

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.24259 of 2017
and WMP No.25643 of 2017

G.Kanagasabai

... Petitioner

vs.

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

2. The Chairman,
Teachers Recruitment Board,
Chennai.

3. The Director,
Collegiate Education,
Chennai.

4. The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram - 608 002.

5. The Principal,
Government Arts College,
C. Mutlur, Chidambaram.

6. The Principal,
Government Periyar Arts College,
Cuddalore.

7. Dr. N. Rajendran,
Assistant Professor,
Department of Zoology,
Government Arts College,
C. Mutlur, Chidambaram.

8. Dr.K.Chinnadurai,
Assistant Professor,
Department of Zoology,
Periyar Arts College,
Cuddalore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, calling for the records from the respondents, pertaining the appointment of 7th and 8th respondents and direct the 2nd respondent to conduct an enquiry in respect of the certificate of Experience produced by Respondents 7 and 8 and take further action.

For Petitioner : Mr.R.Chellamuthu
for M/s.A.Panneerchelvam

For Respondents 1 to 4 : Mr.C.Munusamy,
Spl.Govt.Pleader (Education)

For Respondents 5 & 6 : Mr.E.Manoharan,
Addl. Govt. Pleader

For Respondents 7 & 8 : No appearance

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Public Interest Writ Petition has been filed challenging the action of the respondents 1 to 6, pertaining to the appointment of respondents 7 and 8 and consequently prayed for a direction to the 2nd respondent to conduct an enquiry, in respect of the certificate of Experience produced by respondents 7 and 8 and take further action.

2. Case of the petitioner is that Dr.N.Rajendran, Son of Narayanasamy, 7th respondent herein, residing at Door No.1-4, New Kothangudi Flats, Aranganathan Salai, Annamalai Nagar, Chidambaram 608 002, who is now posted as Assistant Professor, Department of Zoology, Government Arts and College, Chidambaram, has obtained employment, misleading the authorities, regarding his qualification. Under RTI, the petitioner came to know that Dr.N.Rajendran (7th respondent) never served as a Teacher at Centre of Advanced Study in Marine Biology, Annamalai University, but served only as a Research Officer and that his appointment was not under the employment of University.

3. The petitioner has further submitted that the 7th respondent applied for the post of Lecturer in Zoology, by direct recruitment of Lecturers in Government Arts and Science

Colleges and a provisional certificate of selection was issued to him based on the certificates submitted by him, regarding his education and qualifications prescribed for the post. Subsequently, the provisional certificate for the appointment was cancelled, as his teaching experience required, for the post was not fulfilled.

4. Aggrieved by the cancellation, the 7th respondent has filed W.P. No. 17863 of 2008 challenging the cancellation of the provisional certificate of appointment. According to the petitioner, even though the Government had filed a counter, stating that the 14 marks awarded to the petitioner towards teaching experience cannot at all be granted, since the petitioner had served only as a Research Officer and that the same cannot be treated as teaching experience, this Court relied on the certificate of experience purported to have been issued by Annamalai University, which was produced by the 7th respondent. In that certificate, it has been stated that the petitioner was having 7 years of experience in teaching the students and research scholars. Based on this certificate, this Court set aside the order of the cancellation of the provisional selection and directed the Teachers Recruitment Board (2nd Respondent) to issue the posting order to the 7th respondent.

5. Subsequently, the 7th respondent has filed a Contempt Petition No.1198 of 2009, against the respondents 1 and 2 for not complying with the directions issued in W.P. No.17863 of 2008 and for issuance of posting order. According to the petitioner, certificate of experience produced by the 7th respondent, before this Court was not genuine and bogus. After obtaining the information under the RTI Act from Annamalai University, he had sent representations to the Director of the Directorate of Collegiate Education, Chennai (3rd respondent), Joint Director of Collegiate Education, Trichy and to the Principal, Government College of Arts and Science, Chidambaram (5th respondent), but no action was taken by them.

6. The petitioner has further submitted that in a similar case Thiru.K.Chinnadurai (8th respondent) serving as a Assistant Professor, Department of Zoology, Thanthai Periyar College, Cuddalore also has been selected to the post of Lecturer on the basis of the certificate of experience purportedly issued by Annamalai University. On enquiry, under the RTI Act, it was found that the 8th respondent was also not teaching to the students and served only as a Research Officer. His employment was not under the University. Petitioner has contended that as per the categorical information given by the Public Information Officer, Annamalai University, they are not the competent authority to issue certificate of experience to respondents 7 and 8, and their employment was not under the University. According to the petitioner, both of them never served as

teachers, but only as Research Officer. In this regard, he sent a representation, dated 30.03.2017, to the first respondent and though, acknowledged by respondents 1 to 6, they have not taken any action. Hence, he has filed the present writ petition, for the relief, as stated supra.

7. Heard the learned counsel appearing for the parties and perused the materials available on record.

8. First of all, let us consider, few decisions of the Hon'ble Supreme Court on service matters.

(i) In Dr.Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others, reported in 1998 (7) SCC 273, the Hon'ble Supreme Court dealt with an issue, as to whether a Public Interest Writ Petition, at the instance of a stranger, could be entertained, by the Administrative Tribunal. After considering the decisions in Jasbhai Motibhai Desai vs. Roshan Kumar Haji Bashir Ahmed and others (1976) 1.S.C.C. 671, the law declared in Chandra Kumar vs. Union of India (1997) 3 SCC 261, and the provisions of the Administrative Tribunals Act, 1985, the Hon'ble Supreme Court held as follows:-

"18..... Section 3 (b) defines the word 'application' as an application made under Section 19. The latter Section refers to 'person aggrieved'. In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word 'order' has been defined in the explanation to sub-s. (1) of Section 19 so that all matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. It in that context, Sections 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated.

19.Our attention has been drawn to a judgement of the Orissa Administrative Tribunal in Smt. Amitarani Khuntia Versus State of Orissa 1996. (1) OLR (CSR)-2. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgement is relevant:

"....A reading of the aforesaid provisions would mean that an application for redressal of grievances

could be filed only by a 'person aggrieved' within the meaning of the Act.

Tribunals are constituted under Article 323 A of the Constitution of India. The above Article empowers the Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well-defined in the Act. It does not enjoy any plenary power."

We agree with the above reasoning.

21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger."

(ii) In *Ashok Kumar Pandey vs. State of W.B.*, reported in (2004) 3 SCC 349, the Hon'ble Apex Court, at paragraphs 5 to 16, held as follows:-

"5. It is necessary to take note of the meaning of the expression "public interest litigation". In Stroud's Judicial Dictionary, Vol. 4 (4th Edn.), "public interest" is defined thus:

"Public interest.—(1) A matter of public or general interest 'does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected'."

6. In Black's Law Dictionary (6th Edn.), "public interest" is defined as follows:

"Public interest.—Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or

liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

7. In Janata Dal case (1992 (4) SCC 305 = 1993 SCC (Cri) 36) this Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, this Court has laid down as follows: (SCC p. 331, para 53)

"The expression 'litigation' means a legal action including all proceedings therein initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In para 62 of the said judgment, it was pointed out as follows: (SCC p. 334)

"Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 98 of the said judgment, it has further been pointed out as follows: (SCC pp. 345-46)

"While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. In subsequent paras of the said judgment, it was observed as follows: (SCC p. 348, para 109)

"It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration."

Similarly a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold."

11. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters – government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to lose but trying to gain for nothing and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand

name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, courts must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows:

"Public interest law is the name that has recently been given to efforts which provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while

dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra v. Prabhu* (1994 (2) SCC 481 = 1994 SCC (L&S) 676) and *A.P. State Financial Corpn. v. Gar Re-Rolling Mills* (1994 (2) SCC 647 = AIR 1994 SC 2151. No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See *Buddhi Kota Subbarao (Dr) v. K. Parasaran* (1996 (5) SCC 530 = 1996 SCC (Cri) 1038 = JT 1996 (7) SC 265] Today people rush to courts to file cases in profusion under this attractive name of public interest. Self-styled saviours who have no face or ground in the midst of public at large, of late, try to use such litigations to keep themselves busy and their names in circulation, despite having really become defunct in actual public life and try to smear and smirch the solemnity of court proceedings. They must really inspire confidence in courts and among the public, failing which such litigation should be axed with a heavy hand and dire consequences.

16. As noted *supra*, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations, whereas only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts at times are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra* (1998) 7 SCC 273, this Court held that in service matters PILs should not be entertained, the inflow of the so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to

throw them out on the basis of the said decision. This tendency is being slowly permitted to percolate for setting in motion criminal law jurisdiction, often unjustifiably just for gaining publicity and giving adverse publicity to their opponents. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out whether it was a bona fide venture. Whenever such frivolous pleas are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs, as it prima facie gives impression about oblique motives involved, and in most cases shows proxy litigation. Where the petitioner has not even a remote link with the issues involved, it becomes imperative for the court to lift the veil and uncover the real purpose of the petition and the real person behind it. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

(iii) In *Dr.B.Singh (Dr.) v. Union of India*, reported in (2004) 3 SCC 363, the Hon'ble Supreme Court decided the case on the same lines and held that PIL is not maintainable in service matters.

(iv) In *Gurpal Singh vs. State of Punjab*, reported in JT 2005 (5) SC 389, the Hon'ble Apex Court held that PIL is not maintainable in service matters.

(v) In *Indian Consumers Welfare Council vs. Union of India and another*, reported in 2005 (3) L.W. 522, the abovesaid Council, filed a public interest writ petition, challenging a notification, issued by the 2nd respondent therein, by which, applications were invited, from degree holders, with degree in education, and consequently, prayed for a direction to the respondent therein, to appoint only those teachers, who were trained in teaching primary sections, for handling classes from 1st to 7th standards, to the post of Secondary Grade Teachers.

Following the decision in Gopal Singh vs. State of Punjab, reported in 2005 J.T. [5] SC 389, the Hon'ble Apex Court ordered as follows:-

"This is a public interest litigation in respect of a service matter. It has been repeatedly held by the Supreme Court that no public interest litigation lies in service matters, the last decision being Gopal Singh vs. State of Punjab (2005 J.T. [5] SC 389. Accordingly, this writ petition is dismissed."

(vi) In N.Veerasingam vs. Union of India, reported in (2005) 2 MLJ 564, while considering a public interest litigation filed by a treasurer of a political party, praying to take action against Mrs.Lakshmi Praneesh, IAS, the fifth respondent therein, under the All India Services (Discipline and Appeal) Rules, 1969, for allegedly making allegations against a leader of a political party, following the above judgments of the Honourable Apex Court, a Hon'ble Division Bench of this Court held as follows:-

"It is settled law that no writ in the form of public interest litigation will lie under Article 226 of the Constitution in service matters. The petitioner has no locus standi to file the public interest litigation. The extraordinary powers of the High Court under Art.226 of the Constitution in matters of this kind is required to be used sparingly and only in extraordinary cases." "The service matters are essentially between the employer and the employee and it would be for the State to take action under the Service Rules and there is no question of any public interest involved in such matters."

"The petition is not only not maintainable either in law of facts but also would amount to abuse of the process of Court."

(vii) In B.Srinivasa Reddy vs. Karnataka Urban Water Supply and Drainage Board Employees Association and others, reported in 2006 (11) SCC 731, at paragraph 61, the Hon'ble Apex Court held that in service matters only the non appointees can assail the legality of the appointment procedure.

(viii) In Neetu vs. State of Punjab, reported in 2007 (10) SCC 614, the Hon'ble Apex Court held as follows:-

"The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases."

Referring to the decisions in Dr.Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others, reported in 1998 (7) SCC 273 and Ashok Kumar Pandey v. State of W.B reported in 2004 (3) SCC 349, cited supra, the Hon'ble Apex Court in Neetu's case, held that PIL in service matters is not maintainable.

(ix) In Seema Dharmdhere, Secretary, Maharashtra Public Service Commission vs. State of Maharashtra, reported in 2008 (2) SCC 290, the Hon'ble Apex Court restated that PIL is not maintainable in service matters.

(x) In Hari Bansh Lal vs. Sahodar Prasad Mahto and others, reported in 2010 (9) SCC 655, claiming himself as Vidyut Shramik Leader, a writ petition was filed before the High Court, challenging the appointment of Mr.Hari Bansh Lal, who was appointed, as Chairman of Jharkand State Electricity Board. The High Court declared that his appointment was not only arbitrary, but also, contemptuous, and ultimately, quashed his appointment, which gave rise to an appeal, before the Hon'ble Apex Court. Addressing the issue, as to whether a public interest writ petition, is maintainable in service matters, following the earlier decisions in Dr.Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others, reported in 1998 (7) SCC 273 and Ashok Kumar Pandey v. State of W.B reported in 2004 (3) SCC 349, and other decisions, the Hon'ble Supreme Court held as follows:-

PIL in service matters:

11)About maintainability of the Public Interest Litigation in service matters except for a writ of quo warranto, there are series of decisions of this Court laying down the principles to be followed. It is not seriously contended that the matter in issue is not a service matter. In fact, such objection was not raised and agitated before the High Court. Even otherwise, in view of the fact that the appellant herein was initially appointed and served in the State Electricity Board as a Member in terms of Section 5(4) and from among the Members of the Board, considering the qualifications specified in sub-section (4), the State Government, after getting a report from the vigilance department, appointed him as Chairman of the Board, it is impermissible to claim that the issue cannot be agitated under service jurisprudence.

12)We have already pointed out that the person who approached the High Court by way of a Public Interest Litigation is not a competitor or eligible to be considered as a Member or Chairman of the Board but according to him, he is a Vidyut Shramik Leader. Either before the High Court or in this Court, he has

not placed any material or highlighted on what way he is suitable and eligible for that post.

.....

The same principles have been reiterated in the subsequent decisions, namely, Dr. B. Singh vs. Union of India and Others, (2004) 3 SCC 363, Dattaraj Nathuji Thaware vs. State of Maharashtra and Others, (2005) 1 SCC 590 and Gural Singh vs. State of Punjab and Others, (2005) 5 SCC 136.

15) The above principles make it clear that except for a writ of quo warranto, Public Interest Litigation is not maintainable in service matters.

(xi) In Girjesh Shrivastava and others vs. State of Madhya Pradesh and others, reported in 2010 (10) SCC 707, appointments were challenged in PIL, on the grounds of contravention of rules, regarding reservation of ex-servicemen. The High Court allowed the writ petition and ordered cancellation of appointments, and dismissed the review petitions also. While considering the issue, as to whether the matter ought to have been taken, as service dispute and not PIL, the Hon'ble Supreme Court, after considering a catena of decisions, at paragraphs 14 to 19 has held as follows:-

14. However, the main argument by the appellants against entertaining WP (C) 1520/2001 and WP (C) 63/2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is considerable merit in that contention.

15. It is common ground that dispute in this case is over selection and appointment which is a service matter.

16. In the case of Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others (1998) 7 SCC 273, a three judge Bench of this Court held a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of speedy disposal of service matters would get defeated" (para 18). Same reasoning applies here as a Public Interest Litigation has been filed when the entire dispute relates to selection and appointment.

17. In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association and others*, reported in (2006) 11 SCC 731 (II), this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (See para 61, page 755 of the report).

18. This view was very strongly expressed by this Court in *Dattaraj Nathuji Thaware v. State of Maharashtra and others*, reported in (2005) 1 SCC 590, by pointing out that despite the decision in *Duryodhan Sahu* (supra), PILs in service matters 'continue unabated'. This Court opined that High Courts should 'throw out' such petitions in view of the decision in *Duryodhan Sahu* (supra) (Para 16, page 596).

19. Same principles have been reiterated in *Ashok Kumar Pandey v. State of W.B.*, reported in (2004) 3 SCC 349, at page 358 (Para 16).

(xii) In *Soma Velandi vs. Dr. Anthony Elangovan*, reported in 2010 (4) CTC 8, following *Gurpal Singh vs. State of Punjab*, reported in JT 2005 (5) SC 389, a Hon'ble Division Bench held that PIL is not maintainable in service matters.

(xiii) In *Bholanath Mukherjee and others vs. Ramakrishna Mission Vivekananda Centenary College and others*, reported in 2011 (5) SCC 464, before the Hon'ble Supreme Court, a direction to set aside the appointment of the 3rd respondent therein, as Principal, was sought for, as the 3rd respondent was junior, to them, and did not have the requisite qualification. Reiterating the legal position that PIL is not maintainable in service matters, the Hon'ble Apex Court declined to entertain the challenge to the notices issued to Ramakrishna Mission to reconstitute the committees.

(xiv) The Hon'ble Apex Court, while considering a Public Interest Writ Petition, in *Ayaubkhan Noorkhan Pathan vs. State of Maharashtra and others*, reported in 2013 (4) SCC 465, at paragraphs 14 and 15, observed as follows:-

14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided.

Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: P.S.R. Sadhanantham v. Arunachalam & Anr., AIR 1980 SC 856; Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114; State of Uttaranchal v. Balwant Singh Chaufal & Ors., (2010) 3 SCC 402; and Amar Singh v. Union of India & Ors., (2011) 7 SCC 69)

15. Even as regards the filing of a Public Interest Litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: Dr. Duryodhan Sahu & Ors. v. Jitendra Kumar Mishra & Ors., AIR 1999 SC 114; Dattaraj Natthuji Thaware v. State of Maharashtra, AIR 2005 SC 540; and Neetu v. State of Punjab & Ors., AIR 2007 SC 758)

(xv) In a decision in Tmt.Sumathi and four others vs. State, rep. by the Chief Secretary to the Government of Tamil Nadu, Chennai and 15 others (W.P.No.25704/2013, Decided on 13.03.2014), a Hon'ble Division Bench of this Court, held that Public Interest Litigation is not maintainable in service matters.

(xvi) In a decision in Tmt.P.Lakshmi vs. State, rep. by the Chief Secretary, (W.P.No.25704/2013 Decided on 13.03.2014), the Hon'ble First Bench of this Court, held that Public Interest writ petition is not maintainable in service matters.

9. Keeping in mind, the pronouncement of the Hon'ble Supreme Court, as to whether PIL can be maintained in service matters, we posed a question to the learned counsel for the petitioner, as to whether the instant writ petition, relates to service matter. Answer was neither positive nor negative. But the prayer made in the writ petition speaks for itself. It is to call for the records relating to the appointment of 7th and 8th respondents and to direct the 2nd respondent, to conduct an enquiry, in respect of the certificate of experience produced by respondents 7 and 8 and take further action.

10. On the facts and circumstances of this case, let us consider as to how W.P.No.17363 of 2008 came to be filed and ordered.

11. When, the Chairman, Teachers Recruitment Board and Directorate of Collegiate Education, Chennai, respondent No.2, herein cancelled the provisional selection of the 7th respondent, as Lecturer in Zoology in Government Arts College, Thillai, Chidambaram, the same was challenged in W.P.No.17863 of 2008, wherein, the 7th respondent has prayed for a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings in R.C.No.1030/A6/2006 dated 27.05.2008 passed by the Chairman, Teachers Recruitment Board, Chennai, 2nd respondent therein, and quash the same, and prayed for a direction to direct the 2nd respondent therein, to appoint the 7th respondent as Lecturer in pursuant to the Selection Order by the 2nd respondent.

12. In the said writ petition W.P.No.17863 of 2008, the 7th respondent has contended that he had worked as a Research Officer, in the post of Marine Biology and his main work was to teach students and research scholars in the said department. 7th respondent has relied on the certificate dated 03.04.2008, issued by the Director, Centre of Advanced Study in Marine Biology, Annamalai University, which reads thus.

ANNAMALAI UNIVERSITY

CENTRE OF ADVANCED STUDY
IN MARITIME BIOLOGY
PARANGIPETTAI - 608 502
TAMILNADU - INDIA

Phone : 04144-243223
Fax : 04144-243555
Date : 03.04.2008

EXPERIENCE CERTIFICATE

This is to certify that Dr.N.Rajedran has 7 years of experience in teaching the students and research scholars as the Research Officer, Environmental Information System Centre [ENVIS] at Centre of Advanced Study in Marine Biology, Annamalai University sponsored by the Ministry of Environment & Forests, Government of India, New Delhi. The duration of the assignment is from 1st June 2000 to June 2007.

Sd/-xxx

[T.BALASUBRAMANIAN]

Director

C.A.S.in Marine Biology
Annamalai University
Parangipettai - 608 502

Sd/-xxx

27.2.2008

REGISTRAR

ANNAMALAI UNIVERSITY

13. Whereas, Annamalai University, in the counter affidavit,

has stated that the said certificate, cannot at all be granted, since the 7th respondent has served only as a Research Officer and the same cannot be treated as teaching experience. Averting to the rival submission and taking note of the certificate dated 03.04.2008, a learned Single judge of this Court in W.P.No.17863 of 2008 dated 10.11.2008, ordered as hereunder,

"5. In the said certificate it is clearly stated that the petitioner is having 7 years of experience in teaching the students and research scholars. The Government Order issued in G.O.(Ms).No.306, Higher Education (F2) Department, dated 10.9.2007 requires teaching experience in Universities/ Government/Aided Colleges/self financing colleges in the approved post including the teaching experience (in the relevant subject) of the candidates in Medical/Engineering/Law Colleges. The petitioner having been given the experience certificate by the Annamalai University certifying that he shall teach the students and research scholars in the Marine Biology which is the related subject of biology, the said certificate given by the Annamalai University is to be treated as a valid certificate for the purpose of awarding marks at the rate of two marks for each completed years. The same was also the view taken by the selection committee and awarded the marks. The impugned order states one reason and the same is found untenable. The second respondent has chosen to give a different reason in the counter affidavit. The said attitude adopted by the second respondent cannot also be sustained. The impugned order is set aside. The selection given to the petitioner is restored.

6.The second respondent is directed to issue the posting order to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

7.The Writ Petition is allowed accordingly. No costs. Consequently, connected pending miscellaneous petitions are disposed of."

14. Averments made in the instant writ petition W.P.No.24249 of 2017, is based on the information obtained under the Right to Information Act, 2005.

15. Reply of the Public Information Officer, Annamalai University to the petitioner dated 08.06.2015 is as follows,
File No.P10/169/2015

Sub : Under RTI Act 2005, information required - Reg.
Ref : Your letter dated : 30.03.2015.

In reference to your letter, required answer given below.

S.No	Question	Answer
1	Please furnish me the certified copies of the graduation of (i) Chinnadurai son of Gunasekaran (ii) Rajendran son of Narayanasamy from your university along with the copies of the relevant records with the period of studying.	Mr.Chinnadurai joined in the Research in Marine Biology Department on 04.02.2002 and received the degree on 28.04.2005. Mr.N.Rajendran joined in the Research in Marine Biology Department on 20.12.1993 and received the degree on 27.01.1998.
2	Please furnish the certified copies of the service records of (i) Chinnadurai son of Gunasekaran (ii) Rajendran son of Narayanasamy in the Department of Marine Biology or other Department in your University with the duration of service.	Mr.N.Rajendran worked as Research Officer from the year 2000 to 2007 under the ENVIS Project in the Department of Marine Biology. Mr.G.Chinnadurai worked as Research Officer from May 2005 to August 2006 under ENVIS Project in the Marine Biology Department. Their appointment will not come under the university appointment.
3	Please furnish copies of the classes taught in every week by (i) Chinnadurai son of Gunasekaran (ii) Rajendran son of Narayanasamy in Department of Marine Biology in your University with explanation.	Chinnadurai and Rajendran did not serve as teachers in Marine Biology Department. Hence not answered for the queries raised.

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S.No	Question	Answer
4	Please furnish the certified copies of the certificate experience of teaching for (i) Chinnadurai son of Gunasekaran (ii) Rajendran son of Narayanasamy in Department of Marine Biology in your University	Chinnadurai and Rajendran did not serve as teachers in Marine Biology Department. Hence not answered for the queries raised.
5	Please furnish the copies of the details containing the names of the Head of Department with their service records of appointment, transfer, promotion and retirement along with any order passed on their omission and commission during their period of service from the date of joining till 31.03.2015 when (i) Chinnadurai son of Gunasekaran (ii) Rajendran son of Narayanasamy served as teacher in Department of Marine Biology in your University	
6	Please furnish the copies of the registration for the study of Ph.D. by (i) Chinnadurai son of Gunasekaran (ii) Rajendran son of Narayanasamy and the award of Ph.D. to them through Department of Marine Biology in your University.	

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S.No	Question	Answer
7	Please furnish the copy of order issued by the officer for awarding Ph.D to (i) Chinnadurai son of Gunasekaran (ii) Rajendran son of Narayanasamy in Department of Marine Biology in your University with details of the concerned officer's appointment, promotion, transfer, dismissal from service and office loan granted to him.	
8	Please furnish the details of the movable and immovable properties held by the present Head of Department of Marine Biology in your University along with the details of tenants occupying the house belonging to the Head of Department containing their office address and the copy of receipts for receiving the rent from them.	He has submitted the details of movable and immovable property and the other details required by you do not come under this ambit of RTI Act. Director, Marine Biology Research Centre, Annamalai University, Parankipettai.
9	Please furnish the details of the construction of infrastructure in Department of Marine Biology in your University and the renovation work carried on with the copies of relevant records.	

Sd/-

Public Information Officer

16. Information furnished to the petitioner states that, "Mr.N.Rajendran worked as Research Officer from the year 2000 to 2007 under the ENVIS Project in the Department of Marine Biology.

Mr.G.Chinnadurai worked as Research Officer from May 2005 to August 2006 under ENVIS Project in the Marine Biology Department. Their appointment will not come under the university appointment.

Chinnadurai and Rajendran did not serve as teachers in Marine Biology Department. Hence not answered for the queries raised."

17. From the perusal of the order made in W.P.No.17863 of 2008 dated 10.11.2008, it could be seen that when Annamalai University, in the counter affidavit, took the stand that the said certificate cannot at all be issued, as the petitioner had worked only as a Research Officer, the same has been rejected way back in 2008. Now after a decade, raising the very same reasons, that is, the 7th respondent was only a Research Officer, in the Annamalai University and did not possess teaching experience, instant writ petition, has been filed.

18. Firstly, this Court has already considered the abovesaid issue and rejected the case of the University. Said decision has not been appealed, either by the University or the Teachers Recruitment Board, respondents 1 and 2 therein. On the contra, decision has been acted upon and that the 7th respondent, N.Rajendran has been appointed as Lecturer in Zoology. Said decision rendered in 2008, cannot be sought to be reviewed by the writ petitioner, as a pro bono litigant. Contention of the petitioner that the certificates are bogus, is misleading, for the reason that genuineness of the certificate was never disputed. Annamalai University has accepted issuance of the certificate dated 03.04.2008. But only questioned the authenticity.

19. Perusal of the material on record would show that even though the petitioner is stated to have obtained the information from the Public Information Officer, Annamalai University, in the year 2015, instant writ petition No.24259 of 2017, has been filed after two years. Even taking it for granted that the petitioner has any right to seek for a remedy, there is delay and laches.

20. Laches or reasonable time are not defined under any Statute or Rules. "Laches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another.

21. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.

(i) The words "reasonable time", as explained in Veerayeeammal v. Seeniammal reported in 2002 (1) SCC 134, at Paragraph 13, is as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is

called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

22. Reference can also be made to few decisions of the Supreme Court, where inordinate delay and laches, on the part of the litigant in approaching the Court has been disapproved:

(i) In State of M.P. v. Bhailal Bhai reported in AIR 1964 SC 1006, the Hon'ble Supreme Court held that unreasonable delay denies to the petitioner the discretionary extraordinary remedy of mandamus, certiorari or any other relief.

(ii) In State of M.P., v. Nandlal Jaismal reported in 1986 (4) SCC 566, the Hon'ble Supreme Court, at Paragraph 24, held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ

jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

(iii) In *State of Maharashtra v. Digambar* reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraphs 12, 18 and 21, held as follows:

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary

relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Prosper Armstrong* (1874) 5 PC 221) thus :

"Now the doctrine of laches in Courts of

Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy."

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

(iv) In *State of Rajasthan v. D.R. Laxmi* reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(v) In *Chairman, U.P. Jal Nigam and another v. Jaswant Singh* reported in AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions on the aspect of delay, at Paragraph 13, held as follows:

"13.....Therefore, whenever it appears that the claimants lost time or while away and did not rise

to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

(vi) In *S.S. Balu v. State of Kerala*, (2009) 2 SCC 479, wherein at paragraph No.17, the Hon'ble Supreme Court held as follows:

"17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal thereagainst, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In *NDMC v. Pan Singh* this Court held: (SCC p. 283, para 16)

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable

jurisdiction."

23. Writ petition relates to service matter and Public Interest Litigation is not maintainable. Decision made in W.P.No.17863 of 2008 dated 10.11.2008, cannot be permitted to be reviewed in 2018, after a decade, in the present writ petition, captioned as Public Interest Litigation. In the light of the above decisions and discussion, W.P.No.24259 of 2017, is dismissed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

skm/ars

To

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

2. The Chairman,
Teachers Recruitment Board,
Chennai.

3. The Director,
Collegiate Education,
Chennai.

4. The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram - 608 002.

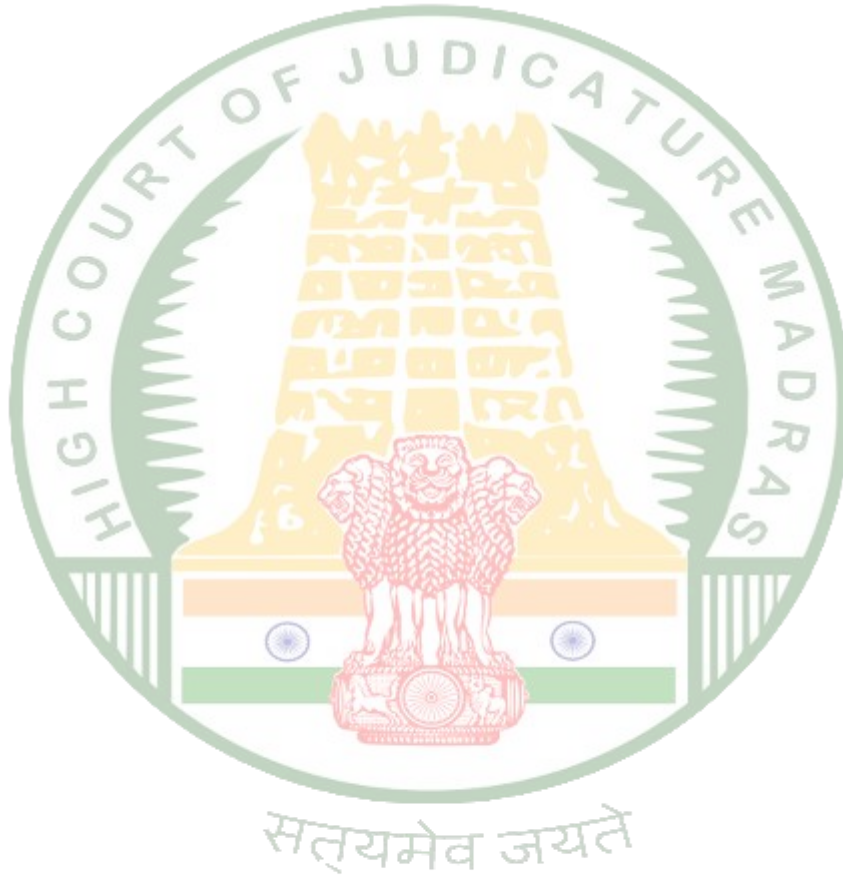
5. The Principal,
Government Arts College,
C. Mutlur, Chidambaram.

6. The Principal,
Government Periyar Arts College,
Cuddalore.

+2cc to Mr.A.Panneerchelvam, Advocate, S.R.No.63763 and 63388.
+1cc to the Government Pleader, S.R.No.64149.

WP.No.24259 of 2017
and W.M.P No.25643 of 2017

rrs 01/10/2018



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