

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 30.07.2018	Delivered on 14.08.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.1532 to 1539 of 2017

and

C.M.P.Nos.20211 to 20218 of 2017

W.A.No.1532 of 2017 :-

- 1.The Chairman, Syndicate of
University of Madras,
Centenary Buildings, Chepauk,
Chennai 600 005.
- 2.The Registrar,
University of Madras,
Centenary Building, Chepauk,
Chennai 600 005. Appellants

WA.No.1533 of 2017 to WA.No.1539 of 2017:

- 1 THE CHAIRMAN
SYNDICATE OF THE UNIVERSITY OF MADRAS
CHEPAUK, CHENNAI-5 1st Appellants in
WA.1533/2017
2. THE REGISTRAR,
UNIVERSITY OF MADRAS,
CENTENARY BUILDING, CHEPAUK,
CHENNAI 600 005. 2nd Appellant in WA.1533/17
.... 1st Appellant in WA.1534, 1535,
1536, 1537, 1538 and 1539/17
- 2 THE VICE CHANCELLOR
UNIVERSITY OF MADRAS, CENTENARY BUILDINGS
CHEPAUK, CHENNAI-5 2nd Appellant in WA.Nos.1533,
1534, 1535, 1536, 1537, 1538 and
1539 of 2017

versus

K.MEGARAJU,	Respondent in WA.No.1532/2017
G.VIJAYAKUMAR	Respondent in WA.No.1533/2017
T. KRIPASANKAR	Respondent in WA.No.1534/2017
T.A.CHANDRASEKAR	Respondent in WA.No.1535/2017
G.EZHILARASU	Respondent in WA.No.1536/2017
K.KUMARAVEL	Respondent in WA.No.1537/2017
S.NAGARAJAN	Respondent in WA.No.1538/2017
N.CHINNAYA	Respondent in WA.No.1539/2017

PRAYER in W.A.No.1532 of 2017: Appeal filed against the order passed by this Court dated 22.09.2017 passed in W.P.No.30701 of 2013.

Common Prayer in W.A.Nos.1533 to 1539 of 2017:Appeal filed against the order passed by this Court dated 22/09/2017 passed in WP.Nos.30783/13, WP.Nos.975,976,977,978,979 and 980 of 2014.

Common Prayer in WP.Nos.30701 and 30783 of 2013:These writ petitions filed under Article 226 of constitution of India, praying to call for the records relating to impugned order passed by the 2nd respondent in his proceedings No.F1(A)/Estt./Discip/2013/2360 dated 07/11/2013 and No.F1(A)/Estt./Discip/2013/2363 dated 07/11/2013 respectively and quash the same.

WP.No.975 to 980 of 2014:Writ petitions filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the order of the 1st respondent in Proceedings No. F.1 (A)/Estt./Discip/2013/

- i) 2361 dated 7.11.2013
- ii) 2404 dated 12.11.2013
- iii) 2362 dated 7.11.2013
- iv) 2405 dated 12.11.2013
- v) 2356 dated 7.11.2013
- vi) 2366 dated 7.11.2013 respectively and quash the same.

For Appellants : Mr.Mani Sundargopal

For Respondents : Mr.K.Raja
in W.A.Nos.1532 & 1533 of 2017

Mr.C.Vigneswaran
in W.A.Nos.1534, 1535 & 1537 of 2017

Mr.S.Subbiah, Senior Counsel
for M/s.W.M.Abdul Majeed
in W.A.Nos.1536, 1538 & 1539 of 2017

J U D G M E N T

R.SUBRAMANIAN, J.

1. The challenge in these intra-Court appeals is to the order of the learned Single Judge dated 22.09.2017 made in W.P.Nos.30701 and 30783 of 2013 and W.P.Nos.975 to 980 of 2014, in and by which, the learned Single Judge while allowing the Writ Petitions filed by the respondents in all these appeals set aside the impugned orders of punishment and directed the appellants/ university to reinstate the respondents in their original positions. There was also a further direction to restore the original pay along with all service benefits with promotions and in respect of the individuals who had retired from services.

2. All the respondents who were employees of the University were charge sheeted under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for certain delinquencies allegedly committed by them while working in the Base Camp - III for attending work relating to dummy numbering of the answer papers of the UG examination conducted during May 2011. The charges against all these employees were similar.

3. The University constituted a Disciplinary Committee consisting of Prof.K.Aludiapillai, IAS (Retd.), Mrs.S.Rajalakshmi, M.A., M.L., and Mr.P.Perumalappan, B.A., B.L., for conducting disciplinary enquiry. After following the due procedure and conducting the enquiry, the committee filed a report finding the employees guilty of the charges. The copies of the report of enquiry committee were furnished to the respondents seeking their explanation. On receipt of the explanation the University imposed punishments, the details of which are as follows:

Sl. No.	Writ Petition No./ Writ Appeal No.	Name	Designation	Punishment
1.	W.P.No.30701/2013 W.A.No.1532/2017	K.Megaraju	Assistant Section Officer	Reduction to lower post for five years and pay fixed at minimum of pay band and Grade pay applicable.

Sl. No.	Writ Petition No./ Writ Appeal No.	Name	Designation	Punishment
2.	W.P.No.30783/2013 W.A.No.1533/2017	G.Vijayakumar	Assistant Section Officer (SG)	Reduction to lower post for three years and pay fixed at minimum of pay band and Grade pay applicable
3.	W.P.No.975/2014 W.A.No.1534/2017	T.Kripasankar	Assistant Section Officer	Reduction to lower post for two years and pay fixed at minimum of pay band and Grade pay applicable
4.	W.P.No.976/2014 W.A.No.1535/2017	T.A.Chandrasekar	Section Officer (Retd.)	Withhold one-third pension for five years
5.	W.P.No.977/2014 W.A.No.1536/2017	G.Ezhilarasu	Assistant Section Officer	Reduction to lower post for five years and pay fixed at minimum of pay band and Grade pay applicable
6.	W.P.No.978/2014 W.A.No.1537/2017	K.Kumaravel	Section Officer	Withhold one-third pension for five years
7.	W.P.No.979/2014 W.A.No.1538/2017	S.Nagarajan	Section Officer	Reduction to lower post for one year and pay fixed at minimum of pay band Grade pay applicable
8.	W.P.No.980/2014 W.A.No.1539/2017	N.Chinnaiya	Assistant Section Officer	Reduction to lower post for five years and pay fixed at minimum of pay band Grade pay applicable

4. The affected employees challenged the orders of punishments in the Writ Petitions. Before the Writ Court the respondents/ employees mainly contended that there was no

reasonable opportunity given to the employees in the course of the domestic enquiry, inasmuch as they were prevented from defending their case by producing documents or examining witnesses. It is also the contention of the delinquent employees that they were denied right of cross examination of the witnesses examined on the side of the Management. The very constitution of the disciplinary Committee itself was challenged inasmuch as rank outsiders were appointed.

5. It was the further contention of the employees that several employees who were charge sheeted along with the respondents herein were exonerated by the Committee without any valid reasons. The employees also contended that the charges being similar in nature, the appellants/ University had applied different yardsticks while awarding punishments. When some of the employees who were charge sheeted for very same delinquencies were imposed a punishment of reduction to lower rank for a period of 1 year and 2 years, some of the employees were imposed a punishment of reduction in rank for a period of 5 years. Claiming that there was no rationale behind the imposition of different punishments on the employees who were charge sheeted for the same set of delinquencies, the employees would contend that the appellants /University has treated them unequally.

6. The learned Single Judge who heard the Writ Petitions held that there was discrimination in the matter of punishment, inasmuch as some of the employees had been let off with lesser punishment while the others had been made to face a more stringed punishment. The learned Single Judge also concluded that inasmuch as the outsiders were appointed as enquiry officers the very enquiry proceedings are invalid. On the above conclusions, the learned Single Judge allowed the Writ Petitions setting aside the punishments imposed with consequential direction for reinstatement. Aggrieved the University is before us by way of this intra-Court Appeals.

7. We have heard Mr.Mani Sundaragopal, learned counsel appearing for the appellants, Mr.K.Raja, learned counsel appearing for the respondents in W.A.No.1532 and 1533 of 2017, Mr.C.Vigneshwaran, learned counsel appearing for the respondents in W.A.Nos.1534, 1535 and 1537 of 2017 and Mr.S.Subbiah, learned Senior Counsel for for Mr.W.M.Abdul Majeed for the respondents in W.A.Nos.1536, 1538 and 1539 of 2017.

8. Mr.Mani Sundaragopal, learned counsel appearing for the appellant University would contend that the disciplinary proceedings were conducted as per the Rules of the University by

appointing a committee of three persons including a former IAS officer. Taking us through the report of the Committee, the learned counsel would contend that the Committee had conducted the disciplinary proceedings in a fair and proper manner and the respondents who claimed that they had not been given reasonable opportunity did not raise any such issue during the course of the disciplinary proceedings. He would also rely upon the judgment of the Division Bench of this court in *The University of Madras vs. Dr.Maa.Selvaraasan* and another reported in 2006 (3) CTC 1, wherein this Court had upheld the appointment of an outsider as an enquiry officer.

9. Insofar as the findings of the learned Single Judge that the University has discriminated between the employees while awarding punishments, Mr.Mani Sundaragopal, would contend that the punishment was imposed considering the age of the delinquent employees and the period of the punishment was altered according to the remaining service.

10. Per contra, Mr.S.Subbiah, learned Senior Counsel appeared for Mr.W.M.Abdul Majeed in W.A.Nos.1536, 1538 and 1539 of 2017 would contend that once it is found that the delinquencies are the same, the University cannot adopt a different yardstick, allegedly, based on the remaining services of the delinquent officials.

11. Mr.K.Raja learned counsel appearing for the respondents in W.A.Nos.1532 and 1533 of 2017 would submit that the reasons given by the University for imposing lesser punishments on some of the employees are not borne out in the orders passed imposing punishment or in the resolution of the Syndicate which considered the imposition of the punishment on the delinquent employees. The learned counsel would further contend that the appellant/ University cannot be allowed to introduce new reasons while answering the claim of the employees before the Writ Court or before this Court in the Appeal.

12. Mr.C.Vigneswaran, learned counsel appearing for the respondents in W.A.Nos.1534, 1535 and 1537 of 2017 would substantially adopt the arguments of Mr.S.Subbiah, learned Senior Counsel appearing for the respondents in W.A.Nos.1536, 1538 and 1539 of 2017.

13. We have considered the rival submissions. The following points emerge for determination in these Appeals:

1. Whether the action of the University in appointing outsiders as enquiry officers is contrary to statute 19(y) of the Madras University Act?

2. Whether the impugned disciplinary proceedings were vitiated by denial of reasonable opportunity to the employees concerned?

3. Whether the University was right in discriminating amongst the employees while awarding different punishments for the same set of delinquencies?

Question No.1 :-

14. As far as the power of the University to appoint an outsider as an enquiry officer, we find that the same has been answered by the Division Bench in *The University of Madras vs. Dr.Maa.Selvaraasan* and another reported in 2006 (3) CTC 1. The Division Bench had framed the following specific question in the said Writ Appeal:

"Whether the impugned disciplinary action as well as the consequential decision of the compulsory retirement by the syndicate is bad as the same is based on the report of an Enquiry Officer, who is not a member of the Syndicate, as the very appointment of the Enquiry Officer is contrary to Section 19(y) of the Act? "

While answering the said question the Division Bench had after referring to the judgment of another Division Bench in *Saradha Balakrishnan Vs. The Director of Collegiate Education* reported in 1995 (1) MLJ 610 had concluded as follows:

"12. In the light of the established legal position, it is not possible to agree with the view taken by the learned Single Judge that the Vice-Chancellor had delegated his power to the Enquiry Officer. We have already pointed out that the Syndicate delegated its power to the Vice-Chancellor to take disciplinary action, and the Vice-Chancellor appointed an independent Enquiry Officer to hold an enquiry into the charges levelled against the respondent and submit a report. On the basis of the report of the Enquiry Officer, the Syndicate imposed punishment of compulsory retirement on the

respondent. Under the circumstances, it cannot be said that the Vice-Chancellor has delegated his function merely by deputing an independent officer to enquire and submit a report. That is an ordinary mode of exercise of any administrative power. When the Enquiry Officer is appointed, the disciplinary authority does not lose its power, and therefore the question of delegation of power would not arise in this case. "

15. We see no reason to differ from the conclusions reached by the Division Bench in The University of Madras vs. Dr.Maa.Selvaraasan and another report in 2006 (3) CTC 1. The mere appointment of an enquiry Committee comprising of outsiders does not in any manner violate or contravene Section 19(y) of the Act. As pointed out by the Division Bench in The University of Madras vs. Dr.Maa.Selvaraasan and another report in 2006 (3) CTC 1, the same does not in any manner whittle down the disciplinary powers of the Vice-Chancellor or Syndicate as the case may be.

16. Unfortunately, the decision of the Division Bench in The University of Madras vs. Dr.Maa.Selvaraasan and another report in 2006 (3) CTC 1 case was not brought to the notice of the learned Single Judge which resulted in the learned Single Judge concluding that the appointment of a Committee consisting outsiders as a disciplinary enquiry Committee is against the provisions of Section 19(y) of the Act. We are therefore of the considered opinion that, the appointment of the Disciplinary Committee in itself has not violated the provisions of Section 19(y) of the Act so as to vitiate the entire disciplinary proceedings.

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Question No.2 :-

17. The next contention of Mr.Mani Sundaragopal, learned counsel appearing for the University is that the learned Single Judge was not right in concluding that the employees were not given a reasonable opportunity during the domestic enquiry. Inviting our attention to the report of the Disciplinary Enquiry Committee, the learned counsel for the appellants/ University would contend that the Disciplinary Committee has examined witnesses as well as the documents and has found that the charges have been proved. None of the delinquent employees had complained that they were not given an opportunity for either adducing evidence or for cross examining the witnesses. According to the learned counsel, having participated in the

enquiry proceedings without raising their little finger, the employees cannot be heard to contend that they have not been furnished documents or that they were not allowed to cross examine the witnesses. The University had issued a show cause notice along with a copy of the enquiry report. All the delinquent employees had submitted their explanations, none of them had raised the issue of non-furnishing of documents or denial of opportunity for cross examination in their explanations.

18. We are therefore of the considered opinion that the said contention, raised for the first time in the Writ Petition, cannot be countenanced. We therefore conclude that the claim of the employees that they were not given a reasonable opportunity during the disciplinary enquiry proceedings is without any substance and the same should not have been entertained by the learned Single Judge.

Question No.3:-

19. The 3rd question relates to the question of discrimination alleged by the employees. The punishments imposed on each of the employees have been set out in the tabular statement above. We also find that the charges against all the employees are substantially similar and the findings of the Disciplinary Enquiry Committee are also the same but the Syndicate of the University has chosen to impose different punishments on the employees. No reason is spelt out for imposition of such different punishments either in the resolutions of the Syndicate or in the orders passed by the Disciplinary Authority.

20. When we posed a question regarding the absence of reason for imposing different punishment on the employees who were charged for the same delinquency, Mr. Mani Sundaragopal would submit that the same was done taking into account the remaining service the employees had at the time when the punishment was imposed. We do not think, such an approach could be accepted. Merely because an employee has more number of years of service left, he cannot be saddled with a higher punishment. As rightly pointed out by the learned Single Judge, the Hon'ble Supreme Court has in *Rajendra Yadav Vs. State of Madhya Pradesh* and others reported in 2013 (3) SCC 73 held that the Disciplinary Authority must maintain parity among the delinquents in the matter of punishment. The Hon'ble Supreme Court has in the said judgment observed as follows:

"9. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

11. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs. "

21. In view of the above said dictum of the Hon'ble Supreme Court, we are of the view that the action of the University in imposing lesser punishment on employees who were to retire earlier and higher punishment on employees who had more number of years of service cannot at all be justified. With a view to enable the University to rectify the anomaly, we had adjourned the matter twice requiring the learned counsel for the University to inform the Syndicate and get its views on the question of punishment. Mr. Mani Sundaragopal had produced the minutes of the meeting of the Syndicate held on 19.07.2018 wherein the Syndicate has resolved not to change the punishments already imposed in its meeting held on 13.09.2013.

22. As already pointed out, the Disciplinary Authority is required to maintain parity in the matter of punishments when the delinquents are charged with a same set of charges. As pointed out by the Hon'ble Supreme Court in Rajendra Yadav case reported in 2013 (3) SCC 73 cited supra, there cannot be any discrimination amongst the employees in the matter of punishment depending on the remaining service they have. It is the fundamental principle of service jurisprudence that the punishment must be proportionate to the delinquencies and cannot be related to the balance service or the remaining service the employee has.

23. We are therefore of the considered opinion that, the action of the University in imposing different punishments on the delinquents cannot be sustained. We are therefore forced to interfere with the punishments imposed by the University on the delinquent employees, while rejecting the other contentions of the delinquent employees.

24. From the tabular statement supra it would be seen that the University has chosen to impose the punishment of reduction in rank to a lower post for a period of one year in respect of one S.Nagarajan who is the petitioner in W.P.No.979 of 2014 and the respondent in W.A.No.1538 of 2017, while the punishment of reduction in rank to a lower post for a period of 2 years, 3 years and 5 years has been imposed on the respondents in W.A.Nos.1532, 1533, 1534, 1536 and 1539 of 2017. Insofar as the respondents in W.A.Nos.1535 and 1537 are concerned since they had retired during the pendency of the disciplinary proceedings the punishment of reduction of 1/3rd of pension for a period of 5 years was imposed.

25. Considering the fact that the respondents in W.A.Nos.1535 and 1537 had retired pending the disciplinary proceedings and the punishment of reduction of 1/3rd pension for 5 years have been imposed on them and the currency of the punishment is also over by now, we do not propose to interfere with the said punishment. Hence W.A.Nos.1535 and 1537 will stand allowed and the Writ Petition filed by the said employees in W.P.Nos.976 and 978 of 2014 will stand dismissed.

26. Insofar as the other employees who have been awarded a punishment of reduction in rank for varied periods, we are of the opinion that, uniform punishment of reduction in rank for a period of 1 year that was awarded to the respondent in W.A.No.1538 of 2017 would meet the ends of justice. Therefore, the punishment of reduction in rank for a period of 1 year awarded to the respondent in W.A.No.1538 of 2017 will stand confirmed and the said Writ Appeal will stand allowed resulting in dismissal of Writ Petition in W.P.No.979 of 2014.

27. Insofar as the other employees are concerned viz., the respondents in W.A.Nos.1532, 1533, 1534 and 1536 of 2017 are concerned the punishments awarded to them will stand reduced to reduction in rank for a period of 1 year on par with the respondent in W.A.No.1538 of 2017. These Writ Appeals viz., W.A.Nos.1532, 1533, 1534, 1536 and 1539 of 2017 will stand partly allowed by modifying the punishments into reduction to lower post in the time scale of pay for a period of 1 year instead of 5 years, 3 years and 2 years as imposed by the Disciplinary Authority.

28. In fine, the W.A.Nos.1532, 1533, 1534, 1536 and 1539 of 2017 are partly allowed and the punishment of reduction in rank for a period of 2 years, 3 years and 5 years imposed on the respondents in these appeals will stand reduced to reduction in rank to a lower post for a period of 1 year. Insofar as the W.A.Nos.1535, 1537 and 1538 of 2017 are concerned these Writ Appeals will stand allowed confirming the punishments imposed by the University and the Writ Petitions viz., W.P.Nos.976, 977 and 979 of 2014 will stand dismissed. However, in the circumstances, there will be no order as to costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1.The Chairman, Syndicate of
University of Madras,
Centenary Buildings, Chepauk,
Chennai 600 005.

2.The Registrar,
University of Madras,
Centenary Building, Chepauk,
Chennai 600 005.

3. The Vice Chancellor
University of Madras, Centenary Buildings
Chepauk, Chennai-5

+1cc to M/s.Mani Sundargopal, Advocate SR.NO.56162

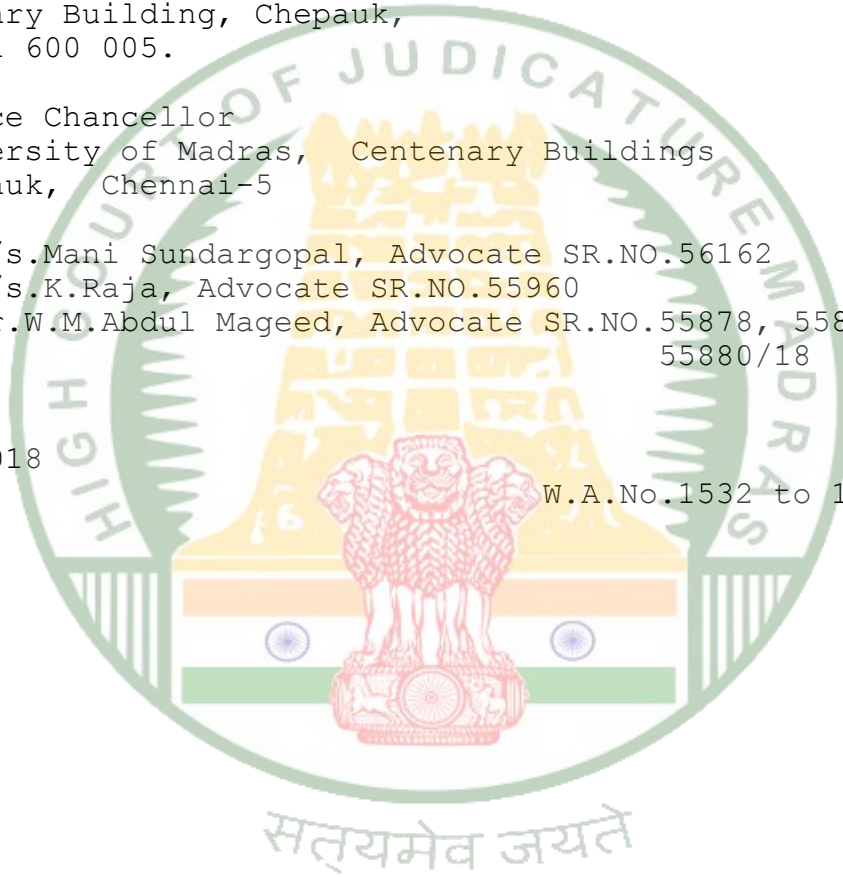
+2cc to M/s.K.Raja, Advocate SR.NO.55960

+3cc to Mr.W.M.Abdul Mageed, Advocate SR.NO.55878, 55879 &
55880/18

RJI (CO)

sm:31.8.2018

W.A.No.1532 to 1539 of 2017



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