

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition 23936 of 2013

R.Saravanan

.. Petitioner

Vs.

1.Government of Tamilnadu,
Rep. By its Secretary,
Department of Higher Education,
Fort St. George,
Chennai - 600 009.

2.Periyar University,
Rep. By its Registrar,
Salem - 636 011.

3.The General Secretary,
Periyar University,
salem.

.. Respondents

R3 - suomote impleaded as per order dated 29/08/2017 made in WP 12510/12, & 23936/13

PRAYER in W.P.No.25703 of 2012: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the second respondent issued in his Proceedings PU/Estt/D2/018485/2013 dated 26.7.2013, quash the same and consequently direct the respondents to reinstate the petitioner in service with all consequential benefits.

For Petitioner : Mr.T.Sellapandian

For Respondents : Mrs.Raniselvam (for R1)
Additional Government Pleader

Mr.P.Godson Swaminathan (for R2)

ORDER

The petitioner seeks issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings PU/Esst/D2/018484/2013, dated 26.7.2013 passed by

the second respondent, to quash the same and to direct the respondents to reinstate the petitioner in service with all consequential benefits.

2. Brief facts, so far as they are relevant for disposal of this writ petition, are as follows: The petitioner was appointed as Assistant Registrar in Periyar University, Salem (respondent No.2) and subsequently, on 31.7.2006, he was promoted as Deputy Registrar by an order dated 31.7.2006.

3. While the petitioner was working as the Deputy Registrar, the second respondent, constituted a three member Committee to conduct a preliminary enquiry to find out the facts leading to the charges qua irregularities and corruption levelled against the petitioner. On 8.4.2009, the petitioner appeared before the Committee and submitted his explanation denying the charges levelled against him.

4. Thereafter, by a letter dated 19.4.2011, the second respondent informed the petitioner that One Man Commission has been constituted to inquire into the charges framed against him and directed him to appear before the One Man Commission presided by a retired Judicial Officer on 29.4.2011. The petitioner appeared before the One Man Commission on 29.4.2011, 16.5.2011, 23.5.2011, 6.6.2011. In the hearing on 6.6.2011, the One Man Commission framed charges on 14 grounds and a copy of the same was furnished to the petitioner asking him to submit explanation. Challenging the constitution of the One Man Commission, the petitioner has filed W.P.No.12510 of 2012, which according to the writ petition averment is pending.

5. Thereafter, on 4.7.2011, the petitioner has submitted his explanation denying the charges. On 12.10.2012, after concluding the hearing, the One Man Commission submitted the report that charge Nos.1, 4, 10, 13 and 14 are proved and the petitioner was directed to submit objection over the report of the One Man Commission. The petitioner has submitted objection to the report on 22.07.2013. Without considering the objection of the petitioner, the second respondent issued the impugned order, removing the petitioner from service, which is challenged in this writ petition.

6. Resisting the writ petition, the second respondent filed the counter-affidavit stating that Periyar University was established in the year 1997 and the University has five Constituent Colleges, which form an integral part of the University. It is stated in the counter-affidavit that for appointment to the post of Assistant Registrar of Periyar University, the qualification required was 55% marks in Master's degree and a good academic record. The petitioner did not

possess Master's degree at the time of his appointment. The case of the second respondent is that since the three member Committee could not move further, the University appointed an independent person, who is an outsider as one of the members of the Committee. The independent person appointed as one of the members also later refused to be part of the Committee fearing the petitioner. Due to fear psychosis created and spread by the petitioner, on 18.4.2011, the University appointed One Man Commission to inquire into the charges levelled against the petitioner and the same was informed to the petitioner.

7. It is averred that the One Man Commission held the enquiry on 29.4.2011 and the petitioner had also participated. After affording an opportunity to the petitioner to defend his case and after examining the witnesses, the One Man Commission submitted its report on 12.10.2012 finding that charge Nos.1,4,10, 13 and 14 are proved and the same was communicated to the petitioner asking him to file his objections. The petitioner has also submitted his explanation.

8. On 4.7.2013, the Government directed the University to take action against the petitioner in the light of the One Man Commission's report. In its extraordinary meeting held on 26.7.2013, the University Syndicate considered the report of the One Man Commission as well as the objection submitted by the petitioner and resolved to accept the findings given by the One Man Commission and also resolved to remove the petitioner from service with effect from 27.07.2013. According to the second respondent, the impugned order was passed after following the due procedure and there is no infirmity warranting interference of this Court. The second respondent, thus, prayed for dismissal of the writ petition.

9. The arguments advanced by the learned counsel for the petitioner are as under:

(a) The role of the One Man Commission was to ascertain and verify the factual position of the assets held by the petitioner, but contrary to the same, the One Man Commission had gone to the extent of framing 14 charges without jurisdiction and without any authority of law. Therefore, the very act of the One Man Commission in framing 14 charges is per se illegal.

(b) The fact finding authority (One Man Commission) cannot himself usurp the role of the disciplinary authority.

(c) The second respondent had grossly departed from the procedure contemplated in the administrative law and had mechanically accepted the charges made by the One Man Commission. Therefore, the charges are void ab-initio.

(d) The petitioner participated in the enquiry for the exclusive reason to demonstrate his innocence and falsity of the charges against him.

(e) No Enquiry Officer was appointed to conduct any enquiry against the petitioner. The One Man Commission had usurped the power of the Enquiry Officer, even without being appointed as Enquiry Officer and had acted without jurisdiction/authority.

(f) The punishment imposed by the second respondent is grossly disproportionate to the nature of charges and the punishment is highly shocking the judicial conscience.

In support of his contention, the learned counsel for the petitioner has cited the decision of the Hon'ble Supreme Court in (1972) 1 SCC 595 (Delhi Cloth and General Mills Company v. Ludh Budh Singh).

10. On the other hand, the learned counsel for the second respondent submitted that since the petitioner threatened the Committee members and refused to co-operate with the members of the enquiry Committee, the members were not able to proceed further, which resulted the University appointing the One Man Commission to enquire into the charges. The One Man Commission held the enquiry, where the petitioner had also participated and after scrutiny of all the materials placed before it, the One Man Commission has given findings that charge Nos.1, 4, 10, 13 and 14 are proved.

11. It was submitted by the learned counsel for the second respondent that the University Syndicate, after considering the report of the One Man Commission and the objections raised by the petitioner, decided/resolved to accept the findings of the One Man Commission. Therefore, the entire process adopted by the One Man Commission is in accordance with law. Learned counsel further submitted that the role of the One Man Commission was that of an Enquiry Officer and more.

12. Qua charge No.1, the learned counsel for the second respondent submitted that the petitioner was responsible for granting affiliation to Ganga College of Education, which was run by a Trust, in which the petitioner's wife is a Trustee. As far as charge No.4 is concerned, learned counsel would submit that the petitioner has failed to produce the title deed of the property to establish the fact that his mother is the bona fide owner of the house. Learned counsel for the second respondent has cited the following decisions in support of his submissions:

(1) (1977) 2 SCC 491 (State of Haryana and another v. Rattan Singh)

(2) (2005) 8 SCC 211 (U.P. State Textile Corpn. Ltd. v. P.C.Chaturvedi and others)

(3) (2008) 12 SCC 30 (Union of India v. U.S.Sadhu, Ex-Inspector)

13. I heard Mr.T.Sellapandian, learned counsel appearing for the petitioner and Mr.P.Godson Swaminath, learned counsel appearing for the second respondent.

14. In so far as the constitution of the One Man Commission and the findings rendered by the One Man Commission are concerned, since the petitioner participated in the enquiry, though he had not adduced any oral and documentary evidence before the One Man Commission, the petitioner has no legal right to plead that the act of the One Man Commission is per se illegal and arbitrary. In his petition, the petitioner has averred that for the exclusive reason to demonstrate his innocence and falsity of the charges, he had participated in the enquiry.

15. On a perusal of the Court records, I find that the writ petition challenging the constitution of the One Man Commission being W.P.No.12510 of 2012 was dismissed as infructuous on 12.09.2017. Therefore, the petitioner, who had participated in the enquiry before the One Man Commission, now cannot plead/question the jurisdiction/authority of the One Man Commission to give findings. At best, he can assail the findings given by the One Man Commission on the charges levelled against him.

16. The point now arises for consideration in this writ petition is whether the report of the One Man Commission finding the charges 1, 4, 10, 13 and 14 to be proved is based on evidence?

17. The sum and substance of 14 charges framed against the petitioner are as follows:

- (1) Approval granted to Ganga College of Education, Mettukadu, Moolapadai, Kornamatti Post, Idappadi Taluk, Salem District.
- (2) Favoured the Co-ordinator of Sarada Study Centre (Affiliated to PRIDE, Periyar University, Salem) to set up a Study Centre.
- (3) Running of Amman Study Centre (Affiliated to PRIDE, Periyar University, Salem) at Kondalampatty as benami.
- (4) Without due permission constructed a residential house at No.118, C-03, Periyar Nagar, Ammapet, Salem.
- (5) Influenced to cut excess number of Karuvel trees and also unscheduled fruit yielding trees in the University campus, thereby caused revenue loss to the University.
- (6) By misusing the power, awarded contract for Periyar University Canteen.
- (7) Malpractices of having purchased Swaraj Mazda bus for Ganga College of Education..
- (8) Possession of jewellery worth Rs.25 lakhs.
- (9) Possession of bank deposits and investment in shares to the tune of Rs.25 lakhs.
- (10) Owning Santro car, worth of more than Rs.4 lakhs.
- (11) Owning Tata Sierra car, worth of more than Rs.2 lakhs.
- (12) Owning Mahendra Jeep, worth of more than Rs.3 lakhs.

(13) Illegal appointment as Assistant Registrar of Periyar University.

(14) Without proper channel and by violating the eligibility rules, obtained M.Phil Degree in Periyar University.

18. As stated supra, out of 14 charges, the One Man Commission has found that charge Nos.1, 4, 10, 13 and 14 were proved. For better appreciation, this Court intends to deal with the alleged proved charges on the trot.

19. Charge No.1:

The gist of charge No.1 is that the petitioner, who was in a responsible position in the second respondent University, influenced his position, and granted affiliation for Ganga College during the year 2007. In order to prove charge No.1, before the One Man Commission, witnesses Thiruvallargal A.Sarvanan (PW6); S.Premalatha (PW7); M.Kanthasamy (PW8) and M.Ravi (PW21) were examined and Ex.P4 was marked. After analysing the evidence of PWs.6, 7, 8 and 21, the One Man Commission arrived at a conclusion that the petitioner's wife Tmt.Nagalakshmi was a member of Annai Education and Charity Trust and Ganga College of Education, Salem.

20. The case of the petitioner is that all recognitions were granted only after getting permission from the Vice-Chancellor and Administrative Committee respectively and the petitioner has not acted individually for grant of affiliation. In his evidence, P.W.6-A.Saravanan, deposed that he had worked in the Section granting recognition to the Colleges and he did not know that the wife of the petitioner was a Correspondent of the Ganga College and that all recognitions were granted only after getting permission from the Vice Chancellor and Administrative Committee.

21. The finding of the One Man Commission qua charge No.1 reads as follows:

"The delinquent's wife Tmt.R.Nagalakshmi was a member of Annai Charitable Trust and Ganga College of Education, Salem with a contribution of Rs.1001/- initially at the commencement of the Trust there were seven members in the trust and each contributed Rs.1001/=-. The seven members were at the initial stage and the total contribution was Rs.7,700/-.

Tmt.R.Nagalakshmi, wife of the delinquent never appeared before the Commission and gave depositions though 4 summons were issued to have to appear before the Commission.

Since the delinquent was the responsible position in the University, influence of this position in the University granting affiliation for the Ganga College during the year 2007

could not be ruled out. Hence, the charge is proved."

22. Learned counsel for the second respondent submitted that the petitioner has processed the file with self interest and influenced the authority to grant affiliation. By relying upon the decision in Rattan Singh (supra), the learned counsel further argued that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply and all materials which are logically probative for a prudent mind are permissible.

23. It is pertinent to note that in the brief deposition of witnesses recorded by the One Man Commission, found at pages 28 & 29, it has been stated as follows:

"8. PW3 has deposed that he did not know the organiser of the Amman Study Centre. Thiru.R.Saravanan, Deputy Registrar never interfere in the affairs of the Amman Study Centre.

9. PW4 has stated that he worked as Assistant in PRIDE. Delinquent never interfered in his work.

10. PW5 has stated that he worked as Director incharge PRIDE and delinquent not interfered in the work of granting permission for the opening of Saradha Study Centre."

From the above depositions, it is clear that the petitioner has not interfered in the work of granting permission for the opening of study centres.

24. As stated supra, all recognitions to Colleges are granted only after getting permission from the Vice-Chancellor and the Administrative Committee. No iota of evidence was produced to show that by influencing his position as Deputy Registrar or Assistant Registrar as the case may be, the petitioner has granted affiliation to Ganga College of Education. May be the petitioner is one of the signing authority in the file. Mere signing in the file does not constitute that the petitioner had influenced the authority for grant of affiliation. No specific evidence given by anybody against the petitioner, nor any documents produced before the One Man Commission to prove that the petitioner influenced for grant of affiliation to Ganga College of Education. Nor is it the case of the respondents that the petitioner is the sole signing authority entitled to grant such affiliation.

25. Considering the pleadings and the materials available on record, I am of the view that the conclusion of the One Man Commission qua charge No.1 is a figment of his imagination, illusory and self-serving opinion. In the absence of any specific materials to prove that the petitioner had influenced for grant of affiliation, the finding of the One Man Commission

in respect of charge No.1 is arbitrary and the same cannot be sustained in the eye of law.

26. Charge No.4:

The gist of charge No.4 is that the petitioner has not obtained due permission from the University over the house at No.118, C-03, Periyar Nagar, Ammapet, Salem. In order to prove charge No.4, before One Man Commission, PW9 (Niyas Ahamed) and PW22 (K.S.Karunakara Pannerselvam) were examined and Ex.P6, statement of account of HDFC Bank, Salem was marked. After analysing the oral and documentary evidence, the One Man Commission arrived at a conclusion that the petitioner has failed to produce the title deed of the property to prove that the house in question belongs to his mother and held that the petitioner is the real owner of the property.

27. The finding of the One Man Commission in respect of charge No.4 is as follows:

"As per Government Letter No.10227/K-2008 dt. 04.06.2008 of the Higher Education Department, Government of Tamilnadu, Chennai delinquent owned a house cost Rs.60,00,000/- at 118 C-03, Periyar Nagar, Ammapet, Salem.

The delinquent stated that the house belonged to her mother and he was a co-obligant for the housing loan obtained for the construction of the house from the HDFC Bank, Salem.

The delinquent also paid EMI regularly for the above loan from his salary account and client exemption from Income Tax for the said EMI as per Form 16 produced by him. The delinquent also confirmed the above fact vide his petition dt. 23.04.2012 submitted to the Commission. The delinquent also never obtained any permission for signing as Co-obligant in the loan papers from the University. Without being a genuine principle loanee one need not repay the loan even in the capacity of Co-obligant.

The delinquent failed to produce the title deed of the property also and other relevant documents to establish the fact that his mother is the bonafide owner of the house.

Hence it is proved that he is the real owner of the property. Hence this charge is proved."

28. According to the petitioner, the house in question was purchased by the parents of the petitioner before the petitioner entering into service. Learned counsel for the petitioner submitted that the petitioner's mother availed loan from the Bank for construction of the house in question, for which the petitioner stood as co-obligator. Therefore, the petitioner is not the bona fide owner of the house.

29. In his evidence, PW9 stated that the house was in the name of petitioner's mother and the Bank had granted loan for construction of the house. The petitioner also admitted that he stood as co-obligator for the loan availed by her mother.

30. Learned counsel for the second respondent submitted that the petitioner has failed to get permission from the University to stand as co-obligator for the loan availed by his mother and thus violated Government Servants Conduct Rules.

31. It is pertinent to point out that the charge was not specific to the effect that the petitioner has violated the Government Servants Conduct Rules, by being a co-obligator of the loan availed by his mother. The charge is to the effect that the petitioner has not obtained due permission from the University over the house in question. In the grounds of the writ petition, it is stated that "in respect of charge No.4, PW9, the Branch Manager has clearly deposed that the loan was granted for the said property in favour of the petitioner's mother by mortgaging her house property in Survey No.24/2G3 Ward N, Block No.40, Periyar Nagar Salem".

32. On a perusal of the finding, it is seen that the One Man Commission went to the extent of saying that the petitioner has failed to prove that the mother of the petitioner is the bona fide owner of the property. Further, the One Man Commission presumed that the petitioner is the real owner of the property, lightly discarding the evidence of PW9, the Branch Manager that the petitioner's mother was granted loan on her mortgaging the house property. Who else can adduce better evidence than the person who sanctioned the loan. Such credible evidence cannot be lightly brushed aside, nor has the Commission given reasons for negating such evidence.

33. In Delhi Cloth and General Mills Co. v. Ludh Budh Singh, reported in (1972) 1 SCC 595, the Hon'ble Supreme Court held that "when allegations of misconduct are levelled against a person, it is the primary duty of the person making those allegations to establish the same and not for an accused to adduce negative evidence to the effect that he is not guilty".

34. When the second respondent pleads that the petitioner is the bona fide owner of the property, it is the bounden duty of the second respondent to establish the same and not the petitioner. In the instant case, the second respondent has failed to do so. Since there is no specific charge framed against the petitioner that he has violated the Government Servants Conduct Rules and also failed to prove that the petitioner is the bona fide owner of the property in question, the finding recorded by the One Man Commission qua charge No.4

is not sustainable.

35. Charge No.10

The gist of charge No.10 is that the petitioner did not obtain permission for purchase of Santro car bearing registration No.TN-45 Q 5792, thereby violated the Government Servants Conduct Rules. There is also allegation that for purchase of Santro car, without getting permission from the University, the petitioner availed loan of Rs.2,82,000/- from Centurian Bank, Coimbatore.

36. Qua charge No.10, learned counsel for the petitioner submitted that only by producing the salary certificate issued by the University, the petitioner had applied loan for purchase of second hand Santro car. Learned counsel further submitted that as per Clause 19(1) of the Code of Conduct of Employees of Periyar University, no employee shall except with the previous knowledge of the Vice Chancellor acquire and dispose any movable property in various forms and the said Clause was applicable only in case value of the property exceeds the amount equivalent to one year salary of the employee concerned.

37. In the instant case, the petitioner availed loan of Rs.2,82,000/- from the Bank for the purchase of second hand Santro car. The loan amount availed is far lesser than one year salary of the petitioner. The second respondent has failed to show that the Clause 19(1) will not apply to the case of the petitioner. The second respondent has also failed to produce any materials to show that the petitioner had purchased Santro car beyond his regular income. In the absence of any materials to show that by violating the applicable Rules, the petitioner purchased Santro car, it cannot be presumed that the petitioner had savings more than his one year salary and purchased Santro car worth more than Rs.4 lakhs from his savings. Therefore, the finding of the One Man Commission qua charge No.10 is arbitrary and perverse and the same is unsustainable.

38. Charge Nos.13 and 14:

Qua charge Nos.13 and 14, though the One Man Commission recorded finding that those charges are proved. However, in the impugned removal order, it has been stated that the findings of the One Man Commission were accepted except in relation to charges 13 and 14. Since no specific and definite charge was made on these counts initially, the Syndicate of the second respondent University decided to keep aside the said charges. The relevant portion of the resolution of the Syndicate extracted in the impugned order reads as follows:

"The report of the One Man Commission is considered and the findings of the same were accepted except in relation to charges 13 & 14 no specific and definite charge was made on these counts

initially, the Syndicate decides to keep that aside for the present purpose."

39. Learned counsel for the petitioner submitted that without considering the objections raised by the petitioner, the second respondent kept aside charges 13 and 14 on the ground that there is no specific and definite charge. Learned counsel would further submit that the aforesaid shows that the second respondent has mechanically passed the impugned order. The learned counsel for the petitioner further submitted that charge Nos.13 and 14 are beyond the scope of enquiry committee.

40. As rightly submitted by the learned counsel for the petitioner only after knowing the fact that One Man Commission has no authority/power to deal with charge Nos.13 and 14, the Syndicate decided to keep aside charge Nos.13 and 14 by saying that no specific and definite charge was made on these counts, which itself shows non-application of mind by the One Man Commission.

41. The decisions relied upon by the learned counsel for the second respondent in P.C.Chaturvedi (supra) and U.S.Sadhu (supra) are in different context and they cannot be read torn out of context.

42. In P.C.Chaturvedi (supra), the Hon'ble Supreme Court dealt with the issues of payment of subsistence allowance; entitlement of back wages and natural justice. In the instant case, it is not the case of payment of subsistence allowance and the documents not supplied.

43. In U.S.Sadhu (supra), the Hon'ble Supreme Court dealt with the issue of reinstatement on account of infirmities in disciplinary proceedings.

44. In Bharat Iron Works v. Bhagubhai Balubhai Patel & Ors., reported in (1976) 1 SCC 518 and in Rajinder Kumar Kindra vs. Delhi Administration through Secretary (Labour) & Ors., reported in (1984) 4 SCC 635, the Hon'ble Supreme Court held that although the Court cannot sit in appeal over the findings recorded by the Disciplinary Authority or the Enquiry Officer in a departmental enquiry, it does not mean that in no circumstance can the Court interfere. It was observed that the power of judicial review available to a High Court as also to the Hon'ble Supreme Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse.

45. The law is well-settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also the Hon'ble Supreme Court to interfere in the matter.

46. As stated supra, in the instant case, there is no concrete evidence to substantiate the findings recorded by the One Man Commission. Therefore, this Court holds that the findings rendered by the One Man Commission qua charge Nos.1, 4 & 10 are perverse.

47. As stated supra, qua charge Nos.13 & 14, the second respondent itself came to the conclusion that no specific and definite charge was made out. Therefore, the findings recorded by the One Man Commission in respect of charge Nos.13 and 14 are also unsustainable in law.

48. For the foregoing reasons, this Court is of the firm view that the order passed by the second respondent, accepting the findings of the One Man Commission in respect of three charges and keeping aside the findings in respect of two charges without assigning any reason whatsoever, is unsustainable and the same is purely based on apriori consideration and with malice aforethought.

49. In the result:

(a) the writ petition is allowed by setting aside the impugned order in PU/Estt/D2/018485/2013 dated 26.07.2013;

(b) the respondents 1 and 2 are directed to reinstate the petitioner into service from 26.07.2013 and pay all the service and monetary benefits to the petitioner.

(c) the said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Secretary,
Department of Higher Education,
Fort St. George, Chennai - 600 009.

2.The Registrar,
Periyar University,
Salem - 636 011.

3.The General Secretary,
Periyar University,
salem.

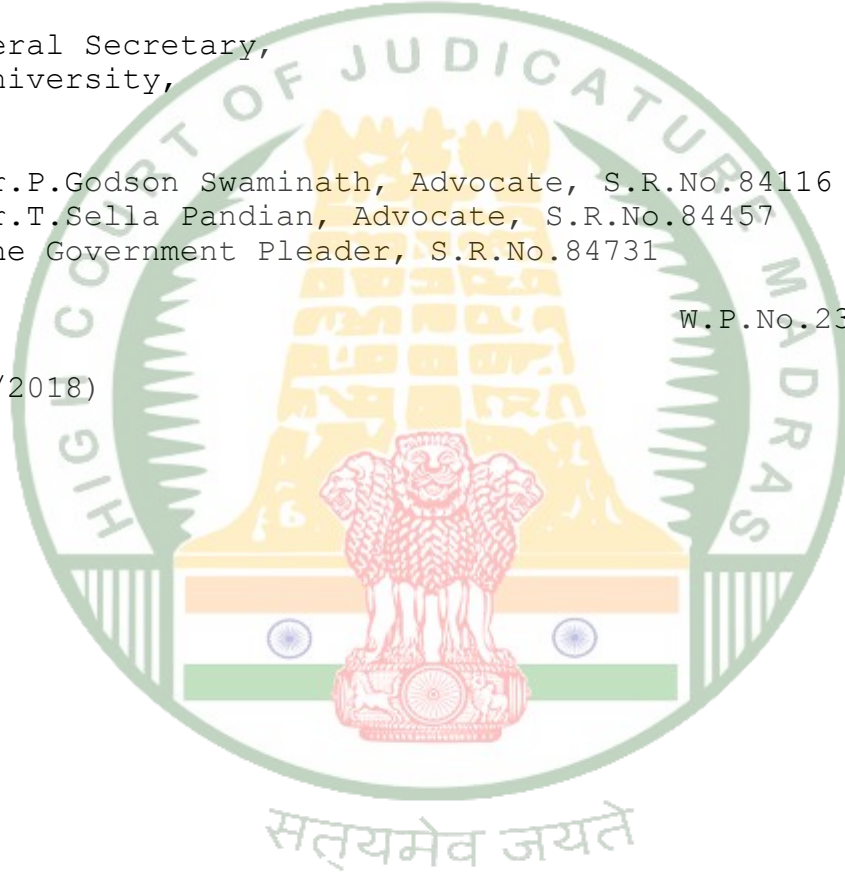
+lcc to Mr.P.Godson Swaminath, Advocate, S.R.No.84116

+lcc to Mr.T.Sella Pandian, Advocate, S.R.No.84457

+lcc to the Government Pleader, S.R.No.84731

W.P.No.23936 of 2013

SSV(CO)
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