

W.P.Nos.20449, 20451 and 20452 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

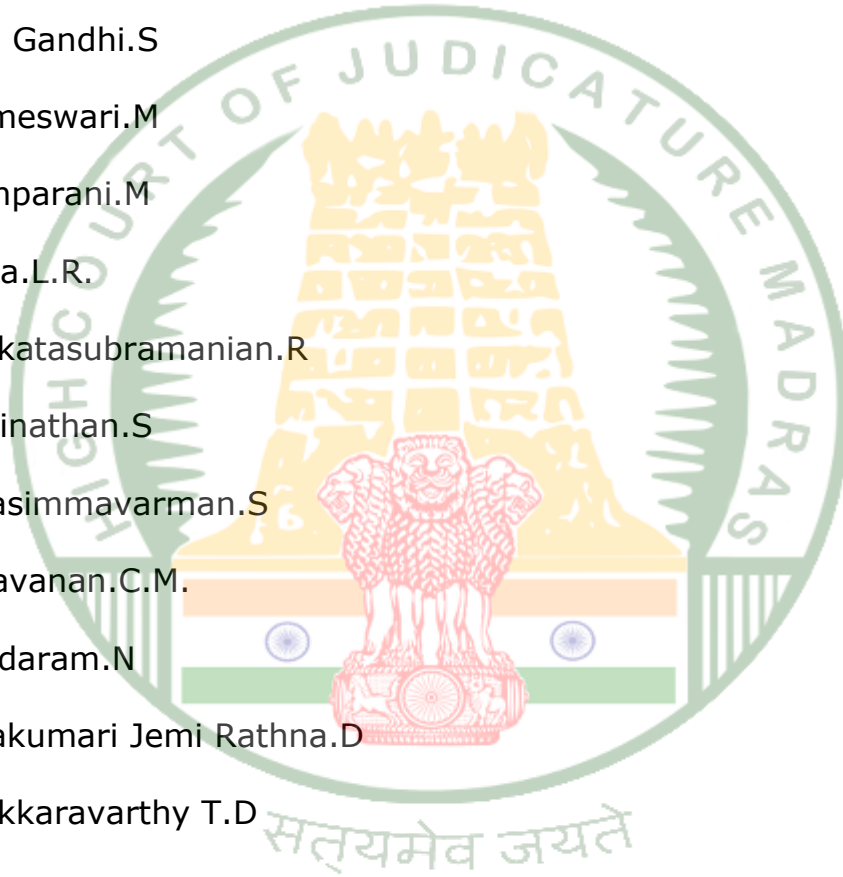
W.P.Nos.20449, 20451 and 20452 of 2015
and W.M.P.No.15866 of 2021

N.Vasudevan .. Petitioner in
WP 20449/2015
N.Senthil Murali .. Petitioner in
WP 20451/2015
V.M.Neesh .. Petitioner in
WP 20452/2015

Vs

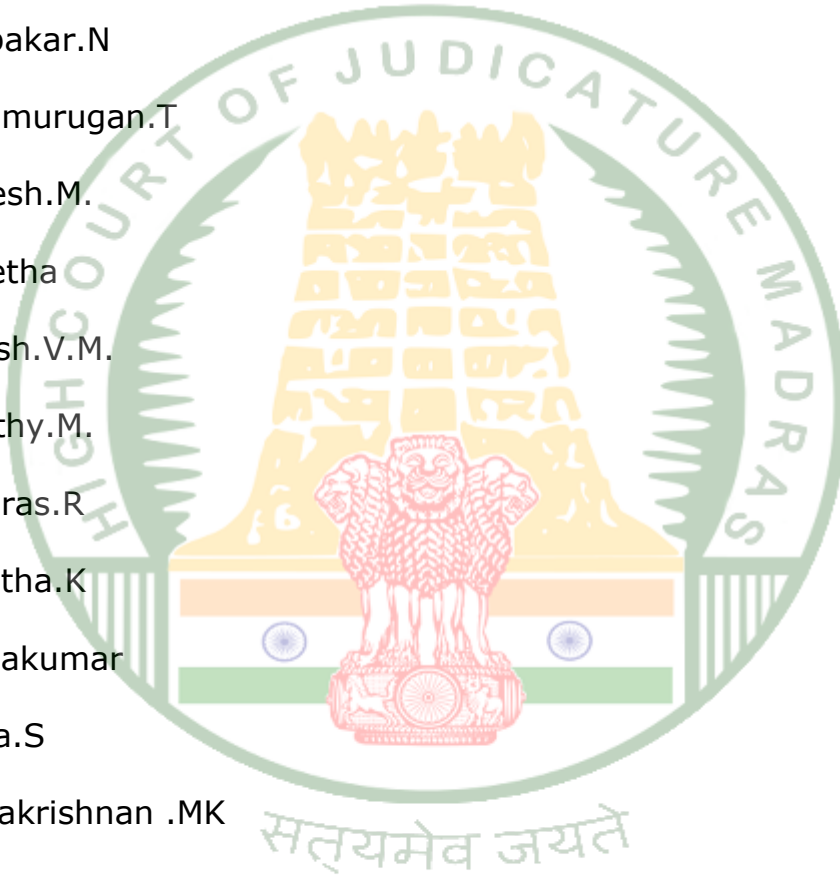
- 1 The Registrar General
High Court of Judicature at Madras
Chennai-600 104.
- 2 The Government of Tamil Nadu
Rep. by the Secretary to Law
Fort St. George, Chennai-600 009.
- 3 Tamilnadu Public Service Commission (TNPSC)
Rep. by its Chairman
Park Town, Chennai-600 003.

- 4 Prakash.S
- 5 Karthika.C
- 6 Vadivel.M
- 7 Mageswari Banu Rekha.S
- 8 Indra Gandhi.S
- 9 Parameswari.M
- 10 Pushparani.M
- 11 Leela.L.R.
- 12 Venkatasubramanian.R
- 13 Gopinathan.S
- 14 Rajasimmavarman.S
- 15 Saravanan.C.M.
- 16 Sundaram.N
- 17 Jeyakumari Jemi Rathna.D
- 18 Chakkaravarthy T.D
- 19 Eswaramurthi.P
- 20 Gajara.R.Jiji
- 21 Shanthi.P
- 22 Angalaeswari S.K.



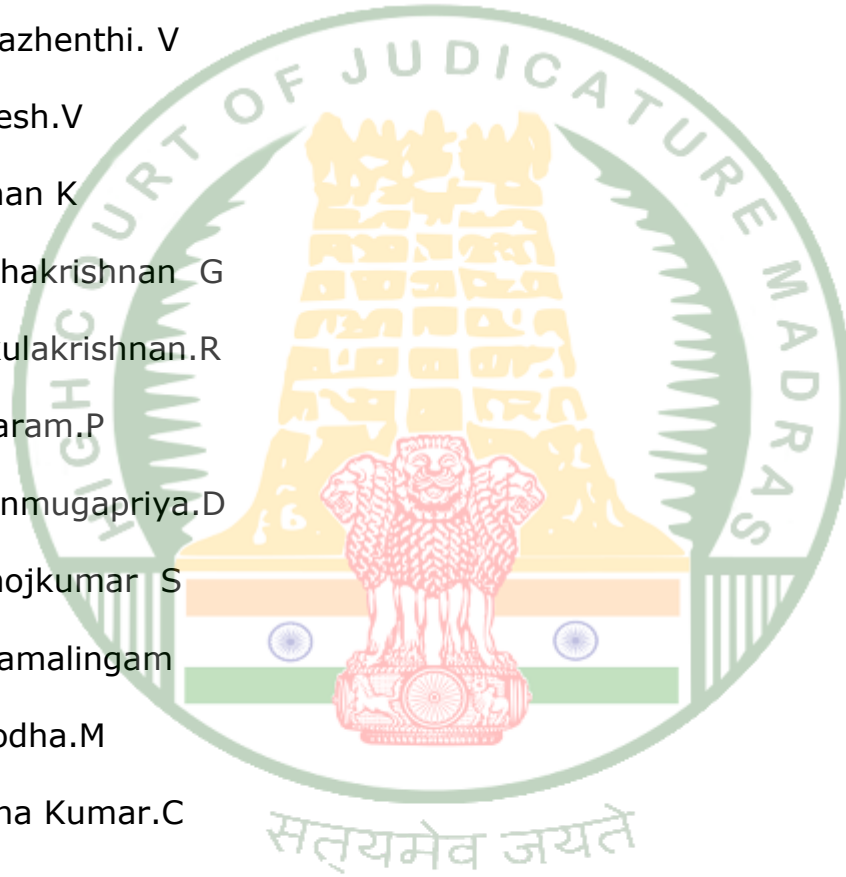
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- 23 Ganesan.P
- 24 Mohana.R
- 25 Manimekalai.M.S.
- 26 Sudhagar.G
- 27 Prabakar.N
- 28 Balamurugan.T
- 29 Suresh.M.
- 30 Breetha
- 31 Neesh.V.M.
- 32 Murthy.M.
- 33 Velaras.R
- 34 Kavitha.K
- 35 Selvakumar
- 36 Priya.S
- 37 Mayakrishnan .MK
- 38 Saravanan B.
- 39 Vijayalakshmi N
- 40 Nargis Karim.G
- 41 Rajalingom.C



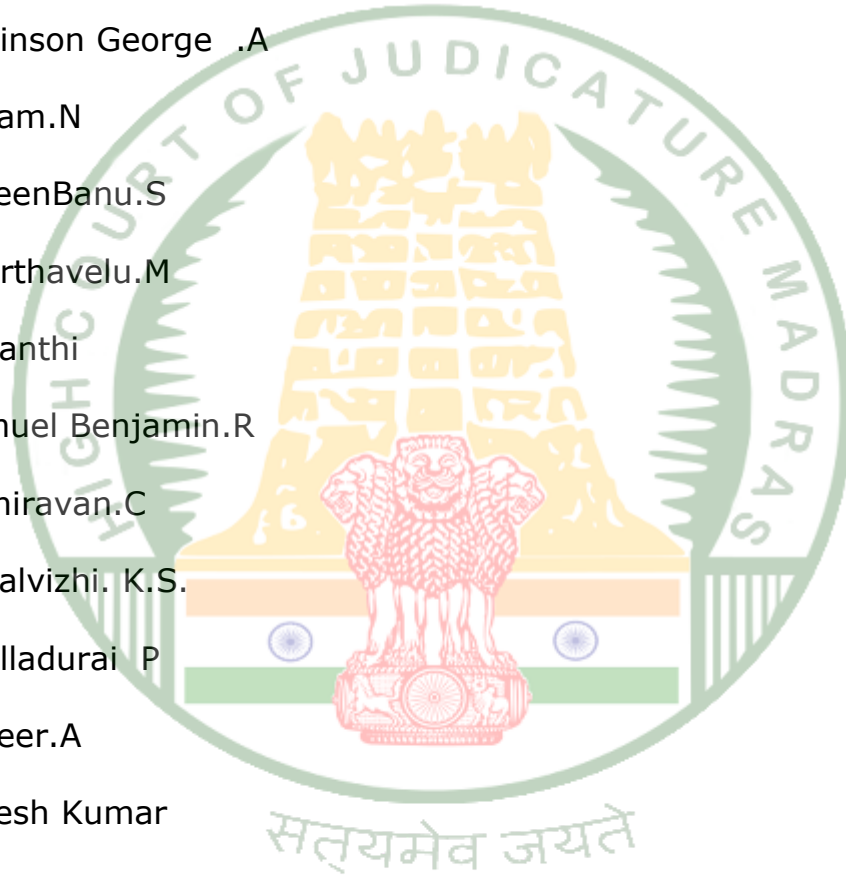
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- 42 Rajmohan .K
- 43 Meenachandra . N.S.
- 44 Christalbabitha
- 45 OmPrakash.J
- 46 Pugazhenthii. V
- 47 Suresh.V
- 48 Mohan K
- 49 Radhakrishnan G
- 50 Gokulakrishnan.R
- 51 Rajaram.P
- 52 Shanmugapriya.D
- 53 Manojkumar S
- 54 N.Ramalingam
- 55 Vinodha.M
- 56 Sorna Kumar.C
- 57 Mariappan.K.
- 58 Prabavathi.A
- 59 Savitiri P.C.
- 60 Vasantha Kumar.M



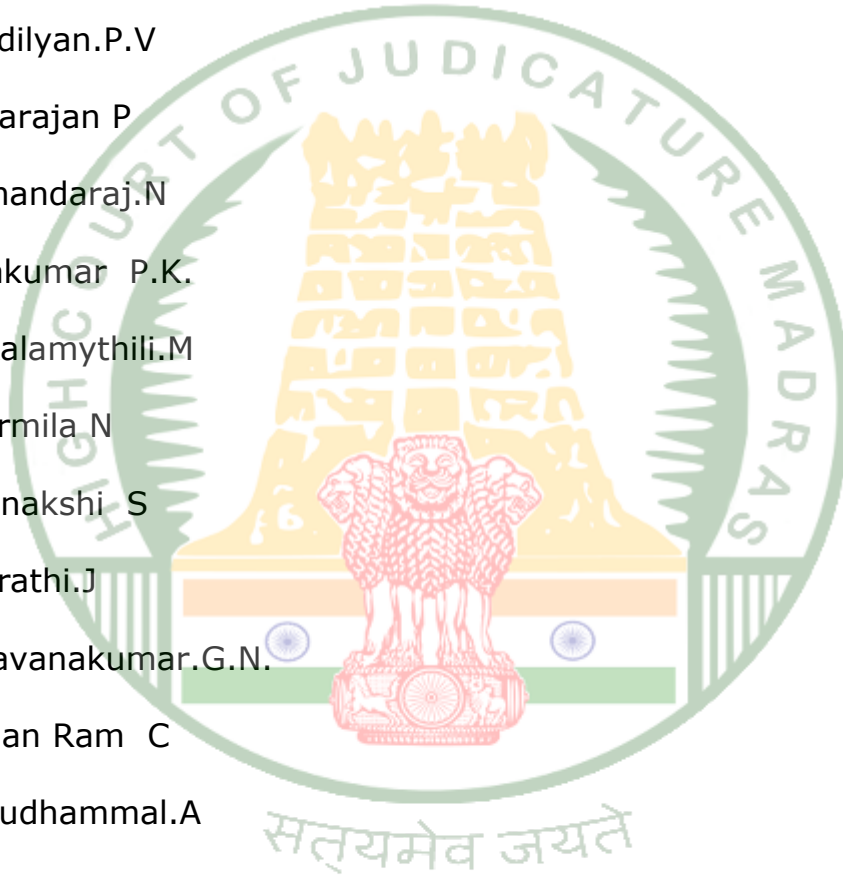
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- 61 Umamaheswari.G
- 62 Santhosh.B
- 63 Ramachandran.S
- 64 Pasumpon Shanmugiah .
- 65 Robinson George .A
- 66 Sriram.N
- 67 AsseenBanu.S
- 68 Amirthavelu.M
- 69 M.Sanathi
- 70 Samuel Benjamin.R
- 71 Kathiravan.C
- 72 Kayalvizhi. K.S.
- 73 Chelladurai P
- 74 Baseer.A
- 75 Suresh Kumar
- 76 Sasikala.E
- 77 Supraja P.R
- 78 Prabakaran.G
- 79 Nambirajan.M



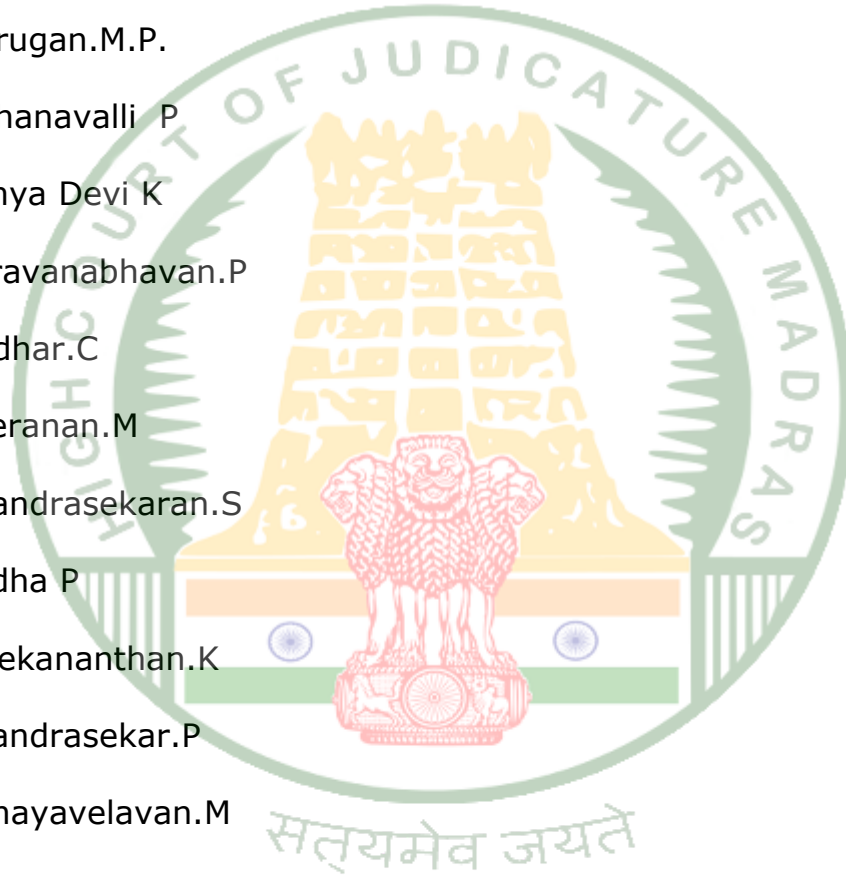
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- 80 Sundararaj V
- 81 Raja Mahesh S
- 82 Yaswanthraolngersol.E
- 83 Vijayakumar S
- 84 Sandilyan.P.V
- 85 Nagarajan P
- 86 Kothandaraj.N
- 87 Sivakumar P.K.
- 88 Mekalamythili.M
- 89 Sharmila N
- 90 Meenakshi S
- 91 Bharathi.J
- 92 Saravanakumar.G.N.
- 93 Mohan Ram C
- 94 Daoudhammal.A
- 95 Sankar G
- 96 Kanagaraj R
- 97 Jyothi.K
- 98 Ruskin Raj P.S.



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- 99 Vasheeth Kumar.P.V.
- 100 Muralitharakannan .K
- 101 Rani R
- 102 Balakrishnan A
- 103 Murugan.M.P.
- 104 Mohanavalli P
- 105 Kanya Devi K
- 106 Saravanabhavan.P
- 107 Sridhar.C
- 108 Veeranan.M
- 109 Chandrasekaran.S
- 110 Sudha P
- 111 Vivekananthan.K
- 112 Chandrasekar.P
- 113 Udhayavelavan.M
- 114 M.Sivasakthi
- 115 Jayavel G
- 116 Sathish.R
- 117 Srividhya V



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118 Balamurugan.M

119 Anusha M.K.

120 Lingam.K

121 Asha Kausalya Shanthini D

122 Jai Kumar V

123 Barsadbegam.A

124 Velusamy V.P.

125 Akiladevi M

126 Jayaprakash N.S

127 Gokul Murugan R

128 Deepa V

129 Deivam.C

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131 Rajakumar R.V.

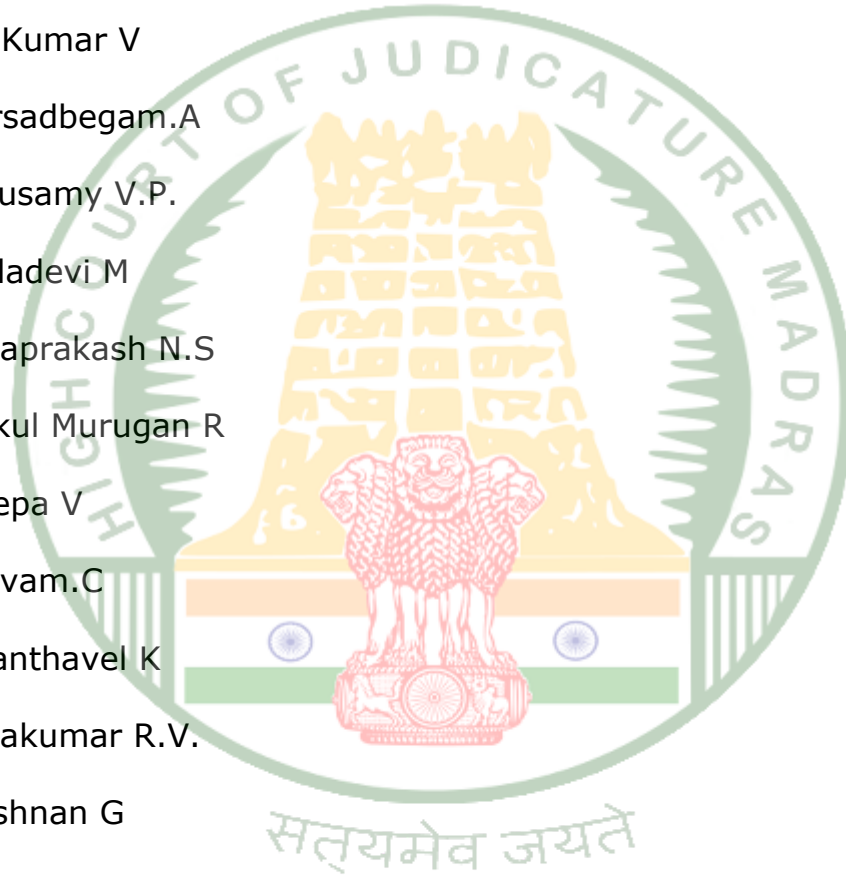
132 Krishnan G

133 Shanmugapriya.A

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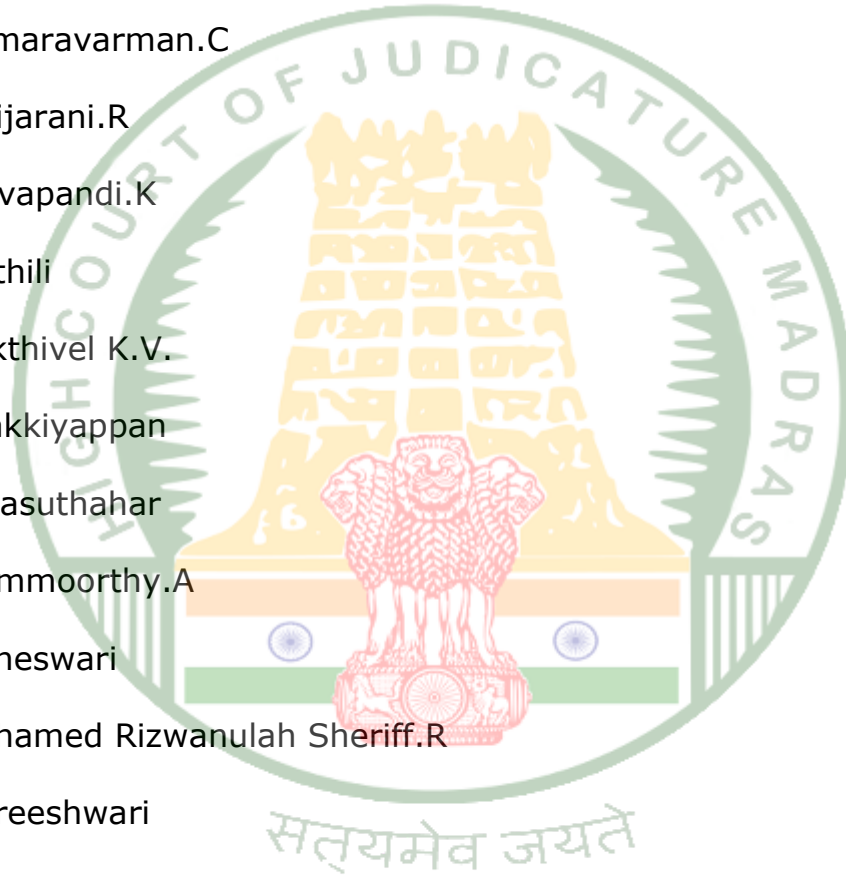
135 Ananthan K

136 Kalaivani.L



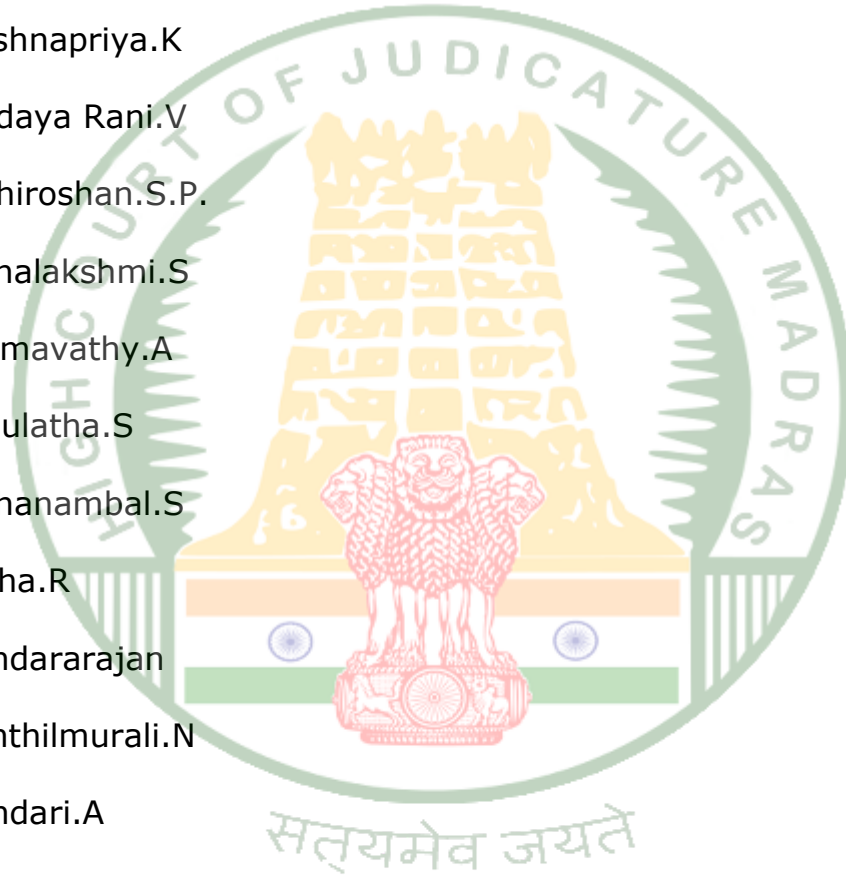
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- 137 Muralikrishna Anandan
- 138 Saridha.A
- 139 Paulpandian.K.S.
- 140 Nambirajan K
- 141 Kumaravarman.C
- 142 Girijarani.R
- 143 Selvapandi.K
- 144 Mythili
- 145 Sakthivel K.V.
- 146 Esakkiyappan
- 147 Jeyasuthahar
- 148 Mummoorthy.A
- 149 Maheswari
- 150 Mohamed Rizwanulah Sheriff.R
- 151 Mareeshwari
- 152 SelvanJesu Raja
- 153 Sivasakthivelkannan.K
- 154 Palanivel.K
- 155 Senthil Kumar Rajavel



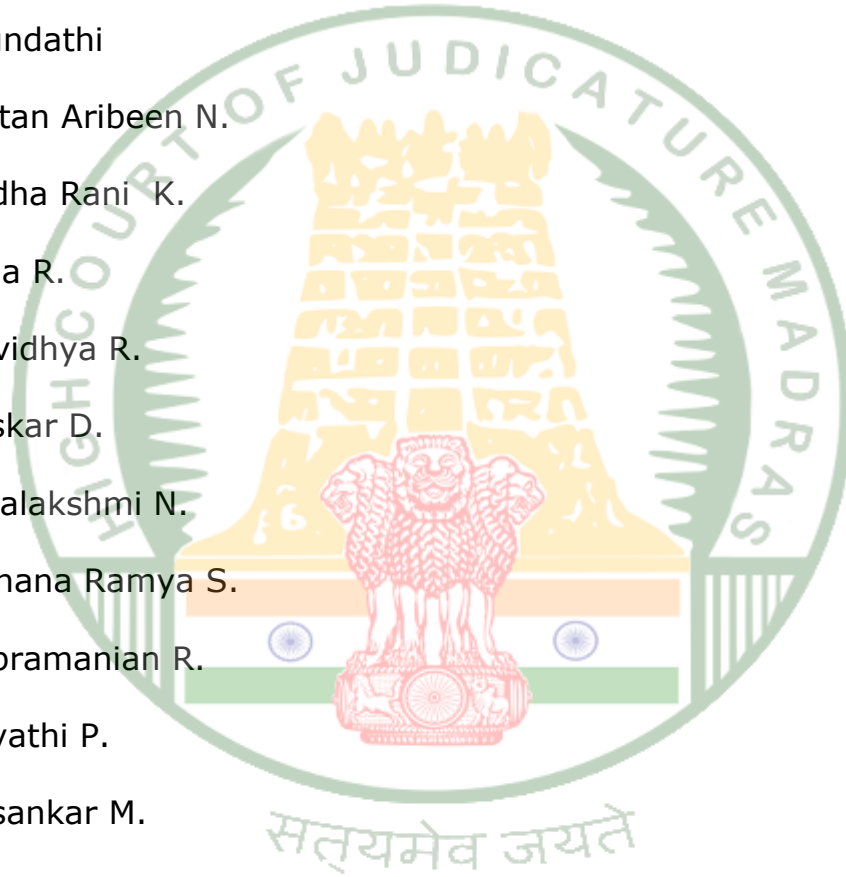
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- 156 Jagadeesan.R
157 Gowdhaman.P
158 Ramachandran.M
159 Mahendra Boopathi K.V.
160 Krishnapriya.K
161 Irudaya Rani.V
162 Rishiroshan.S.P.
163 Mahalakshmi.S
164 Premavathy.A
165 Indulatha.S
166 Mohanambal.S
167 Latha.R
168 Sundararajan
169 Senthilmurali.N
170 Sundari.A
171 Nazeer Ali.A.B.
172 Jayasudha.T.S.P.
173 Assan Mohammed.S.
174 Thirumani K.S.



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- 175 Inbakartick K.
176 Robert Kennedy Ramesh
177 Tamilselvi S.
178 Renukadevi K.
179 Arundathi
180 Sultan Aribeen N.
181 Sudha Rani K.
182 Uma R.
183 Srividhya R.
184 Baskar D.
185 Rajalakshmi N.
186 Mohana Ramya S.
187 Subramanian R.
188 Revathi P.
189 Jaisankar M.
190 Dhanam R.
191 Bismitha A.
192 Arun Sabapathi
193 S.Lakshmi



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194 Gowthaman C.R.

.. Respondents
in all WPs.

(RR4 to 194 are impleaded as per order
dated.19.12.2016, in MP.3/2015 in
WP.20449, 20451 & 20452/2015)

Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records of 1st respondent herein relating to Official Memorandum of ROC No.1986/2009-B2 dated 10.3.2009 and quash the same in so far as it erroneously fixes the seniority of the petitioners and consequently direct the 1st and 3rd respondent to fix the Seniority List of the candidates based on the rank assigned to each of the candidates by following the Rule 8 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules 2007 before proceeding with the promotion of the 2009-Batch of Civil Judges (Junior Division) to the post of Civil Judges (Senior Division).

For Petitioners : Mr.V.Prakash
in all WPs. Senior Counsel
for Mr.R.Harishankar

For implead petitioner : Mr.N.Subramaniyan
(in WMP.15866/2021)

For Respondents : Mr.V.Vijay Shankar
in all WPs. for 1st respondent

Mr.R.Shunmugasundaram
Advocate-General
assisted by
Ms.Shabnam Banu,
Counsel for State,
for 2nd respondent

W.P.Nos.20449, 20451 and 20452 of 2015

: Mr.R.Shunmugasundaram
Advocate-General
assisted by
Ms.C.N.G.Niraimathi
Standing Counsel
for 3rd respondent

: Mr.Habeeb Rahman
for respondents 72, 78 and
128

: Mr.M.R.Sivakumar
for respondents 19, 33, 41,
167

: Mr.J.Stalin
for 20th respondent

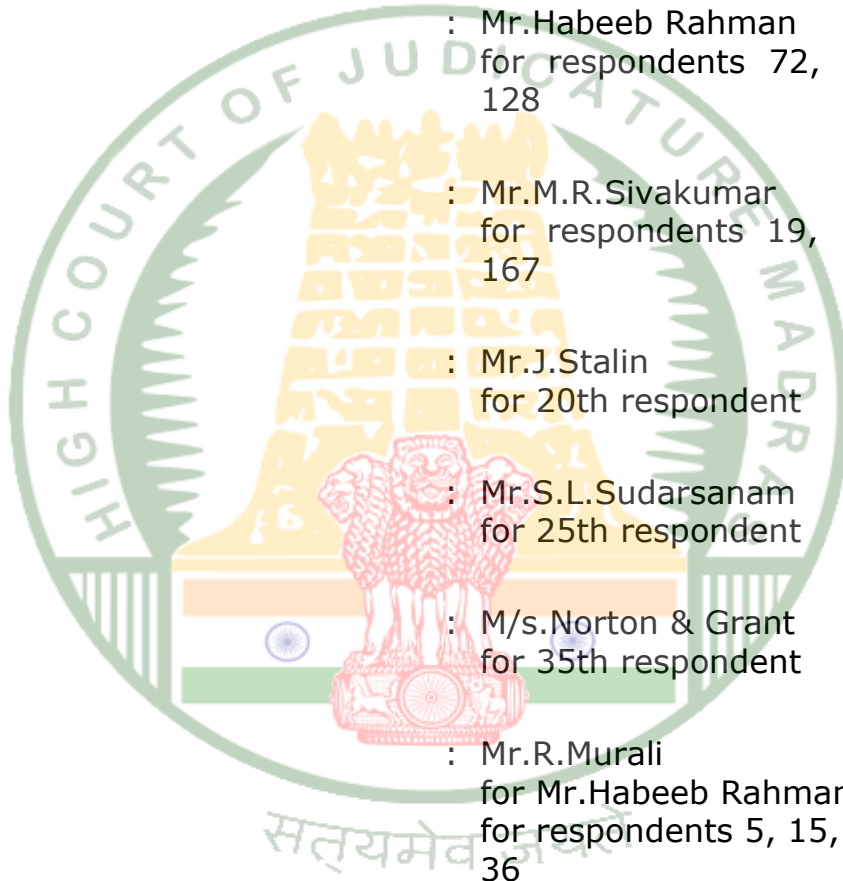
: Mr.S.L.Sudarsanam
for 25th respondent

: M/s.Norton & Grant
for 35th respondent

: Mr.R.Murali
for Mr.Habeeb Rahman
for respondents 5, 15, 24, 28,
36

: Mr.D.Srinivasaraghavan
for 42th respondent

: Mr.A.Tamilvanan
for 45th respondent



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W.P.Nos.20449, 20451 and 20452 of 2015

: Mr.K.Thilageswaran
for 57th respondent

: Mr.B.A.Prakash
for 58th respondent

: Mr.Thomas Aquinas
for 106th respondent

: Mr.C.R.Malavyannan
for 110th respondent

: Mr.A.V.Arun
for 118th respondent

: Mr.M.V.Vijaya Baskar
for 119th respondent

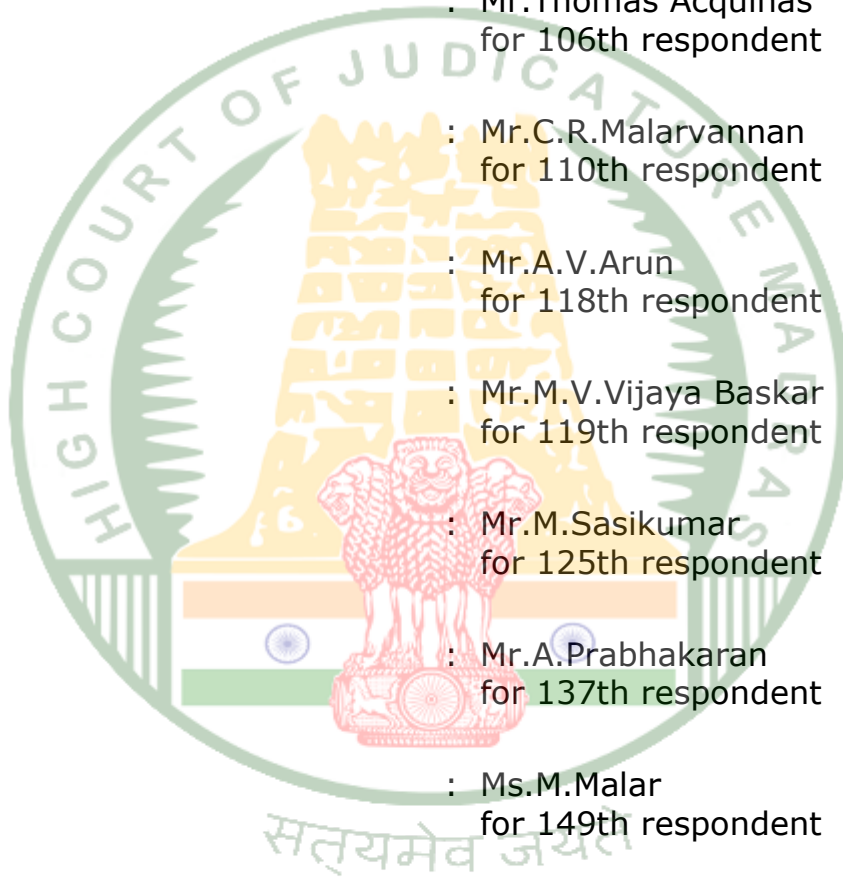
: Mr.M.Sasikumar
for 125th respondent

: Mr.A.Prabhakaran
for 137th respondent

: Ms.M.Malar
for 149th respondent

: Mr.S.Thankasivan
for 192th respondent

: Not ready in notice
for 169th respondent



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W.P.Nos.20449, 20451 and 20452 of 2015

: Tapal returned as under
suspension for 129th
respondent

Other respondents : No appearance

COMMON ORDER

(Order of the Court was made by *the Hon'ble Chief Justice*)

These matters pertain to the order of seniority at the entry level in the district judiciary.

2. In the pyramidal hierarchy that exists in the Indian judiciary, there is the district judiciary - uncharitably, at times, referred to as the subordinate judiciary - which is made up of three tiers, then there are the High Courts which exercise superintendence over the district judiciary and finally there is the Supreme Court which exercises the authority to declare the law of the land under Article 141 of the Constitution.

3. At the very bottom of pyramid, is the entry-level post of

Civil Judge (Junior Division). The recruitment to such post is conducted by the Public Service Commission in this State, as in almost all other States. There is a further stage of direct entry into the district judiciary which has come about pursuant to orders of the Supreme Court in the judgment reported at (2002) 4 SCC 247 (*All India Judges' Association vs. Union of India*). A competitive examination is now held for members of the Bar to be directly recruited at the level of the District Judge. Thus, there are two avenues to enter the district judiciary: one at the bottom of the heap as Civil Judge (Junior Division) and the other at the top of the three-tier district judiciary at the District Judge level. Based on seniority and merit, personnel from the District Judge category are elevated to the High Court and the present system of recruiting lawyers as District Judges directly makes it possible for young entrants by direct recruitment at the District Judge level to reach the High Court within ten to twelve years, subject to seniority and performance, and such judges stand a chance to have a much longer tenure in the High Court than previously possible for members of the district judiciary elevated to the High Court.

4. In respect of the recruitment at the lowest entry-level of Civil Judge (Junior Division), the rules of recruitment in Government service as prevalent in the State would apply. Thus, the reservation rule applies and there is a 200-point roster for the purpose. The Public Service Commission conducts the recruitment examination and forwards the list of successful candidates to the High Court for the High Court's acceptance before the appointments are made.

5. The issue that has arisen is whether the determination of inter se seniority at the Civil Judge (Junior Division) entry-level at the time of recruitment would be on the basis of the roster positions of the recruits or otherwise. So that there is no element of suspense, particularly since the legal issue has been conclusively answered in at least two previous judgments of this Court and wholesomely affirmed by the Supreme Court, it must be recognised that the roster positions have no nexus with the inter se seniority positions of all recruits appointed simultaneously.

6. This order of seniority which is decided at the time that the successful candidates are born into the cadre is of paramount importance as it influences the further progress of the candidate to the two upper tiers and even has an impact in their possible elevation to the High Court. The State and the Public Service Commission still maintain that the roster positions would govern the inter se seniority of the judicial officers recruited, notwithstanding the previous judgments of this Court reported at 2015 (1) MLJ 645 (*Swarnam J. Natarajan vs. High Court of Judicature at Madras*) and 2015 (4) MLJ 281 (*N.Santosh Kumar vs. The Tamil Nadu Public Service Commission*). Indeed, by the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the State attempted to undo the effect of the judgments in *Swarnam J. Natarajan* and *N.Santosh Kumar*, but the offending provisions were struck down by a judgment reported at 2019 (6) CTC 750 (*K.Raja vs. Additional Chief Secretary*).

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7. The petitions pertain to the recruitment conducted in 2009 and the order of seniority for Civil Judges (Junior Division) who

were recruited in that year. As a consequence, the seniority positions in the subsequent recruitments have also to be scrutinised. The subsequent recruitments took place in 2012, 2015 and 2018. Examinations were also conducted in 2020, but the successful candidates have not yet been appointed.

8. As to the judges recruited to the relevant posts prior to 2009, there is no challenge. As such, the matters prior to the recruitment of 2009 need not be considered and it may only be observed that the positions as to promotion made in respect of such judges may not be disturbed as a consequence of the present judgment.

9. The fundamental rule when applying the reservation policy and following any form of roster system is that, if a reserved category candidate obtains such marks as would entitle such reserved category candidate to obtain a general category seat, such reserved category candidate jumps out of the reserved category and is given the seat in the relevant roster position earmarked for a

general category candidate as a deemed general category candidate because, on merit, such candidate would have made the cut even without any reservation being in vogue. It is this rule that allows the meritorious reserved category candidate ("MRC", in short) to jump out of his category and be placed in the appropriate general category seat on the roster, that, somewhat paradoxically, is one of the principal reasons why the roster positions cannot be applied to ascertain the positions as to seniority. It is possible that in a 10-point roster, the second, fourth and eighth positions are earmarked for general category candidates; but a reserved category candidate obtains marks which are better than the third-placed general category candidate. In that case, such MRC will take up the eighth slot in the 10-point roster, though as the first in the reserved category he may otherwise have been entitled to obtain the first slot in the roster. Thus, when merit is given recognition by treating an MRC to be entitled to a general category seat, the position that may have been occupied by the MRC in the roster is lost to him and he occupies a lower slot on the roster. In such a scenario, if the roster system is taken to be the order of seniority among the

recruited candidates, it would result in an MRC being penalised for his merit.

10. It is in such milieu that the Supreme Court judgment reported at 2003 (5) SCC 604 (*Bimlesh Tanwar vs. State of Haryana*) must be noticed, as such judgment overruled the law previously declared by the Supreme Court in the case reported at (1995) 5 SCC 625 (*P.S.Ghalaut vs. State of Haryana*). Paragraph 40 of the report in *Bimlesh Tanwar* is of relevance in the present context:

"40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of a class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in

P.S. Ghalaut does not lay down a good law."

11. In the light of the contrary argument presented by the State and the Public Service Commission here, paragraph 43 of the judgment in *Bimlesh Tanwar* is also significant, as is paragraph 54 thereof, for the purpose of the order proposed to be passed herein:

"43. The said decision cannot be said to have any application whatsoever in determining inter se seniority as regards vacancies required to be filled up in the years 1989-91. Reliance by Dr Chauhan on the decision of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* [(1990) 2 SCC 715] is equally misplaced."

"54. Furthermore, it is now well settled that a settled seniority position should not be unsettled. The respondents had already been posted to the post of Additional District Judge. As would appear from the report of the Sub-Committee that the seniority list was published in the year 1992. Representations were, however, made only in the year 1997 which was rejected by the High Court on 22-8-1997. The writ petition was filed in March 1998 which was

dismissed by reason of the impugned judgment dated 18-8-1999."

12. The word "decision" at paragraph 43 of the judgment in *Bimlesh Tanwar* refers to the *All India Judges' Association* case of 2002, alluded to earlier.

13. In course of the present proceedings, an order was passed on July 8, 2021 constituting a committee, comprising Mr.V.Prakash, Senior Advocate and Advocates Mr.V.Vijay Shankar and Ms.C.N.G.Niraimathi, to go through the lists after obtaining the results of the candidates who had been appointed pursuant to the recruitment examinations since 2003 and indicate the appropriate inter se seniority position in respect of each lot of simultaneous appointments. However, since the seniority list pertaining to the 2003 recruitments has not been challenged, such part of the exercise is no longer relevant.

14. In the earlier part of the order dated July 8, 2021, the

placement of candidates as per the roster and the roster form of selection were discussed. However, in the penultimate paragraph of the order of July 8, 2021, the committee was required to determine the position of seniority "in accordance with law as recognised in the initial part of this order." To the extent that such direction may have implied that the roster would have any impact on the seniority position, the order is clearly and unambiguously erroneous. Thankfully, the committee tasked with the work of determining the seniority position, at least the majority members thereof, proceeded on the basis of the law that has been declared by this Court and approved by the Supreme Court for determining the seniority list. Ms.Niraimathi, who represents the Public Service Commission along with learned Advocate-General, submitted a dissenting note. However, such dissenting note appears to require promotion based on the judgment in *P.S.Ghalaut* which has been overruled in *Bimlesh Tanwar* and noticed to be so in an order of January 22, 2016 passed on the special leave petition arising from the judgment in *N.Santosh Kumar*.

15. The legal position has been set out at paragraphs 62 to 66 of the judgment in *Swarnam J. Natarajan*. In *N.Santosh Kumar*, this Court went on to distinguish between the roster and the rule of reservation on the one hand, and the seniority list on the other, in the most articulate detail at paragraph 71 of the report where it was observed that: "The Rule of Reservation and the 200 point roster are not to be taken as one and the same. The Rule of Reservation is the theoretical expression of the policy of the Government. The 200 point roster is the mathematical exposition of the manner in which the Rule of Reservation has to be worked out and implemented..."

16. There is a reason for prescribing a roster. In the complex culture of reservation now prevalent, reservation on percentage basis is assigned to different reserved categories. If the reservation is based on empirical studies, the commensurate percentage of reservation for a particular category may even result in the quantum of reservation being expressed in fractions, with or without integers. At the same time, it is not necessary that the number of vacancies would be so many on each occasion so as to

have room for all categories of reserved classes to be accommodated to the fullest extent of the quantum of reservation.

17. In its simplest form there may be a rule of reservation providing 50 per cent reservation for a certain class; or in another case there may be 33-1/3 per cent reservation for one category and a further 33-1/3 per cent reservation for a second group. In such cases, the unreserved category would occupy the balance 50 per cent in the first case and the balance 33-1/3 per cent in the other case. Even though specific rosters may not be prescribed for such simple situations, the principle behind the roster system has necessarily to be followed as the number of vacancies every time may not be multiplies of two or three, respectively, to satisfy the rule of reservation in every recruitment process. Thus, in the first case when there is a recruitment for filling up only one vacancy, the next recruitment, again of a single vacancy, should be such that both the reserved category and the unreserved category are represented in appropriate measure as per the rule of reservation.

18. When the ratio of reservation is more complex, the roster has to be longer to ensure that all fractions in the rule of reservation are integrated as integers in the roster. At the end of the day, however, the roster does no more than to implement the rule of reservation. In contemporary jargon, the roster may be seen to only be the template for effectuating the rule of reservation in a particular post; no more, no less.

19. The roster system is continuous, in the sense that if seven vacancies are filled up now, and the next lot of vacancies may be nine and the third lot of vacancies may be 22, the categories to which these candidates would belong would be decided according to the slots as per the roster. Thus, in respect of the recruitment for the first seven candidates, the positions on the roster may be such that more than 50 per cent of the new appointees could be from the most backward classes though the overall percentage of reservation for the most backward classes may be less than 50 per cent. The idea of the roster system is to ensure that the exact percentage of reservation is worked out at the end of 100 points or 200 points or

40 points, whatever number of points may be prescribed by the roster. The roster is repeatedly applied, such that in the 200-point case the 201st position is the same as the first, the 250th position is the same as the 50th and the 400th position goes to a candidate belonging to the same category as the 200th.

20. Both *Bimlesh Tanwar* and *N.Santosh Kumar* instruct that the roster system is only for the purpose of ensuring that the quantum of reservation is reflected in the recruitment process; it has nothing to do with the inter se seniority, among those recruited. *N.Santosh Kumar* indicates the steps to be taken for recruitment based on the roster system. Paragraph 72 of such report covers the entire gamut. The judgment then proceeds to refer to Rule 35(a) of the Tamil Nadu State and Subordinate Services Rules, 1955. It may be profitable to notice such rule:

“35 (a) The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil

Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.”

21. Rule 35(a) of the said Rules of 1955, in its material part and as is relevant for the present discussion, may be read as follows:

“The seniority of a person in a ... grade shall ... be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies.”

22. When it is so obviously apparent that an MRC would suffer if the order of the roster is deemed also to be the order of seniority, despite the fact that such MRC would have qualified to obtain an appointment even if no rule of reservation was in vogue, clearly, the rule of reservation would not apply, within the meaning of the

expression “where it applies” as contained in the provision. Not only is it theoretically possible but experience also shows that it is often the case that the highest placed MRC obtains such marks as would entitle him to the last slot in the general category under the roster system. If then, the last slot on the prescribed roster – as in the 200-point roster relevant for the present purpose – is earmarked for a general category candidate, where the MRC is fitted as per his marks, and the order of placement of names as per the roster also deemed to be the seniority list, the relevant MRC would be ranked last among the 200 candidates despite such candidate being entitled to a higher slot in the roster, if he were not permitted to jump from the reserved category to the general category on the basis of the marks obtained by him.

23. That does not mean, however, that it is such rule of permitting an MRC to jump from the reserved category to the general category which must be dispensed with. Such rule has to be in place since it is evident that the relevant MRC would have qualified for the appointment even if there were no rule of

reservation. The principle behind such rule is to recognise the merit of the candidate and to treat an MRC as a general category candidate and leave the slot that he would otherwise have occupied in his reserved category to another socially backward candidate of the same class. The very ethos of social justice founded on the principle of equal availability of opportunities justifies the rule that an MRC has to jump from his category to the general category.

24 . *N.Santosh Kumar* noticed an argument to the effect that since the provision pertaining to seniority makes such rule applicable, subject to the rule of reservation, the rule of reservation as embodied in the roster system would be the order of merit or seniority and there could be no other seniority list outside the roster. Such contention was expressly repelled and, indeed, this was affirmed by the Supreme Court in the order of January 22, 2016:

"The fundamental principle which has been applied by the Division Bench in the cases on hand relates to the question as to what should be the basis

for drawing a seniority list. In that context, the Division Bench has noted that at the time when the service Commission drew the list in 2000 the same was in tune with the judgment of this Court in *P.S. Ghalaut v. State of Haryana*, reported in (1995) 5 SCC 625. The Court also found that the said list which was approved by the State Government did not achieve the finality and that ultimately when the seniority list came to be issued on 29.02.2004, by which time the judgment of this Court in *Bimlesh Tanwar v. State of Haryana*, reported in ((2003) 5 SCC 604) had come into effect which reversed the judgment in *Ghalaut* (supra). The Division Bench, therefore, held that there was no delay in the challenge made to the seniority list. After the emergence of the judgment in *Bimlesh Tanwar* (Supra), the fundamental principle relating to drawal of seniority list was that it should be based on merit list of selection and that the list drawn based on roster point can have no application for the purpose of seniority list.

"As the said fundamental principle was applied by the High Court in passing the impugned judgment, we do

not find any merit in these special leave petitions.
The special leave petitions are dismissed."

25. Though it may strictly not be relevant in the present context, but the judgment in *K.Raja* must also be referred to since, as in that case, the State again endeavours to take two steps back and resurrect the position prevailing prior to the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 coming into effect. In *K.Raja*, this court had frowned upon several key provisions introduced by the State in enacting the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. By such legislation, the State attempted to ensure a roster-based seniority and relied on Article 16(4A) of the Constitution as the source of the legislative authority in such regard.

26. In *K.Raja*, this Court held that the 2016 enactment amounted to the obliteration of a judgment without seeking to cure the previous defect in law that was noticed in the judgment. Upon *K.Raja* setting aside the offending provisions of the Act of 2016,

particularly Sections 1(2), 40 and 70 thereof, the judgment was carried by way of a special leave petition which was dismissed on July 6, 2020. The State speaks of a review petition that had been filed, but the same has also been dismissed on March 26, 2021.

27. The legal effect of the judgments rendered in *Swarnam J. Natarajan* and *K. Santosh Kumar* is that the roster positions do not determine the seniority of the appointees who gain simultaneous appointments; that is to say, those who are appointed collectively on the same date or are deemed to be appointed on the same date, irrespective of when they join their posts. In a sense, such judgments lay down the proposition that the law that was prevalent in this State till the time that the judgments were rendered did not disturb the ordinary rule pertaining to the preparation of the seniority list, whether by virtue of the rule of reservation or as the consequence of any roster being prescribed to implement the rule of reservation.

28. That Article 16(4) of the Constitution empowers a State to

make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services of the State, is unquestionable. It is equally open to a State to make any provision for reservation in matters of promotion, with consequential seniority to any class of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State, in view of Article 16(4A) of the Constitution. However, even on a combined reading of both such provisions of the Constitution, there does not appear to be any valid rule in operation now – nor was there any when the *Swarnam J. Natarajan* and *N. Santosh Kumar* judgments were pronounced – to provide for the order of the names as per the prescribed roster to also be the seniority list. Though it may not be necessary to delve on the hypothetical, even if there were to be a law in such regard, the same would fall foul of Article 14 of the Constitution on the ground of unreasonableness and, inter alia, the prejudice suffered by the MRC as a consequence thereof.

29. When a declaration as to a position in law is made by a court, the material facts that go into the constitution of such position may be altered by the legislation. For instance, a legal provision may be judicially interpreted to not apply as an embargo in certain cases. In such a situation, if it is within the legislative competence of the relevant legislature, an amendment or a law may be brought in to create an express embargo; and, the earlier judicial pronouncement would no longer operate in the changed scenario. However, a law cannot be enacted to validate any illegality that has been judicially determined to be an illegality; or worse, continue the illegality.

30. The position is somewhat different from where a provision of law is found constitutionally invalid by a judicial pronouncement. In such a case, a new law brought to cure the defect, which resulted in the law being declared invalid, is permissible. But, just like a situation where a law or a provision may be declared invalid on the ground of legislative incompetence and the same legislature

may not re-enact the same law or provision, when the factual parameters governed by a prevailing law is considered in a judgment and then the anomaly in the impugned determination is found, the determination which has been struck down cannot be subsequently validated nor can the future determination on the similar lines be made valid without the factual matrix or the applicable law being altered. This was, in essence, the principle laid down in *K. Raja* which, upon the dismissal of the SLP therefrom and the rejection of the review, has attained finality, at least as far as this Court is concerned. The judgments in *Swarnam J. Natarajan* and *N.Santosh Kumar* held that the 200-point roster prescribed to implement the rule of reservation had no nexus with the seniority list that ought to be prepared upon the simultaneous appointments of several persons in the post of Civil Judge (Junior Division). To boot, the dictum in *N.Santosh Kumar* received the imprimatur of the Supreme Court on January 22, 2016. As a consequence, the State could not pass a law to undo the judicial finding without changing the basis of the roster.

31. In the light of the above, the issue is no longer *res integra* and it may no longer be contended that the roster position would determine the seniority of the recruits in any recruitment process. Thus, the seniority of the persons inducted to the post of Civil Judge (Junior Division) from 2009 onwards has to be determined in accordance with the marks obtained by the successful candidates in the recruitment examination such that the appointee with the highest marks will be placed in the first position and the appointee with the lowest marks among the successful candidates will be placed in the last position in the list prepared according to seniority, irrespective of, and completely without reference to, the positions such appointees may have occupied on the 200-point roster.

32. On behalf of the State, a judgment reported at (2006) 6 SCC 673 (*Arvinder Singh Bains vs. State of Punjab*) has been placed, inter alia, for the observation therein at paragraph 39 of the report that the roster prescribed has to be read along with the relevant rule in determining the seniority. Apart from the fact that

such judgment may not cover the present situation, there is the later Supreme Court order of January 22, 2016, expressly endorsing the view in *N.Santosh Kumar*. To such extent, whatever may have been the enunciation of law in *Arvinder Singh Bains*, may not be relevant for the present purpose. For similar reasons, the original dictum in the *All India Judges' Association* case, as relied upon by one of the parties, may be of no relevance at this stage. Paragraphs 29 and 30 of the report have been placed which, inter alia, contain an observation to the following effect:

"29. ... Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited ...".

33. First, the indispensable cliché has to be repeated, that a judgment cannot be read as a legislative enactment and a stray observation or an incidental remark which does not form the basis of the ratio decidendi therein may not be of binding value; though the persuasive value of the stray sentence or even the incidental remark cannot be ignored, particularly if it is of the highest court of the land.

34. Secondly, there is this cardinal principle as an inextricable extension of the doctrine of precedents. When a previous judgment of the Supreme Court is noticed in a later judgment of the Supreme Court and the previous judgment is read down or interpreted and a dictum is rendered which appears to be at variance with the previous judgment, it is the dictum in the later judgment which becomes binding and an independent interpretation of the previous judgment is not permissible. However, if a later judgment of the Supreme Court does not refer to an earlier judgment of that court and takes a contrary view, it is open to the High Court before which

both the judgments are cited to choose which of the judgments is better suited to the facts of the case and apply the same. In other words, to put it bluntly, if a pink ping-pong ball referred to in the previous judgment is subsequently interpreted to have been a red ping-pong ball, it is such dictum which becomes binding and the High Court cannot refer to the original pink ping-pong ball.

35. Some of the parties, who subscribe to the view that the roster position should determine the seniority list, refer to Rule 35(f) of the said Rules of 1955. Such provision is relied upon not because it has an impact on whether roster positions should determine the seniority list, but only to nip the challenge to the existing seniority list in the bud on the ground that the law prevents any objection or protest to a seniority list being entertained after three years from the date of appointment to the relevant grade or beyond a period of three years from the date of the order fixing the seniority, whichever is applicable. It is in such light that the relevant provision must be seen:

"35(a) ...

...

(f) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts."

36. The contention has to be rejected out of hand even on the basis of Rule 35(f). Though the Rule prohibits the receipt of an application for revision of the seniority of a person in a particular grade, the bar must be seen to be restricted to an individual case and not when a mistake in the methodology adopted for the preparation of the seniority list is pointed out. At any rate, the last sentence of the provision, in a sense, undoes the prohibition in cases of rectifying orders and in cases resulting from mistake of

facts. The present exercise, apart from the fact that it does not pertain to any single person and covers the entire class, is also permitted by the final sentence in the Rule.

37. Further, the first of the present petitions was filed in July, 2015 and only a few months after the mistake in the preparation of the seniority list was pointed out in the judgment in *Swarnam J. Natarajan* on November 28, 2014 and the subsequent decision in *N.Santosh Kumar* on March 31, 2015.

38. Submissions have also been made as to the efficacy and validity of the roster system since it apparently does not recognise all horizontal reservation, or even women as a class. However, that is the State's prerogative as to how the 200-point roster would read and there may always be room for bettering the roster and making it all inclusive.

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39. As a result of the order here and the direction to prepare the seniority list in accordance with the descending order of marks

obtained by the appointees at the recruitment examination, the positions existing prior to now will, obviously, get disturbed. It is in such context that the observation at paragraph 54 in *Bimlesh Tanwar* has been referred to. The interest of justice and even balance of convenience necessitates that those candidates who have obtained promotion till today, whether such promotion was as a result of the exercise undertaken by the High Court or pursuant to the representations made by the judicial officers themselves, should not be upset. In other words, wherever promotions have been granted from among appointees in the entry cadre, the revised seniority list will not result in a judicial officer previously promoted being brought down to a lower position. The rights of all judicial officers, who are placed in higher positions in the seniority list by reason of the revision pursuant to this order, to be promoted to the next higher post will be subject to the vacancy at such level. Of course, all the directions would apply in respect of the recruitment processes conducted in 2009, 2012, 2015 and 2018. The seniority list for the appointees pursuant to the 2020 recruitment will be governed by the law as declared here.

40. The members of the committee constituted by this Court have specifically referred to a matter that needs to be addressed to avoid further litigation, confusion and heartburn. That pertains to those desirous of taking the limited competitive examination for jump promotion at the District Judge (Entry Level). The present rules permit 65 per cent of the vacancies in the post of District Judge to be filled up by promotion from the cadre of Civil Judge (Senior Division) based on seniority and performance; 25 per cent to be directly recruited from the members of the Bar as per the eligibility criteria set in such regard; and, the balance 10 per cent from among those not in contention to be considered for promotion, upon their taking a limited competitive examination and subject to fulfilling certain other criteria. It is possible that as a result of the revision in the seniority list, the inter se seniority among candidates who were recruited at the same time and also promoted at the same time may be altered. It is made clear that for the purpose of eligibility to take the limited competitive examination, if the seniority position of a judge in the cadre of Civil Judge (Senior

Division) is revised upwards, but he lacks the five-year qualification in the post to take the limited competitive examination, he will be eligible therefor, if another Civil Judge in the same post, but lower in seniority rank, is eligible to take the examination. This is because a systemic error should not prejudice an individual who would have otherwise had the opportunity to take the limited competitive examination, but for the mistake.

41. Accordingly, W.P.Nos.20449, 20451 and 20452 of 2021 are disposed of with the following directions:

(i) The revised seniority lists as prepared in accordance with the marks obtained by the candidates recruited to the post of Civil Judge (Junior Division) would prevail irrespective of the order in which they may have been shown by the Public Service Commission or their roster positions. If two or more appointees obtain identical marks, the older or oldest in age, as the case may be, will occupy the higher or highest position between such

candidates in the seniority list.

(ii) The above direction will apply only to appointees recruited to the post of Civil Judge (Junior Division) 2009 onwards.

(iii) It is needless to say that the dates of appointment are of crucial importance when preparing the seniority list, but when a common recruitment process is undertaken, all new recruits must be deemed to have been appointed on the same date and their order of seniority will be in accordance with the marks obtained in the recruitment examination, irrespective of the date of joining and regardless of the positions they occupied as per the roster.

(iv) The promotions obtained till today by candidates who have been recruited as Civil Judge (Junior Division) in or after the year 2009 will remain unaffected by this

order, in the sense that no one already promoted should be demoted to a lower post.

(v) Even if the revision results in a higher ranked officer remaining in a lower post than a lower ranked officer, promotion will be on the basis of the prospective vacancy in the promotional post.

(vi) For Civil Judges (Senior Division) who may be eligible to take the limited competitive examination in future, all judges ranked higher than the last-placed Civil Judge (Senior Division) who is entitled to take the examination on the basis of the time spent in the post, will be eligible irrespective of not having spent the requisite time in the post.

(vii) As far as the 2020 recruitment process is concerned, since the appointments have not yet been made, the seniority list must be prepared in terms of

this order and on the basis of the descending order of marks obtained by the appointees at the recruitment examination. To clarify for all purposes, the person with the highest marks must be placed first in the seniority list and so on till the person with the lowest marks in the last position, irrespective of what slots they may have occupied as per the roster.

(viii) Any fixation or re-fixation of seniority made in accordance with law for judges recruited prior to 2009 will remain unaffected by this order.

Consequently, W.M.P.No.15866 of 2021 is closed. There will be no order as to costs.

सत्यमेव जयते

(S.B., CJ.)

(S.K.R., J.)

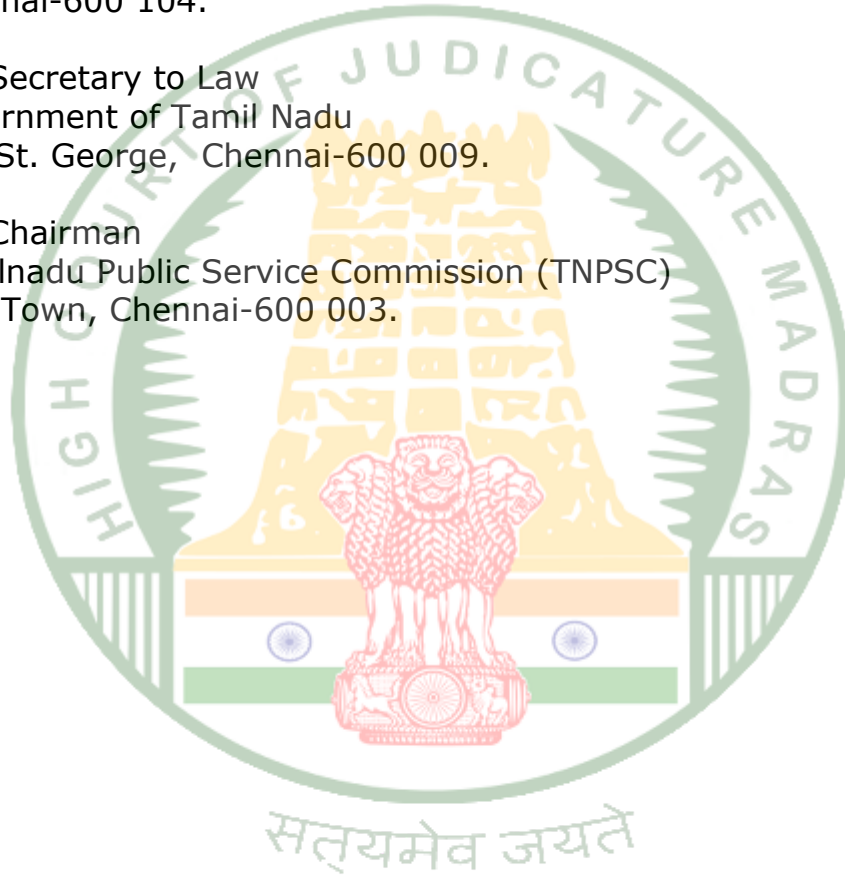
20.07.2021

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To:

- 1 The Registrar General
High Court of Judicature at Madras
Chennai-600 104.
- 2 The Secretary to Law
Government of Tamil Nadu
Fort St. George, Chennai-600 009.
- 3 The Chairman
Tamilnadu Public Service Commission (TNPSC)
Park Town, Chennai-600 003.

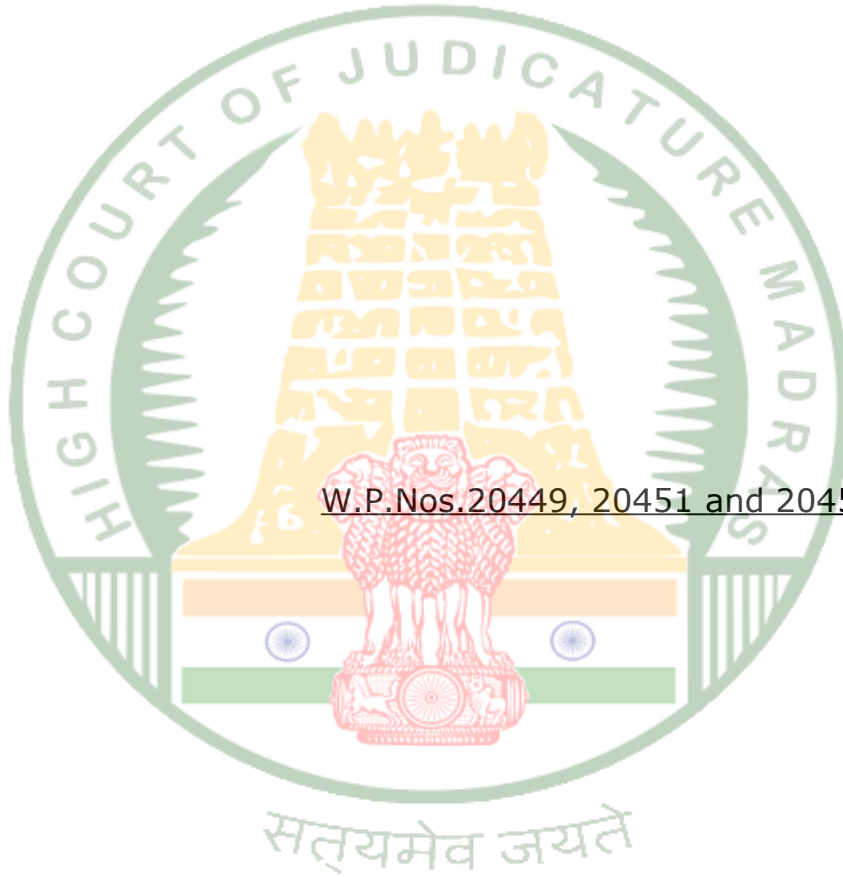


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W.P.Nos.20449, 20451 and 20452 of 2015

THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

(sasi)



W.P.Nos.20449, 20451 and 20452 of 2015

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20.07.2021