

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-08-2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 24123 of 2015

M. Govindarajan

.. Petitioner

Versus

1. The State of Tamil Nadu
represented by its Principal Secretary to Government
Highways and Minor Ports (HR.2) Department
Secretariat
Chennai - 600 009

2. The Director General (Highways)
O/o. The Director General of Highways
Chepauk, Chennai - 600 005

formerly known as

Chief Engineer (General)
Highways and Rural Works Department
Chepauk, Chennai - 600 005

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records connected in G.O. (D) No.86, Highways and Minor Ports (HR2) Department dated 10.04.2015 passed by the first respondent and charge memo No.8775/Confidential-3/2001-4, dated 20.09.2001 passed by the second respondent and quash the same and consequently direct the respondents to promote the petitioner as Assistant Divisional Engineer and Divisional Engineer on par with juniors with all benefits.

For Petitioner : Mr. K. Venkatachalapathy, Senior Advocate
for Mr. G. Elanchezhiyan

For Respondents Mr. S. Gunasekaran
Additional Government Pleader for R1&R2

ORDER

The petitioner has come forward with this writ petition challenging the order dated 10.04.2015 passed by the first respondent as well as the charge memo dated 20.09.2001 passed by the second respondent and consequently direct the respondents to promote him as Assistant Divisional Engineer and Divisional Engineer on par with juniors with all consequential benefits.

2. The petitioner was appointed as Assistant Engineer in the Highways Department on 08.10.1984 and promoted as Assistant Divisional Officer on 18.02.2011. While he was working as such, the second respondent issued a charge memo dated 20.09.2001 under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The crux of the charge against the petitioner is that when he was working as Assistant Engineer during 1995-1996, he was assigned with the task of preparation of list of the employees working under the non muster rolls on daily wage basis for three different road projects. While preparing such non muster rolls, the petitioner has prepared the list by repeating the names of the same daily wage employees contained in one list verbatim in the other two lists thereby he has committed dereliction in discharge of his duty. On receipt of the charge memo, the petitioner his explanation on 30.01.2002 and denied the charges. Not satisfied with the explanation offered by the petitioner, an enquiry officer was appointed. The enquiry officer, after completing enquiry, submitted his report dated 11.09.2002 concluding that the charges against the petitioner are proved. The report of the enquiry officer dated 11.09.2002 was not immediately communicated to the petitioner, rather, by a communication dated 19.12.2003 of the second respondent, the report of the enquiry officer dated 11.09.2002 was enclosed and the petitioner was called upon to submit his further explanation. In response to the communication dated 19.12.2003, the petitioner submitted his explanation on 07.02.2004, however, no orders were passed thereof. The petitioner has therefore submitted a representation on 23.06.2005 and 09.08.2005 requesting the second respondent to afford him an opportunity of hearing and to drop all further proceedings against him. The petitioner also met the first respondent and submitted yet another representation dated 28.09.2005 and requested to drop the charges. As there was no orders passed in the disciplinary initiated against the petitioner, he approached this Court by filing WP No. 49104 of 2006 to quash the charge memo dated 20.09.2001 and to direct the respondents to include his name in the panel drawn for the year 2005-2006 for further promotion from among the eligible Assistant Divisional Engineer.

3. When WP No. 49104 of 2016 was pending before this Court, the Government has passed final order in the disciplinary proceedings initiated against the petitioner in G.O. (3D) No.111, Highways Department dated 07.11.2006 by imposing the punishment of stoppage of annual increment for two years with cumulative effect and it will have the effect of affecting his pension. In view of the final order passed by the Government, the petitioner withdrew WP No. 49104 of 2016 filed before this Court. Thereafter, the petitioner has preferred an appeal to the appellate Authority on 23.03.2007. The Statutory appeal preferred by the petitioner was rejected by the appellate authority after a lapse of six years on 27.03.2012. Challenging the order of rejection dated 27.03.2012 as well as the order of punishment dated 07.11.2006,

the petitioner filed WP No. 33107 of 2012 before this Court. By order dated 01.09.2014 passed in WP No. 33107 of 2012, this Court observed that enquiry was not properly conducted by the disciplinary authority in accordance with Rule 17 (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and therefore, while allowing the writ petition, the matter was remanded back to the disciplinary authority. In and by the said order dated 01.09.2014 in WP No. 33107 of 2012, this Court gave a specific direction to the disciplinary authority to conduct proper enquiry and to pass appropriate orders within a period of three months from the date of receipt of a copy of the order. According to the petitioner, the copy of the order dated 01.09.2014 in WP No. 33107 of 2012 was made ready and delivered on 24.09.2014. On receipt of the copy of the order dated 01.09.2014 in WP No. 33107 of 2012 on 24.09.2014, the petitioner has submitted a representation dated 29.09.2014 by enclosing a copy of the order passed by this Court. In and by the representation dated 29.09.2014, the petitioner has requested the respondents to implement the order passed by this Court and to complete the enquiry at the earliest. The petitioner also stated in his representation that he is ready and willing to extend his cooperation for conduct of the enquiry. However, no enquiry proceedings have been commenced till December 2014 and the period stipulated by this Court lapsed. Thereafter, after a period of six months, on 10.04.2015, the disciplinary authority has passed an order appointing an enquiry officer by name Ms. M.S. Selvi without even issuing a fresh charge memo. Even thereafter, the enquiry proceedings have not commenced and therefore, the petitioner has submitted a representation dated 08.05.2015 to the enquiry officer to expeditiously commence and complete the enquiry against him. According to the petitioner, in view of the pendency of the enquiry proceedings, he was deprived of successive promotions from the year 2001. It is also his contention that his juniors have been given promotions and they are holding higher post. Therefore, he has come forward with the present writ petition to quash the charge memo itself on the ground of delay in initiating the enquiry proceedings.

4. According to the learned Senior counsel for the petitioner, the charge memo itself is not sustainable inasmuch as it is a curable one. In the list prepared by the petitioner, which is the subject matter of the charge memo, the names of the daily wage employees have been wrongly entered by the concerned Road Inspector. According to the learned Senior counsel for the petitioner, the number of daily wage employees engaged for completion of the work is not inflated and only the names of the daily wage employees have been repeated. It is further stated that the three projects have been completed with the estimated number of daily wage workers and there was no pecuniary loss caused to the exchequer.

5. The learned Senior counsel for the petitioner would vehemently contend that there was delay in every stage of the enquiry proceedings and it is attributable on the part of the respondents. The delay in commencing and concluding the enquiry

proceedings have deprived the petitioner of his legitimate promotion. The occurrence took place during the year 1995-1996 for which charge memo was issued to the petitioner on 20.09.2001 after a period of 5 ½ years from the date of occurrence. The petitioner submitted his explanation on 30.01.2002. An enquiry officer was appointed on 22.06.2002 who submitted his report on 11.09.2002. The enquiry report was communicated to the petitioner on 19.12.2003 and he submitted his explanation to the report of the enquiry officer on 07.02.2004. As there was no final order passed in the disciplinary proceedings, the petitioner submitted a representation dated 28.09.2005. At this stage, the petitioner approached this Court and filed WP No. 49104 of 2006 to quash the charge memo dated 20.09.2001 and to direct the respondents to include the name of the petitioner in the panel drawn for the year 2005-2006 to enable him to get further promotion. When WP No. 49104 of 2006 was pending, the disciplinary authority passed final order on 07.11.2006 imposing the punishment of stoppage of increment for two years with cumulative effective which will have a bearing on the pension payable to the petitioner. As against the same, the petitioner filed a statutory appeal and it was kept pending for nearly five years. The appeal was rejected by the appellate authority only on 27.03.2002. Challenging the same, the petitioner filed WP No. 33107 of 2002 and this Honourable Court set aside the entire disciplinary proceedings on the ground that enquiry was not properly conducted and directed the disciplinary authority to commence and complete the enquiry within three months. The time limit imposed by this Court has not been adhered to by the disciplinary authority and therefore, according to the learned Senior counsel for the petitioner, the entire disciplinary proceedings initiated against the petitioner are vitiated. In this context, the learned Senior counsel for the petitioner relied on the Judgment of the Division Bench of this Court rendered on 30.07.2014 in W.A. No. 931 of 2013 as well as the order passed by this Court on 25.03.2015 in WP No. 8968 and 8969 of 2014 to contend that when there is delay in initiation and conclusion of the disciplinary proceedings the entire proceedings as against the delinquent are vitiated. The learned Senior counsel for the petitioner would therefore contend that in this case when there is a delay in commencing and concluding the disciplinary proceedings against the petitioner for a considerable length of time, the petitioner is entitled to get the charge memo itself quashed and consequently he is entitled for promotion on par with his juniors with all consequential benefits.

6. The learned Additional Government Pleader appearing for the respondents, by placing reliance on the counter affidavit of the second respondent, would contend that by order dated 01.09.2014 passed by this Court, the respondents were authorised to continue the disciplinary proceedings already initiated against the petitioner under Section 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. However, after receipt of the order dated 01.09.2014, an opinion has been sought for from the Government Pleader as to

whether an appeal can be preferred against the order dated 01.09.2014 passed by this Court. An opinion was rendered on 24.11.2014 to the effect that preferring an appeal is not desirable. Thereafter, a concurrence was obtained from the advisory department and on the basis of the same, the order dated 10.04.2015 was passed appointing an enquiry officer to commence and conclude the enquiry against the petitioner. It is further stated by the learned Additional Government Pleader that since the charge memo was of the year 2001 and the order of punishment was passed on 07.11.2006, the records relating to the same could not be traced immediately and this has resulted in the delay in continuing the departmental proceedings against the petitioner. At any rate, according to the learned Additional Government Pleader, the delay in concluding the departmental proceedings against the petitioner is neither wilful nor wanton. It is further stated that when the charges levelled against the petitioner are serious, the delay is not a ground to set aside the entire charge memo on technicalities. Therefore, the learned Additional Government Pleader prayed this Court for dismissal of the writ petition.

7. I heard the learned Senior counsel appearing for the petitioner as well as the learned Additional Government Pleader for the respondents. I had carefully examined the material records placed.

8. At the outset, on appreciation of the factual aspects entangled in this case, commencing from the date on which the petitioner has committed the alleged irregularity during the year 1995-1996 till the order dated 10.04.2015 was passed by the first respondent appointing an enquiry officer to conduct disciplinary proceedings against the petitioner, this Court can only observe that there was delay in each and every stage of the disciplinary proceedings commenced and conducted against the petitioner. This Court is also pained to observe that the petitioner was driven from pillar to post to see that the disciplinary proceedings initiated against him are finalised once and for all. It is also to be observed that by reason of the prolonged disciplinary proceedings initiated and pending against the petitioner, he was denied successive promotion paving way for his juniors to march him over. Thus, the petitioner was subjected to hardship, prejudice and ordeal by reason of pendency of the disciplinary proceedings against him for a long time. Therefore, this is a fittest case where this Court is justified in setting aside the charge memo itself for the reasons to be recorded hereunder.

9. The charge against the petitioner is that when he was working as Assistant Divisional Engineer, he approved the list of non-muster roll employees engaged on daily wage basis for completion of three road projects. Admittedly, such list was prepared by the Road Inspector concerned which was counter-signed by the petitioner. According to the petitioner, there were three road projects entrusted to him in which the number of daily wage employees engaged were not inflated. What has gone wrong is that the name of the daily wage workers have been repeated wrongly. However, according to the petitioner, there

was no pecuniary loss caused to the Government and the three projects entrusted to him have been completed in time. It is in this background, a charge memo dated 20.09.2001 was issued by the second respondent under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules containing two charges. The first charge is that the petitioner has approved the three list of non muster roll employees in which their names have been repeated. The second charge is that the petitioner has failed to discharge his duties properly. The petitioner submitted his explanation on 30.01.2002 denying the charges. An enquiry officer was appointed who submitted his report on 11.09.2002 concluding that the charges against the petitioner are proved. By a communication dated 19.12.2003, the enquiry officer report was sent to the petitioner for which he has submitted his further explanation on 07.02.2004. Immediately, a final order could have been passed by the disciplinary authority, but it was not done. In fact, the petitioner himself has submitted a representation on 23.06.2005, 09.08.2005 and 28.09.2005 requesting the respondents to drop all further proceedings against him. Since there was no final orders passed against the petitioner, he filed WP No. 49104 of 2006 to quash the charge memo dated 20.09.2001 and to direct the respondents to include his name in the panel drawn for the year 2005-2006 for further promotion from among the eligible Assistant Divisional Engineer. At this stage, the disciplinary authority has passed the final order in G.O. (3D) No.111, Highways Department dated 07.11.2006 imposing the punishment of stoppage of annual increment for two years with cumulative effect which will have a bearing on the pension payable to him. Inasmuch as final order has been passed, the petitioner withdrew WP No. 49104 of 2006.

10. Assailing the order dated 07.11.2006, the petitioner filed an appeal to the appellate Authority on 23.03.2007. Such appeal has not been taken up by the appellate authority immediately. For the reasons best known, the appeal was kept pending for about five years and only on 27.03.2012 the appeal was rejected. Challenging the order of rejection dated 27.03.2012 as well as the order of punishment dated 07.11.2006, the petitioner filed WP No. 33107 of 2012 before this Court. By order dated 01.09.2014 passed in WP No. 33107 of 2012, this Court observed that enquiry was not properly conducted by the disciplinary authority in accordance with Rule 17 (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and therefore, while allowing the writ petition, the matter was remanded back to the disciplinary authority. In and by the said order dated 01.09.2014 in WP No. 33107 of 2012, this Court gave a specific direction to the disciplinary authority to conduct proper enquiry and to pass appropriate orders within a period of three months from the date of receipt of a copy of the order. The relevant portion of the order dated 01.09.2014 can usefully be extracted hereunder:-

"9. It is an admitted case that the petitioner was charge sheeted for certain irregularities in the preparation of muster rolls containing same names for three parts of Road work

under Jawahar employment scheme 1995-1996. Since there were serious irregularities the Government has taken time to frame the charges and therefore enquiry officer was appointed. Even though the respondents have stated that the delay caused in the finalisation of the disciplinary proceedings is neither wilful nor wanton and it is an unavoidable since the process involved in the disciplinary proceedings as per the existing Tamil Nadu Civil Services (Discipline & Appeal) Rules are all time consuming, the respondents have not examined any witness. Nowhere in the document, it is stated that documents have been marked on behalf of the department in the enquiry. Even assuming for the sake of argument that documents have been marked on the side of the Department, it has to be marked through witnesses and the petitioner has to be given opportunity to cross-examine the witnesses. Rule 17 (b) is very clear that if the charges are denied, a detailed enquiry has to be conducted, even in case if an employee admits the charges. Only in cases where the employee admits the charges and agrees that no enquiry is required, there is no need for a detailed enquiry and it can be taken note of that the employee has admitted the guilt in the enquiry. In this case, there is no admission but denial and hence the procedure mentioned in Rule 17 (b) will have to be followed and the same is absent in this case.

11. By holding that the enquiry has not been conducted properly as against the petitioner, this Court, while setting aside the order of punishment dated 07.11.2006 passed by the disciplinary authority, which was confirmed by the appellate authority on 27.03.2012, remanded the matter back to the disciplinary authority. In and by the said order dated 01.09.2014, this Court has also given an ultimatum to the disciplinary authority to commence and complete the disciplinary proceedings against the petitioner within a period of three months. Thereafter, the petitioner also invited the attention of the disciplinary authority by submitting a representation dated 29.09.2014 and requested the respondents to comply with the order dated 01.09.2014 passed by this Court. In spite of such specific observation having been made by this Court, for the reasons best known, the respondent did not commence the enquiry within the time stipulated by this Court. Rather, the respondents also did not approach this Court seeking to extend the time limit fixed by this Court.

12. In this context, the learned Senior counsel for the petitioner relied on the Judgment of the Division Bench of this Court rendered on 30.07.2014 made in Writ Appeal No. 931 of 2013. In the said Judgment, the Division Bench of this Court, referring to the earlier decision of the Division Bench of this Court in the case of (State of Tamil Nadu, represented by its Secretary to Government, Personnel and Administrative Reforms

Department, Chennai - 9 and others vs. T. Ranganathan) reported in (2010) 3 MLJ 625 held that when there is delay in commencing and completing the disciplinary proceedings, the entire proceedings are vitiated. Useful reference to the judgment of the Division Bench can be extracted hereunder:-

"4. The main contention of the appellant before the learned single Judge, as could be seen from the grounds raised in the writ petition, is that this Court having fixed the time limit to initiate disciplinary proceedings and complete the same within a period of three months from the date of initiation, without seeking extension of time, the department is not justified in issuing the charge memo that too after seven years and the matter in issue is covered by the Judgment of the Division Bench of this Court, reported in (2010) 3 MLJ 625 (State of Tamil Nadu, rep. by its Secretary to Government, Personnel and Administrative Reforms (Q) Department, Chennai - 600 009 and others vs. T. Ranganathan) (in which one of us - N.P.V.J., is a member) wherein also the time limit mentioned by the Tribunal having not been complied with and the continuance of the proceedings being without seeking extension of time, the Division Bench of this Court set aside the order of the learned single Judge.

5. The learned Senior counsel appearing for the appellant also submitted that the said judgment of the Division Bench, reported in (2010) 3 MLJ 625 was challenged before the Honourable Supreme Court in Special Leave to Appeal (Civil) Nos. 11346 and 11347 of 2010 and by order dated 23.04.2010, the said Special Leave to Appeal (Civil) Nos. 11346 and 11347 of 2010 were dismissed at the admission stage itself. As such, the matter in issue is squarely covered by the Judgment of the Division Bench of this Court, stated supra.

13. It is evident from the judgment of the Division Bench of this Court that even though time limit was prescribed for concluding the departmental proceedings, it was not completed within the time fixed or the department has approached the Court with a petition for extension of time granted. Therefore, the Division Bench held that if there is inordinate delay in commencing or completing the disciplinary proceedings, it would cause prejudice to the delinquent government servant and in such event, the charge memo itself can be quashed.

14. In (P.V. Mahadevan vs. Managing Director, Tamil Nadu Housing Board) 2005 4 CTC 403, the Honourable Supreme Court had an occasion to consider the delay in commencing and concluding the disciplinary proceedings against the delinquent. Having regard to the inordinate delay, which was unexplained by the department, the Honourable Supreme Court held that the protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the

interests of inspiring confidence in the minds of the government employees. Useful reference of the Judgment of the Honourable Supreme Court can be quoted hereunder:-

"In the instant case the transaction took place in the year 1990. The expenditure ought to have been considered in the accounts of the succeeding year. In the instant case the audit report was ultimately released in the 1994-1995. The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions of the Tamil Nadu Act 17. It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. Mr. R. Venkataramani, learned Senior counsel is appearing for the respondent. His submission that the period from the date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter affidavit is not convincing and is only an afterthought to give some explanation for the delay.

Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral

benefit shall be disbursed within three months from this date. No costs.

15. In that case before the Honourable Supreme Court, the delinquent Government Servant was charged for act of corrupt practice. The disciplinary proceedings prolonged even after his retirement. In such circumstances, the Honourable Supreme Court held that the delinquent had already suffered enough on account of the protracted disciplinary proceedings and no useful purpose would be served to continue the disciplinary proceedings even after retirement of the government servant. Ultimately, the Honourable Supreme Court quashed the entire disciplinary proceedings and directed the Housing Board to disburse all the retiral benefits to the delinquent. In the present case also, as mentioned above, this Court finds that there is delay at every stage and it has caused acute mental agony, prejudice, hardship and ordeal to the petitioner. Even as regards the charges levelled against the petitioner are concerned, it is evident that the charges can be cured by preparing a proper list of those daily wage workers engaged without the names being repeated. In other words, the charges levelled against the petitioner are curable. Further, by reason of the delinquency committed by the petitioner, there is no revenue or financial loss caused to exchequer. In such circumstances, this Court is of the opinion that continuing the disciplinary proceedings against the petitioner will be a wasteful exercise involving time and money. Further, the petitioner has already frustrated by reason of the pendency of disciplinary proceedings due to which his juniors have marched him over. This is more so that the petitioner was always ready and willing to extend his cooperation for completion of the departmental proceedings. However, the respondents have not taken any act to conclude the departmental proceedings swiftly inspite of a direction having been given by this Court. In such circumstances, this Court is of the view that the petitioner is entitled to succeed in this writ petition.

16. In the result, the order passed in G.O. (D) No.86, Highways and Minor Ports (HR2) Department dated 10.04.2015 on the file of the first respondent and the charge memo dated 20.09.2001 passed by the second respondent are quashed. The writ petition is allowed as prayed for. No costs. It is needless to mention that the petitioner is entitled for all consequential benefits, including promotion on par with his juniors.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

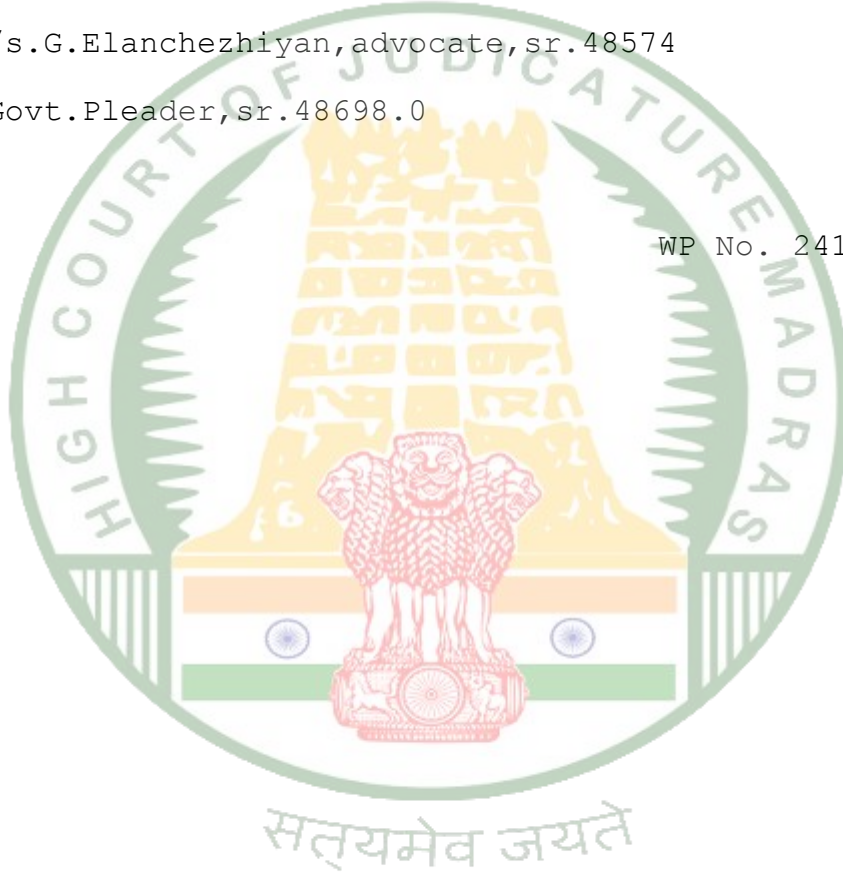
1. The State of Tamil Nadu
represented by its Principal Secretary to Government
Highways and Minor Ports (HR.2) Department
Secretariat
Chennai - 600 009
2. The Director General (Highways)
O/o. The Director General of Highways
Chepauk, Chennai - 600 005

+1cc to M/s.G.Elanchezhian, advocate, sr.48574

+1 cc to Govt.Pleader, sr.48698.0

ctr(co)
krd 14/9

WP No. 24123 of 2015



WEB COPY