



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2016

Pronounced on : 10.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

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W.P. (MD) .No.13912 of 2011

and

M.P. (MD) Nos.1 and 2 of 2011

T.Sheba Rani

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.

2.The Director of Teacher Education,
Research and Training, D.P.I. Compound,
College, Road,
Chennai - 600 006.

3.The Principal,
District Institute of Education and Training,
Vanaramutti,
Tirunelveli District.

4.The Secretary,
Valliammai Hindu Teacher Training Institute,
Kulasekharapatnam,
Thoothukudi District - 628 206.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, call for the records relating the impugned proceedings issued by the 4th respondent Secretary, Valliammai Hindu Teacher Training Institute, Kulasekharapatnam in Na.Ka.No.9-2011 dated 31.05.2011 and quash the same and further direct the respondents herein to approve the petitioner's appointment forthwith as B.T.Assistant (Mathematics) in the 4th respondent Institute and disburse the grant-in-aid towards salary with effect from the date of appointment viz. 11.09.2009.

For Petitioner : Mr.P.Krishnasamy

For Respondents : Mr..K.Guru, (for R1 to R3)

Government Advocate

Mr.G.Prabhu Rajadurai (for R4)

**O R D E R**

The writ petition has been filed by the writ petitioner seeking issuance of a Writ of Certiorari of Mandamus, to call for the records relating the impugned proceedings issued by the 4th respondent Secretary, Valliammai Hindu Teacher Training Institute, Kulasekharapatnam in Na.Ka.No.9-2011 dated 31.05.2011 and quash the same and further direct the respondents herein to approve the petitioner's appointment forthwith as B.T.Assistant (Mathematics) in the 4th respondent Institute and disburse the grant-in-aid towards salary with effect from the date of appointment viz. 11.09.2009.

2.The case of the petitioner is that the 4th respondent, who is the Secretary of Valliammai Hindu Teacher Training Institute, Kulasekharapatnam, Thoothukudi District has appointed the petitioner as B.T. Assistant (Mathematics) on 11.09.2009 in a permanent regular vacancy occurred on account of the retirement of the previous incumbent one N.Thangamariam and the petitioner's salary was also fixed Rs.9300-34,800+4,400/-, since the petitioner is required qualification to the post of B.T. Assistant (Mathematics).

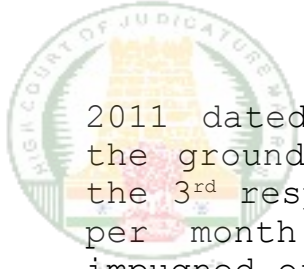
3.The 4th respondent school is running with the Government aid and hence the appointment of the petitioner as B.T. Assistant (Mathematics) was regular permanent aided post and hence it is the duty of the 4th respondent to submit necessary proposal to the 3rd respondent seeking approval to the petitioner's appointment for disbursement of salary. In spite of several request made by the petitioner, the 4th respondent did not took any efforts to submit the proposal to the 3rd respondent for the approval of the petitioner's appointment.

4.After the appointment of the petitioner, the 4th respondent has directed the petitioner to stay at Kulasekharapatnam and compelled to work from 8.00 a.m. to 8.00 p.m. on all days including holidays. The 4th respondent paid only to pay a sum of Rs.5,000/- as advance towards her salary.

5.The case of the petitioner is that the 4th respondent also compelled the petitioner to do other than teaching works also without paying any remuneration. Thereafter, the 4th respondent/Secretary has submitted the proposal in respect of the approval of the petitioner's appointment on 13.03.2010 to the 3rd respondent/Principal, District Institute of Education and Training, Vanaramutti, Tirunelveli District. But, the 3rd respondent/Principal did not pass any orders on the said proposals.

<https://hcservices.ecourts.gov.in/hcservices/>

6.The petitioner also come forward by saying that quite surprisingly, the 4th respondent vide proceedings in Na.Ka.No.9-



2011 dated 31.05.2011 terminated the petitioner from service on the ground that her appointment has not been approved so far by the 3rd respondent and hence he re-fixed her salary from Rs.5,000/- per month to Rs.3,000/- per month. Therefore, the present impugned order has been passed by the 4th respondent /Institute.

7.The writ petitioner also states that the impugned order passed by the 4th respondent is vitiated by malice in law in as much as the same has been passed without adherence to the principles of natural justice. The petitioner also raised the grounds that neither any notice nor an enquiry was conducted before terminating from service to the petitioner. The petitioner also stated that she was worked under the 4th respondent Institution for more than 20 months without any blemish. She has also stated that till date, the 4th respondent has satisfactory with her work and no complaint has been made in that regard so far. Therefore, the termination without notice has vitiated the entire proceedings. Challenging the said order, the present writ petition has been filed by the petitioner and praying this Court for the above prayer.

8.A counter affidavit has been filed by the Government on behalf of the 2nd respondent.

9.The 2nd respondent stated that it is an admitted fact that the petitioner was appointed as B.T. Assistant (Mathematics) vide Proceedings Na.Ka.No.9/2009 dated 11.09.2009 by the 4th respondent/Institute in the pay scale of Rs.9300-34,800+4400 subject to the approval of the 3rd respondent.

10.The 2nd respondent also stated that the 3rd respondent/Principal, District Institutes of Education and Training, Vanaramutti seeking clarification to approval the appointment of the petitioner Smt.T.Sheba Rani vide Na.Ka.No.299/A3/2009 dated 08.03.2011. The proposal was duly considered and scrutinized by the Director of Teacher Education Research and Training and stated that the appointment of the petitioner was not eligible for approval as per the G.O.Ms.No.873, Education Science and Technology (D2) Department dated 13.1.1995 and G.O.Ms.No.4, School Education (X2) Department dated 19.01.2004.

11.The 2nd respondent also stated that as per the order dated 31.05.2011, the 2nd respondent has terminated the petitioner from service with effect from 31.05.2011 vide Na.Ka.No.9/2011 dated 31.05.2011 of the 4th respondent herein i.e. The Secretary, Valliammai Hindu Teacher Training Institute, Kulasekarapattinam. The Government has passed the following orders for filling up of vacancies in Aided Schools vide G.O.Ms.No.873, Education, Science and Technology (D2) Department dated 13.11.1995.



(i) "The Private aided Educational institutions shall make all appointment in their institution through the Employment Exchange only with no candidates is available from the Employment Exchange or the candidates who are sponsored from the Employment Exchange are found to be unfit, it would be open to the Private educational agency to seek the permission of the concerned Authority and go ahead with the recruitments from the open competition.

(ii) This order shall take effect from 17.02.1995 i.e. the date of judgment of the High Court in the W.A.No.879/93. The Director of School Education/Director of Elementary Education and the Private School Managements shall compute the vacancies well in advance and take steps to fill up the same within three months. So that there will not be any difficulty and the vacancies will be filled up without any loss of time.

(iii) The Employment Exchange should send the list within 10 days from the date of receipt of the requisition made by the private aided school managements for appointment of candidates as stipulated in G.O.Ms.No.778 Education dated 19.05.1979. If the qualified candidates are not available in the Employment Exchange, it should send a Nil Report to the Private School managements within 10 days."

12.The 2nd respondent also stated that as per G.O.Ms.No.4, School Education (X2) Department, dated 10.01.2004, it is stated as follows:

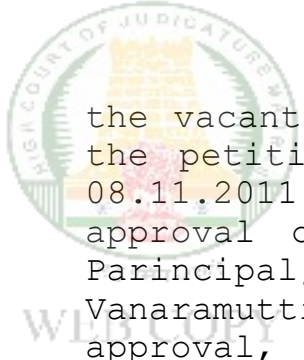
"ii. While filling up the vacancies available as on 1.6.2003 in the aided schools on consolidated pay for a period of 5 years, the rule of reservation will be started afresh.

iii. Vacancies available as on 1.6.2003 in the aided schools will be filled up by both consulting employment exchange and through some other modes like news paper publication advertisement, media, called for the application by notifying the same in the notice board and consider all applications and select the best candidates from among them without there being any performance to the candidates sponsored by the employment exchange."

13.Therefore, the 2nd respondent stated that the appointment of petitioner on 11.09.2009 by the 4th respondent has been passed order without obtaining any seniority list from the Employment Exchange, the appointment was made and no paper advertisements were also given, but, the 4th respondent appointed the petitioner. Therefore, the petitioner appointment could not be approved. Therefore, her service was terminated from 31.05.2011.

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14.The 2nd respondent also states that after terminating the petitioner from service that one Selvi.V.Sathya was appointed in



the vacant post that has arisen due to arising the termination of the petitioner on 06.11.2011 and she was joined in the post on 08.11.2011. The 4th respondent also submitted a proposal copy for approval of the appointment of the above said teacher to the Principal, District Institute of Teacher Education and Training, Vanaramutti. The 3rd respondent also submitted that for the approval, in his letter dated 09.12.2013 and the said Selvi.V.Sathya has not attended the 4th respondent's institute from 11.05.2012.

15. Therefore, the 2nd respondent stated that the appointment of the petitioner is totally against the orders of the Government i.e. G.O.Ms.No.873, Education Science and Technology (D2) Department dated 13.11.1995 and G.O.Ms.No.4 School Education (X2) Department dated 19.01.2004 and hence, the appointment was not approved by the 2nd respondent. Accordingly, the termination was effected. Hence, he was terminated from 31.05.2011 and he prayed this Court for dismissal of the writ petition.

16. A counter affidavit has been filed by the 4th respondent Institute. The 4th respondent stated that the 4th respondent Institute started in the year 1947 and presently imparting training in Diploma in Teacher Education and the 4th respondent permitted to admit 80 students every year and the Educational Agency runs a Middle School from the year 1903. Thereafter, in the year 1936, the 4th respondent started a High School, which is presently upgraded to the level of Higher Secondary School.

17. The 4th respondent also states that the 4th respondent Institute is aided by the Government grant to an extent of 2/3rd of the salary of the teachers and for the purpose of aid, the 4th respondent sanctioned strength of a Principal, B.T. Assistant (Maths), Senior Tamil Teacher. Hence, the appointment of the candidates to these posts are subject to the approval of the educational authorities viz. the 3rd respondent herein only, thereafter granted relief.

18. The 4th respondent also states that the prior to the year 2009, vacancies arose to the sanctioned vacancies and in so far as B.T. Assistant (Maths), the vacancy arose on 01.06.2005. However, in view of the ban order, he could not appoint any candidate against such sanctioned vacancies. The 2nd respondent by his proceedings dated 29.06.2009 directed the appointment of teachers against sanctioned vacancies. Therefore, the 4th respondent requested the permission of the 3rd respondent to appoint B.T. Assistant (Maths). Simultaneously, the 4th respondent requested the Professional Employment Exchange at Chennai on 14.08.2009 to sponsor the candidates. The employment exchange at Chennai by his communication dated 18.08.2009 forwarded his request to its branch office at Madurai. Since in accordance with G.O.Ms.No.778 (Education) dated 19.05.1979 the employment exchange has to



forward the list of candidates within a period of 10 days and that such list was not forwarded, therefore, the 4th respondent proceeded to conduct interview for the candidates who sent their applications on the initiation of their publication in the newspaper and by affixture dated 02.08.2009.

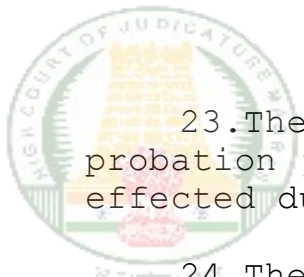
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19.The 4th respondent has selected and appointed the petitioner to the post of B.T.Assistant (Maths) by the proceedings of this respondent dated 11.09.2009. But, the appointment of the petitioner is subject to approval of the 3rd respondent and the petitioner also should under going a probation period of two years. The 4th respondent also states that the 3rd respondent was duly intimated about the said appointment, it was only the employment exchange forwarded its list of candidate on 07.12.2010.

20.The 4th respondent also stated that on 13.03.2010, the 4th respondent forwarded the proposal for the approval of the appointment of the petitioner to the 3rd respondent. In the meanwhile on the request of the petitioner, the 4th respondent paid a sum of Rs.5,000/- per month as an advance though the petitioner agreed in clear terms that she would claim salary only if the Government come forward to approve her appointment and provided grant.

21.The 4th respondent also states that the other teachers working against the sanctioned post are receiving salary on consolidated basis and that this petitioner provided with the advance on the agreeent that the petitioner would repay the same on receiving the grant.

22.The 2nd respondent by his proceedings dated 04.07.2011 refused to approve the appointment of the petitioner. Since, they were already informed that the said appointment would not be approved, the petitioner was terminated from service on 31.05.2011. The petitioner accepting the termination did not attend the school from 01.06.2011 and that she did not prefer to challenge the same. Subsequently, the 3rd respondent granted permission to appoint B.T. Assistant (Maths) Teacher. At the request made by the 4th respondent, the employment exchange sponsored the candidates and also paper publication was effected. There were 5 candidates sponsored by employment exchange, but none of them fulfilled the new qualification sent by NCTE (PG with M.Ed 55% marks). Nine candidates including this petitioner attended the interview through the paper publication made by them. On the basis of the relative merits, the 4th respondent selected one V.Sathya to the post of B.T. Assistant (Maths) and appointed on 06.11.2011 and she joined in the said post on 08.11.2011. Since the petitioner having participated in the interview and lost in the selection process cannot maintain this writ petition, challenging the termination order passed six months earlier.



23.The 4th respondent also states that before completing the probation period, the petitioner cannot challenge the termination effected during probation period.

24.The 4th respondent also states that lastly as the appointment was subject to the approval of the Government and that on the refusal of the Government to approve the post. The appointment of the petitioner is of no effect. Therefore, the 4th respondent sought for dismissal of the writ petition as not maintainable.

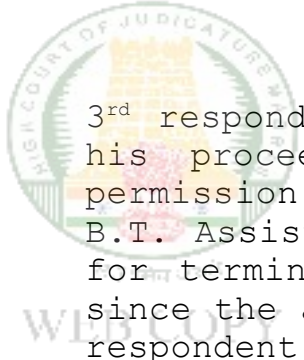
25.Heard Mr.P.Krishnasamy, learned counsel appearing for the petitioner and Mr.K.Guru, learned Government Advocate, appearing for the respondents 1 to 3 and Mr.G.Prabhu Rajadurai, learned counsel appearing for the 4th respondent.

26.I have perused the entire available materials on record. It is seen from the records that the petitioner was appointed as B.T. Assistant (Mathematics) on 11.09.2009 in the 4th respondent Institute and it is a permanent regular vacancy arose due to the retirement of N.Thangamariammal. The salary of the petitioner was fixed as Rs.9,300-34,800+4,400/- by the 4th respondent. The petitioner possessed more than one required qualification to the post of B.T. Assistant.

27.It is further case of the petitioner that the petitioner's appointment was not sent to the 3rd respondent for approval immediately after the appointment. The 4th respondent has sent the proposal to approve the appointment of the petitioner to the 3rd respondent only on 13.03.2010. While so, due to the shock and surprise of the petitioner, the 4th respondent by proceedings in Na.Ka.No.9-2011 dated 31.05.2011 terminated the service of the petitioner on the ground that the petitioner's appointment was not approved by the 3rd respondent. The 4th respondent further stated in the impugned order that the petitioner's salary was re-fixed Rs.3,500/- and directed her to remit a sum of Rs.28,367/- towards excess payment of salary paid to her. The said order is impugned in this writ petition.

28.According to the petitioner, she worked under the 4th respondent institution for more than 20 months without any remarks. The impugned order is passed without issuing any show cause notice to the petitioner. The 4th respondent herein having extracted the work from 8.00 a.m. to 8.00 p.m. on all days including holidays from the petitioner, cannot reduce the salary of Rs.3,500/- of the petitioner from 17.09.2009 to 31.05.2011. The impugned order is liable to be quashed.

29.According to the 4th respondent, it is true that the petitioner was appointed as B.T. Assistant (Maths) in a permanent vacancy. The 4th respondent has also obtained permission from the



3rd respondent herein to the said vacancy. The 3rd respondent in his proceedings in Na.Ka.No.299/A3/2009 dated 21.08.2009 gave permission to the 4th respondent Institution to fill up the post of B.T. Assistant (Maths). But, the 4th respondent has stated reason for termination of the petitioner in the counter affidavit that since the appointment of the petitioner was not approved by the 3rd respondent vide proceedings dated 22.08.2011, in pursuance of the proposal submitted by the 4th respondent Institution. It is further stated that in the counter affidavit of the 3rd respondent that in the appointment of the petitioner herein itself, it was stipulated that the appointment of the petitioner is subject to the approval of the 3rd respondent. Though the petitioner agreed that she would claim salary only if the government approved her appointment and provided grant. After termination of the petitioner, in the place of the petitioner one V.Sathya was appointed to the post of B.T. Assistant (Maths) on 06.11.2011 and she is working in the 4th respondent's institution. The petitioner accepting her termination did not attend the school from 01.06.2011 and therefore she is not entitled for any relief from this Court and they pray to dismiss the writ petition.

30.I have closely perused the impugned order. Firstly, in the impugned order, there is no reference about any show cause notice to the petitioner and the reading of the impugned order does not disclose about any notice sent to the petitioner and explanation received from the petitioner.

31.Admittedly, the petitioner was appointed as B.T. Assistant (Maths) by the 4th respondent on 11.09.2009. The proposal sent by the 4th respondent was not approved by the 3rd respondent for certain reasons. The 4th respondent ought to have challenged the rejection of approval of the petitioner by the 3rd respondent or should have communicated the same to the petitioner. I could not find any such communication sent by the 4th respondent institution to the petitioner herein to enable her to challenge the same. Further, it is the duty of the 4th respondent to re-submit the proposal to the 3rd respondent after rectifying the defects. In this case, the 4th respondent has neither challenged the rejection order nor communicated to the petitioner. In my consider view that the 4th respondent institution having appointed the petitioner herein in a regular / permanent vacancy and extracted work for nearly about 3 years, owes duty to pay the original salary fixed in the appointment order of the petitioner. There is no fault on the part of the petitioner in getting appointment to the post of B.T. Assistant (Maths).

32.Apart from this, the 4th respondent filed his counter stating that due to the vacancy arose on 01.06.2005 in the post of B.T. Assistant (Maths), the 2nd respondent also by his proceedings dated 29.06.2009 directing the 4th respondent for appointment of teachers against sanctioned post. Pursuant to the above, the 4th



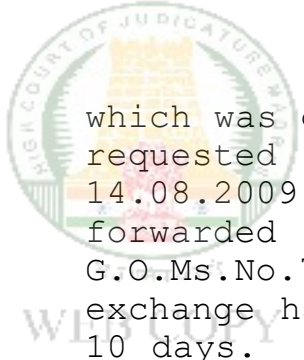
respondent also requested the 3rd respondent/Principal, District Institutes of Education and Training, Vanaramutti, Tuticorin District, requesting the permission of the 3rd respondent to appoint B.T. Assistant (Maths). Simultaneously, the 4th respondent also requested the Professional Employment Exchange at Chennai on 14.08.2009 to sponsor the candidates, for the appointment of B.T. Assistant Teacher (Maths) in the fourth respondent school. The Employment Exchange at Chennai by his communication dated 18.08.2009 forwarded their request to its branch office at Madurai. In the meanwhile, the 3rd respondent granted permission on 21.08.2009. Since, in accordance with G.O.Ms.No.778 (Education) dated 19.05.1979 the employment exchange has to forward the list of candidates within a period of 10 days and that such list was not forwarded within the stipulated period of time, therefore, he proceeded to conduct interview for the candidates who sent their applications on the initiation of publication in the newspaper on 02.08.2009. Thereafter, the petitioner was selected and appointed to the post of B.T. Assistant (Maths) by the proceedings of the 4th respondent on 11.09.2009.

33.The 4th respondent in his counter has stated as follows:

"5.I submit that prior to the year 2009, vacancies arose to the sanctioned vacancies and in so far as B.T. Assistant (Maths), the vacancy arose on 01.06.2005. However, in view of the ban order, we could not appoint any candidate against such sanctioned vacancies. The 2nd respondent by his proceedings dated 29.06.2009 directed the appointment of teachers against sanctioned vacancies. This Respondent requested the permission of the 3rd Respondent to appoint B.T. Assistant (Maths). Simultaneously this respondent requested the Professional Employment Exchange at Chennai on 14.08.2009 to sponsor the candidates. The employment exchange at Chennai by his communication dated 18.08.2009 forwarded our request to its branch office at Madurai. In the meanwhile the 3rd Respondent granted permission on 21.08.2009. Since, in accordance with G.O.Ms.No.778 (Education) dated 19.05.1979 the employment exchange has to forward the list of candidates within a period of 10 days and that such list was not forwarded, we proceeded to conduct interview for the candidates who sent their applications on the initiation of our publication in the newspaper and by affixture dated 02.08.2009.

6.I submit that this Petitioner was selected and was appointed to the post of B.T.Assistant (Maths) by the proceedings of this Respondent dated 11.09.2009."

34.Therefore, it is made clear that the 4th respondent also not appointed the petitioner by calling her only, but after through proper channel request made to the 2nd respondent, which was granted on 29.06.2009 and also to the 3rd respondent / Principal



which was granted on 21.08.2009 and in fact the 4th respondent also requested the Professional Employment Exchange at Chennai on 14.08.2009 to sponsor the candidates and subsequently the same was forwarded to its branch office at Madurai. But, as per the G.O.Ms.No.778 (Education) dated 19.05.1979, the employment exchange has to forward the list of candidates within a period of 10 days. Therefore, as per the counter in para-5 and 6 of the 4th respondent, it is made clear that through proper channel only the petitioner was appointed as B.T. Assistant (Maths). The 4th respondent also called the candidates from the Professional Employment Exchange, Chennai on 14.08.2009, but it was not forwarded the list of candidates within 10 days, which was mandatory as per G.O.Ms.No.778 (Education) dated 19.05.1979. In the said circumstances, the appointment of the petitioner is absolutely valid in law and the non approval of the respondents 2 and 3 by stating that this petitioner was not appointed through employment exchange is absolutely incorrect statement and without proper reasons of the respondents 2 and 3, since the 4th respondent has followed the proper method as per the counter statement of the 2nd respondent, no list was issued by the Professional Employment Exchange of Chennai and its Madurai Branch office within 10 days as per the G.O.Ms.No.778 (Education).

35.The 4th respondent having every power to appointing the petitioner by conducting interview those who have applied and accordingly, this petitioner was appointed on 11.09.2009. Therefore, the petitioner is make out the case before this Court. Accordingly, this Court ought to have interfere with the order passed by the 4th respondent, since it was passed with non-application of mind and against the principles of natural justice.

36.For the foregoing reasons, I have no hesitation to set aside the impugned order of the 4th respondent herein dated 31.05.2011 and the 4th respondent herein is directed to reinstate the petitioner into service and to pay the salary as fixed in the appointment order to the petitioner from 11.09.2009 to 31.05.2011.

37.In the result:

(a) the writ petition is allowed by setting aside the order passed by the 4th respondent in Na.Ka.No.9-2011 dated 31.05.2011.

(b) the respondents 2 and 3 are hereby directed to approve the petitioner's appointment of the petitioner as B.T. Assistant Teacher (Maths) from 11.09.2009 and disburse the grant-in-aid towards salary with effect from the date of appointment i.e. 11.09.2009.

(c) the said exercise shall complete within a period of four weeks from the date of receipt of a copy of this order.

38.Accordingly, this writ petition is allowed with the above



observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Records)

WEB COPY /True Copy/

Sub Assistant Registrar

vsa

To

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Teacher Education,
Research and Training, D.P.I. Compound,
College, Road,
Chennai - 600 006.
- 3.The Principal,
District Institute of Education and Training,
Vanaramutti,
Tirunelveli District.

+1cc to Mr.P.Krishnasamy Advocate Sr.No. 1915

JAM/31.01.2017/ SV-MMS/11p-5c

Order made in
W.P. (MD) .No.13912 of 2011o
and
M.P. (MD) Nos.1 and 2 of 2011
10.01.2017