

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.12.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

Writ Appeal No.1364 of 2012

1.R.Venkataraman (deceased)
2.Meera K.
3.Master Kaushik Venkataraman
Rep. by mother & guardian Mrs.K.Meera ...Appellants

vs.

The Government of Tamil Nadu
Rep. by Secretary to Govt.
Public (Est-IV) Department,
Fort St. George,
Chennai - 600 009. ...Respondent

WRIT Petition filed under clause 15 of the Letters Patent against the order of the writ court dated 28.09.2011 made in W.P.No.25493 of 2009.

W.P.No.25493 of 2009:-Praying for a Writ of Certiorarified Mandamus, calling for the records of the proceedings in Letter No.22610/E.IV/2009-1 Public (Estt.IV) Department dt 13.11.2009 on the file of the respondent, quash the same and direct the respondent to regularise the petitioner's service in the post of S.C. Assistant Section Officer with effect from 29.12.1997 as ordered in G.O.Ms.No.772 Public (Establishment-IV) Department dated 4.9.2002.

For Appellants : Mr.G.Thyagarajan

For Respondents : Tm.Pappiah,
Special Government Pleader

JUDGMENT

(made by S.MANIKUMAR, J)

Challenge in this writ appeal is to an order dated 28.09.2011 made in W.P.No.15896 of 2011, by which, the writ court, dismissed the writ petition filed for a writ of certiorarified mandamus, against the respondent herein, to quash the proceedings in Letter No.22610/E.IV/2009-1 Public

(Estt.IV) Department dated 13.11.2009 and consequently, declined to issue a direction to the respondent to regularise the services of the appellant, in the post of Assistant Section Officer (Strictly Confidential) with effect from 29.12.1997, as ordered in G.O.Ms.No.772, Public (Establishment-IV) Department, dated 04.09.2002.

2. Appellant (since deceased), had stated that he was a Junior Assistant, in City Police Office, Chennai. Thereafter, vide G.O.Ms.No.1412, Public (Establishment - IV) Department dated 10.11.1997, he was appointed as Assistant Section Officer (Strictly Confidential) in Public (SC) Department, by transfer from the category of Special Branch Assistant, and Special Assistant, in Tamil Nadu Ministerial Service. For the post of Assistant Section Officer (Strictly Confidential) in Public (SC) Department, one should possess a technical qualification of Type writing higher grade both in English and Tamil and shorthand lower grade in English. Admittedly, the appellant (since deceased), did not possess the required qualification. His appointment to the post of Assistant Section Officer (Strictly Confidential) in Public (SC) department, was subject to the condition that he should pass shorthand lower grade in English, within two years from the date of his appointment as Assistant Section Officer (Strictly Confidential). Since, he did not acquire the qualification in English shorthand, lower grade, vide G.O.(Rt) No.957, Public (Establishment-IV) Department dated 10.03.2000 extension of time by one year to acquire the said qualification, was given. Vide G.O.(Rt) No.1365, Public (Establishment-IV) Department dated 29.12.2001, time was extended by a further period of one year.

3. Appellant (since deceased), had contended that his right shoulder was damaged due to an accident and that he had to work late hours in office, and therefore, he could not pass, short hand English in lower grade. He had prayed for relaxation of the qualification in shorthand English in lower grade, regularisation and promotion as SC Deputy Section Officer in Public (SC) Department. According to him, in exercise of powers conferred under Rule 48 of Tamil Nadu State and Subordinate Services Rules, called as General Rules, proviso to Rule 2 of Annexure 2 to the Special Rules for the Tamil Nadu Secretariat Services was relaxed and accordingly, his services in the post of Assistant Section Officer (SC), in Public (SC) Department was regularised vide Order in G.O.Ms.No.772, Public (Establishment-IV) Department dated 04.09.2002, with effect from the date of his initial appointment as Assistant Section Officer, i.e. 29.12.1997. Appellant had further submitted that, subsequently, Government have issued orders in G.O.Ms.No.685, Public (Establishment-IV) Department dated 30.06.2003 directing amendment to the abovesaid order, G.O.Ms.No.772, Public (Establishment-IV) Department dated 04.09.2002 stating that regularisation of the services of the appellant, in the post of Assistant Section

Officer (SC), in Public (SC) Department, would be from the date of issue of the Government Order, dated 04.09.2002.

4. Being aggrieved by the same, the appellant (since deceased) sent a representation dated 18.09.2006. The respondents informed him that his request for regularisation of service retrospectively, cannot be done. The appellant made further representation dated 29.04.2009, which was rejected on 13.11.2009. Appellant has filed W.P.No.25493 of 2009, to quash the order dated 13.11.2009 passed by the Secretary to Government, Public (Establishment-IV) Department, and consequently, prayed for a direction to regularise his services, as Assistant Section Officer (SC), in Public (Establishment-IV) Department with effect from 29.12.1997, as ordered in G.O.Ms.No.772 Public (Establishment-IV) Department dated 04.09.2002.

5. Before the writ court, on behalf of respondent, the Deputy Secretary to the Government, Public (Establishment) Department, Chennai, in his counter affidavit, has stated that, as per the second proviso to Rule 2 of the Annexure-II to the Special Rules for the Tamil Nadu Secretariat Service, the qualifications prescribed for the post of Strictly Confidential Assistant Section Officer are:

- (i) A pass in Typewriting Tamil and English in Higher Grade (now Senior Grade); and
- (ii) A pass in English Shorthand in Lower Grade (now Junior Grade).

At the time of his appointment, there was dearth of hands. Therefore, the appellant was appointed as Assistant Section Officer (Strictly Confidential) in Public (SC) Department, Secretariat, with effect from 29.12.1997, in relaxation of the above said rule, but with a condition that he should acquire the second qualification, within two years from the date of joining of the post. He was given further time of two years to acquire the said qualification, viz. a pass in English Shorthand Junior Grade, but the appellant (since deceased) failed to do so.

6. When the appellant approached the Government to relax the qualification in his favour, the same was considered, as he had already put in 15 years of Government service and also of the fact that, he had met with an accident and injured his right shoulder. Considering his representation sympathetically, the Government issued orders in G.O.Ms.No.772, Public (Establishment-IV) Department, dated 04.09.2002, relaxing the second proviso to Rule 2 of Annexure II to the Special Rules, Tamil Nadu Secretariat Service, in his favour and regularised his services with effect from 29.12.1997, the date, on which he was initially appointed.

7. Thereafter, representations were received from some of the Strictly Confidential Assistant Section Officers, who were appointed later, stating that giving retrospective effect, to the appellant in regularising the services of the appellant was not appropriate, as the appellant had not acquired the required qualification, and fully qualified persons, would be affected. The Respondents have contended that instructions have been issued by the Personnel and Administrative Reforms Department vide U.O. Note No.61800/Per-S/98-1, dated 10.09.1998, that benefits of regularisation of irregular appointments, have to be given effect only from the date of order. Taking note of the above, amendment was issued in G.O.Ms.No.685, Public (Establishment.IV) Department, dated 30.06.2003 to G.O.(Ms) No.772, Public (Establishment.IV) Department, dated 04.09.2002 and as per the amendment, regularisation of services of the appellant was ordered to be given effect from the date of issue of the order dated 04.09.2002. Inasmuch as the amendment issued was in conformity with the existing instructions issued by the Personnel and Administrative Reforms Department dated 10.09.1993, violation of principles of natural justice, has been rebutted. Contention has also been made that despite ample opportunity, the appellant (since deceased) did not acquire the prescribed qualification. Therefore, he was not entitled to regularisation from the date of his initial appointment.

8. Adverting to the above submissions, the writ court, vide order made in W.P.No.25493 of 2009 dated 28.09.2011, declined to quash the order dated 13.11.2009 passed by the Secretary to the Government, Public (Establishment.IV) Department, Chennai and consequently, declined to issue any direction to the respondent to regularise the services of the appellant in the post of Assistant Section Officer (SC) in Public (SC) Department with effect from 29.12.1997, as ordered by Department on 04.09.2002.

9. Being aggrieved, the appellant (since deceased), has filed the appeal. Pending disposal of the same, he died and his legal representatives have been substituted.

10. Assailing the correctness of the order of the writ court, Mr.G.Thyagarajan, learned counsel for the legal representatives of the appellant, submitted that before issuing G.O.Ms.No.685, Public (Establishment-IV) Department dated 30.06.2003, restricting the date of regularisation from the date of issue of G.O.Ms.No.772, Public (Establishment.IV) Department, dated 04.09.2002, there was no notice to the appellant and therefore, there is violation of principles of natural justice. He further submitted that the appellant had worked for nearly 18 years, as Junior Assistant, before promotion to the post of Assistant Section Officer (SC) in Public (SC) Department and therefore, the length of service, taken note of, while issuing G.O.Ms.No.772 Public (Establishment.IV) Department, dated 04.09.2002, ought not to

have been ignored, while issuing the subsequent G.O.Ms.No.685, Public (Establishment-IV) Department dated 30.06.2003.

11. On the above said aspect, learned counsel for the appellant has relied on a judgment of this court in Perumal V. Vs. Commissioner and Secretary to the Government, Health and Family Welfare Department, Chennai and others reported in (2006) 2 M.L.J. 339, decided by a learned single Judge, and in the said case, the appellant therein had worked for 15 years. Except the above, no other submission, has been made.

12. Heard Mr.G.Thyagarajan, learned counsel for the legal representatives of the sole appellant (since deceased) and Mr.Tm.Pappiah, learned Special Government Pleader for the respondent and perused the materials available on record.

13. Qualification for the post of the Assistant Section Officer (Strictly Confidential), in Public (SC) Department, as per the second proviso to Rule 2 of the Annexure-II to the Special Rules for the Tamil Nadu Secretariat Service, are:

(i) A pass in Typewriting Tamil and English in Higher Grade (now Senior Grade); and

(ii) A pass in English Shorthand in Lower Grade (now Junior Grade).

14. Admittedly, the appellant (since deceased) did not possess the abovesaid qualifications, at the time of his appointment, to the post of Assistant Section Officer (Strictly Confidential), in Public (SC) Department . On 29.12.1997, by relaxing the above said rule, the appellant (since deceased) had been promoted, as Assistant Section Officer, with a condition to acquire the qualification, namely, a pass in English Shorthand in lower grade, within two years from the date of joining the post. Subsequently, vide G.O.(Rt) No.957, Public (Establishment-IV) Department dated 10.03.2000, extension of one year has been granted with effect from 30.12.1999 to acquire the said qualification. Vide G.O. (Rt) No.1365, Public (Establishment-IV) Department dated 29.12.2001, time has been extended by a further period of one year. Thus, the appellant (since deceased), had been given four years time, to acquire the qualification of shorthand in English Lower Grade from 1997. He did not acquire the same. However, taking note of 15 years Government service and also of the fact that his right shoulder was damaged, in an accident and that he had to work for late hours in the office, which resulted in lack of practising in shorthand, the appellant had requested that he may be given relaxation from acquiring the qualification of English Shorthand Junior Grade, and for inclusion of name in panel, for promotion as Deputy Section Officer, Strictly Confidential, in Public Department.

15. The Government have considered the representation of the appellant and the proposal of the Public (S.C.) Department and thereafter, in exercise of the powers, conferred under Rule 48 of the General Rules for the Tamil Nadu State & Subordinate Services, contained in the Tamil Nadu Services Manual Volume - 1 of 1987, have issued order in G.O.(Ms) No.772 Public (Estt.IV) Department dated 04.09.2002, regularising the services of the appellant, as Assistant Section Officer, Strictly Confidential, in Public Department, from the date his initial appointment to the said post. Subsequently, taking note of the fact that as per the instructions issued by the Department of Personnel and Administrative Reforms vide U.O. Note No.61800/Per-S/98-1, dated 10.09.1998, that orders of regularisation have to be issued, only with effect from the date of issue of order and also taking note of the representations, stated supra, the Government have issued order in G.O.Ms.No.685 Public (Establishment IV) Department dated 30.06.2003 amending G.O.Ms.No.772, Public (Estt.IV) Department, dated 04.09.2002, as hereunder:

"GOVERNMENT OF TAMIL NADU

Abstract

Establishment - Public (Estt.IV) Department -
Thiru.R.Venkataraman, S.C. Assistant Section Officer
- Relaxation of Rules - Orders issued - Amendment
issued.

PUBLIC (ESTABLISHMENT IV) DEPARTMENT
G.O.Ms.No.685
Dated : 30.06.2003.

Read:

G.O.Ms.No.772, Public (Estt.IV) Department, dated
04.9.2002.

ORDER :

The following amendments are issued to
G.O.Ms.No.772, Public (Estt.IV) Department, dated
04.09.2002.

Amendment

For the existing para 4 of the G.O. read above,
the following para shall be substituted:-

"The Public (S.C.) Department has stated that
Thiru.R.Venkataraman, S.C. Assistant Section
Officer, Public (S.C) Department in his
representation dated 26.4.2001 represented that he
has put in 15 years of Government Service and his
right shoulder was damaged due to accident and that
he has to work late hours in Office, which resulted
in the lack of practising shorthand and requested
that he may be given relaxation from acquiring the
required qualification of English Shorthand Junior
Grade and to include his name in the current year's
panel, for promotion as S.C.Deputy Section Officer."

For the existing para 5 of the G.O. read above, the following shall be substituted:-

"The government after careful examination, accept the above proposal of the public (S.C.) Department. Accordingly, in exercise of the powers conferred by Rule 48 of the General Rules for the Tamil Nadu State & Subordinate Services contained in the Tamil Nadu Services Manual Volume-I of 1987, the Governor of Tamil Nadu hereby relaxes the second proviso to rule 2 of Annexure II to the Special Rules for the Tamil Nadu Secretariat Service in favour of Thiru.R.Venkataraman so as to regularise his services in the post of S.C. Assistant Section Officer with effect from the date of issue of this order. The Government direct that no unqualified person will be taken to Public (S.C.) Department at entry stage in future."

(BY ORDER OF THE GOVERNOR)

T.PITCHANDI
SECRETARY TO GOVERNMENT

To
Thiru.R.Venkataraman, S.C. Assistant Section
Officer, Public (S.C.) Department, Chennai - 9
The Public (S.C.) Department, Chennai - 9
The Public (Bills-C) Department, Chennai - 9
The Pay & Accounts Officer, Chennai - 9
The Accountant General, Chennai 9/18

Copy to
The Personnel & Administrative Reforms (D)
Department, Chennai-9 (2 copies)
SF/SC.

/Forwarded/By Order/

Section Officer."

16. Accordingly, Order dated 06.11.2003, has been issued by the Deputy Secretary to Government stating that under Rule 23(a)(i) of the Tamil Nadu State and Subordinate Service Rules, services of the appellant (since deceased) have been regularised, in the category of Assistant Section Officer (SC), Public (SC) Department, with effect from 04.09.2002 onwards.

17. From the material on record, it could be deduced that, the appellant (since deceased) had neither challenged, G.O.Ms.No.685 Public (Establishment IV) Department dated 30.06.2003, directing regularisation from the date of the issue of the order i.e. 04.09.2002, nor the order dated

06.11.2003 of the Deputy Secretary to Government, regularising his services in the cadre of Assistant Section Officer (SC), Public (SC) Department dated 04.09.2002. But Appellant (since deceased) had made representations.

18. On 04.02.2009, the Joint Secretary to the Government, Public (Establishment-IV) Department, Chennai has sent a reply stating that the request of the appellant cannot be complied. The said communication has not been challenged. But, the appellant seemed to have submitted another representation dated 29.04.2009 to the Chief Secretary to the Government, seeking for regularisation from the date of his initial appointment. Secretary to the Government, Public (Estt-IV) Department, Secretariat, Chennai dated 13.11.2009, has rejected the letter dated 29.04.2009 stating that his request cannot be accepted, for the reason that regularisation given earlier, itself was a concession. Rejection of the request, has been rejected as early as on 04.02.2009, by the Joint Secretary to the Government, Public Department, which has not been challenged.

19. Though Mr.G.Thyagarajan, learned counsel for the legal representatives submitted that the order impugned before the writ court, was in violation of principles of natural justice, this court is not inclined to accept the said contention for the reason, that, the department has only followed the existing instructions of the Department of Personnel and Training, vide U.O. Note No.61800/Per-S/98-1, dated 10.09.1998, for regularisation, which categorically, states that, orders of regularisation should be made only with effect from the date of issuance of regularisation, and therefore, the appellant (since deceased) had no right to contend that, it should be from the date of initial appointment.

20. The second contention that he had worked for 15 years in Government service, has been taken note of, while issuing G.O.Ms.No.772, Public (Establishment-IV) Department dated 04.09.2002, and therefore, the same ought to have been sustained, also cannot be countenanced for the reason that, on the facts and circumstances of the case, length of service in Government alone, would not confer any indefeasible right to the appellant (since deceased), for regularisation from the date of his initial appointment, when admittedly, he did not possess the required qualification for the post. If the prescribed or required qualification, can be relaxed, from the date of initial appointment, then, all irregular appointments, without satisfying the prescribed educational qualification, can be regularised, from the date of initial appointment. We are of the view that educational qualifications, should not be relaxed, except for specific reasons to be recorded. Age can be relaxed. Mode can be relaxed, if the incumbent satisfies the required educational qualification. But, the Government, should be given the latitude, to decide as to when the

required educational qualification to the posts, should be relaxed, taking into consideration of length of service, in the post, for which relaxation is given.

21. Fact that the appellant, had not acquired the required educational qualification, for four years, despite extension of time, cannot be lost sight of. If a person has been appointed to a post, subject to a condition that, he should acquire the prescribed qualification for the post, within the period provided therefor, he cannot be said to have acquired an indefeasible right to be regularised, from the date of his initial appointment, without satisfying the required qualification prescribed for the post. We are of the view, that the same should not be approved. Cases, involving, age relaxation or the mode of appointment, subject to satisfying the qualifications prescribed for the post, may stand on a different footing, but not the required or prescribed educational qualifications. If unqualified persons, are also to be regularised, from the date of their appointment, then the decision of the court, would be against the rules, governing appointment, which mandates fulfillment of educational qualifications for the post. Exception to the rule, can be considered to lower posts.

22. The Hon'ble Supreme Court in State of Karnataka vs. Umadevi, reported in (2006) 4 SCC 1 = 2006 II LLJ 722 SC, held that persons appointed in violation of Article 14 and 16 are class by themselves, such appointees, though appointed de hors the statutory rule, their services cannot be regularised. In the said case of Uma Devi (supra), the Hon'ble Supreme Court further cautioned the High Courts and made the following observations:-

"4. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over. It is time, that the courts desist from issuing orders preventing regular selection of recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and

as the guardian of equal rights protection should not be forgotten.

6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (See Basu's Shorter Constitution of India). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That Article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedure which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognized that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the Constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following

the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

23. When the irregularity in the matter of appointment was sought to be rectified, by relaxing the required qualifications, keeping in view of the prerogative of the Government, to adopt the date of issue of the order of regularisation, in terms of the Government guidelines, issued by the Personnel and Administrative Reforms Department vide U.O. Note No.61800/Per-S/98-1, dated 10.09.1998, and when the Government have issued orders in G.O.Ms.No.685 Public (Establishment-IV) Department dated 30.06.2003, decision of the writ court cannot be said to be irrational, arbitrary, warranting any interference. Appellant (since deceased), who did not possess the required educational qualifications for the post of Assistant Section Officer (SC), Public (SC) Department on the date of initial appointment nor acquired the qualification, within the period of four years, provided therefor by the Government, and when the conditional appointment, to the post of Assistant Section Officer, was purely conditional, subject to acquiring the qualification and accepted, as stated supra, the Government is always empowered to determine the date of regularisation. What has been done in the case on hand is that the mistake in issuing the order in G.O.Ms.No.772, Public (Establishment-IV) Department dated 04.09.2002, has been corrected by issuing an amendment in G.O.Ms.No.685 Public (Establishment IV) Department dated 30.06.2003.

24. Amendment in G.O.Ms.No.685 Public (Establishment IV) Department dated 30.06.2003 issued has not been challenged. After six years, representation has been made. Representation of the appellant dated 29.4.2009 has been rejected on 13.11.2009 by the Secretary to the Government, for the reasons stated supra.

In the light of the discussion, we do not find that there is any infirmity in the order impugned before us, warranting interference. Writ appeal is dismissed. However, there shall be no order as to cost.

asr

Sd/-

Assistant Registrar

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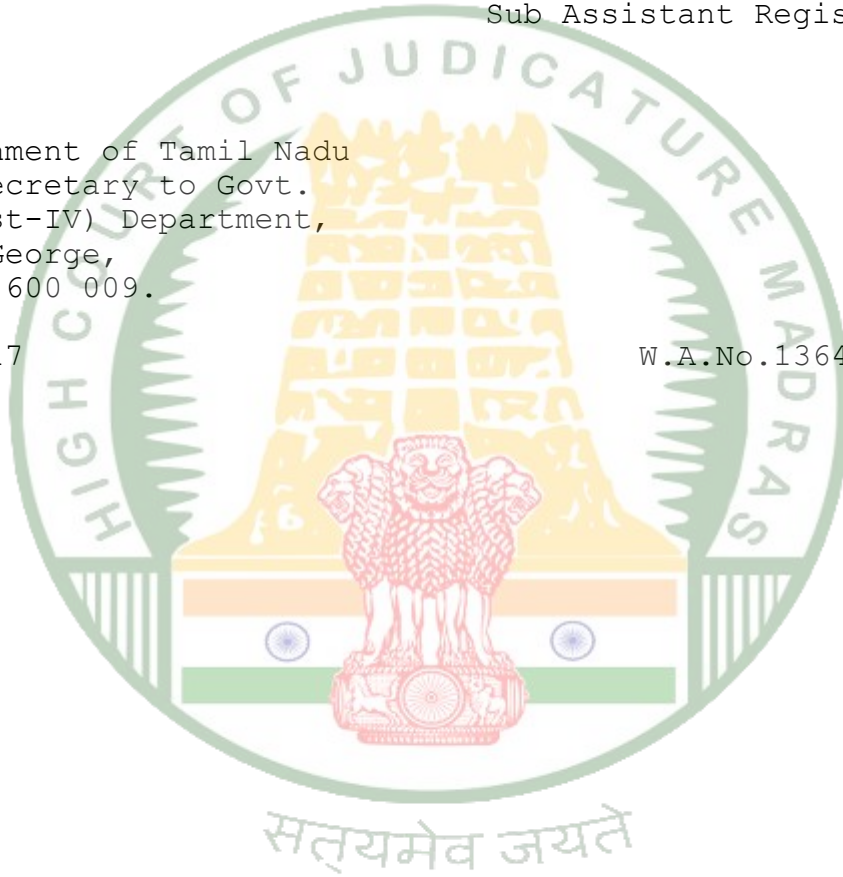
Sub Assistant Registrar

To

The Government of Tamil Nadu
Rep. by Secretary to Govt.
Public (Est-IV) Department,
Fort St. George,
Chennai - 600 009.

KR/06/03/17

W.A.No.1364 of 2012



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