

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.03.2018

Delivered on : 10.04.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.27825 and 27826 of 2011
& M.P.Nos.1 & 1 of 2011 and
Cont.P.Nos.888 & 889 of 2013 and
Rev.Appln.Nos.212 & 213 of 2014

W.P.Nos.27825 & 27826 of 2011:

M.Senthilkumar .. Petitioner in
W.P.No.27825/2011
P.Sankar .. Petitioner in
W.P.No.27826/2011

versus

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai.

2. The Director of Town Panchayats,
Kuralagam, Chennai.

3. The Assistant Director of Town Pannchayat,
Salem. .. Respondents 1 to 3
in both WPs

4. The Executive Officer
Veeraganur Town Panchayat,
Salem District.

.. Respondent No.4 in
WP 27825 of 2011

5. The Executive Officer,
Thedavur Town Panchayat,
Salem District.

.. Respondent No.4 in
WP 27826 of 2011

Prayer in WP 27825 of 2011: This Writ Petition is filed under
Article 226 of the Constitution of India, praying for issuance

of Writ of Mandamus, to direct the respondents to regularize the services of the petitioner as Work Inspector pursuant to the sanction of posts in G.O.Ms.No.93 dated 28.5.1998 and in the light of the proposals submitted by the 4th respondent in his proceedings dated 27.7.2011.

Prayer in WP 27826 of 2011: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the respondents to regularize the services of the petitioner as Work Inspector pursuant to the sanction of posts in G.O.Ms.No.93 dated 28.5.1998.

For petitioners : Mr.Vijay Shankar
For Respondents: Mr.Mr.P.H.Arvind Pandian, AAG
assisted by
Mr.D.Venkatachalam, AGP
for R1 to R3
M/s.M.E.Rani Selvam for R4

Cont.P.Nos.888 & 889 of 2013:
M.Senthilkumar ... Petitioner in
Cont.Petn.888/2013
P.Sankar ... Petitioner in
Cont.Petn.889/2013

versus

1. Mr.C.V.Sankar IAS,
Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai.

2. Mr.T.P.Rajesh, IAS,
Director of Town Panchayats,
Kuralagam, Chennai.

3. Mrs.Palaniammal,
Assistant Director of Town Pannchayat,
Salem. ... Respondents 1 to 3
in both Cont.Petns.

4. Mr.Lawrence,
Executive Officer,
Veeraganur Town Panchayat,
Salem District.

... Respondent No.4
in Cont.P.888/2013

5.Mr.Nandakumar,
Executive Officer,
Theadavur Town Panchayat,
Salem District.

... Respondent No.4
in Cont.P.889/2013

5. Mr.Ramasamy,
Assistant Executive Engineer,
Office of the Asst.Director of Town Panchayat,
Salem.

.. Respondent No.5
in both Cont.Petns.

Prayer in both Cont.Petns.: These Petitions are filed under Section 11 of the Contempt of Courts Act, praying to punish the respondents for willful disobedience of the orders passed by this Court in M.P.Nos.1 & 1 of 2011 in W.P.Nos.27825 & 27826 of 2011 dated 29.8.2012.

For petitioners : Mr.Vijay Shankar
For Respondents : Mr.Mr.P.H.Arvind Pandian, AAG
assisted by
Mr.D.Venkatachalam, AGP
for R1 to R3
M/s.M.E.Rani Selvam for R4

Rev.Appln.Nos.212 & 213 of 2014:

The Executive Officer,
Veeragnur Town Panchayat,
Salem District.

.. Petitioner in
Rev.Petn.212 of 2014

The Executive Officer,
Thedavur Town Panchayat,
Salem District.

.. Petitioner in
Rev.Petn.213 of 2014

सत्यमेव जयते
versus

1. M.Senthilkumar

.. Respondent No.1 in
Rev.Petn.212 of 2014

2. P.Sannkar

.. Respondent No.2 in
Rev.Petn.213 of 2014

3. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai.

4. The Director of Town Panchayats,
Kuralagam, Chennai.

5. The Assistant Director of Town Pannchayat,
Salem. .. Respondents 2 to 4
in both Rev.Petns.

Prayer: These Review Petitions are filed seeking to review the order dated 29.08.2012 made in M.P.Nos.1 & 1 of 2011 in W.P.Nos.27825 & 27826 of 2011.

For Petitioner : Mr.L.S.M.Hazan Fizal

For Respondents : Mr.P.H.Arvind Pandian, AAG
assisted by
Mr.D.Venkatachalam, AGP
for R2 to R5

COMMON ORDER

The writ petitioners have approached this Court, seeking the following relief:

"To direct the respondents to regularize the services of the petitioner as Work Inspector pursuant to the sanction of posts in G.O.Ms.No.93 dated 28.5.1998 and in the light of the proposals submitted by the 4th respondent in his proceedings dated 27.7.2011."

2. Since common issues and grounds have been raised in these two Writ Petitions and similar prayer has been sought for therein, these Writ Petitions are taken up together for common disposal.

3. The writ petitioners were appointed as Technical Assistants in the fourth respondent Town Panchayat in 2009. They are qualified in Diploma in Civil Engineering. On being appointed in 2009, they have been continuously working without any interruption. The post of Technical Assistant is a work charged post and the salary to the said post, is paid out of common fund created for the said purpose. They were never treated as regular Government servants. Like the petitioners, there were several persons working in the post of Technical Assistant for long years and in response to the repeated representations, the Government took a policy decision to sanction regular posts, called 'Work Inspectors' to accommodate such all those Technical Assistants, who had fulfilled certain

criteria as permanent employees. The Government passed a Government Order in G.O.Ms.No.93 dated 28.5.1998 creating several categories of posts in the Engineering Wing in addition to the existing engineering posts. One such category is the post of Work Inspector and nearly, 250 posts were sanctioned. In spite of the issuance of the G.O.Ms.No.93 dated 28.5.1998, these posts were not filled up on regular basis and they remained unfilled. Finally, the Government issued another Government Order in G.O.Ms.No.183 dated 19.9.2008 wherein, about 185 Technical Assistants who were working in different town panchayats came to be regularized as Work Inspectors. Initially, it was restricted to the persons who were in service and in continuous employment till 2001, i.e. the date on which, the Government passed G.O.Ms.No.211 (P&AR) Department dated 29.11.2001 imposing general ban on recruitment and 5 sanctioned posts of Work Inspectors were brought on regular time pay scale at Rs.3050-4590 and all the Technical Assistants who were initially regularized, were granted necessary relaxation of the rules and all other were allotted the same District where they were originally employed. Some of the Technical Assistants like the petitioners herein who were appointed after 2001 had approached this Court by way of Writ Petitions, which came to be dismissed by a learned single Judge of this Court. However, as against dismissal of the Writ Petitions, Writ Appeals were filed and appellants therein had withdrawn the Writ Appeals and submitted a representation to the Director of Town Panchayat, the second respondent herein to consider their claim for absorbing them as Work Inspectors. The second respondent in consideration of the said representation, has recommended for their absorption by proceedings dated 15.1.2011. In a batch of Writ Appeals, viz., W.A.No.1507 to 1516 of 2010, wherein, the Government is the appellant and while recording the subsequent development, the learned Bench of this Court has disposed of the appeals as follows:

"7. Aggrieved, the Government has come forward with these appeals. Though the learned Government Pleader raised many contentions with regard to the claim of the respondents for appointment as Work Inspectors, we do not want to delve into the same for, it appears that in respect of certain candidates/incumbents, who had joined in the post after 2001, the learned single Judge declined to grant relief and their writ petitions were dismissed. Those writ petitioners preferred Writ Appeals against the said judgment. Subsequently, those appellants withdrew the writ appeals and submitted representation to the second

respondent to consider their cases for absorption as Work Inspectors. The second respondent appears to have favourably considered those representations and by proceedings Na.Ka.No.22943/2009 A2, dated 15.01.2011 recommended them to be considered for absorption. Copy of such proceedings was produced before us by the learned Government Pleader. Learned Government Pleader submitted that the case of the present respondents shall also be considered along with others for their absorption. Learned counsel appearing for the respondents very fairly submitted that the respondents have no objection if the impugned judgment is modified to that extent. Learned counsel for the respondents submitted that the respective Assistant Director of Panchayats, under whom the respondents are working, have certified to the fact that all the respondents have been engaged in service much prior to 2001, and the first respondent may take note of them same, while considering the case of the respondents.

8. Hence, we dispose of these appeals, and modify the impugned judgment by directing the appellants to consider the case of the respondents for their absorption along with the candidates, whose names have been recommended by the second respondent by proceedings dated 15.1.2011, and take a final decision, within three months from the date of receipt of a copy of this order. Till final decision is taken the respondents, if they have been engaged in services, shall be continued to be engaged, and it shall abide by the final decision to be taken by the respondents, as indicated above. No costs. Consequently, miscellaneous petitions are closed."

4. The learned Division Bench of this Court has taken note of the proceedings of the second respondent dated 15.1.2011 while granting similar relief to the Technical Assistants who were in fact appointed after 2001, i.e. the cut off date fixed by the Government in its G.O.Ms.No.183 dated 19.9.2008. According to the petitioners, the 4th respondent under whom, the petitioners were working had also submitted proposals

recommending for their absorption in 2011. However, for unknown reasons, the claims of the petitioners were not considered favourably. Therefore, they were constrained to approach this Court seeking for issuance of Writ of Mandamus, directing the respondents to regularize their services as Work Inspectors pursuant to G.O.Ms.No.93, dated 28.5.1998. in the light of the proposals submitted by the 4th respondent dated 27.07.2011.

5. Upon notice, Mr.D.Venkatachalam, learned Addl.Govt.Pleader entered appearance for respondents 1 to 3 and Mrs.M.E.Rani Selvam entered appearance for respondent No.4 and filed counter affidavits in respect of both the Writ Petitions.

6. At the time when the matter was admitted by this Court, an order of interim injunction was passed on 2.12.2011 and the same was extended periodically and finally, the interim order was also made absolute on 29.8.2012. However, it appears that the interim order was not obeyed and from August 2011 onwards, no salary was paid to the petitioners although they were continued in employment and the fourth respondent had extracted the work from them. In these circumstances, two Contempt Petitions were filed in C.P. Nos.888 and 889 of 2013 for having not obeyed the interim order passed by this Court in both the Writ Petitions.

7. On behalf of the Government, two review applications have been filed in order to review the interim order passed by this Court in M.P.Nos.1 & 1 of 2011 in W.P.Nos.27825 and 27826 of 2011 dated 29.8.2012. Earlier, though both the Contempt Petitions and the Review Applications were heard, however, the same were not disposed of. But they were tagged along with the present Writ Petitions to be heard together. Hence, the said Contempt Petitions and the Review Applications were also taken up together and being disposed of along with the present Writ Petitions vide this common order.

8. Shri Vijay Shankar, learned counsel appearing for the petitioners, at the out set, would submit that the action of the respondents in not regularizing the petitioners alone per se, is discriminatory, arbitrary and unreasonable, for the following reasons, viz.,

a) that though 252 posts of Work Inspectors were sanctioned vide G.O.Ms.No.93, dated 28.05.1998, the entire sanctioned strength had not been filled up and there are still 117 vacancies to be filled up and that many persons were available in the posts of Technical Assistants. He would draw the attention of this court to an order passed by the learned Judge of this Court in WP No.5203 of

2016 dated 3.3.2016 wherein, the learned Judge directed to consider 15 petitioners therein as Work Inspectors who had joined after 2001 by referring to the orders passed by the Courts and the learned Judge not only confined the relief to the petitioners but also has observed that all the 54 persons presently working as Technical Assistants may also be considered for regular appointment and after their superannuation, the respondents were free to treat the post of Work Inspector as vanishing category. In pursuance of the order passed by the learned single Judge dated 3.3.2016, a list was prepared containing 32 names vide proceedings dated 26.5.2017 directing the individuals to submit certain documents as required for their consideration for regular employment as Work Inspectors. According to the learned counsel, in 32 names which were being considered vide proceedings dated 26.05.2017, the names of the petitioners did not find a place. At this, the learned counsel would submit that this was probably for the reason that from October 2014, the petitioners were restrained from working by the 4th respondent on the instructions of the superiors when notices of contempt were issued to them. The said action on the part of the respondents was nothing but a vindictive action in order to compel the petitioners not to pursue the contempt proceedings pending before this Court.

b) that there are unimpeachable and clinching materials which were filed in the form of typed set of papers in the contempt petitions would unequivocally demonstrate that the petitioners were continuously employed when the interim injunction was passed in 2011 and in spite of the same, they were not paid salary. Therefore, there is a clear case of contemptuous act on the part of the respondents for which the respondents were liable to be punished by this Court. However, the learned counsel, Shri Vijay Shankar appearing for the petitioners would submit that since the writ petitions are taken up for final disposal and the matters are being argued on merits, he would not pursue the contempt remedy and he would rather take the decision in the writ petition as contempt petitions have lost its sting due to efflux of time.

c) today a fresh list has been prepared containing 32 names of Technical Assistants vide proceedings dated 26.5.2017 wherein, obviously the names of the present two petitioners were left out since they were not allowed to work from 2014 onwards and unfortunately contempt petitions could not be heard at the appropriate time in order to set right the illegal action of the respondents in stopping the petitioners from work despite the clear interim orders passed by this Court.

d) that since the petitioners had been continuously employed from 2009 to 2014 and they were illegally stopped from attending work during pendency of the writ petitions, their names ought to have been included in the list for regular absorption as Work Inspectors. In fact, the learned Judge of this Court, in his order, dated 3.3.2016 in W.P.No.5203 of 2016 has not only directed the respondents to consider the regularization of 15 petitioners therein but also all the similarly placed numbering 54 Technical Assistants.

e) that there were only 32 persons available and by inclusion of two more persons in the list, no prejudice would be caused to the respondents as sufficient posts are remaining vacant for not only accommodating the petitioners herein but also few others. As rightly held by the learned Judge that on exit from the post of Work Inspector by the existing incumbents for whatever reasons, the post of Work Inspector to be treated as vanishing category. According to the learned counsel, the fact of the matter is that vide G.O.Ms.No. 93, dated 28.5.1998, 250 posts of Work Inspectors have been sanctioned and lot more posts remained unfilled which fact has not been disputed by the respondents. The learned counsel would further submit that by accommodating the petitioners in the latest list for their regular absorption as Work Inspector is one way of salvaging the position of the respondents in order to avoid contempt action by this Court against the respondents. In any event, when the petitioners are similarly placed like that of other 32 persons whose names were included in the latest list vide proceedings dated 26.5.2017, their non-inclusion would be violative of Article 14 of the Constitution of India. Further so, it would be taken that the persons who

approached this Court seeking to enforce, their right to have their appointment regularized will be deprived of appointment itself. In all, the learned counsel for the petitioners would submit that this is a case where the petitioners have demonstrated enough reasons and grounds for this Court's intervention.

9. Per contra, Mr.P.H.Arvind Pandian, learned Addl.Advocate General appearing for the respondents would submit that first of all the post of Technical Assistant was not a sanctioned post and the petitioners were not appointed by the respondents and they have earned their appointment illegally without concurrence or approval from the competent authority. Such appointment and their continuity cannot be recognized by the Government as a valid appointment and to make them eligible for regular absorption. Therefore, the learned Addl.Advocate General would contend that the appointment of these two petitioners was outside the scope of the Government employment and by no stretch of their service conditions, they can hope to become regular employees as Work Inspector as envisaged either in G.O.Ms.No.93 dated 28.5.1998 or in G.O.Ms.No.183, dated 19.09.2008. Their post is work charged and salary being paid from supervisory fund maintained by the Panchayat and as such, their appointment is not a valid one even on temporary basis and the post of Technical Assistant is a non-existing post.

10. The learned Addl.Advocate General would also point out that the persons who were originally considered for regular absorption, were working for several years and the Government felt that since those persons were working for long years continuously, their services would be taken for regular absorption and fixed cut off date as 2001 and such cut off date was not found extended by any Court as on date. As regards the order passed by the learned Division Bench in W.A.No.1507 to 1516 of 2010 dated 15.3.2011, the learned Addl.Advocate General would submit that the appeals were disposed of only in the light of the proceedings of the second respondent dated 15.1.2011 and that does not give them any cause of action for these writ petitioners to claim such benefit. According to the learned Addl.Advocate General, there is no authoritative ruling, finding fault with the cut off date prescribed by the Government as far as present issue is concerned and the petitioners having been appointed only in 2009, cannot claim themselves to be equal to the persons who had worked for several years as on 2001. According to the learned Addl.Advocate General, these petitioners were not even in employment when both the above G.Os. were issued and therefore, the scope of the above G.Os. is unlikely to cover such of those who were appointed subsequent to the said G.Os. Therefore, he would submit that the petitioners

are not equally placed as that of the other persons who were regularized and therefore, the action of the respondents being discriminatory, arbitrary as contended by the petitioners, has no factual or legal basis. Therefore, he would submit that the Writ Petitions does not deserve any consideration of this Court and the same have to be rejected as devoid of merits.

11. This Court has given its anxious consideration to the rival submissions of the learned counsel appearing for the petitioners as well as learned Addl. Advocate General appearing for the respondents and perused the entire materials and pleadings placed on record.

12. As regards the issue of cut off date is concerned, it is admitted fact that the said cut off date had lost its sanctity when persons appointed after 2001 had been regularly absorbed as Work Inspectors on the basis of the observation made by this Court or by the competent authority's orders. When such is the case, whether the submissions made by the learned Addl. Advocate General sanctifying the cut off date in order to deny the benefit of regular absorption to the petitioners, can be held to be valid any more. The simple answer is 'no'. The learned Judge of this Court even as early as on 3.3.2016 passed an order by directing the respondents to fill up the vacancies of the Work Inspectors with as many persons as possible not only restricting it to 15 petitioners therein and on the basis of the direction of this Court, a list was also prepared on 26.5.2017, wherein, 32 names were included leaving out the petitioners. Even if these 32 persons were absorbed, eventually there are still very many posts left unfilled in the posts of Work Inspector and it appears from the facts of the case that there are enough hands available in the post of Technical Assistants to fill up the actual sanctioned strength of Work Inspector. That being the case, this Court does not see any justification as to why the names of the petitioners alone can be singled out denying the benefit of regular absorption in the post of Work Inspectors.

13. Today, the respondents may take a valid objection stating that these petitioners were not in employment for their names to be included in the present list. Such argument cannot hold good for the reason that the petitioners were stopped from attending work when notices were issued in the contempt petitions and if only contempt petitions are pursued and taken to its logical end, the remedy for the petitioners would have been different and such proceedings would have enured to the advantage of the petitioners. Further the contempt petitions were ultimately tagged to the writ petitions. In the circumstances, the petitioners cannot be placed less advantageous position than their position in the contempt petitions. After all, the petitioners were stopped from work

during pendency of the writ petitions and pendency of litigation before this Court cannot be attributed against the petitioners or to the respondents either. Therefore, it has to be seen that whether these two writ petitioners were also entitled to be considered along with other Technical Assistants particularly in view of the specific directions of this Court in its order dated 3.3.2016 in W.P.No.5203 of 2016.

14. From the facts as discussed above, this Court is of the considered view that these petitioners who appointed as Technical Assistants in 4th respondent Panchayat, are also entitled to be considered on par with the other Technical Assistants for regular absorption. As rightly contended by the learned counsel appearing for the petitioners that the employees who were brought in regular establishment by granting them the benefit of absorption, had been working earlier like the petitioners in the work charged post and therefore, the argument advanced on behalf of the learned Addl. Advocate General that these two petitioners were working only in the work charged post and therefore, they are not entitled to seek absorption, is not a valid argument which can be appreciated by this Court. This Court does not see any difference in the nature of the employment of these petitioners as that of the other employees who were included in the list for regular absorption as Work Inspectors, as demonstrated by the learned counsel appearing for the petitioners. When that being the case, the denial of benefit of regularization to these writ petitioners alone despite the existence of vacancies, does not satisfy the constitutional requirement of equality before law. Any different conclusion can only result in negation of petitioners' right to be treated equally under our Constitutional scheme. Although much pain has been taken by the learned Addl. Advocate General to resist the claim of the petitioners, ultimately it boils down to the fact that whether these two petitioners were to be considered for regular employment on par with others or not. The main thrust of argument initially made was regarding the cut off date i.e. 2001 fixed by the Government. However, for regularization of Work Inspector, the cut off date has not been strictly followed by the respondents themselves as admittedly, several Technical Assistants who had been appointed after 2001 have been absorbed as Work Inspectors on permanent basis. Secondly, the argument that the petitioners were being paid as Work Charged employees, cannot also be a valid plea for denying them benefit since all the Technical Assistants who came to be regularized were treated only as work charged employees before they came to be regularized. Therefore, there cannot be invidious discrimination as between the petitioners and others in the matter of regularization. Thirdly, ostensible reason for not including the names of the petitioners in the latest list by proceedings dated 26.5.2017, that the petitioners were not in

employment as on date, cannot also be a valid reason, since these two petitioners came to be stopped from work after notices were issued by this Court in the Contempt Petitions. However, the Contempt Petitioners as stated above, could not be taken to its logical end and they were ordered to be tagged along with the writ petitions for final hearing. Therefore, the period of non-employment of the petitioners can best be ignored for the purpose of their inclusion in the latest list providing for permanent observation. For all practical reasons, it must be taken that the petitioner are deemed to have been in the employment atleast for the purpose of inclusion of their names for permanent observation as Work Inspectors. Therefore, this Court is of the view that all the arguments raised on behalf of the respondents are unacceptable and run contrary to the principle of equity, fair play and good conscience.

15. For the above said reasons, the Writ Petitions are allowed. There shall be a direction to the respondents to include the names of the petitioners for the purpose of regularizing their services as Work Inspectors on par with the others and grant the benefit of regularization to these petitioners in terms of the order passed by the learned Judge of this Court dated 3.3.2016 in W.P.No.5203 of 2016 by including their names along with 32 names vide proceedings dated 26.5.2017. The respondents/competent authority are directed to initiate and complete such exercise within a period of 10 weeks from the date of receipt of a copy of this order. No costs.

16. In view of allowing the Writ Petitions, no further orders necessary in the Contempt Petitions as well as Review Applications and accordingly, the same are closed.

Sd/-

Deputy Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai.

2. The Director of Town Panchayats,
Kuralagam, Chennai.

3. The Assistant Director of Town Pannchayat,
Salem.

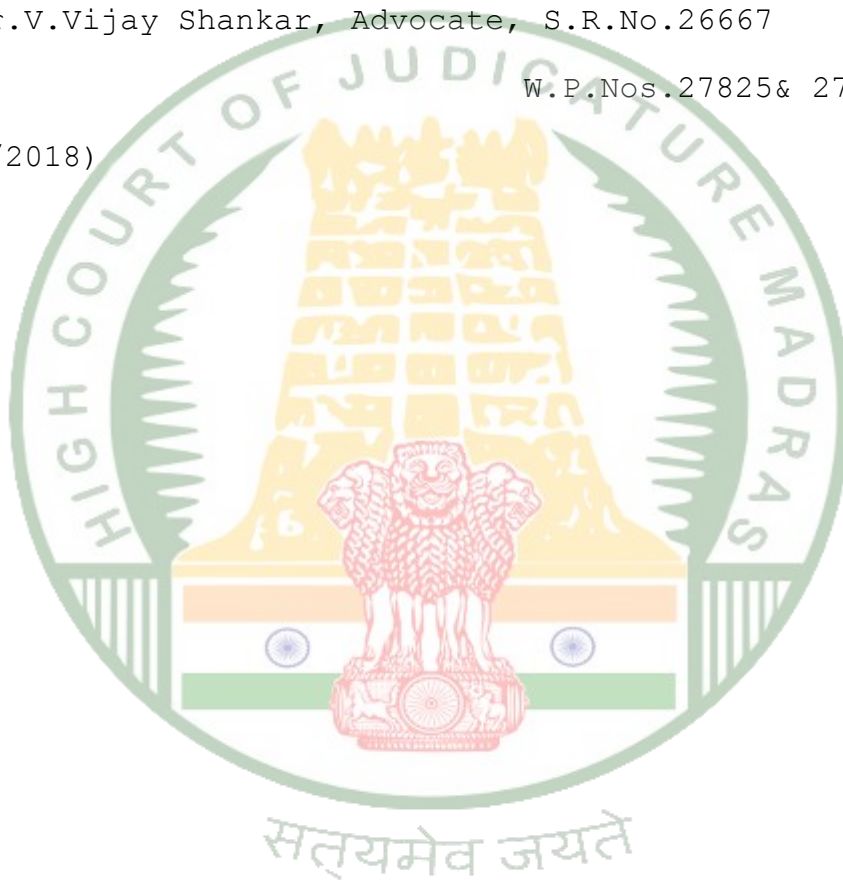
4. The Executive Officer
Veeraganur Town Panchayat,
Salem District.

5. The Executive Officer,
Thedavur Town Panchayat,
Salem District.

+2cc to Mr.V.Vijay Shankar, Advocate, S.R.No.26667

W.P.Nos.27825& 27826 of 2011

RRK(19/04/2018)



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