, suitable measures are to be taken then and there, so as to fill up the Reserved post without committing any violations.

91. The learned Senior counsel for the writ petitioner further contended that whenever there is a backlog vacancy, a separate 2nd time notification shall be made for selection of candidates belonging to the respective categories by direct recruitment in the same recruitment year or as early as possible before the next recruitment/selection as against those vacancies. But, the said exercise had not been done by the respondents so far. Even in 2nd attempt, if those candidates are not available then those vacancies have to be left unfilled and they have to be carried forward to the next recruitment treating them as the backlog vacancies along with the next year recruitment. The backlog vacancies have to be filled up first and then only the regular recruitment has to follow. The said exercise had not been done scrupulously and with reference to the provisions of the statutes.

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92. However, it is stated by the learned Additional Advocate General that the Backlog vacancies are also filled up along with the regular vacancies. Thus, the respondents had complied with the 200 point roster system as per Schedule V.

93. Even as per the Notification impugned dated 18.07.2018, 186 vacancies are notified including 14 Backlog vacancies.

94. As far as 2013-2014 Notification dated 22.07.2014 is concerned, the subject of Labour Law and Administrative Law was treated as one subject, and so also, the Constitutional Law and International Law as one subject. Those two subjects, which were notified as combined subjects during the recruitment of the year 2014 is now sub-divided as 4 separate subjects namely International Law, Labour Law, Constitutional Law and Administrative Law.

95. In the State of Tamil Nadu, no such separate subject wise Master Degree courses are now conducted by the Government Law Colleges as well as by the Law University. Even now, the subject of International Law and Constitutional Law is available and also the Labour Law and Administrative Law is available. In the absence of such separate courses at Master Degree levels, it may not be possible for the candidates to satisfy the requirements in its fullest form. However, it is contended that the candidates, who studied the combined subjects of International Law and Constitutional Law as well as Labour Law and Administrative Law are at liberty to submit separate applications for both the posts. In respect of the impugned Notification, 10 Posts are notified for International Law, 12 Posts are notified for Labour Law, 15 Posts are notified for

Constitutional Law and 10 Posts are notified for Administrative Law. Two separate applications are to be submitted by a single candidate, if they wish to apply for both the subjects. Under these circumstances, an important question arises is that, whether the Rule of Reservation, more specifically, 200 point roster system can be continued with reference to Rule 27 r/w Schedule V as well as during the midway, when the 200 point roster system, which commenced during the year 2009 is in half way through.

96. Division of Subjects may be an administrative prerogative and an academic decision taken by the respondents. But, Rule of Reservation can never be allowed to be denied or diluted as the same is the Constitutional Mandate. The respondents now made a submission that they have commenced the 200 point roster system afresh right from Point No.1 in respect of these four subjects, which all are divided and prescribed as separate subjects. In the event of allowing such fresh implementation of 200 point roster system, then the same practice will continue, whenever there is a division of subjects in future and the Scheduled Tribe candidate placed in 50th Place in the 200 point roster system will never get an opportunity to secure public employment as per the Rule of Reservation, which is mandated under the Constitution.

97. It is relevant to consider the provisions of the Tamil Nadu Dr.Ambedkar Law University Act, governing the academic prescriptions of the

affiliated colleges. Admittedly, all the Government Law Colleges are the affiliated Colleges to the law University. Thus, they are governed by the Law University Act. Section 5(ii) of the Act states that "to provide for instructions or training in such branches of learning pertaining to law, as the University may deem fit". Section 5(vii) of the Act, which reads as under:-

"5(vii) to hold examinations and to confer degrees, titles, diplomas and other academic distinctions on persons who shall have pursued an approved course of study in the University, University college or any college affiliated or deemed to be affiliated to the University under this Act and shall have passed the prescribed examinations of the University subject to such conditions as the University may determine;"

98. The Powers of the Syndicate are enumerated in Section 23(5), states that "to establish departments of study in the University in such discipline of learning in various fields of law as it may deem fit". Section 23(13) states that "to prescribe the qualifications of teachers in the University departments and University colleges and the affiliated colleges in the State". Section 23(17) states that "to cause an inspection of all colleges, and other institutions affiliated or to be affiliated, to the University and to take such action as may be deemed necessary".

99. On a perusal of the provisions of the Act, it is clear that the affiliated colleges are bound to follow the academic prescriptions made by the University.

The unilateral changes made by the affiliated Law Colleges at their choice without prior approval of the Law University is certainly in violation of the provision of the Law University Act and the very spirit of the provisions. Such provisions are enacted in order to maintain the academic uniformity and consistency amongst the affiliated Law Colleges as well as in the University across the State. Providing power to the University in respect of the academic modifications has got a relevance. The University is empowered to conduct examinations and award degrees as per the University Grants Commission(UGC) Regulations. The University is bound to follow the University Grants Commission(UGC) Regulations in the matter of prescription of minimum educational qualifications and other academic standards. While doing so, the affiliated colleges to the University must also follow the University Academic standards and the procedures as contemplated. Thus, the unilateral modifications in academic programmes without the prior approval of the Law University is certainly impermissible and such divisions or modifications done without getting approval from the University can never be held as legal. Under these circumstances, in the event of recruiting persons based on the division of subjects, it is to be considered, whether such subjects are notified separately by the Law University or an approval has been obtained by the affiliated Government Law Colleges, from the University.

100. Admittedly, the learned counsel appearing on behalf of the Law

University made a submission that no such prior approval was granted in respect of the Division of Law Subjects notified in the impugned Notification. Thus, the Recruitment by dividing the academic subjects would create issues even with relevant to the approval to be obtained from the University.

101. As far as the other subjects are concerned, though there is no change in the Nomenclature or otherwise, this Court is of an opinion that the Vertical and Horizontal Reservations are to be implemented strictly in accordance with the guidelines issued by the Hon'ble Supreme Court of India in "**Rajesh Kumar Daria**" case. The guidelines are discussed in the aforementioned paragraphs and in respect of all other subjects, the respondents are bound to review the selection list with reference to the principles laid down by the three judges Bench of the Hon'ble Supreme Court of India in "**Rajesh Kumar Daria**" case by rearranging the selection list and by implementing the Vertical and Horizontal Reservations in accordance with the guidelines issued by the Apex Court.

102. In this view of the matter, this Court is of an undoubted opinion that in respect of International Law, Labour Law, Constitutional Law and Administrative Law, a fresh selection is to be conducted by strictly continuing the 200 point roster system as contemplated Section 27 of the Act r/w Schedule V. As far as the other subjects are concerned, the Selection List, which is already

prepared, has to be reviewed in accordance with the principles laid down by the Apex Court of India in "**Rajesh Kumar Daria**" case.

103. It is brought to the notice of this Court that unqualified Law Teachers / Professors are appointed and they are serving both in Tamil Nadu Dr.Ambedkar Law University and Government Law colleges across the State. However, no actions are taken by the competent authorities to weed out the illegalities and irregularities prevailing in respect of appointments, which all are very well within the knowledge of the competent authorities and thus, they are failing in their duties to implement the Statutes as well as the Constitution.

104. The University Grants Commission (UGC) as well as the Bar Council of India are the competent authorities and they are duty bound to conduct inspections in the Law Colleges and Law Universities in respect of these irregularities and illegalities and institute suitable actions under the provisions of the Statutes. Corruption, Favouritism and Nepotism are the prime sources for such illegal and irregular appointments, which all are to be construed as Anti-Constitutional elements and Anti-developmental forces. There are widespread allegations of Favouritism and Nepotism in providing appointments in Law Universities and Government Law Colleges. It is high time that the University Grants Commission(UGC) as well as the Bar Council of India conduct surprise inspections and enquiries to verify the educational qualifications and other

eligibility criteria of the Law Teachers across the State of Tamil Nadu with reference to the minimum educational qualifications prescribed by the University Grants Commission(UGC) as well as the relevant statutes namely Tamil Nadu Dr.Ambedkar Law University Act.

105. In respect of the list on hand, implementation of Reservation mandated under the Constitution failed on account of the erroneous implementations by the executives concerned. **It is disheartening to record that the University authorities including the Syndicate failed to notice that not even a single Scheduled Tribe candidate is appointed as Law Professor across the State of Tamil Nadu after independence. The attitudinal mindset explicitly portrays the insensitiveness on the part of the competent authorities. The Constitutional mandate of reaching the goal of social justice is undoubtedly lacking on account of the erroneous implementation of the Rule of Reservations.**

सत्यमेव जयते

106. The Law University in the State of Tamil Nadu is named as Dr.B.R.Ambedkar Law University, the Founder of Indian Constitution. But unfortunately, the University as well as the Government of Tamil Nadu have not appointed of one Scheduled Tribe candidate as Law Professor for the past 72 years.

107. The Government Law Colleges across the State of Tamil Nadu is administered by the Law Department of the Government of Tamil Nadu, more specifically, the Director of Legal Studies. The State authorities have improperly implemented the Rule of Reservation. The Executives of the Law Departments and Director of Legal Studies as well as the Hon'ble Minister have not noticed the crude fact that not even one Scheduled Tribe candidate is appointed in Government Law Colleges and Law University in free India. The Honourable Law Minister of the State of Tamil Nadu has to take serious note of this and initiate appropriate action at the Governmental level to ensure that the Rule of Reservation is followed by the authorities as per the statutes and the Constitutional mandates. Political parties across the Country claim that they are the Messiah for the poor, downtrodden and depressed class communities. Though 72 years lapsed after independence and several parties ruled the State of Tamil Nadu, not even one Scheduled Tribe candidate is appointed as Law Professor, despite the fact that the elected Government is interested in naming the Law University and other various institutions in the name of Dr.B.R.Ambedkar.

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108. The Government of Tamil Nadu is providing appointments in certain special cases. The decision at the Administrative level are taken in this regard, considering certain extraordinary circumstances, warranting actions. Similarly, while implementing the subject wise Reservations in appointments of Teaching

Faculty in Law Colleges, the Government is duty bound to review the 200 point Roster system and its workability, more specifically, during the implementation of 200 point Roster system. In other words, while following the subject wise appointments with reference to the Rule of Reservation, the workability of 200 point Roster system and the hardship, if any caused and the implications in the Rule of Reservations, more specifically, to the oppressed class people are to be taken note of by the competent authorities. A workable solution is highly warranted, so as to ensure that adequate representations are provided to the oppressed and depressed class citizen, who all are aspiring to secure public employment as per the Rule of Reservation with reference to the Statutes and the Constitution of India. Thus, a review in this regard is required to maintain adequate representations from various communities in the Teaching Faculty of Government Law Colleges and Law University in the State of Tamil Nadu.

109. Having taken note of the above discrepancies and erroneous implementation of 200 point Roster system as well as its workability, while appointing the Law Teachers on subject wise basis with reference to Section 27 r/w Schedule V of the Tamil Nadu Government Servants(Conditions of Service) Act 2016, this Court is inclined to pass the following orders:-

- (1) The Notification No.2/2018 dated 18.07.2018 stands quashed to the extent of the current vacancies notified for recruitment to the Posts of International Law – 10 vacancies, Labour

Law – 12 Vacancies, Constitutional Law – 15 vacancies, and Administrative Law – 10 Vacancies.

(2) In respect of the other subjects and the respective vacancies notified, the respondents are directed to review the selection list now under preparation pursuant to the Notification No.2/2018 dated 18.07.2018 and arrange the merit selection list strictly in consonance with the principles laid down by the Hon'ble Supreme Court of India in the case of ***Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others, reported in 2007 8 SCC 785***, while implementing the Vertical and Horizontal Reservations and also by following the 200 point roster system scrupulously as per Section 27 r/w Schedule V of the Tamil Nadu Government Servants(Conditions of Service) Act, 2016.

(3) While implementing the Rule of Reservation as directed above by reviewing the selection list, the appointments already made pursuant to the two recruitments of the years 2010-2011 and 2013-2014, need not be disturbed. However, the adjustments, if any are to be made, in order to comply with the Rule of Reservation, is to be done with reference to the current selection list now under preparation, or by issuing a fresh Recruitment Notification, whichever is feasible.

(4) The 4th respondent in W.P.No.20734 of 2018 / The

University Grants Commission is directed to appoint a Special Inspection Committee to identify the illegal and irregular appointments made in Tamil Nadu Dr.Ambedkar Law University and its affiliated colleges with reference to the University Grants Commission(UGC) Regulations as well as the Tamil Nadu Dr.Ambedkar Law University Act and accordingly, initiate appropriate actions against all such illegalities and irregularities in consonance with the relevant statutes. The Executives, who all are responsible and accountable are also to be prosecuted and disciplinary proceedings are to be initiated in accord with law.

(5) The Government of Tamil Nadu is directed to ensure proper implementation of Rule of Reservation in appointments by maintaining adequate representation of all the communities as per the Constitutional mandates and in order to reach social justice. In the event of any lapses, or negligence on the part of the executives, then the Government is directed to initiate appropriate prosecutions and disciplinary proceedings against all such executives, who all are responsible for erroneous or non-implementation of the Statutes and the Constitutional mandates.

(6) The 7th respondent in W.P.No.18841 of 2018 / The National Commission for Scheduled Castes is directed to scrutinize the allegations made by the writ petitioners and institute appropriate

actions in this regard with reference to the Statutes.

110. With these directions, both the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

10.04.2019

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Internet:Yes
Index:Yes
Speaking order

To

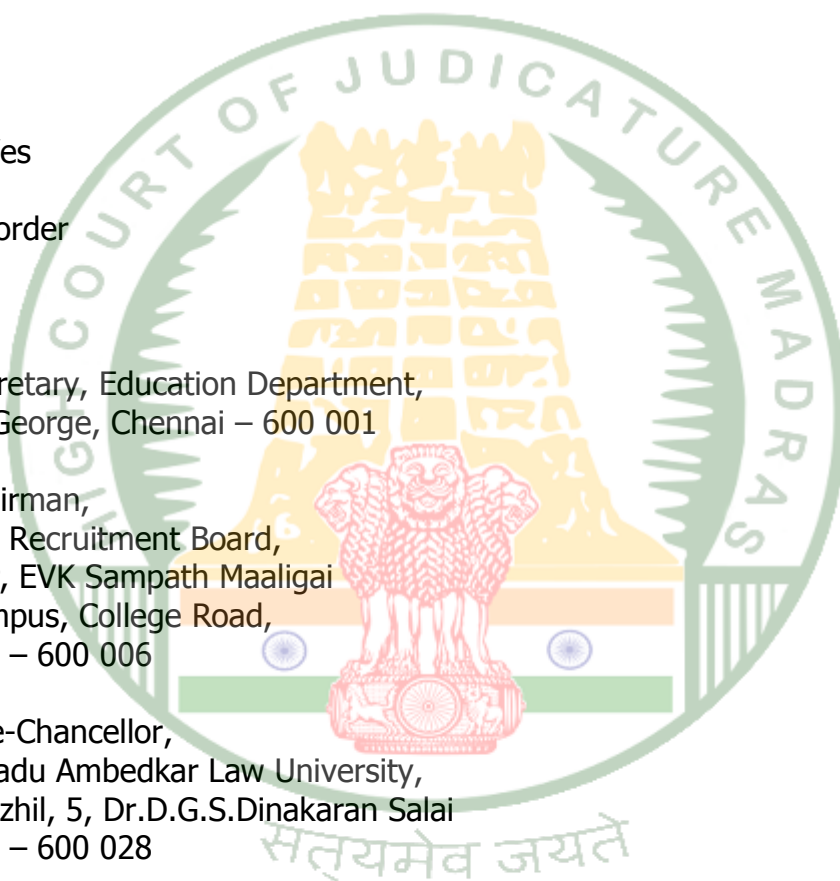
1.The Secretary, Education Department,
Fort St.George, Chennai – 600 001

2.The Chairman,
Teacher Recruitment Board,
4th Floor, EVK Sampath Maaligai
DPI Campus, College Road,
Chennai – 600 006

3.The Vice-Chancellor,
Tamil Nadu Ambedkar Law University,
Poompozhil, 5, Dr.D.G.S.Dinakaran Salai
Chennai – 600 028

4.The Chairperson,
University Grants Commission,
Bahadur Shah Zafar Marg
New Delhi – 110 002.

5.The Member Secretary,
Teachers Recruitment Board,
EVK Sampath Maaligai
DPI Complex, College Road
Chennai – 600 006



6.The Secretary to Government
Law Department
Secretariat,
Fort St.George,
Chennai – 600 009

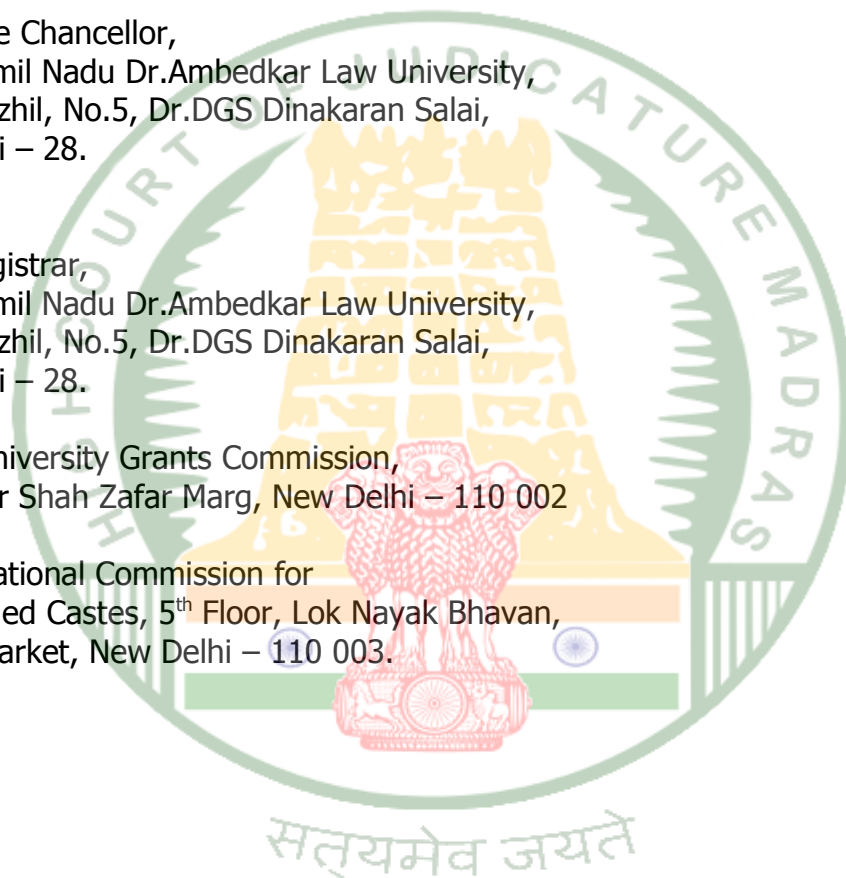
7.The Director of Legal Studies,
Kilpauk, Chennai – 600 010.

8.The Vice Chancellor,
The Tamil Nadu Dr.Ambedkar Law University,
Poonpozhil, No.5, Dr.DGS Dinakaran Salai,
Chennai – 28.

9.The Registrar,
The Tamil Nadu Dr.Ambedkar Law University,
Poonpozhil, No.5, Dr.DGS Dinakaran Salai,
Chennai – 28.

10.The University Grants Commission,
Bahadur Shah Zafar Marg, New Delhi – 110 002

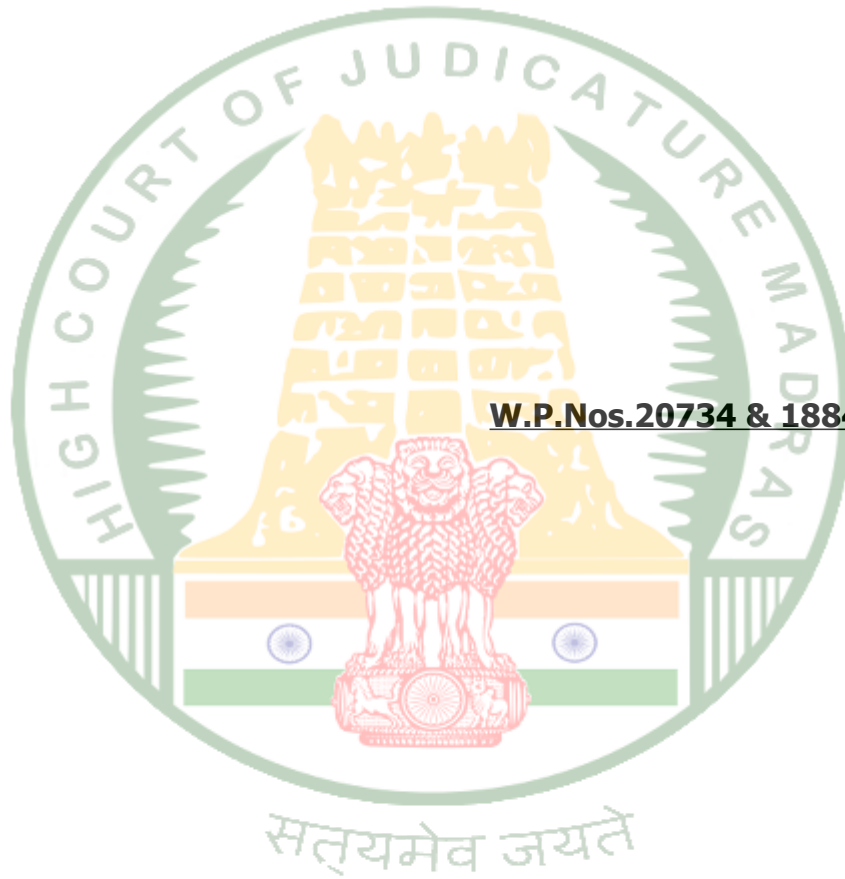
11.The National Commission for
Scheduled Castes, 5th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.



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S.M.SUBRAMANIAM, J.

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W.P.Nos.20734 & 18841 of 2018

10.04.2019

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