

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-11-2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31317 of 2014

And

M.P.Nos.1 and 2 of 2014

R.Selvaraj

Petitioner

-vs-

1.The Director of Survey and Land Records,
Chepauk,
Chennai-600 005.

2.The Assistant Director of Survey and Land Records,
Coimbatore. . . Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Charge Memo Na.Ka.No.A8/ 3255/2014 dated 30.4.2014 of the second respondent, to quash the same to the limited extent of issue thereof under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and issue consequential directions to the first respondent to convert the same under Rule 17(a) thereof and to consequently forthwith include the name of the petitioner in the ensuing panel for promotion as Deputy Inspector of Survey for the year 2013-2014 and promote him as such, upon subjecting of his eligibility otherwise with all consequential benefits.

For Petitioner - Mr.M.Ravi

For Respondents-1&2- Mr.R.Vijayakumar,
Additional Government Pleader
Assisted by Mr.K.Thangapandi,
Government Advocate.

ORDER

The charge memo dated 30.4.2014 issued by the second respondent is under challenge in this writ petition.

2. The writ petitioner was initially appointed as Survey-

cum-Draftsman on consolidated monthly pay in the year 1983 and was brought under the regular timescale of pay with effect from 19.9.1995. The services of the writ petitioner was regularised with effect from the year 1996 and he was promoted as Sub-Inspector of Survey thereafter. The writ petitioner claims that he was fully eligible for promotion to the post of Deputy Inspector of Survey in the panel of the year 2013-2014 and the crucial date was 25.4.2014. However, when the writ petitioner was serving as the Sub-Inspector of Survey in the Office of the Assistant Director of Survey and Land Records, Coimbatore, he was posted to serve on deputation in the Western Zone of Coimbatore City Municipal Corporation in proceedings dated 5.4.2012. The writ petitioner joined duty in the said post on 12.4.2012. The writ petitioner was on medical leave for 30 days from 8.6.2012 to 7.7.2012 and on expiry of the leave, he joined duty on 6.7.2012. However, he was not allowed to join duty and subsequently, joined duty on 18.7.2012. Further, the writ petitioner was relieved from the deputation post and rejoined duty in his parent Department, on 10.7.2013 in the Office of the Assistant Director of Survey and Land Records, Coimbatore. Subsequently, by virtue of an order passed by the Additional Director of Survey and Land Records, Chennai, the writ petitioner was posted to the Office of the Assistant Director of Survey and Land Records, Namakkal and he joined duty at Namakkal.

3. However, on account of certain allegations, in the deputation post, a charge memo was issued to the writ petitioner in proceedings dated 30.4.2014 and the charges against the writ petitioner are extracted as under:-

"1. திரு.ஆர்.செல்வராஜ், சார் ஆய்வாளர், கோவை மாவட்ட உதவி இயக்குநர் கட்டுப்பாட்டின் கீழ் பணிபுரிந்து வந்தபோது தனியர் இம்மாவட்டத்தில் பணிபுரிந்த 05/2012 முதல் 06/2013 வரையிலான காலங்களுக்குரிய நாட்குறிப்பினை நாளதுவரை உரிய வழிமுறையாக சமர்ப்பிக்காமல் இருந்து வருவது.

2. தனியர் இச்செயல் முலம் Chain Survey Land Records Manual Part II, Chapter IV & VI-ல் குறிப்பிடப்பட்டுள்ள நிலஅளவைதுறை சார்ந்த நகரநிலஅளவை அலுவலர் தொடர்பான பணி நடைமுறை விதிகளை மீறிசெயல்பட்டுள்ளது.

3. நாட்குறிப்பினை வட்டத்துணை ஆய்வாளர் மற்றும் ஆய்வாளரிடம் சமர்ப்பித்து, அவர்களின் அங்கீகாரம் பெற்று, பின்னர் உதவி இயக்குநருக்கு சமர்ப்பிக்க வேண்டும் என்ற நடைமுறைகள் இருப்பது தெரிந்திருந்தும், நீண்ட காலம் இத்துறையில் பணியாற்றி வரும் தனியர், வட்டத்துணை ஆய்வாளர் மற்றும் ஆய்வாளர் ஆகியோரது அங்கீகாரம் பெறாது, வழிமுறையை மீறி உதவி இயக்குநருக்கு பதிவஞ்சல் முலமாக நாட்குறிப்பினை அனுப்பி வைத்துள்ளதன் முலம் நடைமுறை விதிகளை மீறி செயல்பட்டுள்ளது.

4. தனியர் நாட்குறிப்பினை சமர்ப்பிக்குமாறு இவ்வலுவலக

குறிப்பாணைகள் வாயிலாக நாமக்கல் உதவி இயக்குநர் மூலம் தெரிவிக்கப்பட்டும், நாளது வரை நாட்குறிப்புகளை சமர்ப்பிக்காமல் இருந்து வருவதன் மூலம் உயர் அலுவலரின் உத்தரவினை உதாசீனப்படுத்தியது.

5. தனியரின் இந்நடவடிக்கை காரணமாக நிர்வாகத்திற்கு இடையூறு விளைவித்தது /"

4. Annexure-II, charge memo denotes the statement of allegations and Annexure-III provides the list of documents.

5. The writ petitioner submitted his representation on 10.7.2014, requesting the Competent Authority to convert the charges from 17(b) of the Tamil Nadu Civil Services Discipline and Appeal Rules to 17(a) of the said Rules. After submitting the representation, the writ petitioner moved the present writ petition, challenging the charge memo.

6. The learned counsel, appearing on behalf of the writ petitioner, contended that the writ petition is filed mainly on the ground that the Government issued guidelines in Circular No.14353/Per.N/93-I, P & AR Department, dated 11.3.1993, mentioning the types of cases in which proceedings under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are to be initiated. The learned counsel is of the opinion that the respondents have violated the guidelines issued by the Government in this regard and instead of framing charges under Rule 17(a), they have framed the charges under Rule 17(b). Thus, the charge memo itself is to be quashed.

7. In support of the contention, the learned counsel for the writ petitioner relied on the judgment of this Court in S.Kannan vs. State of Tamil Nadu, Represented by its Secretary to the Government, Home Transport-II Department, Chennai and Others {(2009) 8 MLJ 217}, the relevant paragraphs 4, 10, 11, 12 and 21, are extracted hereunder:-

"4. The one and only contention of the learned counsel for the petitioner is that the allegations made against the petitioner do not attract the ingredients to frame charges under Rule 17 (b), but only under Rule 17 (a), as there is no dishonest motive, and non consideration of the same by the respondents has vitiated the entire proceedings.

10. For deciding the charges to be framed under Rule 17 (b), the Government, vide Circular No.14353, P&AR (Per.N)/93-1, dated 11.03.1993, has framed certain guidelines, which read as under :

"Without prejudice to the generality of situations involving indiscipline, moral

turpitude, corruption etc., charges under rule 17 (b) have to be framed in the following types of cases for imposing any one of the major penalties :-

(1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g.

(a) possession of assets disproportionate to the known sources of income ;

(b) obtaining or attempting to obtain illegal gratification ;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc;

(2) Falsification of Government records.

(3) Irregularity or negligence in the discharge of official duties with a dishonest motive. (emphasis supplied)

(4) Misuse of official position for personal gain.

(5) Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.

(6) Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills etc.

Unless a major punishment is really warranted namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges

under rule 17 (b) is not necessary and should be avoided." (emphasis supplied)

11. On a perusal of the above guidelines, what comes to be known is that none of the charges framed against the petitioner comes under the above category of cases. Though the charges are framed against the petitioner under Rule 17 (b) as if there is irregularity or negligence in the discharge of official duties, as adumbrated in Clause 3 of the guidelines referred to supra, the said negligence, alleged by the respondents, does not contain the dishonest motive, which is a crucial factor for deciding the category of the charge i.e., under 17 (a) or under 17 (b).

12. The very object of framing of the guidelines is that unless a major punishment is really warranted, namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under Rule 17 (b) is not necessary and should be avoided.

21. One more aspect in this case is that the case in C.C.No.88 of 2003, dated 16.09.2004 has ended in acquittal on the ground that the alleged presence of eye witnesses namely P.Ws.1 and 2 in the place of occurrence is doubtful and that the damages in the motor cycle are not in corroboration with the evidence of the eye witnesses. The said judgment has become final, as no appeal has been preferred against the same. So, the mere complaint of the father of the deceased cannot be a material to initiate the proceedings against the petitioner."

8. Further, the learned counsel for the writ petitioner relied upon the orders passed by this Court in the case of M.Sampoornam vs. State of Tamil Nadu, Represented by its Secretary to Government, Revenue Department, Secretariat, Chennai-9 {W.P.(MD) No.12725 of 2011 decided on 22.3.2013}. This case was based on the earlier judgment rendered in the case of S.Kannan (cited supra). Relying on the earlier judgment cited supra, the case of M.Sampoornam (cited supra) was decided.

Paragraph-12 of the said judgment is relevant and the same is extracted hereunder:-

"12. In the light of catena of decisions referred to above, having gone through the facts and circumstances and material papers available on record, I am of the view that the respondents could have framed the charges against the petitioner only under rule 17(a) and not under rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, it being a minor delinquency, as per the guidelines issued by the Government and the proceeding would not be a bar in promoting the petitioner, subject to the result of the departmental proceeding. It is also brought to the notice of this Court that the petitioner is on the verge of retirement and if she is not promoted that will adversely affect her legitimate right, since the departmental proceeding was initiated after a lapse of 2+ years after the occurrence and pending for more than three years."

9. This apart, the learned counsel for the writ petitioner relied upon the order of the Hon'ble Division Bench of this Court in the case of G. Prakasam vs. Secretary to Government, Revenue Department, Chennai-9 and Others {W.P.No.3558 of 2004 decided on 5.9.2006} and the relevant paragraph-9 is extracted hereunder:-

"9. As far as the second limb of the prayer sought for by the petitioner for promotion to the post of District Revenue Officer on par with his juniors and with consequential benefits, is concerned, we feel that the punishment of stoppage of increment for a period of six months without cumulative effect is only a minor punishment as per Tamil Nadu Civil Services (Discipline and Appeal) Rules applicable to the Tamil Nadu Government servants and the Charges could have been framed under Rule 17(a) as they were not serious in nature. Admittedly, the charges were framed against the petitioner for certain lapses and lack of supervision and no other allegations such as, illegal gratification, committal of penal offence, etc. which would come under Rule 17(b) were levelled against the petitioner. The Government has given specific guidelines with regard to framing

of charges under Rule 17(a) and 17(b). The guidelines are to the following effect:

"Guidelines for deciding whether charges may be framed under Rule 17(b):

(1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of law, e.g.,

(a) possession of assets disproportionate to the known sources of income;

(b) obtaining or attempting to obtain illegal gratification;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate, etc.,

(2) Falsification of Government records.

(3) Irregularity or negligence in the discharge of official duties with a dishonest motive."

10. The learned counsel for the writ petitioner vehemently contended that the Hon'ble Division Bench in paragraph-9 of the judgment cited supra, held that in view of the charges framed against the delinquent under Rule 17(b), his right of promotion was denied. Thus, the authorities ought to have been framed the charges only under Rule 17(a) based on the nature of the allegations which are minor lapses. Thus, the Division Bench considered the case therein and issued directions to consider for granting of promotion. While considering the grievances in respect of promotion, the Hon'ble Division Bench considered the guidelines issued by the Government in letter dated 11.3.1993.

11. Therefore, the Hon'ble Division Bench is of the opinion that the guidelines issued was not followed in that case also. By drawing an inference, the learned counsel for the writ petitioner stated that the case on hand is also a similar case where the charges are very minor in nature and framing of the charges under Rule 17(b) is highly unwarranted and contrary to the guidelines issued by the Government under Letter dated 11.3.1993.

12. The learned Additional Government Pleader, in this regard, opposed the contentions of the learned counsel for the writ petitioner by stating that the Government guidelines were issued in the form of a letter and cannot have statutory force. The guidelines are issued for the Competent Authorities to

follow certain circumstances and it was issued only in the nature of directory and it can never be claimed as mandatory by the delinquent officials. The guidelines issued in this regard are directory and non-adherence of certain guidelines by the Competent Authorities, cannot be considered as violation of rules. In this regard, it is for the delinquent to submit his explanations/ objections and contest the case before the enquiry proceedings. All these points in respect of minor charges and major charges, can be solicited by the delinquent before the Competent Authorities at the time of enquiry proceedings. Contrarily, this cannot be a ground to file a writ petition and quash the charge memo itself.

13. Heard the respective learned counsel appearing both on behalf of the writ petitioner and the respondents.

14. Now this Court has to consider the nature of penalties prescribed under the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the procedures to be followed for framing of the charges and imposing penalties on the Government employees.

15. Part III of Rule 8 deals with Penalties and Procedures. The following penalties are prescribed under Rule 8 and the same are extracted hereunder:-

"PART III

PENALTIES AND PROCEDURES

8. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon every person who is a member of the civil service of the State and every person holding a civil post under the State specified in Rule 2, namely :-

- (i) Censure;
- (ii) Fine (in the case of persons for whom such penalty is permissible under these rules);
- (iii) Withholding of increments or promotion:

Provided that in cases where the punishment of withholding of increment cannot be given effect to fully, the monetary value equivalent to the amount of increments ordered to be withheld for the unexpired period of the punishment shall be recovered from the person:

Provided further that in cases of stoppage of increment with cumulative effect, the monetary value equivalent to three times the amount of increments ordered to be withheld maybe recovered.

- (iv) Reduction to a lower rank in the seniority list or to a lower post not being lower than that to which he was directly

recruited, whether in the same service or in another service, State or Subordinate or to a lower time scale, not being lower than that to which he was directly recruited, or to a lower stage in a time scale:

Provided that in cases where the punishment of reduction to a lower stage in a time scale cannot be given effect to fully, the monetary value equivalent to the difference in emoluments as a result of reduction to such lower stage in the time - scale for the unexpired period of the punishment shall be recovered from the person.

(v) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to any Government Company or Organisation or Local Authority or to a Lower Body, while on deputation, by negligence or breach of orders.

(vi) Compulsory retirement;

(vii) Removal from the Civil Service of the State Government;

(viii) Dismissal from the Civil Service of the State Government;

(ix) Suspension, where a person has already been suspended under Rule 17(e), to the extent considered necessary by the authority imposing the penalty.

The penalties mentioned in items (i) to (iii), (v) and (ix) shall be deemed to be minor penalties and those in items (iv), (vi) to (viii) as major penalties.

The penalties mentioned in items (vi), (vii) or (viii), as the case may be, shall be imposed on a Government servant for the violation of Rule 19 of the Tamil Nadu Government Servants' Conduct Rules, 1973.

Explanation-I.- The discharge,-

(i) of a person appointed on probation before the expiry or at the end of the prescribed or extended period of probation ; or

(ii) of a person engaged under contract, in accordance with the terms of his contract ; or

(iii) of a person appointed, otherwise than under contract, to hold a temporary appointment on the expiration of the period of appointment, does not amount to removal or dismissal within the meaning of this rule.

Explanation-II.- The following shall not amount to a penalty within the meaning of this

rule, namely :-

(i) withholding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the Rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;

(ii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a service, grade or post for promotion to which he is eligible;

(iii) reversion of Government servant officiating in a higher service, grade or post to a lower service, grade or post, on the ground that he is considered to be unsuitable for such higher service, grade or post on any administrative ground unconnected with his conduct;

(iv) reversion of a Government servant, appointed on probation to any other service, grade, or post, to his permanent service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or to the rules and orders governing such probation;

(v) replacement of the services of a Government servant, whose services had been borrowed from a State Government or the Central Government or an authority under the control of a State Government or the Central Government at the disposal of the State or the Central Government or the authority from which the services of such Government servant had been borrowed; and

(vi) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement.

Explanation-III.- The removal of a person from the Civil Service of the State Government shall not disqualify him for future employment but the dismissal of a person from the Civil Service of the State Government shall ordinarily disqualify him for future employment. [Substituted in G.O.Ms.No.62, P & AR (N), dated 2nd February, 1996]".

16. Rule 17(a) of the said Rules enumerates the procedures for imposing minor penalties. The Rule says that in every case where it is proposed to impose on a member of a service or a person holding a civil post under the State any of the penalties

specified in items (i), (ii), (iii), (v) and (ix) in Rule 8 or in Rule 9, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed. Thus the summary procedure is prescribed under Rule 17(a) for the purpose of imposing the minor penalties. The minor penalties, as such, are stated as above.

17. The procedure for imposing major penalties are prescribed under Rule 17(b). The prescribed procedures are to be followed for imposing the major penalties. For imposing major penalties, an enquiry is required and the principles of natural justice is to be adhered to. In this regard, all opportunities to participate and defend the case to be provided to the delinquent officials.

18. The Rule does not prescribe any such provisions for the purpose of framing of charges either under Rule 17(a) or under Rule 17(b) of the Rules. Under these circumstances, the learned counsel for the writ petitioner has emphatically contended that in the absence of any rule in respect of framing of charges, the guidelines issued by the Government in letter dated 11.3.1993 must be followed. In other words, the guidelines issued in this regard will have an effect of a Statute since the Rules are silent in this regard.

19. Certainly the point raised by the learned counsel for the writ petitioner is a concern to the Court and the same is to be clarified legally for the purpose of settling this issue in respect of the legal enforceability of the administrative instructions issued by the Government.

20. This Court has to cite the judgment of the Hon'ble Supreme Court of India in the case of Union of India vs. K.P. Joseph and Others [(1973) 1 SCC 194]. The Hon'ble three Judges Bench of the Supreme Court of India, participated in the adjudication of the above case. His Lordship Mr. Justice K.K. Mathew, while speaking for the Bench, held that the rule that administrative orders confer no justifiable rights is subject to exceptions. When the order confers upon the respondent the right to have his pay fixed in the manner specified in the order that forms part of the conditions of his service and can be enforced. Paragraphs 9, 10 and 11 of the judgment are extracted hereunder:-

"9. Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in Sant Ram Sharma v. State of

Rajasthan [AIR 1967 SC 1910 : (1968) 1 SCR 111 : (1968) 1 SCJ 672] that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.

10. In Union of India v. Indo-Afghan Agencies Ltd. [AIR 1968 SC 718 : (1968) 2 SCR 366, 377 : (1968) 2 SCJ 129] this Court, in considering the nature of the Import Trade Policy said:

"Granting that it is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities."

To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that we have imported the principle of natural justice of audi alteram partem into this area. A very perceptive writer has written:

"Let us take one of Mr Harrison's instances - a regulation from the British War Office that no recruit shall be enlisted who is not five feet six inches high. Suppose a recruiting officer musters in a man who is five feet five inches only in height, and pays him the King's shilling; afterwards the officer is sued by the Government for being short in his accounts; among other items he claims to be allowed the shilling paid to the undersized recruit. The Court has to consider and apply this regulation and, whatever its effect may be, that effect will be given to it by the Court exactly as effect will be given to a statute providing that murderers shall be hanged, or that last wills must have two witnesses."

(John Chipman Gray on "The Nature and Sources of the Law").

11. We should not be understood as laying down any general proposition on this question. But we think that the Order in question conferred upon the first respondent the right to have his pay fixed in the manner specified in the Order and that was part of the conditions of his service. We see no reason why the Court should not enforce that right."

21. The Supreme Court had drawn a fine distinction in between the differences. The Supreme Court, while carefully settling the principles, stated that all the administrative instructions are not enforceable nor anybody can claim any right over it. So also all the administrative instructions are unenforceable and certain guidelines are to be enforced on facts and circumstances. Thus, a careful interpretation is required in such circumstances to decide what are all the administrative instructions issued by the Government, which are enforceable or directory in nature and what are all the instructions or guidelines issued by the Government, are unenforceable and no vested right can be rest upon. Under these circumstances, this Court is of the opinion that an analysis of the nature of the instructions issued by the Government, is certainly to be undertaken while deciding such kind of cases.

22. Going beyond this, the Rules of Constructive Interpretation are also to be considered by this Court. Constructive Interpretation is a method of legal interpretation that aims to find a normative unity in the diversity of rules that characterise a legal system. It is about finding the interpretation of a rule that fits in with the current legal system and is most justified according to ideals of fairness, justice, procedural due process and integrity. "Constructive Interpretation is a matter of imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong".

23. Dworkin held that constructive interpretation can be divided into three stages. First stage is the "Pre-interpretive" stage in this stage a judge looks at all relevant rules and standards depending upon the available material. The second stage is the 'interpretive' stage in which the Judge settles on some general justification of the main elements of the practice identified in the pre-interpretive stage and the third stage is 'post interpretive', in this stage a Judge shall review his decision and ensure that it is in its best possible form and is coherent with the principles and rules of the legal structure.

Constructive interpretation consists of integrity, discretion

and precedents, with each element playing an important role in making the judge reach the most desired decision.

24. Law as integrity holds that when 'hard cases' come in front of a court, the judge has an obligation to recognize legal rights and duties on the assumption that they were all created by the community as an institution. Further, a concept of law can only be said to be true if it imbibes the principles of justice, fairness and procedural due process, a judge when deciding any new case shall enforce these as it would ensure that every person has a fair and just standing in front of the same standard. Dworkin holds that the inclusion of these principles will result in the finest constructive interpretation of the community's legal practice. Law as integrity states that the law must speak with one voice, so judges must assume that the law is structured on coherent principles about justice, fairness and procedural due process, and that in all fresh cases which comes before them, judges must enforce these so as to make each person's situation fair and just by the same standard - that is to say, treat everyone equally.

25. The aspects of 'fit' and 'substance' play a vital role in his theory; 'fit' denotes that the new judgement shall be coherent with the already established law and 'substance' denotes the consistency to political morality, which is the moral underpinning of a large group acting as one. This method of interpretation involves three main elements:

(1) Legal scholars can gain a better understanding of certain rules by conducting a constructive interpretation of them; in other words, by looking for the best interpretation of those rules, bearing in mind the dimensions of 'fit' and 'justification';

(2) Dworkin considers the principle of equal concern and respect as the leading notion that rules should always have to comply with. This principle can be seen as the foundation of all legal rules. The legal scholar should therefore keep this notion in mind when interpreting a certain legal practice;

(3) When interpreting the relevant rules, the legal scholar must bear in mind the conception of law as integrity. This not only indicates that law has to be seen as a consistent and coherent set of rules, but also implies that the interpreter has to view legal rules against the background of the current legal system so that the interpretation fits with the principles implied in the existing legal system.

26. Further, this Court has to consider, whether a writ can be entertained against a charge memo or not. A writ can be entertained under Article 226 of the Constitution of India, against a charge memo only if the charge memo was issued by an authority having no jurisdiction or if allegation of mala fides are raised or if the same is in violation of any statutory rules. Even in case of raising the allegations of mala fides, the authority against whom such an allegation is raised, to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any one of the legal grounds, no writ can be entertained against the charge memo. It is left open to the delinquent official to submit his explanations/objections on the charge memo and to prove his innocence before the Competent Authorities by participating in an enquiry proceedings. Thus, a writ against a charge memo can be entertained only on exceptional circumstances and on limited grounds.

27. Intermittent intervention in departmental disciplinary proceedings are certainly not preferable. The judicial review, in this regard, to be exercised cautiously by the Constitutional Courts. Institutional respect must be followed while deciding this kind of writ petitions. The Competent Authorities, while initiating proceedings against its own employees, under the Conduct Rules, the Courts must also allow the Competent Authorities to complete the proceedings in all respects.

28. The idea of prolonging and protracting the departmental proceedings by the delinquent to be deprecated and the Courts should not encourage such an idea of the delinquent. The very object and purpose of the disciplinary proceedings and the Conduct Rules are to maintain a clean and efficient public administration. In the process of running an administration, if the Competent Authorities found that the public servant has involved in certain allegations of misconducts or otherwise, it is the duty of the Competent Authority to initiate disciplinary proceedings under the Discipline and Appeal Rules. Such being the very purpose and object of the Rules, the Courts must be very slow in intervening with the charge memo initiated against a public servant.

29. In respect of the grounds raised in this writ petition, the learned counsel for the writ petitioner cited a judgment of this Court in the case of S.Kannan (cited supra), no doubt, the learned Single Judge of this Court, considered the guidelines issued by the Government in letter dated 11.3.1993 and granted the relief. The learned Judge was of the opinion that the guidelines are to be followed scrupulously by the Competent Authorities and the nature of the allegations set out in the charge memo for framing the charges either under Rule 17(a) or under Rule 17(b). Thus, the learned Judge was inclined to grant

the relief in that writ petition.

30. In yet another case cited by the learned counsel for the writ petitioner, the very same judgment was referred and the relief was granted. In respect of the Hon'ble Division Bench judgment, cited by the learned counsel for the writ petitioner, this Court is of the opinion that the Division Bench has not considered in respect of quashing of the charge memo and it was considered only in respect of considering the case of the writ petitioner therein for promotion. Thus, this Court need not go into the factual details of the case cited in this regard by the writ petitioner.

31. On a perusal of the charge memo, this Court is able to find that the writ petitioner has failed to maintain a Diary in accordance with the instructions given by the Department. Further, he has violated the procedures contemplated in Chain Survey Land Records Manual Part II, Chapter IV and VI. Thirdly, the allegations are stated that he has not submitted the Diary before the Assistant Director of Survey and Land Records. In this regard, nine documents were enclosed in Annexure-III. Further, Annexure-II enumerates the statement of allegations and imputations.

32. In respect of the facts and circumstances of the case, this Court is not inclined to appreciate the same at this point of time. The allegations set out in the charge memo are to be enquired into and an enquiry in this regard is certainly warranted. The facts, circumstances, documents, evidences etc., are to be considered by the Competent Authorities, while conducting the enquiry proceedings and the Courts cannot appreciate the facts and circumstances that the very charge memo itself is under challenge in this writ petition.

33. The learned counsel for the writ petitioner has criticised the charge memo dated 30.4.2014, has been drawn by the second respondent with regard to the events which have taken place quite sometime past, as the lapses themselves point out that the instructions in respect of maintaining the Diary alone has been violated.

34. It is urged by Mr.M.Ravi, learned counsel appearing on behalf of the writ petitioner, that even if all the charges are looked into as it is, there is no allegation of dishonesty or lacking in integrity. He would, therefore, urge that the proceedings, drawn under Rule 17(b) of the Rules, are not sustainable. He places heavy reliance on the judgments rendered earlier by this Court, setting forth that proceedings under Rule 17(b), cannot be drawn contrary to the guidelines issued by the Government, which clearly bring out that only in cases where dishonesty or lack of integrity is attributed, then proceedings

under Rule 17(b) can be drawn, but not otherwise.

35. Though the learned counsel for the writ petitioner cited the judgments in this regard, this Court is not inclined to consider the same in view of the subsequent judgment of the Hon'ble Division Bench of this Court in the case of R.Bagyalakshmi vs. The Principal District Judge and Other {2017 (2) Writ L.R. 367. The Hon'ble Division Bench, in which I am also a party to that, has enumerated the legal principles in this regard and the relevant paragraphs are extracted hereunder:-

"4. Learned counsel for the writ petitioner has criticised that the Memo, dated 15.02.2016, has been drawn by the Principal District Judge with regard to the events, which have taken place quite sometime past, as the lapses themselves point out that the instructions said to have been given on 30.08.2013, 29.01.2014, 07.11.2014 etc., have not been faithfully carried out by the writ petitioner. The reason why such lapses have not been taken serious note of prior to 15.02.2016, warranting drawing of any show cause notice for minor penalties, is left to be wondered.

7. It is urged by Sri Subbiah that even if all the three charges are looked into as it is, there is no allegation of dishonesty or lacking in integrity. He would, therefore, urge that the proceedings, drawn under Rule 17 (b) of the Rules, are not sustainable. He places heavy reliance on a judgment rendered earlier by this Court, setting forth that proceedings under Rule 17 (b) cannot be drawn contrary to the guidelines issued by the Government, which clearly bring out that only in cases where dishonesty or lack of integrity is attributed, then proceedings under Rule 17 (b) can be drawn, but not otherwise.

10. With regard to the second charge, it is really surprising that the Principal District Judge has not thought it appropriate to initiate disciplinary proceedings against the writ petitioner in the immediate aftermath of 24.04.2015, on which date, at about 05.00 p.m., the writ petitioner was alleged to have disrespectfully replied to the Presiding Officer in the chambers that the information from Sheristadar should have been ascertained in her presence. There is no denying the fact that the Principal District

Judge has been apprised of this incident on 24.04.2015 immediately thereafter. Why did the Principal District Judge wait nearly one year i.e., up to 15.02.2016, for initiating disciplinary proceedings ? Is it because the writ petitioner wanted to retire from service by submitting an application, dated 25.11.2015, seeking voluntary retirement ? Much more intriguing is the failure to cite the Presiding Officer as a witness in support of this charge. Whereas, the disciplinary authority has thought it appropriate to establish the charge by examining Sri C.Kumar, Sheristadar, who can vouch for the alleged disrespectful conversation that has taken place between the writ petitioner on one hand and the Presiding Officer on the other, in the chambers of the Presiding Officer. At the time when the alleged disrespectful conversation took place, it is obvious and clear, that Sri C.Kumar, Sheristadar of the Court, was not present. Therefore, one fails to understand as to why the Presiding Officer has not been examined or cited as a witness in support of the said charge. Thus, a feeling has been left behind in our mind that the disciplinary proceedings, particularly, Charges 1 and 2, have been brought forth at this distant point of time, only for the purpose of delaying the settlement and terminal benefits of the writ petitioner, upon her retirement voluntarily on the afternoon of 29.02.2016. The disciplinary proceedings are not meant for achieving any such collateral objective. The disciplinary proceedings are intended not only to check indiscipline and/or associated misconduct on the part of a civil servant, but every such conduct has to be dealt with sternly and must be nipped in the bud. It cannot be allowed, all by lapse of time, to blossom into some kind of a practice. More importantly, indiscipline on the part of a civil servant, if at all tolerated, would send a wrong message across. It would also lead to the rot setting in, in the rank and file. Above all, no tolerance should be shown towards the indiscipline and also lapse of time in tackling the same effectively. Any such delay would lead to the dilution of the rigor and impact thereof. That is what had

happened in this case.

15. The Government guidelines adverted to by two different Division Benches of this Court earlier have been reproduced by us, a little earlier. At the outset, it is apt to recall the legal principles governing the issue of enforceability of administrative instructions/ executive orders/non-statutory guidelines. It is beyond any pale of doubt, that the aforementioned categories of instructions do not have any statutory backup or flavour. They are purely intended for regulating the business of the Government, to be carried out in a most effective manner. If a field is already occupied by a statutory provision or the rules made under a statute, administrative instructions or guidelines can never supplant the same. At best, such instructions or guidelines can only supplement the rule or the statutory provision. The administrative instructions or guidelines, therefore, have no enforceability. (see AIR 1982 SC 917, (2001) 3 SCALE 289, (1979) 2 SCC 491).

16. Administrative instructions or guidelines also confer no rights on any individual. (see Union of India v. K.P. Joseph, 1973 SCJ 1, (2001) 2 SLJ 258).

17. It is a settled principle of law that administrative instructions or guidelines should not be inconsistent with the statutory provisions or the rules made thereunder, which are meant for giving effect to the provisions of a statute. (see District Registrar v. M.B. Kutti, AIR 1979 SC 1060). Giving effect to the guidelines or instructions, which are inconsistent with a statutory provision or rule, would tantamount to an abuse. (see (1979) 2 SCC 491). "

36. Thus, this Court has to consider the facts that the guidelines, in this regard, issued by the Government, are only instructions and these instructions cannot form any basis for quashing the very charge memo itself. This apart, the other merits and the nature of the explanations furnished by the delinquent official ought to have been produced at the time of enquiry proceedings before the Authorities Competent and as per the Rules in this regard.

37. In respect of conduct of enquiry, this Court cannot consider the merits and the demerits in relation to the

allegations set out in the charge memo. It is left open to the writ petitioner to participate in the enquiry proceedings, in the manner known to law and in accordance with the Rules by availing of the opportunities provided to him under the Rules.

38. The Hon'ble Division Bench also has categorically enumerated that those administrative instructions or guidelines confer no rights on any individual. It is a settled principle of law that administrative instructions or guidelines should not be inconsistent with the statutory provisions or the rules made thereunder, which are meant for giving effect to the provisions of a Statute. Giving effect to the guidelines or instructions, which are inconsistent with a statutory provision or rule, would tantamount to an abuse.

39. When this Court also looks into the guidelines, there is reasonable ground to believe that a penal offence has been committed by a Government Servant, but the evidence forthcoming is not sufficient for prosecuting in a Court of Law, and the examples cited in respect thereof relate to (1) (a) possession of assets disproportionate to the known sources of income; (b) obtaining or attempt to obtain illegal gratification; (c) misappropriation of Government property, money or shares; (d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration, which is not adequate; (2) Falsification of Government records; (3) Irregularity or negligence in the discharge of official duties with a dishonest motive. When we critically examine these guidelines, which give freedom to the competent disciplinary authority to proceed further under Rule 17(a), but not to frame charges under Rule 17(b), we are wonder struck. Rule 17(a) is put in place only for the purpose of imposition of minor penalties. The necessary procedure to be followed has been provided and contemplated in that regard.

40. As is normally understood, imposition of minor penalty is warranted where the attributable misconduct is on a minor scale. For certain lapses in discharge of functions by a civil servant, which may not be so serious enough to warrant imposition of major punishment, such as removal or dismissal or compulsory retirement from service or even reduction in rank (reversion) or in status etc., but only a minor penalty is required to be imposed, then the procedure under Rule 17 (a) is required to be followed. Minor penalties commence from censure/warning, which will have a limited period of shelf life, say, six months or one year and other punishments, such as, stoppage of annual grade increment (s) for a specified period, which will impact the employee concerned in monetary terms for a specified period. This gradation of punishments has been attempted by the rule making authority more for the purpose of regulating the exercise of discretion.

41. For every minor misconduct, the gravest of the punishments is not supposed to be inflicted, in the name of exercising disciplinary control. A harsh or disproportionate punishment would produce the opposite of the desired result of disciplinary control. It will demoralise the cadre concerned. It would also put them off for rendering services efficiently and productively too. On every occasion, he would be tempted to indulge in "safety first" norms, so that he cannot be penalised for any reason. The net result would be the slowing down of the operating machine of the entire Civil Services. The Governance of the State would get impaired in that process.

42. To ensure freedom of mind amongst the civil servants, a gradation of punishments has been prescribed with an inbuilt direction to the competent disciplinary authority to choose the most appropriate one amongst them. In choosing the punishment to be inflicted, the alleged degree of misconduct, the manner in which such misconduct is exhibited, the level/grade of the civil servant and the stage of his service life at which the punishment is sought to be inflicted are all relevant factors, which are required to be taken into consideration, while exercising the discretion.

43. The guidelines, as they appear, are inconsistent with the very theme behind the disciplinary control, which is vested in every appointing authority/competent disciplinary authority. In this context, it is appropriate to bear in mind that conscious effort is required certainly to protect the rights of the civil servants, who are expected to honestly and fearlessly perform their duties and functions without buckling under any pressures or succumbing to temptations, encountered by them or likely to be encountered by them, during their service tenure. That was the reason, why valuable rights/obligations have been contemplated and provided for in the form of Article 311 by our constitutional makers. While doing so, designedly, protection has been insulated as against the punishments of dismissal, removal or reduction in rank only. It does not mean that there is no protection to a civil servant available against rest of the punishments.

44. A fair procedure, which accords with the principles of natural justice, has to be followed. The insulation contemplated and provided for by Article 311 is to create the necessary sense of security in the mind of the civil servant. Against any unjust or arbitrary disciplinary control, the remedies of getting such actions corrected is always available to the civil servants. That was the very reason why, to regulate the discretion conferred upon competent disciplinary authority for inflicting punishments on erring civil servants, a graded scale of punishment is put in place. The guidelines talk of, not

subjecting a civil servant to the disciplinary control, leading to possible infliction of major punishments under Rule 17 (b), even in such cases where the civil servant is stated to be in possession of assets disproportionate to his known sources of income or obtaining or attempting to obtain illegal gratification.

45. The precious plea put forth behind the guidelines was that if the disciplinary authority were to find that the evidence was not forthcoming, which is sufficient for prosecution in a Court of law, no major penalty proceeding should be drawn under Rule 17(b) of the Rules. Who has to determine, whether there is sufficient evidence for one to be prosecuted in a Court of law ? Is it dependent upon the will, the pleasure or the lack of it on the part of the disciplinary authority ? Then, what is meant by sufficiency of evidence ? What kind of evidence, that can be considered sufficient for prosecuting a civil servant, who is in possession of disproportionate assets to his known sources of income or for his obtaining or attempting to obtain illegal gratification ? What objective standards can be applied for determining the sufficiency of evidence in such cases ? If such grave misdemeanour exhibited by civil servants as possessing disproportionate assets is to be condoned, including cases like misappropriation of Government property, money or shares, one wonders as to for whose benefit these guidelines are intended.

46. Surely, the guidelines are not meant to protect the wrongdoers, who are in possession of disproportionate assets to his known sources of income or persons, who made an attempt to obtain illegal gratification or did obtain illegal gratification and persons, who have misappropriated Government money, property or shares or a civil servant, who has obtained or attempted to obtain a valuable thing or pecuniary advantage without consideration or for inadequate consideration. Such conduct, by no stretch of imagination, on the part of the civil servant, is liable to be countenanced. Any such act of seeking to condone the conduct of civil servants of the above referred nature would tantamount to holding a protective umbrella over the heads of certain civil servants, who treat or take it for granted, that they are beyond the reach of law.

47. In this process, the very principles enshrined behind the Prevention of Corruption Act, to the extent of the civil servants are concerned, can never be allowed to be diluted. Any such attempt will pollute the purity of the stream of the civil services. Civil services have been constituted not only for the sake of providing employment to adequate numbers under the Government hold, but, it is essentially meant for delivery of services, which the State is required to render to its citizens.

48. Therefore, the stream of civil services is required to

maintain its purity at all times, lest the civil servants would tend to use the opportunity of their position or placement as such, to indulge in profiteering for themselves. They would be doing so at the cost of the State as well as its citizens. A person, who has obtained or attempted to obtain illegal gratification for performing services, for which he is recruited, is simply doing violence to the very nature of his employment.

49. The State has been providing for adequate remuneration for each civil servant in return, commensurate to their services and the economic capacity, permitting the State to do so. It fixes the scales of pay, which contain periodical incremental growth. That was meant to ensure that the civil servants get paid adequate remuneration proportionate to the nature of duties and responsibilities discharged by them. Scales of pay are also revised periodically to offset the inflation that has set in in the meantime between last revision of pay scales. They are getting paid allowances as well for undertaking any travel beyond their headquartered place.

50. All these are put in place by the State, as a package of adequate remuneration, for rewarding the civil servants, who are effectively, efficiently and honestly discharging their duties and responsibilities attached to their post. In spite of such reasonably attractive packages and, above all, the status of a civil servant which he enjoys all through his tenure as a civil servant if he were to indulge recklessly in dishonesty by acquiring assets disproportionate to his known sources of income or attempting to obtain illegal gratification or misappropriate the Government property or money for obtaining pecuniary advantage without consideration or for inadequate consideration, such misconduct cannot be tolerated at all. Any such attempt to deal with such men with velvet gloves would bring out clear inconsistency between the very concept of security of service, the disciplinary control and the fundamental obligation of every civil servant to maintain integrity and honesty throughout his tenure of employment.

51. For these reasons, I am of the view that the guidelines framed by the State Government for the purpose of determining whether charges, leading to imposition of major penalties, are to be framed under Rule 17 (b) or not, is an unsustainable exercise, indulged in by the State.

52. Even in cases where falsification of Government records by a civil servant is sought to be protected by these guidelines which declare that charges need not be framed under Rule 17 (b). After all, the Government records are required to be maintained properly, accurately and diligently. If the Government records were to be falsified, would it be very difficult for one to

imagine the disastrous consequences that can flow, sometimes, from any such falsification.

53. Above all, can a State suffer the ignominy of doubting the accuracy of its own record. We fail to comprehend as to what purpose the guidelines framed by the Government are intended to achieve ? The third of the kind of misconducts which is aimed to be insulated by these guidelines is with regard to irregularity or the negligence in discharge of official duties with a dishonest motive. While it is time that the State is reminded that motive is absolutely irrelevant in the matter of disciplinary control, the essential test, which is to be determined is, whether the misconduct is a mere motive or is the very foundation for chargesheeting the employee.

54. Long years ago, it has been pointed out by the Supreme Court in *State of Bihar v. Gopi Krisore Prasad* (AIR 1960 SC 689) that the motive fades itself into insignificance when the foundational facts behind the charge are laid properly. This principle has been consistently followed subsequently in *State of Bihar v. Shiva Bhikshuk Misra* (AIR 1971 SC 1011); *ONGC v. Dr.M.Iskander Ali* (AIR 1980 SC 1242) and *Nepal Singh v. State of U.P.* (AIR 1980 SC 1459).

55. In the face of this legal regime and also in view of the fact that no guidelines are enforceable, the guidelines framed, I am of the opinion, are only trying to help the wrongdoers to escape from the net of being proceeded against, to the extent of avoiding infliction of major punishments. Thus, this Court takes this opportunity to direct the State Government to reconsider the matter and withdraw these guidelines or frame appropriate guidelines, which will not result in sufferance of the dishonest employees in its services.

56. No doubt, the charges against the writ petitioner in this regard also seems to be certain lapses in respect of maintaining the Diary. However, the same is to be enquired into by the Enquiry Officer to be appointed in this regard by the Disciplinary Authority.

57. In view of the discussions made above, this Court is of the opinion that it is for the Authorities to proceed with the enquiry under the Rules in force by providing all reasonable opportunities to the writ petitioner and it is left open to the writ petitioner to submit his explanations/objections in this regard to the Competent Authorities and to prove his innocence by participating in the departmental disciplinary proceedings and in respect of merits, this Court is not inclined to consider the case of the writ petitioner and the grounds raised in this

writ petition.

58. An elaborate discussion of this Court in the foregoing paragraphs of the judgment, this Court is of the opinion that even in the case on hand, the nature of charges can neither be construed as very serious nor be construed as no serious. Thus, a line to be drawn in this regard. However, this Court is not aware of the evidences and the documents to be scrutinised at the time of the enquiry proceedings. On a plain reading of the charges, this Court is of the opinion that it looks like certain procedural lapses alleged to have been committed by the writ petitioner. However, this Court is unaware of the seriousness of such omissions and commissions by the writ petitioner, culminating into framing of the charges nor this Court is aware of the documents, evidences and the seriousness involved in such lapses alleged to have been committed by the writ petitioner.

59. Thus, it is fair and in the interest of justice, that appropriate authorities are to be directed to consider all these documents, evidences and witnesses and also the seriousness of the allegations involved in the impugned charge memo and by conducting an enquiry, a decision is to be arrived.

60. Thus, in the interest of justice to all and to lay down the correct proposition in respect of entertaining a writ petition in the matter of charge memo, this Court is inclined to direct the respondents to proceed with the enquiry proceedings forthwith and conclude the same by providing opportunity to the writ petitioner as per the rules and pass final orders in the disciplinary proceedings as early as possible and preferably, within a period of six months from the date of receipt of a copy of this order. The writ petitioner is also directed to cooperate for the conclusion of the disciplinary proceedings in all respects by the respondents and if any non-cooperation on the part of the writ petitioner, the respondents are at liberty to record such non-cooperation in the enquiry proceedings itself.

61. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Director of Survey and Land Records,
Chepauk,
Chennai-600 005.

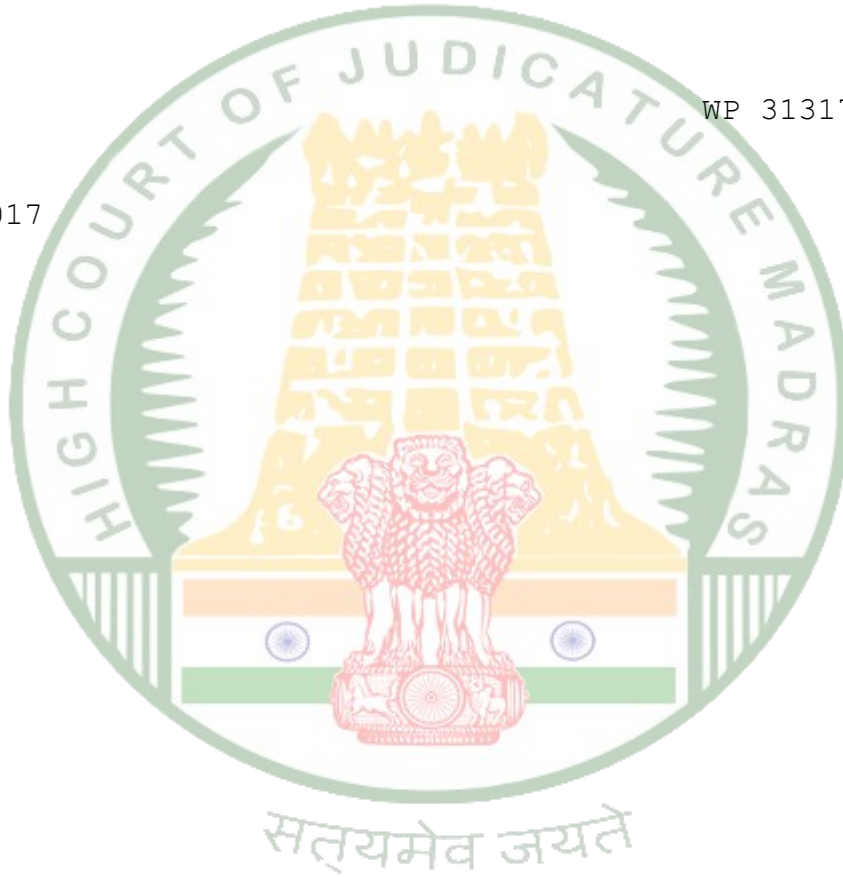
2.The Assistant Director of Survey and Land Records,
Coimbatore.

+1 cc to Mr.M.Ravi Advocate sr 82957

+1 cc to the Govt Pleader sr 82890

WP 31317 of 2014

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