

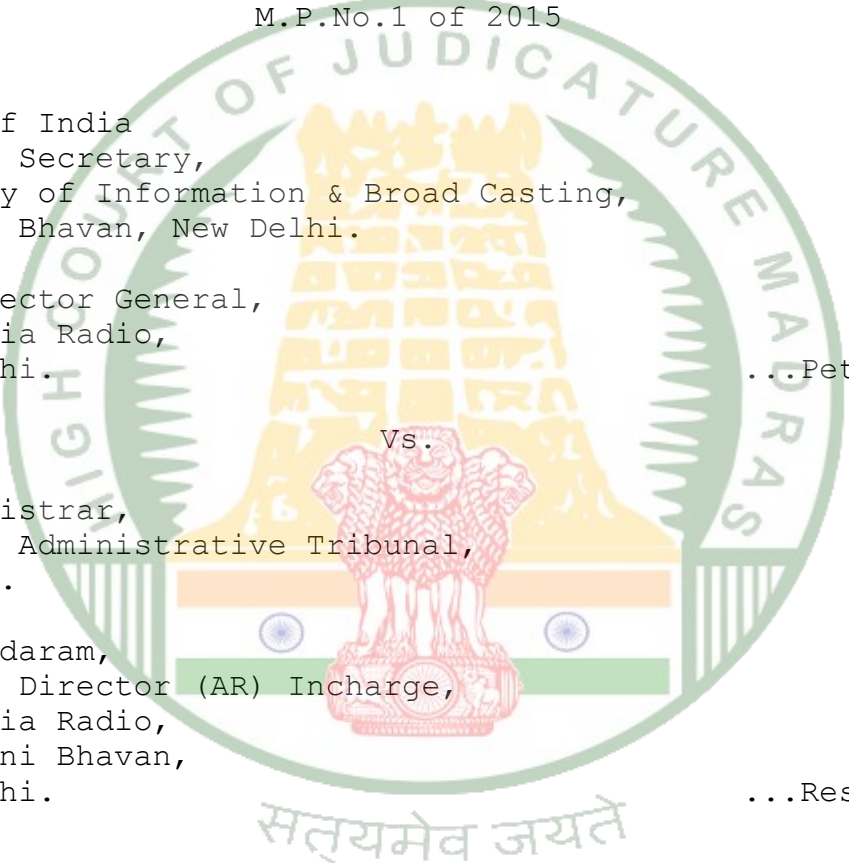
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2015

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.No.30001 of 2015
and
M.P.No.1 of 2015

- 
1. Union of India
rep. by Secretary,
Ministry of Information & Broad Casting,
Shastri Bhavan, New Delhi.
2. The Director General,
All India Radio,
New Delhi.Petitioners
- Vs.
1. The Registrar,
Central Administrative Tribunal,
Chennai.
2. K.K.Sundaram,
Retired Director (AR) Incharge,
All India Radio,
Akashvani Bhavan,
New Delhi.Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorari, calling for the records from the file of the First Respondent made in O.A.No.194/2012 dated 16.02.2015 and quash the same.

For Petitioner : Mr.Su.Srinivasan

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

The Petitioners have preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records from the file of the First Respondent/Registrar, Central Administrative Tribunal, Chennai made in O.A.No.194 of 2012 dated 16.02.2015.

2.The First Respondent/Central Administrative Tribunal, Chennai while passing the impugned order in O.A.No.194 of 2012 (filed by the Second Respondent/Applicant) had clearly inter-alia observed that "... Applicant (Second Respondent) had missed the opportunity to serve as a regular Director (AR) of the Department from 2008 merely on account of the delay in holding the DPC for the post of Deputy Director (AR) by the Respondents. It is evident that clear vacancies in the grade of Deputy Director (AR) were available way back in the year 1999 when the applicant and three others were promoted on Ad hoc basis to that grade" and resultantly found that the Second Respondent/Applicant would have been fully eligible to be considered for regular promotion to the post of Director (AR) even from December 2008, the date on which the post fell vacant, had been granted regular promotion to the post of Deputy Director (AR) (when he became eligible for the post and when a clear vacancy was available) and in the interest of justice, directed the Petitioners to consider the case of the Second Respondent (Applicant) for promotion to the post of Director (AR) from December 2008, duly taking note of the fact that he had functioned in the post of Deputy Director on Ad hoc basis from 1999 onwards until regular promotion was granted to him on 31.03.2009. Apart from that, the First Respondent/Tribunal also directed that upon such consideration, the Second Respondent/Applicant may be granted promotion to the post of Director (AR) w.e.f. December 2008 and fixed his pay and allowances notionally in the pay scale of Director (AR) till his retirement and revised his pensionary benefits accordingly.

3.Continuing further, the First Respondent/Tribunal also observed that since the Second Respondent/Applicant was already granted financial up-gradation upon in Situ promotion to the post of Deputy Director and 2nd MACP, his pay and allowances in the post of Director (AR) from December 2008 would be fixed only on notional basis. Moreover, the First Respondent/Tribunal went on to add that the arrears of revised pension and other retiral benefits consequent to the notional pension would be paid to the Second Respondent/Applicant on

actual basis and granted four months time to comply with the directions issued from the date of receipt of copy of the order.

4.Challenging the validity and legality of the impugned order dated 16.02.2015 in O.A.No.194 of 2012 passed by the First Respondent/Tribunal, the Learned counsel for the Petitioners submits that the First Respondent/Tribunal had failed to take into consideration that mere vacancy in a particular post would not ipso facto entitle the senior most person to be appointed.

5.The Learned counsel for the Petitioners urges before this Court that 'non convening of DPC' for certain number of years cannot be a sole ground to promote the Second Respondent/Applicant with retrospective effect from December 2008, from the date of vacancy fell in the post of Director (AR) and to grant all the benefits on notional basis which is contrary to the decision of the Hon'ble Supreme Court in 1988 SCC (L & S) 1754.

6.The main grievance of the Petitioners is that the First Respondent/Tribunal had failed to appreciate the contentions that the Second Respondent/Applicant admittedly had worked as Deputy Director (AR) for ten years only on Ad hoc promotion, enjoying the pay scale granted to him in the grade of Deputy Director (AR) and that would not be bestow on him any right to claim promotion for the next higher grade, as the same is clearly stipulated in DOP & T OM No.2201/3/375-Estt (D) dated 29.10.1975 and OM.No.28036/1/2001-Estt (D) 21.07.2011.

7.On the side of the Petitioners, a plea is taken to the effect that the First Respondent/Tribunal had not appreciated a prime fact that the Second Respondent/Applicant was regularly promoted to the post of Deputy Director (AR) w.e.f. 31.03.2009 whereas, for promotion to the post of Director (AR), the incumbent should have rendered five years regular service in the grade of Deputy Director (AR) which was not the case until his retirement in November 2011.

8.The Learned counsel for the Petitioners submits that the Office Memorandum No.28036/1/2001-Estt(D) dated 23.07.2001, (which was reiterated in Office Memorandum dated 03.04.2013) clearly envisages that a 'Ad hoc Appointment' does not bestow on an individual, to claim for regular appointment and the services rendered on 'Ad hoc basis' in the grade concerned, also does not count for the purpose of seniority in that grade and also for eligibility for promotion to the next

higher grade.

9.The Learned counsel for the Petitioners projects an argument that the Second Respondent/Applicant had not challenged the O.M.No.28036/1/2001-Estt(D) dated 23.07.2001 (as stated supra) which dis-entitled him from making a claim for promotion to the post of Director (AR) and also that he had not challenged the rule which prescribes minimum of five years regular service in the grade of Deputy Director (AR).

10.The Learned counsel for the Petitioners brings it to the notice of this Court that the First Respondent/Tribunal had failed to appreciate that the Second Respondent/Applicant due to non promotion to the next higher grade was extended 2nd MACP in PB-3 in the scale of pay of Rs.15600-39100/- with Grade Pay of Rs.7600/- with effect from 01.09.2008 and further, he attained superannuation on 30.11.2011. That apart, the Second Respondent/Applicant had availed all the financial benefits of the promotional posts from time to time under Modified ACP Scheme.

11.Lastly, it is the submission of the Learned counsel for the Petitioners that O.A.No.194 of 2014 filed by the Second Respondent/Applicant suffers from laches and because of the said delay, the First Respondent/Administrative Tribunal ought to have rejected the Original Application in the subject matter in issue.

12.It is not in dispute that the Second Respondent/Applicant joined service as a Direct Recruit through Union Public Service Commission interviews and joined as 'Audience Research Officer', All India Radio during the year 1982. As a matter of fact, the post of 'Audience Research Officer' is in the Junior Time Scale of the Central Group 'A' Service. According to the Second Respondent/Applicant, the next promotion is to the post of Deputy Director (Audience Research) which is in the Senior Time Scale. It is the clear cut stand of the Second Respondent/Applicant that although clear and definite vacancies were available for unknown reasons, the Petitioners had not conducted DPCs at regular/periodical intervals.

13.The stand of the Second Respondent/Applicant is that only after 17 years in September 1999, he secured promotion as Deputy Director that too of 'Ad hoc Basis'. The version of the Second Respondent/Applicant is that in terms of 'Recruitment Rules' for the post of Deputy Director (Audience Research), the post is to be filled only through promotion,

the requirement being one should have worked as 'Audience Research Officer' with five years of regular service. In as much as the Second Respondent/Applicant had entered into service during the year 1982 as 'Audience Research Officer' and completed five years in the year 1987, is rightly eligible to be given promotion as 'Deputy Director' from the year 1987 especially, when clear vacancies were available. However, the DPCs at regular intervals were not held and it is the forcible plea of the Second Respondent/Applicant that his promotion was inordinately delayed and it was only in September 1999 that he secured promotion, that too on 'Ad hoc Basis' as 'Deputy Director'.

14.It is to be noted that by virtue of an order of the Department dated 30.10.2009, the Second Respondent/Applicant's promotion was regularised as 'Deputy Director' (Audience Research) on regular basis w.e.f. 31.03.2009. To put it differently, the Second Respondent/Applicant for ten years from the year 1999 till March 2009 continued as Deputy Director on an 'Ad hoc Basis'.

15.Before the First Respondent/Tribunal, the Second Respondent/Applicant in O.A.No.194 of 2012 had averred that the post 'Director' was to be filled 100% by promotion and that the earlier incumbent in the post of 'Director' reached superannuation on 31.10.2008 and immediately, he being the senior most Deputy Director was required to look after the post of 'Director' (Audience Research) and further that, all financial and administrative powers were also delegated to him by means of proceedings of the Second Petitioner/Second Respondent dated 17.12.2008.

16.In the instant case, although the Second Respondent/Applicant made representations dated 10.10.2010 and 04.07.2011 stating that he was denied promotion at every level owing to non convening of DPCs and that he should not be penalised for the inaction in the subject matter in issue but no reply was received by him and in the meanwhile, he attained the age of superannuation on 30.11.2011, as 'Director In-charge'.

17.Apart from the above, the Second Respondent/Applicant in O.A.No.194 of 2012 before the First Respondent/Tribunal had stated that in the cadre of 'Director' (Audience Research) there were two sanctioned post, but only one post was operational from the year 2004 and even this post was not filled up on regular basis despite eligible officers like him being very much available in the 'Feeder Cadre'.

18. In the reply to O.A.No.194/2012 (filed by the Second Respondent/Applicant), the Petitioners/Respondents had stated that the Second Respondent/Applicant on his selection through UPSC under Direct Recruitment was appointed in All India Radio as Audience Research Officer w.e.f. 23.04.1982 and then as per V Central Pay Commission's recommendations, two posts of Deputy Director (Audience Research) were upgraded to the post of Joint Director (Audience Research) (in the Grade Pay of Rs.7600/- as per the present pay scale) and that the post of Joint Director (Audience Research) is the Feeder Grade to the post of Director (Audience Research).

19. The principal stand taken on behalf of the Petitioners in the reply to O.A.No.194 of 2012 was that the Second Respondent/Applicant was under consideration zone for promotion to the post of Deputy Director (Audience Research) in the DPCs meeting that took place on 15.11.1991 and 25.06.1997 respectively. However, he was not to be promoted due to non availability of more vacancies and as such, a proposal for promotion to the post of Deputy Director (Audience Research) was sent during the year 2003 and that UPSC had refused to be associated with the DPC citing Department of Personnel and Training (DOPT) Office Memorandum dated 21.05.1999. Therefore, the Recruitment Rules of the post were amended after due consultation with DOPT, Ministry of Law etc., and that the new Recruitment Rules for the post of Deputy Director (Audience Research) were notified on 08.01.2008.

20. It transpires that the Second Respondent/Applicant was considered and promoted to the post of Deputy Director (Audience Research) on regular basis w.e.f. 31.03.2009 soon after the convening of DPC for considering promotion to the post of Deputy Director (Audience Research), soon after the notification of revised Recruitment Rules for the post during the year 2008.

21. According to the Petitioners/Respondents, the claim of the Second Respondent/Applicant for being continued as 'Deputy Director' (Audience Research) on 'Ad hoc Basis' was wrong. Since he was given the Ad hoc promotion till 31.03.2004 and only for the remaining period, he enjoyed the pay scale granted to him under in-situ-promotion in the grade of Deputy Director (Audience Research).

22. It is the case of the Petitioners/Respondents that the Second Respondent/Applicant being only Deputy Director

(Audience Research) w.e.f. 31.03.2009 was not eligible for consideration for promotion to the post of 'Director' (Audience Research) since he had not rendered requisite service as Deputy Director (Audience Research) but he was extended '2nd MACP' in the Grade Pay of Rs.7600/- w.e.f. 01.09.2008. Prior to this, he was given the benefit of 'in-situ-promotion' in the grade of 'Deputy Director' (Audience Research) in the pay scale of Rs.10000-15200 w.e.f. 02.06.2000.

23.It is to be borne in mind that the term 'Ad hoc' is a Latin term and is defined as 'pertaining to', or 'for the sake of a particular case alone' in Webster's New International Dictionary Vol-I, 2nd Ed.

24.It is not uncommon that Ad hoc Appointments are continued for long periods. At this juncture, this Court very pertinently points out the decision Abraham Jacob and others V. Union of India reported in AIR 1998 Supreme Court at page 1011 whereby and where under the Hon'ble Supreme Court allowed the benefits of Ad hoc promotion to the post of Assistant Engineers as if the Junior Engineers therein were regularly promoted within their quota.

25.In this connection, it may not be out of place for this Court to make a significant mention that it is a settled law that until regularised an 'Ad hoc Employee' cannot be considered as a member of the cadre. Further, ordinarily, an 'Ad hoc Employee' is not entitled to seniority in the promotion post. However, in cases of 'Ad hoc Promotions' made in substantive vacancy and the promotions are likely to continue indefinitely, the rule of continuous officiation would determine their inter se seniority in the cadre, as opined by this Court. Moreover, strong positive reasons must be shown as far as 'practicable' as to why the 'regular vacancies' were not filled up for a particular period. In fact, an earnest endeavour should be made to fill up the post and convincing reasons must be shown that the failure to fill up that post was not 'procrastinatory' in the considered opinion of this Court.

26.It cannot be gainsaid that Department of Personnel vide their Office Memorandum No.22034/1/76-Estt (D) dated 29.04.1977 had stated that only in exceptional circumstances under exigencies of public service 'Ad hoc Appointments' could be made.

27. At this stage, this Court worth recalls and recollects the decision Bheru Singh V. State of Madhya Pradesh and others reported in 1987 (4) Services Law Reporter at page 376 and at Special pages 381 and 382 wherein at paragraphs 18 to 21 it is observed and held as under:

"18. Hence, it is necessary to explain the true concept of 'ad hoc' appointment in service matters. In the present era, in every sphere including that of Services, 'ad hocism' is increasing resulting in frustration and service unrest among employees because of the uncertainty in their service, as the word 'ad hoc' is not being construed in its true sense and is being given altogether a different meaning. In this respect, it is suffice to say that the meaning of the term 'ad hoc' is a settled one, which means, for any special or particular purpose to last for a particular period (see S.P. Vasudeva V. State of Haryana and others, AIR 1975 SC 2292 (see para 4) (Emphasis supplied by us). If special purpose or period is not disclosed in the order making ad hoc appointment, but simply the word 'ad hoc' is mentioned there and the appointee, without any hindrance, is allowed to continue for years together, then by nomenclature of the order (i.e., 'ad hoc') alone cannot be construed to be an 'ad hoc' appointment, but shall be treated as 'regular' appointment.

19. The concept of making 'ad hoc' appointment is that in emergency, regular appointment by conducting examinations and taking interview, etc. is not possible due to short of time, then in such event, till regular interview, etc. are taken, 'ad hoc' appointment for a special or particular purpose and for a particular period could be made.

20. Now a days, 'ad hocism' is not being understood in its right perspective resulting in uncertainty in the future of the employees. Therefore, it needs to be curbed. Illustratively, suppose a person who is about 24 years of age, is appointed on ad hoc basis without mentioning the purpose or the period, but only the word 'ad hoc' is mentioned in the appointment order and that such a person is allowed to continue in service for a number of

years, say 56 years and by that time, he crosses the maximum age limit for appointment in Government service and thereafter if his service are terminated on the ground that his appointment was on 'ad hoc', then this narrow approach to the meaning of the word 'ad hoc' will definitely be against the service jurisprudence.

21. Therefore, if no specific purpose of time limit is mentioned in the appointment order making ad hoc appointment, but only the word 'ad hoc' is mentioned and if the employee concerned is allowed to continue in service for years together, then the appointment order will not be treated as on 'ad hoc' basis but will certainly liable to be treated as regular appointment."

28. Also that, this Court cites of decision of Hon'ble Supreme Court Secretary-cum-Chief Engineer, Chandigarh V. Hari Om Sharma and others reported in 1998 (5) SCC at page 87 and at Special pages 89 & 90 whereby and whereunder at paragraphs 6 to 8 it is observed and held as follows:

"6. Having regard to these facts, we are of the view that the Tribunal was fully justified in ordering that the respondent shall be promoted on the basis of "quota" fixed for non-diploma-holders with 10 years of service and not on the basis of integrated seniority. The Tribunal was also justified in ordering payment of salary to the respondent for the post of Junior Engineer I with effect from 1990 when he was made to work on that post. It is true that the respondent, to begin with, was promoted in stop-gap arrangement as Junior Engineer I but that by itself would make no difference to his claim of salary for that post. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement.

7. Learned counsel for the appellant has placed reliance on Sreedam Chandra Ghosh V.

State of Assam [1996 (10) SCC 567: 1997 SCC (L & S) 332] as also on State of Haryana V. S.M.Sharma [1993 Supp (3) SCC 252 : 1993 SCC (L&s) 1072 : 1993 (25) ATC 594 : JT (1993) 3 SC 740] to contend that since the respondent was promoted on the basis of stop-gap arrangement, he could not claim promotion as a matter of right nor could he claim salary for the post of Junior Engineer I as he was given only current duty charge of that post. Both the contentions cannot be accepted. The Tribunal has already held that the respondent having been promoted as Junior Engineer I, though in stop-gap arrangement, was continued on that post and therefore, he has a right to be considered for regular promotion. Having regard to the facts of this case, there is no reason to differ with the Tribunal.

8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872."

29.As far as the present case is concerned, the Second Respondent/Applicant missed the bus of serving as a regular Director (Audience Research) of All India Radio from the year 2008 only on the ground that there was a delay as regards the convening of DPC in regard to the post of Deputy Director (Audience Research) by the Petitioners. It cannot be denied that when the Second Respondent/Applicant and three others were promoted on Ad hoc Basis to the Grade of Deputy Director (Audience Research) during the year 1999, there were available vacancies in that grade.

30.In the light of the detailed qualitative and quantitative discussions, as mentioned supra and also this Court taking note of the entire conspectus of the attendant facts and circumstances of the case in an integral manner comes to an inescapable and irresistible conclusion that when the Second Respondent/Applicant was eligible to be considered for regular promotion to the post of 'Director' (Audience Research) (as early as in December 2008, the date on which the post fell vacant) he was not granted the regular promotion to the post of Deputy Director (Audience Research), when he became very much rightly eligible for the post and that too when a clear cut vacancy was very much available. Moreover, the Second Respondent/Applicant had functioned as Deputy Director (Audience Research) on Ad hoc Basis from the year 1999 till regular promotion was given to him on 31.03.2009. Looking at from that angle, the directions issued by the First Respondent/Tribunal in O.A.No.194 of 2012 dated 16.02.2015 to the effect that the Second Respondent/Applicant may be granted promotion to the post of 'Director' (Audience Research) with effect from December 2008 and to fix his pay and allowances notionally in the pay scale of 'Director' (Audience Research) till his retirement and to refix his pensionary benefits etc., are unexceptional. Consequently, the Writ Petition sans merits.

31.In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

DP

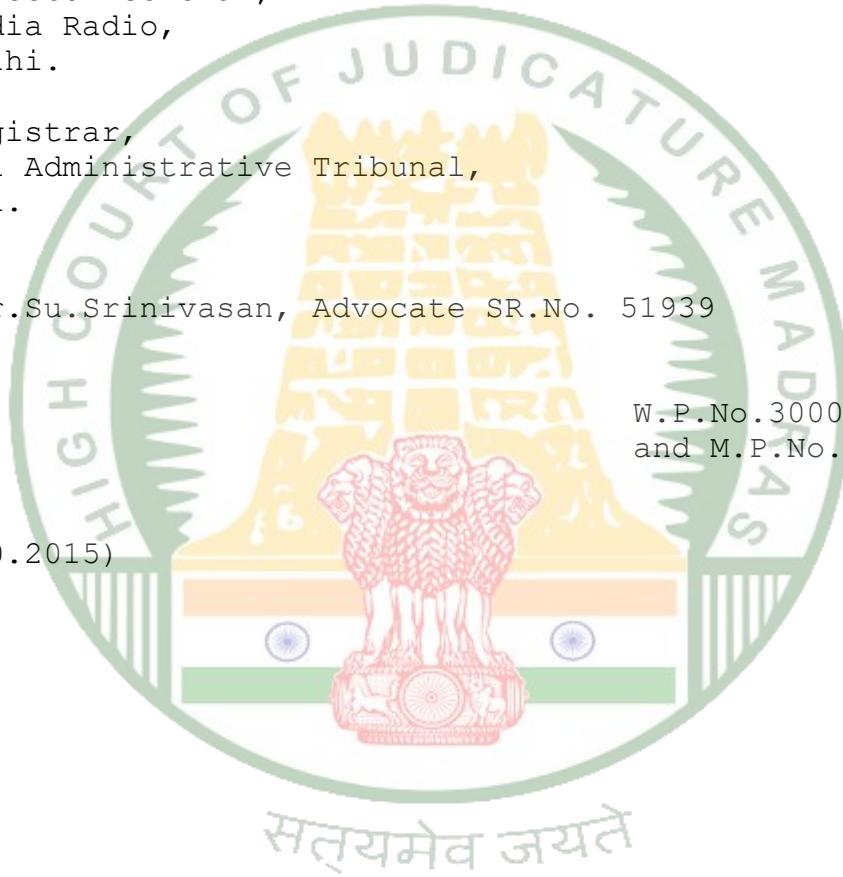
To

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3. The Registrar,
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1 CC to Mr.Su.Srinivasan, Advocate SR.No. 51939

W.P.No.30001 of 2015
and M.P.No.1 of 2015

PPA (CO)
PSI (26.10.2015)



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