

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

RP.No. 501 of 2014 () IN WA.1546/2008

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AGAINST THE ORDER/JUDGMENT IN WA 1546/2008 of HIGH COURT OF KERALA DATED
24-07-2008**

REVIEW PETITIONER(S)/REVIEW PETITIONERS:

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- 1. MANJU GOPINATH
SUVAMA, PUNNAPRA P O, ALAPPUZHA-688 004.**
 - 2. K MOHAMMED GADHAFI
DARUL FALAH, CHULLIPARAMBU P O, VENGARA
MALAPPURAM DIST, PB NO 1, PIN-676 304.**

**BY ADVS.SRI.P.A.NOOR MUHAMMED
SMT.S.GIFFARA
DR.GEORGE ABRAHAM**

RESPONDENT(S)/RESPONDENTS:

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- 1. THE STATE OF KERALA
REP BY THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM**
 - 2. KERALA PUBLIC SERVICE COMMISSION
REP BY THE SECRETARY, PATTOM, THIRUVANANTHAPURAM**

**R1 BY SR.GOVERNMENT PLEADER SRI.R.PADMARAJ
R2 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC**

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 23-06-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VPV

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE-A: COPY OF THE LETTER DATED 23.11.2007 FROM THE DIRECTORATE OF HOMOEOPATHY, WHICH SHOWS THAT AS ON THE DATE OF EXPIRY OF THE RANK LIST THERE WERE 39 VACANCIES REMAINING UNFILLED.

ANNEXURE-B: COPY OF THE APPOINTMENT CHART DATED NIL ISSUED BY THE PSC.

ANNEXURE-C: COPY OF THE REPRESENTATION DATED 27.12.2005.

ANNEXURE-D: COPY OF THE COMMUNICATION DATED 7.7.2009 OBTAINED FROM THE GOVERNMENT OF KERALA, HEALTH & FAMILY WELFARE DEPARTMENT, THIRUVANANTHAPURAM.

ANNEXURE-E: COPIES OF THE SHOW CAUSE NOTICES DATED 15.12.2003 ISSUED TO THREE CANDIDATES.

ANNEXURE-F: COPY OF THE FINAL RANK LIST ISSUED BY THE PSC SHOWS THAT THE RESULTS OF AS MANY AS 5 SUCH CANDIDATES WERE WITHHELD.

ANNEXURE-G: COPY OF THE NOTIFICATION DATED 20.6.2008 ISSUED BY THE PSC.

ANNEXURE-H: COPY OF THE NOTIFICATION DATED 5.9.2008 ISSUED BY THE PSC.

ANNEXURE-I: COPY OF THE RANK LIST DATED 9.11.2005 PUBLISHED PRIOR TO JUDGMENT IN AJAYAN'S CASE, IN RESPECT OF HSA.

ANNEXURE-J: COPY OF RANK LIST DATED 13.1.2009 PUBLISHED ENLARGING THE ORIGINAL RANK LIST OF HSA CONSEQUENT TO THE JUDGMENT IN AJAYAN'S CASE.

ANNEXURE-K: COPY OF THE ORDER DATED 23.4.2014 IN SLP(C) 29860/2008 PASSED BY THE HON'BLE SUPREME COURT OF INDIA.

ANNEXURE-L: COPY OF THE ORDER G.O.(MS)BO.373/2013/H&FWD DATED 30.8.2013 ISSUED BY THE GOVERNMENT OF KERALA.

ANNEXURE-M: COPY OF THE APPLICATION (I.A.NO.3) DATED 12.2.2007 FILED BY THE PETITIONERS WITHOUT ANNEXURE.

ANNEXURE-N: COPY OF THE ORDER DATED 21.9.2007 PASSED BY THE HON'BLE SUPREME COURT OF INDIA.

ANNEXURE-O: COPY OF THE ORDER DATED 26.9.2008 IN C.C.NO.13040/2008 PASSED BY THE HON'BLE SUPREME COURT.

ANNEXURE-P: COPY OF SOME OF THE ORDERS ON MENTIONING PASSED BY THE HON'BLE SUPREME COURT.

ANNEXURE-Q: COPY OF THE INFORMATION ISSUED BY KERALA PUBLIC SERVICE COMMISSION DATED 11.4.2007 TO THE 1ST PETITIONER.

RESPONDENTS' ANNEXURES: NIL

/TRUE COPY/

P.A. TO JUDGE

VPV

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.
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R.P.No.501 of 2014
in
W.A.No.1546 of 2008
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Dated this the 23rd day of June, 2015

ORDER

P.N.Ravindran, J.

The prayer in this review petition is to review and recall the judgment delivered by a Division Bench of this court to which one of us (P.N.Ravindran, J) was a party on 24.7.2008, dismissing W.A.No.1546 of 2008. By that judgment, the Division Bench upheld the judgment delivered by a learned single Judge of this court on 20.6.2008 dismissing W.P.(C)No.18586 of 2008 filed by the petitioners herein. The brief facts of the case are as follows:-

2. Pursuant to a notification published in the Kerala Gazette, the Kerala Public Service Commission (hereinafter referred to as "the Commission" for short) invited applications from eligible persons for appointment by direct recruitment to the post of Medical Officer (Homoeo) in the Homoeopathy department. The selection process consisted of a written test followed by an interview. The petitioners herein participated in the written test as well as in the interview. After the written test was conducted, a short list of candidates to be called for the interview was published on 8.5.2003. The main list of the short

list consisted of the names of candidates who had secured 65 marks and above. After the short list was published, the Commission issued show cause notices to four among the candidates namely Smt.Usha K.K., Smt.Geetha Mathew, Smt.Seeta Philip and Smt.Nisha A.N. calling upon them to show cause why their names should not be deleted from the short list. The reason stated was that they were wrongly included in the short list on account of an error in computing the marks secured by them in the written examination. It was alleged that as they have not secured the cut off marks fixed by the Commission viz; 65 marks, they are not entitled to be included in the short list. Smt.Usha K.K. and Smt.Geetha Mathew thereupon filed W.P.(C)No.10751 of 2004, Smt.Seetha Philip filed W.P.(C)No.11393 of 2004 and Smt.Nisha A.N. filed W.P.(C)No.11828 of 2004 in this court. The main contention raised in the said writ petitions was that in the absence of any stipulation in the Kerala Public Service Commission Rules of Procedure or in the notification inviting applications for the post, cut off marks could not have been prescribed.

3. While the said writ petitions were pending, the Commission published a ranked list of candidates selected for appointment by direct recruitment for the post of Medical Officer (Homoeo). The main

list of the ranked list contained the names of 131 candidates. A supplementary list of 9 candidates belonging to the Ezhava community, 16 candidates belonging to the Scheduled Castes, 13 candidates belonging to the Muslim community, 2 candidates belonging to the Latin Catholic/Anglo Indian communities, 4 candidates belonging to the Other Backward Classes, 5 candidates belonging to the Viswakarma community, 4 candidates belonging to the Nadar community, 4 candidates belonging to Other Christians and 3 candidates belonging to the Dheewara community, 60 in all, was also published. The first review petitioner herein was rank No.2 in the supplementary list of candidates belonging to the Ezhava community and the second petitioner was rank No.10 in the supplementary list of candidates belonging to the Muslim community. W.P.(C)No.10751 of 2004 filed by Smt.Usha K.K. and Smt.Geetha Mathew was heard and allowed by a Division Bench of this court by judgment delivered on 13.7.2006. Along with the said writ petition, writ petitions filed by candidates seeking appointment by direct recruitment to the post of Medical Officer (Ayurveda) and H.S.A. (English) were also heard and decided. The main issue that arose for consideration in the said writ petitions was as regards the fixation of cut off marks. A Division Bench of this court considered the rival contentions and held that

though in view of the decision of the Apex Court in **State of Punjab and Others v. Manjit Singh** (AIR 2003 SC 4580) screening can be done where a large number of candidates apply for a post, cut off marks cannot be fixed in an arbitrary manner. The Division Bench held that unless the rules or the notification inviting applications otherwise provides, cut off marks cannot be prescribed. In that view of the matter, the Division Bench directed that Smt.Usha K.K. and Smt.Geetha Mathew, the petitioners in W.P.(C)No.10751 of 2004, should be considered and their names should be included in the ranked list. Such an order was passed having regard to the fact that by virtue of the interim orders passed by this court in an earlier writ petition filed by them they had been interviewed for the post. The Division Bench however directed that as none of the selected candidates are on the party array, the case of Smt.Usha K.K. and Smt.Geetha Mathew will be considered only after exhausting the ranked list, which had by then come into force on 15.3.2004. The relevant portion of the judgment of this court in W.P.(C)No.10751 of 2004 [**Ajayan v. State of Kerala** (2006 (3) KLT 854)] reads as follows:-

"7. The latest decision on this point is the Apex Court's decision in Siraj v. High Court of Kerala (2006 (2) KLT 923 SC). The question was regarding fixation of cut off marks in the selection to the post

of Munsiffs. In that case, the notification prescribed that there should be a written examination in four papers carrying 100 marks each and there will be an oral examination and only candidates who secured not less than 35% marks in each of the papers of the written examination with an overall minimum of 45% of the written examination and 30% of the marks for the oral examination shall be eligible for appointment. The Hon'ble Supreme Court held that since in view of the Rules and notification prescribing cut off marks in the written examination and oral examination, the procedure adopted is correct. Here such cut off marks were not prescribed in the Rules or in the notification. Therefore, we are of the view that in view of the Apex Court decision in Manjit Singh's case even though a screening can be done to avoid large number of candidates, cut off marks cannot be made in an arbitrary manner. Here, considering the number of vacancies and considering the fact that this is a case where petitioners were already called for interview and list was published violating the interim orders of this Court and also considering the number of vacancies that arose, we are of the view that elimination of the petitioners from the short list was not correct. Their interview was already over. They should be considered if there are vacancies reported during the currency of the list. Since the candidates who are already selected were not made parties in the writ petition, petitioners' case may be considered only after exhausting the existing list. Ext.P9 short list was published in 2004. Those who have not challenged the list so far, even if similarly placed, will not be entitled to the benefits as they have slept over the matter for years."

4. The Division Bench also observed that those who have not challenged the list, meaning thereby, the ranked list which was produced and marked as Ext.P9 in that writ petition, even if similarly placed, will not be entitled to the benefit of the judgment as they

have slept over their rights for years. W.P.(C)Nos.11393 and 11828 of 2004 filed by Smt.Seeta Philip and Smt.Nisha A.N. were also likewise allowed. It is not in dispute that thereupon the names of Smt.Usha K.K., Smt.Geetha Mathew, Smt.Seeta Philip and Smt.Nisha A.N. were included in the ranked list published on 15.3.2004. In the meanwhile, the Commission unsuccessfully moved the Apex Court by filing Civil Appeal No.4587 of 2006 which was dismissed by judgment delivered on 26.3.2008 on the ground that it has no locus standi to maintain the appeal.

5. It is relevant in this context to note that the petitioners herein and seven others filed I.A.No.3 of 2007 to get themselves impleaded as respondents in Civil Appeal No.4587 of 2006 filed by the Commission. The said application was allowed by order passed on 21.9.2007. After Civil Appeal No.4587 of 2006, arising from the decision in **Ajayan v. State of Kerala** (supra) more particularly the judgment in W.P.(C)No.10751 of 2004, was dismissed by the Apex Court by judgment delivered on 26.3.2008, the petitioners herein filed W.P.(C)No.18586 of 2008 in this court, to be exact on 23.7.2008, wherein they prayed for the following reliefs:-

"(a) Issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents to extend the benefits of Ext.P1 judgment to the

petitioners.

(b) Call for the records leading to decision taken on the meeting held on 2.6.2008 relating to the implementation of Ext.P1 judgment by the 2nd respondent and quash the same by issuing a writ of certiorari or any other appropriate writ, direction or order."

6. The first relief sought by the petitioners was a writ in the nature of mandamus commanding the State of Kerala and the Commission who were joined as respondents 1 and 2 respectively in the writ petition to extend to them the benefit of Ext.P1 judgment in W.P.(C)No.10751 of 2004. The second relief sought was to call for the records leading to the decision stated to have been taken by the Commission at its meeting held on 2.6.2008 to implement Ext.P1 judgment and to quash it. However, the beneficiaries of the decision taken by the Commission on 2.6.2008 were not joined as parties in the writ petition. There were also no averments or grounds justifying the grant of the said relief. The only ground put forward by the petitioners in the writ petition was that as Ext.P1 judgment of this court in W.P.(C)No.10751 of 2004 has been upheld by the Apex Court, the petitioners are entitled to the benefit of Ext.P1 judgment. When W.P.(C)No.18586 of 2008 came up for admission hearing before a learned single Judge of this court on 20.6.2008, it was dismissed *in limine*. Relying on the observations in paragraph 7 of the

decision of the Division Bench in **Ajayan v. State of Kerala** (supra) more particularly the operative portion of the judgment in W.P.(C) No.10751 of 2004, the learned single Judge held that as what the petitioners seek is essentially an enlargement of the ranked list, they should have moved this court earlier in point of time and that after the judgment of the Division Bench, such a plea cannot be entertained. The learned single Judge also took note of the fact that the petitioners have no grievance as regards the inclusion of their names in the supplementary list. In other words, the learned single Judge was of the view that if the petitioners had a grievance regarding the number of candidates included in the ranked list or a case that the ranked list should be enlarged pursuant to the judgment of this court in W.P.(C)No.10751 of 2004, it should have been put forward at an earlier point of time. The petitioners challenged the said judgment by filing W.A.No.1546 of 2008. It was dismissed *in limine* by a Division Bench of this court by judgment delivered on 24.7.2008. The instant review petition was filed long thereafter on 31.5.2014 with a delay of 2144 days, seeking a review of the said judgment. The review petitioner has also filed C.M.Appln.No.193 of 2014 to condone the delay of 2144 days in filing the review petition.

7. We heard Sri.P.A.Noor Muhamed, learned counsel appearing

for the review petitioners, Sri.P.C.Sasidharan, learned standing counsel appearing for the Kerala Public Service Commission and Sri.R.Padmaraj, learned Senior Government Pleader appearing for the State of Kerala. Sri.P.A.Noor Muhamed, learned counsel appearing for the review petitioners contended that the judgment dismissing the writ appeal is a cryptic judgment, that it does not give any reasons and therefore on that short ground, the instant review petition is liable to be allowed. The learned counsel also submitted that out of the four candidates who were included in the ranked list pursuant to Ext.P1 judgment, two candidates had the same marks as the first petitioner (64 marks), one candidate had the same mark as the second petitioner (62 marks) and last candidate had only 60 marks. Though the last candidate with 60 marks was not appointed, one candidate with lesser mark than the first petitioner has been appointed thereby affecting the rule of merit. It was submitted that if the impugned judgment is allowed to stand, the petitioners who were found to be of equal merit or more meritorious than atleast one among the candidates appointed will be denied appointment. Learned counsel also contended that paragraph 7 of the decision in **Ajayan V. State of Kerala** (supra) can have no application to the petitioners for the reason that Smt.K.K. Usha and Smt.Geetha Mathew, the

petitioners in W.P.(C).No.10751 of 2004, Smt.Seeta Philip, the petitioner in W.P.(C).No.11393 of 2004 or Smt.Nisha A.N, the petitioner in W.P.(C).No.11828 of 2004 are persons to whom show cause notices had been issued calling upon them to show cause why their names should not be deleted from the said short list, that the petitioners are the candidates who were included in the short list and in the ranked list and therefore, as the petitioners had no grievance against the short list or the ranked list, the observations in paragraph 7 of the judgment in **Ajayan v. State of Kerala** (supra) cannot be held out against the petitioners.

8. The learned counsel contended that the Division Bench of this court has in **Ajayan v. State of Kerala** (supra) directed the Kerala Public Service Commission to re-cast the ranked list and publish an additional list within two months and advise candidates against the vacancies reported during the currency of the ranked list and that the said judgment attained finality with the dismissal of the appeal filed by the Kerala Public Service Commission before the Apex Court and therefore, the Commission had a duty to enlarge the ranked list and to advise the petitioners against the available vacancies. The learned counsel also submitted that neither the learned single Judge nor the Division Bench considered the fact that

the review petitioners had got themselves impleaded in the appeal filed by the Kerala Public Service Commission before the Apex Court and that it was with them on the party array that the decision of this court in **Ajayan v. State of Kerala** (supra) was upheld by the Apex Court and therefore, for that reason also, they are entitled to the benefits flowing from the said judgment.

9. Per contra, the learned Government Pleader appearing for the State of Kerala and Sri.P.C.Sasidharan, the learned standing counsel appearing for the Kerala Public Service Commission submitted that the ranked list was published on 15.03.2004, that the main list of the ranked list stood exhausted on 25.7.2006 when the last candidate in the main list was advised and that in the light of the decision of the Apex Court in **Nair Services Society v. District Officer, Kerala Public Service Commission** [2003 (3) KLT 1126], the petitioners who were included in the supplementary lists cannot be advised and therefore on that short ground, the instant review petition is liable to be dismissed. The learned counsel also submitted that the Division Bench of this court has not, in **Ajayan V. State of Kerala** (supra) directed the Kerala Public Service Commission to re-cast the ranked list as was done in the case of the ranked lists for the post of Medical Officer (Ayurveda) and H.S.A (English), that in the case of

appointment to the post of Medical Officer (Homoeo), the only direction issued by the Division Bench was to consider the claims of Smt. Usha K.K and Geetha Mathew, if vacancies are available, without disturbing the persons already selected, if during the period of validity of currency of list vacancies had been reported. Learned counsel submitted that in such circumstances, there is no merit or force in the submission made by the review petitioners that in view of the decision of the Division Bench of this court in **Ajayan v. State of Kerala** (supra), the Kerala Public Service Commission was bound to publish an additional ranked list. The learned standing counsel for the Kerala Public Service Commission submitted that the direction to publish an additional list was confined to the post of H.S.A (English) and Medical Officer (Ayurveda) and therefore, the Kerala Public Service Commission had no obligation to publish an additional list for appointment to the post of Medical Officer (Homoeo). Learned counsel contended that the petitioners who were aware of the decision of this court in **Ajayan v. State of Kerala** (supra) at least when they got themselves impleaded in Civil Appeal No.4587 of 2006 by filing I.A.No.3 of 2007 should have prayed for appropriate modification of the decision of the Division Bench in **Ajayan v. State of Kerala** (supra) before the Apex Court or sought the leave of the Apex Court

to move this court seeking a review of the judgment in **Ajayan v. State of Kerala** (supra) and that having not been done, the relief prayed for by the petitioners cannot be granted. Learned counsel also submitted that the instant review petition was filed only on 31.5.2014, with a delay of more than six years, and that having regard to the long delay in filing the review petition and the recruitments that have taken place after the ranked list published on 15.3.2004 ceased to exist, no relief can be granted to the review petitioners. Learned counsel for the Kerala Public Service Commission submitted that challenging the judgment dismissing W.A.No.1546 of 2008, the review petitioners had filed a Special Leave Petition before the Apex Court, that the said Special Leave Petition was dismissed by order passed on 23.4.2014, that the Apex Court has not granted leave to the review petitioners to file a review petition seeking a review of the impugned judgment and therefore for that reason also, the instant review petition is liable to be dismissed.

10. We have considered the submissions made at the Bar by the learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. The ranked list with which we are concerned, viz; for appointment to the post of Medical Officer (Homoeo) was published on 15.03.2004. It ceased to

be in force on 25.07.2006 when the last among the 131 candidates in the main list of that ranked list was advised [vide the decision of the Apex Court in **Nair Service Society v. District Officer, Kerala Public Service Commission** (supra).] The successful petitioners in W.P.(C).Nos.10751 of 2004, 11393 of 2004 and 11828 of 2004 were included in the ranked list only thereafter. Three among them alone were advised and the last candidate, viz; Mrs.Nisha A.N, though included in the supplementary list was not advised. This took place in the year 2008. The petitioners who were aware of the decision of this court in **Ajayan v. State of Kerala** (supra) and the principle laid down therein, viz; that cut off marks could not have been prescribed, ought to have in our opinion moved this court immediately after the decision in **Ajayan v. State of Kerala** (supra) was rendered and sought appropriate reliefs. Instead, they got themselves impleaded in the appeal filed by the Kerala Public Service Commission before the Apex Court against **Ajayan v. State of Kerala** (supra) and was satisfied with the dismissal of the civil appeal. They did not at any point of time until after the ranked list ceased to be in force and the three year period of validity had expired, file a writ petition in this court seeking enlargement of the ranked list. Though the review petitioners contend that the Division Bench of this court has in

Ajayan v. State of Kerala (supra) directed the Kerala Public Service Commission to prepare an additional list, we find no merit or force in the said submission. A close reading of the decision of this court in **Ajayan v. State of Kerala** (supra) will disclose that the said direction was issued only in relation to the post of H.S.A (English) and Medical Officer (Ayurveda). As regards the post of Medical Officer (Homoeo), the only direction issued by this court was to direct that the petitioners in W.P.(C).No.10751 of 2004, be considered for advice and appointment if vacancies are reported during the currency of the list without disturbing the candidates already selected. No direction to enlarge the ranked list of candidates selected for the post of Medical Officer (Homoeo) was issued in W.P.(C).Nos.11393 of 2004 and 11828 of 2004.

11. In such circumstances, we are of the opinion that the relief prayed for by the petitioners in W.P.(C).No.18586 of 2008 could not have been granted. Such being the situation, though the learned counsel appearing for the review petitioners is well founded in his submission that the review petitioners do not belong to the class of persons who have been called upon to show cause why their names should not be deleted from the ranked list, that by itself is not a reason to hold that the petitioners need not have filed a writ petition

in this court seeking an enlargement of the ranked list, raising the very same grounds raised in **Ajayan v. State of Kerala** (supra). The petitioners who have acquiesced with the ranked list and did not challenge it in time by contending that the ranked list should have been enlarged by including candidates not less than three times the number of vacancies existing and anticipated, cannot in our opinion at this distance of time be heard to contend that the ranked list ought to have been enlarged in the light of the decision of the Division Bench in **Ajayan V. State of Kerala** (supra). The explanation offered by the review petitioners for not taking timely steps to have their grievance redressed does not in our opinion merit acceptance.

12. As stated earlier, the instant review petition is filed with a delay of 2144 days. W.A.No.1546 of 2008 was dismissed by judgment delivered on 24.7.2008. The petitioners who did not challenge the validity of the ranked list and pray for re-casting the ranked list by including more number of candidates and had acquiesced in the ranked list cannot in our opinion at this distance of time seek or be granted the reliefs prayed for in the review petition. It is also relevant in this context to note that after W.A.No.1546 of 2008 was dismissed, a fresh ranked list was published on 27.7.2009. The said ranked list also ceased to be in force on 30.10.2013. Later,

the Kerala Public Service Commission has issued a notification dated 4.2.2014, inviting applications for appointment for the post of Medical Officer (Homoeo). The said selection process is underway. As the ranked list which was published on 15.3.2004 was followed by another ranked list which was published on 27.7.2009 and that ranked list held the field till 30.10.2013, for that reason also no relief can be granted to the petitioners. Though the learned counsel appearing for the review petitioners submitted that liberty may be reserved with the review petitioners to file a fresh writ petition, having regard to the facts stated above, viz; that after the ranked list, which is the subject matter of this review petition, was published, another ranked list had been published and appointments had been made therefrom and a fresh selection process is underway, such a relief also cannot be granted.

We accordingly hold that there is no merit in the instant review petition. The review petition fails and it is dismissed. No costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANU SIVARAMAN
JUDGE**