

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 24.03.2016

ORDER DELIVERED ON : 29.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE T.RAJA

WRIT PETITION No.23278 of 2013
and
M.P.Nos.1, 5 and 6 of 2013

E.Anitha

.. Petitioner

vs

1.The Registrar General
High Court of Madras
High Court Buildings
Chennai 600 104

2.Government of Tamilnadu
Rep. By Secretary to the Government
Public (Special A) Department
Secretariat, Chennai 600 009

3.G.Vijaya

4.P.Mathusuthanan
(Impleaded as per order
dated 28.10.2013 in MP 3/2013)

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records from the first respondent relating to the list of 22 candidates provisionally selected for appointment as District Judges (Entry Level) - 2013 along with the press release dated 6.8.2013, bearing reference No.Nil read with reply of the first respondent dated 16.8.2013, bearing reference No.Nil and quashing the same insofar as it relates to selection of the third respondent against the vacancy reserved for SC(W) instead of SC(A), restricting the appointment only to 22 candidates as illegal, arbitrary, discriminatory, unconstitutional and consequently directing the respondents 1 and 2 to declare the writ petitioner as having selected as District Judge (Entry Level) - 2013 in the Tamil Nadu State Judicial Service pursuant to the written test held on 6.7.2013,

and interview on 29.7.2013, to the vacancy reserved for Scheduled Caste (Women), by adjusting the third respondent as being selected against the vacancy reserved for Scheduled Castes (Arunthathiyars on preferential basis) with effect from the date the other 22 candidates selected and appointed as per the notification - 2013 issued by the first respondent dated 6.8.2013 together with all monetary, seniority and other consequential benefits.

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents : Mr.R.Muthukumarasamy
Senior Counsel
Assisted by
Mr.R.Suresh Kumar for R1

Mr.T.N.Rajagopalan
Special Government Pleader
for R2

Mr.V.Ajoy Khose for R4

ORDER

M.SATHYANARAYANAN, J.

The writ petitioner is an unsuccessful candidate for selection to 23 posts of District Judges (Entry Level) -2013.

2.The petitioner in the affidavit filed in support of this writ petition, would aver among other things, that she belongs to Adi Dravida Community, which is a Scheduled Caste Community, and is having qualifications of (a) M.L. (Constitutional Law); (b) M.A. (English Literature); (c) Rashtrabasha Praveen (Hindi Pandit); (d) Shorthand and (e) Typewriting (Tamil and English) Senior Grade and also studying Master of Business Administration (MBA) and she is teaching in Government Law College, Chengalpattu as a Guest Lecturer ever since the year 2007.

3.The petitioner would further state that the second respondent has issued a Notification inviting applications for direct recruitment to 23 posts of District Judges (Entry Level) - 2013, and the said vacancies were distributed as under:-

BC (Other than BC (M))	- 6 (women 2)
General Turn	- 8 (women 4)
Scheduled Castes	- 3 (women - 1)
MBC and Denotified communities	- 4 (women - 1)
SC (Arunthathiyars on preferential basis)	- 1
BC (Muslims)	- 1 (women - 1)

	23

4. It is further averred by the petitioner that she applied for selection and recruitment to the said post and she was one among 165 candidates called for interview. According to the petitioner, she did well in the written examination, compared to Miss.G.Vijaya - third respondent herein, who is a Scheduled Caste (Arunthathiyar) candidate; but, G.Vijaya was awarded more marks in the interview than her and as a consequence, her overall marks were more than the petitioner.

5. The petitioner would further state that out of four posts reserved for Scheduled Caste candidates, as per the Notification, one of them should go to Scheduled Caste (Women) and one to Scheduled Caste (Arunthathiyar) and if the third respondent viz. Miss. G.Vijaya, who belongs to Scheduled Caste (Arunthathiyar) Community, was given the post reserved for Scheduled Caste (Arunthathiyar), naturally, the petitioner would have got the post reserved for Scheduled Caste (Women) because she was the only Scheduled Caste (Woman) candidate. However, the third respondent was selected to the post reserved for Scheduled Caste (Women), and as a consequence, the petitioner was not selected as a District Judge (Entry Level) against the Scheduled Caste (Women) category and the vacancy under Scheduled Caste (Arunthathiyar) category remains unfilled and thus, only 22 persons were selected as against 23 posts and one post is kept idle.

6. It is further stated by the petitioner that as per the final result, Tvl. N.Logeswaran and C.Sanjai Baba (Scheduled Caste Community) and the third respondent Miss.G.Vijaya - Scheduled Caste (Arunthathiyar) were selected and the third respondent was selected and accommodated in Scheduled Caste (Women) category instead of Scheduled Caste (Arunthathiyar) category and the adoption of such procedure is quite contrary to the Tamil Nadu Arunthathiyars (Special Reservation of Seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Scheduled Castes) Act, 2009, (in short, Tamil Nadu Act 4 of 2009) and the Rules framed thereunder.

7.The petitioner would state that in this regard, she also submitted a representation dated 7.8.2013, to the first respondent pointing out the said infirmity, and made a request to the first respondent to issue a fresh/supplementary notification by including her name in the select list, and she is yet to receive any response and therefore, came forward to file the present writ petition.

8.Counter affidavits have been filed by the respondents 1 and 4.

9.Mr.N.G.R.Prasad, learned Counsel, assisted by Mr.K.Srinivasa Murthy, learned Counsel appearing for the petitioner, would contend that as per the Notification, horizontal reservation is provided and has drawn the attention of this Court to the Tamil Nadu Act 4 of 2009 and would contend that admittedly, one post was reserved for Scheduled Caste (Arunthathiyar) on preferential basis and one candidate viz. the third respondent, was available and instead of accommodating her in that slot, she was accommodated in the post meant for Scheduled Caste (Women), and as a consequence, the petitioner has lost her chance to become a District Judge (Entry Level).

10.It is the further submission of the learned Counsel appearing for the petitioner, the performance of the petitioner is more meritorious. He has also drawn the attention of this Court to the list of rank-wise cumulative marks and would submit that the petitioner who has secured the total mark of 56.75 out of 150 and exam mark of 28.38 out of 75, whereas the third respondent had secured 53.25 and 26.63 respectively under the above said heads, and however, in the interview, she was awarded 14 marks, whereas the petitioner was awarded only 5 marks and the procedure adopted by the Interview Committee, is arbitrary and unreasonable.

11.The learned Counsel appearing for the petitioner, has drawn the attention of this Court to the qualifications of the petitioner and would submit that in spite of the fact that she is hailing from a downtrodden community and got Master of Law in Constitution, Master of Arts in English Literature and also passed Rashtrabhasha Praveen - Hindu Pandit as well as Shorthand and Typewriting both Tamil and English - Senior Grade and she is well qualified and suited for selection and appointment to the post of District Judge (Entry Level), overlooking her meritorious claim, by adopting the method of awarding more marks in the interview, the third respondent managed to get her selected and got appointment as District Judge (Entry Level).

12.The learned Counsel appearing for the petitioner, has invited the attention of this Court to the decisions

rendered by the Hon'ble Supreme Court of India and reported in (1995) 5 SCC 173 (ANIL KUMAR GUPTA AND OTHERS V. STATE OF U.P. AND OTHERS) and (2007) 8 SCC 785 (RAJESH KUMAR DARIA V. RAJASTHAN PUBLIC SERVICE COMMISSION AND OTHERS), and would submit that the above judgments speak about the distribution of horizontal reservation seats, while so, giving a total go-by to the said decisions rendered by the Apex Court, the first respondent without adherence to the fairness, in an arbitrary manner, has selected and appointed the third respondent.

13. Insofar as the selection and appointment of the fourth respondent, who came to be impleaded subsequently in the writ petition, it is the submission of the learned Counsel appearing for the petitioner, that the fourth respondent has been accommodated in the vacancy caused on account of selection of the third respondent overlooking the claim of the petitioner, who is also a woman candidate, and the procedure adopted in that regard, on the face of it, is unsustainable and he prays for quashment of selection and appointment of the third and fourth respondents and for selecting and appointing the petitioner as a District Judge (Entry Level) for the year 2013.

14. Mr. R. Muthukumarasamy, learned Senior Counsel, assisted by Mr. R. Suresh Kumar, learned Counsel appearing for the first respondent, has invited the attention of this Court to the counter affidavit filed by the first respondent, and would submit that the third respondent, who belongs to Scheduled Caste (Arunthathiyar) Community was allotted against the Roster Point 26 reserved for Scheduled Caste woman, on account of the fact that the performance of the petitioner was completely unsuitable for selection and when the petitioner has sought for information, a reply was also sent in that regard, and therefore, she cannot express any grievance.

15. It is the further submission of the learned Senior Counsel appearing for the first respondent, that on account of the fact that the third respondent, who belongs to Scheduled Caste (Arunthathiyar) Community, has been accommodated in Roster Point 26, Roster Point 32 reserved for Scheduled Caste (Arunthathiyar), was left unfilled for want of candidates and in the light of Section 6 of the Tamil Nadu Act 4 of 2009 read with Rule 22(a) of the General Rules of Tamil Nadu State and Subordinate Services, the Selection committee found that the Scheduled Caste candidate with Registration No. 11361 viz. P. Mathusuthanan (fourth respondent), has secured the third position in the order of merit, among the Scheduled Caste candidates for having secured 41 out of 100, and he stood as the next Scheduled Caste candidate viz. Thiru C. Sanjay Baba, who secured 44.25 out of 100, and has been fitted in Roster Point 36 on account of securing more marks than that of the writ petitioner, and since the selection and appointment of the third

and fourth respondents, is in consonance with the above said statutory provisions, the petitioner cannot express any grievance.

16.As regards the complaint made by the petitioner as to the procedure adopted in the interview, it is the submission of the learned Senior Counsel appearing for the first respondent, the Selection Committee consisted of three Hon'ble Judges, who had wide and rich experience in the relevant field, and the interview process was fair and transparent and therefore, the petitioner cannot make any complaint and he prays for dismissal of the writ petition.

17.Mr.V.Ajoy Khose, learned Counsel appearing for the fourth respondent, in addition to the submissions made by the learned Senior Counsel appearing for the first respondent, has invited the attention of this Court to the counter affidavit of the fourth respondent and would contend that the third respondent had secured more and higher marks than the petitioner as per her overall performance, and there is no bar for accommodating a Scheduled Caste male candidate in the Roster Point reserved for Scheduled Caste (Arunthathiyar) Community, and taking into consideration the fact that the fourth respondent was overall the third best candidate in Scheduled Caste category, he has been rightly selected and appointed as a District Judge (Entry Level) and is functioning in that capacity for nearly three years and therefore, at this distant point of time, it is not fair to set aside his selection and prays for dismissal of this writ petition.

18.This Court has paid it's best attention to the rival submissions and also perused the materials placed before it, and the decisions relied on by the learned Counsel appearing for the petitioner.

19.The second respondent has issued a Notification inviting applications for direct recruitment of District Judges (Entry Level) numbering 23. As per Clause 7, the written examination will comprise of two papers, and paper-I will be for a maximum of 75 marks and will be entirely of objective type and Paper-II will be of descriptive type and each problem will carry 15 marks and the maximum marks for the paper will be 75. Insofar as the objective type questions are concerned, every wrong answer will invite negative mark at the rate of a minus one by four ($-\frac{1}{4}$) and eventually, the mark secured in both papers, will be totalled and the average scored for a maximum of 75 marks, will be arrived at. The Notification provides for communal reservation also.

20.The Government of Tamil Nadu has passed the Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational

Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Scheduled Castes) Act, 2009 (Tamil Nadu Act 4 of 2009) providing reservation of seats in educational institutions including private educational institutions in State and of appointments or posts in the services under the State to Arunthathiyars in the State of Tamil Nadu within 18% reservation for Scheduled Caste. Section 5 speaks about the right to compete for non-preferential seats, appointments or posts not to be affected and Section 6 speaks about the right to carry forward of vacancies for Scheduled Castes not to be affected. Section 8 says that notwithstanding anything contained in Sections 3, 4, 5 and 6, the claims of the students or members belonging to Arunthathiyars, shall be considered for the unreserved seats, appointments or posts which shall be filled up on the basis of merit and where a student or member belonging to Arunthathiyars, if selected on the basis of merit, the number of seats, appointments or posts reserved for the Arunthathiyars shall not, in any way, be affected. It is relevant to extract Sections 5 and 6 of Tamil Nadu Act 4 of 2009 as under:-

"5. Notwithstanding anything contained in the 1994 Act or the 2006 Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of Arunthathiyars, where more number of qualified Arunthathiyars are available, even after filling up of the required percentage of reservation for Arunthathiyars on preferential basis, such excess number of candidates of Arunthathiyars shall be entitled to compete with Scheduled Caste other than Arunthathiyars in the inter-se merit among them in the case of appointments or posts in the services under the State or admission into educational institutions including private educational institutions.

6. Notwithstanding anything contained in the provisions of this Act or in the 1994 Act or the 2006 Act or in any other law for the time being in force, or in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of Arunthathiyars, where seats, appointments or posts reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates; it shall be filled up by Scheduled Castes other than Arunthathiyars with no carry

forward of vacancies for Arunthathiyars and the entire reservation of eighteen per cent for Scheduled Castes shall be filled up in the year of actual vacancy subject to the availability of Scheduled Castes candidates and the preference given to Arunthathiyars shall not, in any way, affect the existing principle of carry forward of vacancies for Scheduled Castes in general."

21. Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Scheduled Castes), Rules, 2009, was also framed and as per the illustration to Rule 3, out of 100 seats, 18 seats are reserved for Scheduled Castes in the following ratio:-

2	32	66
6	36	72
12	42	76
16	52	82
22	56	86
26	62	92

22. The grievance expressed by the learned Counsel appearing for the petitioner, is that upto written test level, the petitioner performed extremely well and secured more marks than that of the third respondent, who belongs to Scheduled Caste (Arunthathiyar) Community and in the interview, the petitioner was awarded only 5 marks, whereas the third respondent was awarded 14 marks, and thereby, she got the overall mark of 40.63%, whereas the petitioner has got only 33.38% and as a consequence, she was not selected. The further grievance expressed by the learned Counsel appearing for the petitioner, is that since the third respondent belongs to Scheduled Caste (Arunthathiyar) Community, she should have been accommodated in the said vacancy and in that event, one post reserved for Scheduled Caste (Women) would have remained unfilled and in that slot, the petitioner would have been accommodated; but, it was not done so, and the procedure adopted, is in utter violation of the statutory Rules and in an arbitrary manner.

23. The learned Counsel appearing for the petitioner, expresses another grievance stating that on account of accommodation of the third respondent in Scheduled Caste (Women)

Category, one post reserved for Scheduled Caste (Arunthathiyar) on preferential basis, became vacant and in that post, a male Scheduled Caste candidate viz. the fourth respondent, has been accommodated and the procedure adopted in that regard, is unknown to law and invited the attention of this Court to the above cited two decisions.

24. In (1995) 5 SCC 173 (ANIL KUMAR GUPTA AND OTHERS V. STATE OF U.P. AND OTHERS), the writ petitions were filed under Article 32 of the Constitution of India, highlighting the faulty manner in which reservations have been provided and implemented by the Government of Uttar Pradesh and its authorities in the matter of admission to medical courses for the year 1994-95. The Hon'ble Supreme Court of India taking into consideration the implementation of two-way reservations viz. social reservations (vertical reservations) and special reservations (horizontal reservations) and also the revised notification dated 17.12.1994, issued by Lucknow University, has considered the correctness of the procedure prescribed by the said revised notification for filling up seats, and it is relevant to extract paragraph No.18 as under:-

"18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent

in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota."

25. In (2007) 8 SCC 785 (RAJESH KUMAR DARIA V. RAJASTHAN PUBLIC SERVICE COMMISSION AND OTHERS), it has been held that where a vertical reservation is made in favour of a Backward Class, under Article 16(4) of the Constitution of India, the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class, and therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled and the entire reservation quota will be intact and available in addition to those selected under open competition category. Insofar as the horizontal (special) reservation is concerned, the Hon'ble Supreme Court of India observed that where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste Women", and if the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota, and only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes.

26. There cannot be any difficulty in accepting the said propositions laid down by the Hon'ble Supreme Court of India. However, in order to appreciate the submission made by the learned Counsel appearing for the petitioner, this Court has to consider the relevant statutory Rules.

27. As per Section 5 of Tamil Nadu Act 4 of 2009, notwithstanding anything contained in the 1994 Act or the 2006 Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of Arunthathiyars, where more number of qualified Arunthathiyars

are available, even after filling up of the required percentage of reservation for Arunthathiyars on preferential basis, such excess number of candidates of Arunthathiyars shall be entitled to compete with Scheduled Caste other than Arunthathiyars in the inter-se merit among them in the case of appointments or posts in the services under the State or admission into educational institutions including private educational institutions. In the case on hand, the third respondent - a woman candidate, belongs to Scheduled Caste (Arunthathiyar) Community and by virtue of her good performance, got herself accommodated in Scheduled Caste (Women) Category and on account of her accommodation, one post reserved for Scheduled Caste (Arunthathiyar) on preferential basis remained vacant. It is also relevant to consider Section 6 of the Tamil Nadu Act 4 of 2009, which provides among other things, that where seats, appointments or posts reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates; it shall be filled up by Scheduled Castes other than Arunthathiyars with no carry forward of vacancies for Arunthathiyars and the entire reservation of eighteen per cent for Scheduled Castes shall be filled up in the year of actual vacancy subject to the availability of Scheduled Castes candidates and the preference given to Arunthathiyars shall not, in any way, affect the existing principle of carry forward of vacancies for Scheduled Castes in general.

28. In the light of the said provisions, the Selection Committee has considered the case of the fourth respondent. The fourth respondent has secured total mark of 62 out of 150 and the exam mark of 31 out of 75 and in the interview, has secured 10 marks and in overall, secured 41 marks out of the total for 100. As already pointed out, the third respondent has secured 40.63 out of the total for 100. Insofar as the petitioner is concerned, her total mark out of 150 and exam mark out of 75, are less than the fourth respondent and overall, she secured 33.38 out of the total for 100. Therefore, her performance is less meritorious than that of the fourth and third respondents. As per Section 6 of the Tamil Nadu Act 4 of 2009, there is no bar for accommodating a Scheduled Caste candidate and by virtue of better performance, the fourth respondent was accommodated and selected as a District Judge (Entry Level). Rule 21(a) of the Tamil Nadu State and Subordinate Service Rules says that women alone shall be appointed to the post in any institution or establishment specially provided for them; provided that men may be appointed, if suitable and qualified are not available for such appointment.

29. Proviso to Rule 22(a) of the said Rules, also provides that a vacancy reserved for Scheduled Caste (Arunthathiyar) can be filled up by any suitable Scheduled Caste candidate and in the case on hand, Roster Point 32 reserved for

Scheduled Caste (Arunthathiyar) was filled up by accommodating the fourth respondent, who belongs to Scheduled Caste Community on account of his better performance than that of the petitioner.

30.It is also pertinent to point out at this juncture, that the petitioner did not challenge the vires of either Section 6 of the Tamil Nadu Act 4 of 2009, or Rule 22(a) of the Tamil Nadu State and Subordinate Service Rules. In the considered opinion of the Court, the selection of the third and fourth respondents has been done in accordance with the above said statute and Rules thereunder. As per the list of rank-wise cumulative marks, admittedly, the fourth and third respondents had secured overall higher marks than that of the writ petitioner and though the third respondent has secured lesser marks than that of the writ petitioner in the written exam, in the interview, she got higher marks and as a consequence, her performance improved and she secured the overall mark of 40.63 out of the total for 100 as against 33.38 out of 100 secured by the petitioner.

31.In the light of the reasons assigned above, this Court is of the view that the writ petition lacks merits and deserves to be dismissed.

32.In the result, the writ petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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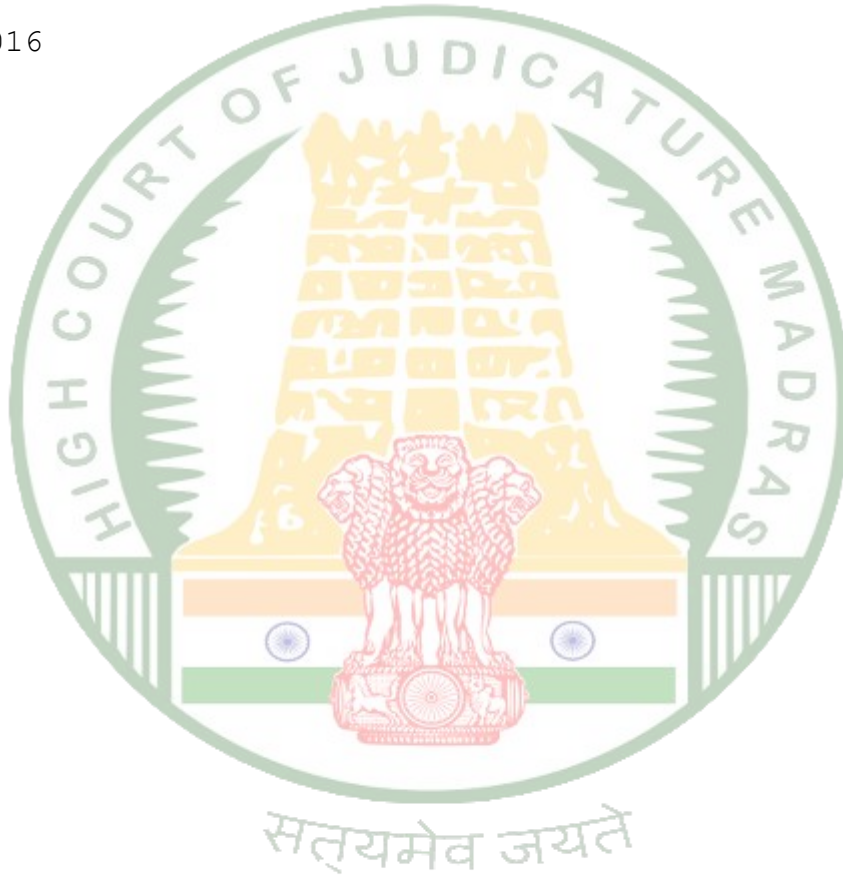
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