

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NOs. 348 & 349 OF 2007
(O.A.NOs. 1740/2001 & 1741/2001)

S.Arunachalam Pillai (Deceased)

Girija Arunachalam Pillai

W/o. Arunachalam Pillai

.... Petitioner in WP No.348/2007
(Substituted Petitioner in the place of
deceased petitioner as per Order dated
17.12.08 and made in MP.108 in WP.348/07)

R. Venkatachalam

.... Petitioner in WP No.349/2007

Vs.

The Government of Tamil Nadu

rep. by its Secretary to Government

Public Works (E1) Department

Fort St. George

Chennai - 600 009.

.... Respondent in both Wps

PRAYER in both Writ Petitions: These Writ Petitions came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.Nos. 1740 & 1741 of 2001 from the file of Tamil Nadu Administrative Tribunal with a prayer to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent relating to the proceedings made in G.O. 3D Nos. 90 & 89 (Public Works (E-1) Department) dated 13.10.2000 and quash the same as null and void, illegal and invalid and consequently direct the respondent to reinstate the petitioners in service with all service and monetary benefits.

For Petitioner
in both WPs

:

Mr. A. Amalraj

For Respondents
in both WPs

:

Mr. K.V. Dhanapalan, AGP

O R D E R

Mr. S. Arunachalam Pillai and R. Venkatachalam filed O.A. Nos. 1740 & 1741 of 2001 respectively, challenging the impugned orders of removal from service, passed in G.O. 3D Nos. 90 & 89 (Public Works (E-1) Department) dated 13.10.2000, to quash the same as null and void, illegal and invalid, with a consequential direction to the respondent to reinstate the petitioners in service with all service and monetary benefits. Both the Original Applications came on transfer as W.P. Nos. 348 and 349 of 2007 to this Court. During the pendency of the writ petition, the petitioner Arunachalam Pillai died and his wife Girija Arunachalam became the substituted petitioner in W.P. No. 348 of 2007, as per the orders of this Court dated 17.12.2008.

2. Mr. A. Amalraj, learned counsel appearing for the petitioners in both the writ petitions, heavily assailing the impugned orders pleaded that while the husband of the petitioner Arunachalam Pillai in W.P. No. 348 of 2007, was working as Junior Engineer, Public Works Department, Vanapuram West Section, Sathanur Dam Sub Division, had prepared Estimate No. 530 I/83-84 relating to the work of special repairs to the banks from K.M.6/600 to 7/700 of B-1 Jambadai Branch canal of Sathanur Right Bank canal colluding with one Mr. S. Selvaraj and in connivance with one contractor Mrs. K. Chandra, had created false records as if the work of removal of shoals between K.M. 6/600 to 7/700 had been carried out when the sanction of the Estimate No.530-I/83-84 contemplates special repairs to the bunds from K.M.6/600 to 7/700 of Jambadai Branch canal without actually executing the work of removal of shoals and when the shoal removal work had already been done by the contractor Thiru V.R. Kuppusamy Naidu on 18.09.1983, there was no necessity to carry out the shoal removal work again on 01.10.1983. And a further allegation that he had prepared estimate relating to the work for carrying out special repairs to the banks from K.M.5/500 to 6/600 of Jambadai Branch canal of Sathanur Right Bank Canal, colluding with other officers and in connivance with the Contractor Mr. V. Murugesan had created false records as if the work of removal of shoal had been carried out. The petitioner R. Venkatachalam in W.P. No. 349 of 2007, was also working as Junior Engineer, Public Works Department, Vanapuram West Section, Sathanur Dam Sub Division, had prepared Estimate Nos. 384/I/83-84, D.R. No.372I/83-84 etc., relating to the work of removal of shoals in Sathanur Right Bank Main canal from K.M.16.830 to 17.500 colluding with each other and in connivance with the contractors had recorded boosted measurements and has also created false records as if the work of special repairs to the

existing banks have been carried out, without actually executing the work and the existing banks of the canal are found to be formed during original execution of the canal itself, colluding with other officers and in connivance with the Contractors.

3. Adding further, it has been contended that in the present cases, the Executive Engineer, Thiruvannamalai has approved and sanctioned the estimates, as prepared by the petitioner's husband Arunachalam Pillai and the petitioner R. Venkatachalam after thorough checking and verifying the records. But, unfortunately the petitioners husband S.Arunachalam Pillai and the petitioner R.Venkatachalam have been punished by awarding the punishment of stoppage of one increment for one year with cumulative effect by G.O. 3D No. 42 & 41 dated 15.02.1995 and the said punishment had already been given effect to, by causing monetary loss to them. Whiles, the Tribunal for disciplinary proceedings in Departmental Enquiry Nos. 128/88 & 126/88 dated 21.12.1988 has wrongly issued charge memos to the petitioners alleging as if the petitioner's husband Arunachalam Pillai and the petitioner R. Venkatachalam had committed irregularities in the execution of the aforesaid work during 1983-1984. When the said work was super checked by an Officer during September 1986, after a lapse of three years from the date of completion of the work, the above works were only de-silting and strengthening of bund through soil and therefore proper evaluation cannot be done after a delay of three years as there is every possibility of alteration on account of seasonal changes like rain, soil erosion, natural calamities etc. With regard to charge No.2, he further argued that when the work was done through a Contractor, the said work was also super checked, while so, three years after completion of the work, there could not have been any possibility to trace out any actual earth works.

4. Adding further, he stated that during the course of execution of works, no inspecting officers had remarked against the petitioner's husband Arunachalam Pillai and the petitioner R. Venkatachalam. Whiles, the charge memo issued against the petitioners, followed by punishment, without there being any proper written complaint and without enquiring the concerned contractor or the local people, is unsustainable in law. Continuing his argument, he would submit that when they have already been imposed with the punishment of stoppage of increment for one year with cumulative effect by order dated 15.02.1995 in G.O. 3D Nos.42 & 41, after verification of the records and files, in respect of the irregularities in the preparation of estimates and execution of the work for carrying out the special repairs to the Sathanur Right Bank Canal, issuing a second charge memo for the same irregularities is,

violation of Articles 20 (2) of the Constitution of India. Further, having punished the petitioners in G.O. 3D Nos.42 & 41 dated 15.02.1995 with the award of Stoppage of increment for one year with cumulative effect, again imposing the punishment of removal from service, is not only excessive and disproportionate but also shocking. When the enquiry officer, who has been called upon to find out the correctness of the charges, found them not guilty in respect of the charges, namely, the allegation of misappropriation, it goes without saying that there is no money transaction or misappropriation of Government funds. Whereas the impugned punishment clearly shows that there has been falsification of records, misappropriation and cheating committed by the petitioner. Therefore, when the enquiry officer found them not guilty in respect of misappropriation of funds, the Government in the impugned orders ought not to have reached the conclusion that the petitioners have committed the offence of falsification of records and also the offence of misappropriation and cheating the Government. In view of the finding given by the Government that there has been misappropriation and cheating of the department money, they have been impelled to reach a different punishment of removal from service. Therefore, imposition of couple of punishments would clearly indicate non-application of mind of the respondents, hence on this sole ground, the impugned order should fail.

5. He further pleaded that the imposition of punishment of removal from service, when the petitioners had already put in more than 21 years of service is liable to be set aside. Again taking support from another order passed by this Court in W.P. No. 25600 of 2009 dated 14.12.2012 in the case of Mr. S. Selvaraj, Assistant Executive Engineer, who was also imposed with the punishment of removal from service submitted that when this Court has come to the conclusion that infliction of punishment of removal from service is disproportionate and the same also shocks the conscience of this Court and as such modification of punishment of removal from service to one of compulsory retirement would meet the ends of justice, keeping in mind that the petitioner's husband S. Arunachalam Pillai, who had been repeatedly subjected to frequent punishments at the hands of the respondents, died on 04.05.2007 during the pendency of the writ petition, leaving behind the poor widow and two children, the impugned punishment of removal from service should suitably be modified, by following the orders passed by this Court in W.P. No. 25600 of 2009 dated 14.12.2012, he further pleaded.

6. A detailed counter affidavit has been filed. Mr. K.V. Dhanapalan, learned Additional Government Pleader submitted that as contended by learned counsel for the petitioners that there has been

a huge delay, namely, for the occurrence that took place during the year 1983-1984, taking into account an unanimous complaint filed in the year 1988, the respondents ought not to have entrusted the matter to the Tribunal for Disciplinary Proceedings, as the Tribunal for Disciplinary Proceedings had issued the charge memo only 7 years later. Even after the aforementioned delay, the punishments came to be imposed only on 13.10.2000. Therefore, for the occurrence that took place during the year 1983-1984, the respondents ought not to have accepted an unanimous complaint after four years, in 1988. Again the Tribunal for Disciplinary Proceedings having taken 7 long years of delay in completing the enquiry, from the date of submission of the report of the Tribunal for Disciplinary Proceedings on 16.02.1995, the respondents have further delayed the matter for imposing the punishment of removal from service on 13.10.2000. In view of the long delay caused by the department, one of the petitioners who have brought the issue in the year 2001 by way of Original Applications before learned Tamil Nadu Administrative Tribunal, had also died on 04.05.2007. However, all these submissions cannot be taken into account for the reason that during the tenure of service as Junior Engineer, the petitioner's husband S. Arunachalam Pillai and the petitioner R. Venkatachalam had taken up the maintenance work of Sathanur Dam Canal during the year 1982-1983, the department noticed certain grave irregularities committed by the petitioners and S. Selvaraj in collusion with each other along with the contractors and caused loss of Rs.2,00,509.90 by way of creation of false records without actually executing the works. In view of that, the Director of Vigilance and Anti Corruption had taken a detail enquiry relating to the allegations of corruption and malpractices committed in silt clearance and raising of bund in Sathanur Right Bank Canal and other branch canals of Sathanur Dam in his file No. DE 123/84/PWD/ North Arcot. The Director of Vigilance and Anti Corruption had also sent his final report to the Government in the year 1987.

7. He further stated that, when the Superintendent Engineer, Public Works Department, North Arcot Circle, Vellore had reported the irregularities in Sathanur Reservoir Maintenance Works, executed during the year 1983-1984 to the Chief Engineer (General), Public Works Department, Chennai on 17.05.1984, as per the instructions of the Chief Engineer (General), Public Works Department, Chennai the Senior Deputy Chief Engineer (Irrigation), PWD, Chennai had conducted a confidential enquiry and submitted his enquiry report in Lr. No. Sr. DCE(I)/ Confdl/ Letter No.1/84 dated 26.05.1984. The above report was also forwarded to the Government, by Chief Engineer (General) on 29.05.1984. The next day, the Government in its Lr. No. 33369/E2/84-3 dated 30.05.1984 had

requested the Director of Vigilance and Anti Corruption Department to conduct a detailed enquiry in this matter. Subsequently, the Superintendent Engineer, PWD, North Arcot Circle in his Lr. No. 12205/83/A3(1) dated 05.06.1984 had sent his report about all the officials' involvement in this case. After forwarding the above report to the Director of Vigilance and Anti Corruption for conducting a detailed enquiry, the Director of Vigilance and Anti Corruption after perusing 1400 records and files in connection with the enquiry requested to nominate an officer to super check the alleged works vide his letter dated 14.10.1985. Pursuant thereto, Mr. K. Muthusamy, Executive Engineer, Public Works Department, Chidambaram Division was requested to conduct a super check of the works on 25.10.1985. Subsequently, one Mr. K.V. Padmanabharao, Executive Engineer, Public Works Department, Floods Division, Maduranthagam was nominated as a super checking officer in CE (G1) Memo No. CII(3)/8015/84-49 dated 17.06.1986. Based on the report of the Director of Vigilance and Anti Corruption, which held that the allegations are proved, the matter was entrusted to the Tribunal for Disciplinary Proceedings, Chennai to conduct an enquiry under the Tamil Nadu Civil Services (DPT) Rules, 1955 against the accused officers on 05.04.1988.

8. Therefore, the chain of events clearly shows that the department has not slept over the matter as alleged by the petitioners. From 1984, steps have been taken to find out whether any irregularities had happened and finally a report was submitted by the Director of Vigilance and Anti Corruption which also says that there were huge irregularities. The matter was finally entrusted with the Tribunal for Disciplinary Proceedings for enquiry on 05.04.1988. Therefore, the contention made by learned counsel appearing for the petitioners that there was a delay, is far from acceptance. Adding further, it is submitted that when the Tribunal for Disciplinary Proceedings also has come to the conclusion that work has not at all been executed and S. Arunachalam Pillai, the petitioner's husband and R. Venkatachalam, thereby has cheated the Government, the imposition of punishment cannot be found fault with. Further, he contended that in Public Works Department, Junior Engineer/ Assistant Engineer of a section is fully responsible for execution of any work since they are the field officers directly involved in the execution of works. Besides, it is the duty of the Junior Engineer/ Assistant Engineer to prepare estimates and call for tender/ obtain quotations as and when required for maintenance work, special repair works, deposit work, improvement work and new work in respect of Government buildings and irrigation projects and such estimates should be prepared by a Junior Engineer/ Assistant Engineer only in accordance with the codal provisions in Public Works

Department and with reference to the circular instructions issued by the department from time to time. Thereafter, the estimates prepared by the Junior Engineer/ Assistant Engineers, in accordance with the rules will be countersigned by the Assistant Executive Engineer and the same have to be approved and sanctioned by the Executive Engineer.

9. It is further contended in the counter that the petitioner's husband Mr. S. Arunachalam Pillai, had prepared 27 estimates relating to the execution of removal of shoal from Sathanur Dam, Right Bank canal and 11 estimates relating to the execution of work of strengthening of bunds of Sathanur Dam Right Bank Canal without taking pre-levels of the site. He has also renamed the silt clearance works as shoal removal and has thus suppressed the facts of the work with ulterior motive. Further, it was submitted that in the case of undertaking silt clearance work in any canal, the Junior Engineer/ Assistant Engineer has to prepare the estimates in accordance with the provisions of the Public Works Department and the said estimates should be countersigned by the Assistant Executive Engineer and finally the same should be approved and sanctioned by the Executive Engineer but to circumvent all these procedures, the petitioners in collusion with another Assistant Executive Engineer, contractors and other subordinates changing the nomenclature of the silt clearance work as shoal removal, for the purpose of getting personal gains suppressed the facts. This has been properly considered by the Tribunal for Disciplinary Proceedings, after taking note of the deposition made by a Contractor Tmt. K. Chandra, who came to the Tribunal deposed stating that she did not carry out the work of removal of shoals. She further deposed that one Thiru Sivaprakasam came to her house and got her signatures in the relevant records as if she had carried out the above work. Therefore, as learned Tribunal for Disciplinary Proceedings accepted the evidence of Tmt. K. Chandra and her son Thiru Rajan, admitting the fact that she had not executed the work of removal of shoals from the Jambadai Branch Canal, the contentions made by learned counsel appearing for the petitioner that the findings of the Tribunal cannot be accepted, is wholly untenable. Besides, the charges framed against the petitioners and other delinquents have been proved holding that the work has not at all been executed and they have also cheated the Government. In view of that, the imposition of punishment in the impugned Government Orders can never be found fault with.

10. Replying to the double jeopardy, it was further submitted that the petitioners along with 3 delinquent officers, Mr. S.A. Ramachandran, Executive Engineer; Mr. S. Selvaraj, Assistant

Executive Engineer; and Mr. B. Arjunlal, Assistant Engineer were charged with two allegations, namely, had prepared estimates without taking the orders of the Chief Engineer (Irrigation) and changing the nomenclature of the silt clearance work as Shoal removal and disregarded the instructions contained in Circular Memo No.C/ 58611/ 81-6 dated 28.09.1981 of the Chief Engineer (Irrigation) in preparation of the said estimates. The said charge is also gone into, by the Tribunal for Disciplinary Proceedings and finally it was found that the petitioners were guilty of the charge, for which they were imposed with the punishment of stoppage of increment for one year with cumulative effect by orders dated 15.02.1995 in G.O. 3D No.42 & 41. Subsequently, it was found that the petitioners along with other officers colluding with the contractors created false records and had misappropriated money, as though shoal removal work was carried out. In view of the above, the matter was again taken up, a confidential enquiry was also conducted on 25.05.1984 and after getting the enquiry report, Government ordered the Director of Vigilance and Anti Corruption to conduct a detailed enquiry on 30.05.1984. When the Director of Vigilance and Anti Corruption conducted a detailed enquiry, a super check of the work was also conducted at the request of the Director of Vigilance and Anti Corruption. Based on the report of the Director of Vigilance and Anti Corruption, the matter was entrusted to the Tribunal for Disciplinary Proceedings to conduct an enquiry under Tamil Nadu Civil Services (DPT) Rules 1955, against the accused officers. Finally, the first charge was proved, while holding the second charge as not proved. On the basis of the findings of the Tribunal for Disciplinary Proceedings, the husband of the petitioner and the petitioner R. Venkatachalam along with 3 other officers were imposed with suitable punishments. In respect of Mr. S. Selvaraj, Assistant Executive Engineer, an order of removal was passed. Similarly, in respect of Mr. R. Venkatachalam, Junior Engineer an order of removal was passed and the petitioner's husband also suffered the same punishment of removal from service. One Mr. B. Arjunlal, Assistant Engineer was imposed with the punishment of stoppage of increment with cumulative effect for two years. Therefore, it is not open to the petitioners to attribute any discriminatory treatment. Adding further, it was contended that depending upon the seriousness of the charges, upon which the findings have been recorded, the present impugned punishment has been imposed against Mr. S. Arunachalam Pillai and Mr. R. Venkatachalam. Concluding his argument, he stated that when the petitioners had not complained of violation of principles of natural justice, they are not entitled to challenge the imposition of punishment.

11. Heard the learned counsel for both sides.

12. When three others, namely, Mr. S.A. Ramachandran, Executive Engineer; Mr. S. Selvaraj, Assistant Executive Engineer; and Mr. B. Arjunlal, Assistant Engineer; were also subjected to disciplinary proceedings before the Tribunal for Disciplinary Proceedings, Chennai on two charges mentioned supra, learned Tribunal accepting the deposition made by Tmt. K. Chandra, which is given as follows, disagreed with the case of the petitioners:

"The statement of Tmt. K. Chandra W/o. Kannan recorded during investigation was marked as Ex.P.240 with the consent of the A.Os. She has stated therein that she was registered as PWD contractor in the year 1980. She was registered as a PWD Contractor through the assistance rendered by one Thiru Sivaprakasam, a friend of her son Thiru Rajan. The said Thiru Sivaprakasam was working as an Assistant in the PWD office at Tiruvannamalai. In September or October of the year 1983, Thiru Sivaprakasam came to her house and informed her that tenders were being called for in the PWD office at Sathanur for removing the shoals in the Jambadai Branch canal taking off from the Sathanur Right Bank Canal and that she may agree to his executing the said work on her behalf. Tmt. Chandra agreed to his proposal. About ten days later Thiru Sivaprakasam came to her house and got her signatures on the tender form and the agreement form. Again about ten days later, Thiru Sivaprakasam came to her house and informed her that the work of removing shoals in the Jambadai Branch Canal had been carried out by employing labourers and got her signature in the relevant M.Book and in the register indicating the disbursement of money for the above work through cheque. She (Tmt.Chandra) did not carry out the work of removing shoals in the Jambadai Branch Canal or receive money for having carried out this work. Thiru Sivaprakasam got her signatures in the relevant records as if she had carried out the above work. He got the above signatures in the presence of her son Thiru Rajan. The signatures in the tender schedule form, agreement form and M.Book shown to her by the Inspector are hers. She is not aware whether Thiru Sivaprakasam carried out the said work. She does not know A.O.1 or A.O.2. "

Finally, charge No.1(a) was held proved. However, learned Tribunal for Disciplinary Proceedings has held that the other parts of the said charge as not proved, against the petitioners. When the petitioner's husband while working as a Junior Engineer along with the other petitioner R. Venkatachalam, Junior Engineer had not executed any work, namely, removal of shoal or slit clearance work in the Banks of Sathanur Right Bank Canal, based on evidences produced before the Tribunal, it was held that both the petitioners have cheated the Government. In view of the definite finding reached by learned Tribunal, the present impugned punishment of removal from service have been imposed. That apart, with regard to the allegation of delay put against the department that when the occurrence took place during the year 1983-1984 only on the basis of the unanimous complaint made in the year 1988, both the petitioners were issued with charge memos on 15.02.1995, it may be seen that from the date of issue of the charge memo, the Tribunal had taken 7 years for submitting its report and even after submission of the report on 15.02.1995, the Government has again taken a belated decision to impose the punishment of removal from service only in the impugned orders dated 13.10.2000 with a further delay of five years. In the meanwhile, the petitioners had not only undergone mental agony but also lost promotional avenues to higher posts. In this context, it is pertinent to peruse the order passed by this Court in W.P. No. 25600 of 2009 dated 14.09.2012 in favour of S. Selvaraj, who is also a co-delinquent of the petitioners, for the reason that when the said S. Selvaraj challenged the order of removal from service, on the ground that the infliction of punishment of removal from service was disproportionate and the same shook the conscious of this Court, accepting the said argument this Court modified the said punishment of dismissal from service to one of compulsory retirement. Therefore, taking note of the above facts and also the death of Mr. S. Arunachalam Pillai during the pendency of the writ petition, as this Court had already modified the punishment of removal into one of compulsory retirement in W.P.No.25600 of 2009 on 14.09.2012 in favour of a co-delinquent S.Selvaraj, I am also following the same reasoning given in favour of S.Selvaraj, inclined to modify the punishment of removal from service into one of compulsory retirement. As the modification of punishment of removal from service to compulsory retirement would reach the ends of justice, while confirming the impugned order the award of punishment of removal from service is modified into one of compulsory retirement.

13. Accordingly, both the writ petitions are allowed to the extent of modification of punishment. It is needless to mention that the respondent department is directed to disburse the consequential service benefits, as though the petitioners have been compulsorily

retired from service from the date of the impugned order, preferably within a period of 10 weeks from the date of receipt of a copy of this order. No order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

avr

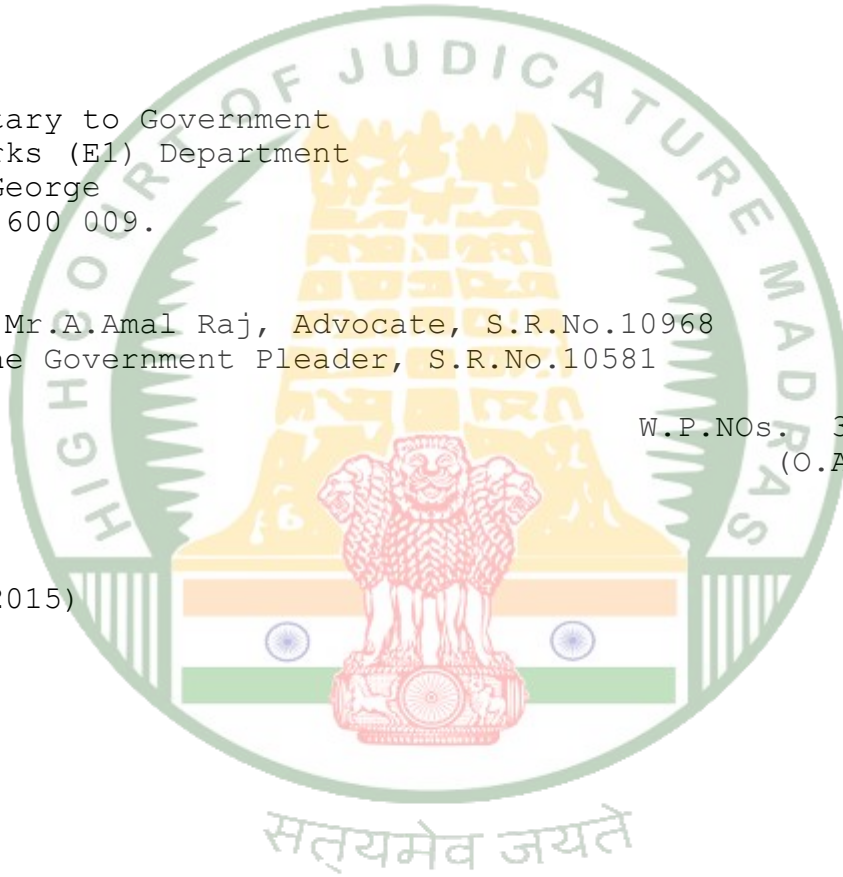
To

The Secretary to Government
Public Works (E1) Department
Fort St. George
Chennai - 600 009.

+2cc's to Mr.A.Amal Raj, Advocate, S.R.No.10968
+1cc to the Government Pleader, S.R.No.10581

W.P.NOs. 348 & 349 OF 2007
(O.A.NOs. 1740/2001
& 1741/2001)

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