

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 18.04.2018]

[DELIVERED ON : 28.09.2018]

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.Nos.1648 to 1651 of 2016

and

C.M.P.Nos.20412 and 6342 of 2016

Capt. M.S.Krishna Kumar
Lakshmi Krishna"
32, Perialwar Street,
Sundaram Colony,
East Tambaram,
Chennai-600 059.

.. Appellant in all W.As./Party-in-person

.. Vs ..

1. Union of India
Rep. by its Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi-110 003.
2. Air India Limited,
Rep. by Chairman and Managing Director,
Airlines House,
Gurudwara Rakabganj Road,
New Delhi-110 001.
3. Air India Limited,
Executive Director of Operations,
New Delhi-110 003.
4. Air India Limited,
General Manager,
Operations Department,
Meenambakkam, Chennai - 600 027.

.. Respondents in W.A.Nos.1648 & 1650/2016

1. Union of India
Rep. by its Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi-110 003.
2. Air India Limited,
Rep. by Chairman and Managing Director,
Airlines House,
Gurudwara Rakabganj Road,
New Delhi-110 001.
3. Air India Limited,
Executive Director of Operations,
New Delhi-110 003.
4. Air India Limited,
Executive Director of Flight Safety,
New Delhi-110 003.
5. Central Training Establishment,
Air India Limited,
Represented by its Director of Training,
(CTE) Ferozguda, Hyderabad-500 011.
6. Air India Limited
General Manager,
Operations Department,
Meenambakkam,
Chennai-600 027.

.. Respondents in
W.A.Nos.1649 & 1651/2016

Prayer in W.A.No.1648/2016 & 1650/2016 : Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the judgment dated 15.06.2016 & 07.09.2016 passed in W.P.No.32885 of 2014 and Review Petition No.79 of 2016 in W.P.No.32885 of 2014.

W.A.No.1648/2016 & 1650/2016 : Writ Petition in W.P.No.32885 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus directing the respondents 1-4 to implement the recommendations of the grievance committee dated 14.03.2014 in letter and spirit and thereby restore the petitioner check pilot license including other monetary benefits and promote him to the post of Instructor within a time frame fixed by this court.

Prayer in W.A.No.1649/2016 & 1651/2016 : Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the judgment dated 15.06.2016 & 07.09.2016 passed in W.P.No.124 of 2016 and Review Petition No.80 of 2016 in W.P.No.124 of 2016.

W.A.No.1649/2016 & 1651/2016 : Writ Petition in W.P.No.124 of 2016 is filed under Article 226 of the constitution of India seekign for the relief of issuance of writ of certiorarified mandamus directing the 5th respondent to call for the records dated 2.2.2015 in Training Committee Proceedings headed by the 5th respondents, quash the same and consequently, diect the 5th respondent to restore the check-pilot (the name is changed to Line Training Captain (L.T.C)) as per Civil Aviation Requirements (C.A.R.) Series 1 part 11 Section 7 with standardisation and revalidation for Line Training Captain which including other an Linewhich including other consequential benefits with more emphasize on average instructional houre and monetary benefits an promote the peititoner to the next post of instructor after necessary Trainign as per Civil Aviation Regulation within a ime frame.

In all W.As.

For Appellant : Capt. M.S.Krishna Kumar
Party-in-person

For R-1 in W.A.
Nos.1648 to 1651/2016 : Mr.J.Madanagopal Rao,
Senior Central Govt. Standing Counsel

For R-2 to R-4 in W.A.
Nos.1648 & 1650/2016
and R-2 to R-6 in W.A.
Nos.1649 & 1651/2016 : M/s.N.G.R.Prasad
for Mr.K.Srinivasamurthy

COMMON JUDGMENT

RMT. TEEKAA RAMAN,J.

W.A.No.1648 of 2016 is filed against the order of dismissal passed by the learned single Judge in W.P.No.32885 of 2014, dated 15.06.2016. The prayer in W.P.No.32885 of 2014 is for issuance of a writ of mandamus directing the respondents 1 to 4 therein to implement the recommendations of the Grievance

Committee dated 14.03.2014 in letter and spirit and thereby restore the writ appellant's Check Pilot license including other monetary benefits and promote him to the post of Instructor within a specified time frame.

2. W.A.No.1649 of 2016 is filed against the order of dismissal passed by the learned single Judge in W.P.No.124 of 2016, dated 15.06.2016. The prayer in W.P.No.124 of 2016 is for issuance of a writ of certiorarified mandamus to set aside the proceedings of the Training Committee headed by the fifth respondent dated 02.02.2015 and consequently, direct the fifth respondent to restore the Check-Pilot [the name is changed to Line Training Captain (L.T.C)] as per Civil Aviation Requirements (C.A.R) Series 1 Part 11 Section 7 with Standardisation and revalidation for Line Training Captain which includes other consequential benefits with more emphasis on average instructional hours and monetary benefits and to promote the appellant to the next post of instructor, after necessary Training as per Civil Aviation Regulation, within a specified time frame.

3. W.A.No.1650 of 2016 is filed against the order of dismissal passed by the learned Single Judge in Review Petition No.79 of 2016 in respect of W.P.No.32885 of 2014, while W.A.No.1651 of 2016 is filed against the order of dismissal passed in Review Petition No.80 of 2016 in respect of W.P.No.124 of 2016.

4. In toto, the relief sought for by the appellant/party-in-person is for a direction to implement the recommendations of the Grievance Committee retrospectively and to set aside the order passed by the fifth respondent, whereby he was removed from the post of Check-Pilot [new name is Line Training Captain (L.T.C.)] with conditions therein and to restore the seniority and promote the appellant to the next post of Instructor.

5. The facts leading to filling of the writ appeals and the review petitions are as follows:-

(i) The appellant joined Air India Limited (Formerly Indian Airlines Limited) as a trainee pilot on 07.08.1989 after acquiring Commercial Pilot License. Over a period of time, he was upgraded as First-Officer, Captain and Check Pilot as per seniority procedure followed in the Airlines and he was working as a Check Pilot from 09.06.2010. The appellant is having the flying experience of 18500 hours. While so, his Check Pilot was removed on 13.10.2011, by the Executive Director (Training), for stopping payment of a cheque issued by the appellant towards his wife's Airbus-320 training, which was alleged to have been forged by the fifth respondent in W.P.No.124 of 2016 for which, a separate writ petition in W.P.No.33 of 2015 was filed before

this Court and an order was also passed to investigate the training, on 28.10.2015. Without assigning any reason, the appellant's Check Pilot was removed vide letter dated 20.10.2011 by the fourth respondent in W.P.No.32885 of 2014 (and sixth respondent in W.P.No.124 of 2016), as against which, the appellant had filed a grievance application dated 02.01.2014 before the fourth respondent in W.P.No.32885 of 2014 (and sixth respondent in W.P.No.124 of 2016) and on 14.03.2014, Grievance Committee decided that "The status of Check Pilot must be restored from the date it was stopped and payment be made of the allowances from the date it was stopped". If the appellant's Check Pilot status is restored to him as per the recommendations of the Grievance Committee, his name will be included in the list. In view of the actions and inactions on the part of the respondents, the appellant was not called for training to the next grade of Instructor. It is needless to state that his juniors were being upgraded to the next grade i.e., the post of Instructor while by-passing the appellant. After the writ petition in W.P.No.32885 of 2014 was filed on 10.12.2014, the respondents passed the impugned order on 02.02.2015 against the appellant wherein, it is stated that "lacks integrity and not to take up for line training captain revalidation". On 29.01.2014, the fourth respondent in W.P.No.32885 of 2014 and the sixth respondent in W.P.No.124 of 2016 passed the impugned order about the incident of 15.07.2012 to the appellant that the Check Pilot should not be utilized till clearance from the fifth respondent and he has to wait for further orders for training, which according to the appellant, is against the rule of flight safety Manual, Chapter-5. The third respondent raked up the letter of the Permanent Investigation Board dated 29.04.2013 and informed the fourth respondent in W.P.No.32885 of 2014 and the sixth respondent in W.P.No.124 of 2016 on 29.01.2014, as to the corrective training the appellant had to undergo, which included Safety Enhancement Training.

(ii) Hence, the appellant filed the writ petition in W.P.No.32885 of 2014 and thereafter W.P.No.124 of 2016 with the prayer as already stated supra. By an order dated 15.06.2016, both the Writ Petitions were dismissed. Aggrieved against the said dismissal order, the appellant has filed the Review Application Nos.79 and 80 of 2016 on the ground that after the disposal of the writ petitions, the appellant came to know about the Operations Circular dated 2/2013 issued by the Director General of Civil Aviation and as per the Director General of Civil Aviation, the offer letter AV22012/34(A320-CH) 07-FID dated 01.06.2010 can be suspended or revoked only by the Director General of Civil Aviation. The appellant states that his Check Pilot was neither suspended nor revoked by the licensing authority, which is the Director General of Civil Aviation, or withdrawn as mandated in Circular 02 of 2013.

(iii) Based upon the said Circular, it was contended by the appellant/party-in-person before the writ Court that the Check Pilotship can be suspended or revoked only by the Director, Civil Aviation, but in the present case, the Check Pilotship has never been suspended or revoked by the Director General or withdrawn as per the Operations Circular 2/2013 for violation of any conditions made thereunder. It was further submitted that in the absence of any Charge Memo fixing the issue to the official respondents, the authorities are bound by the Circular. A counter has been filed in the above said review applications, wherein, the contesting respondents 2 to 4 in W.A.Nos.1648 and 1650 of 2016 and respondents 2 to 6 in W.A.Nos.1649 and 1651 of 2016 have specifically contended that the fact said to have been raised as a new fact, is already existing and it cannot be a ground for review, since the said Circular, which is now sought to be relied upon by the appellant/party-in-person is always available in the official website of the Air India.

(iv) After taking into consideration of the rival submissions, the learned single Judge has observed that the order dated 02.02.2015 is calling upon the appellant to undergo technical training, which, admittedly, he has not undergone citing ill health of his family member and however, subsequently, he has taken a different stand. It was also observed that action was initially taken to make the appellant to undergo training by the Director General of Civil Aviation itself and thereafter, the request of the appellant for revaluation was not taken by the order dated 02.02.2015 and hence, the contents as contained in the present Circular, which is sought to be relied upon, has nothing to do with the facts and circumstances of the present case. With regard to the another contention of the appellant that the person, who conducted the interview on behalf of the Director General of Civil Aviation, was not functioning under it and therefore, he was incompetent to undertake the said exercise, the learned single Judge, has further observed that the appellant has not initially challenged the order of the Director General of Civil Aviation and that he has not raised any plea about the competency of the person referring non authorization by the Director General of Civil Aviation and the decision taken thereon was not challenged by him. Holding so, both the review petitions were rejected. As against the said order, the appellant has filed Writ Appeal Nos.1650 and 1651 of 2016.

6. Heard the appellant, who appeared as party-in-person and the learned counsels appearing for the respondents.

7. The appellant, who appeared as party-in-person, has submitted that there was an issue between the respondents and

the wife of the appellant, who was also undergoing training and as she was asked to pay certain amount for completion of the training, on her behalf, the appellant being her husband had issued a cheque and the said cheque was not honoured due to the instructions given by the appellant subsequently not to honour the same. Taking adverse note of the said act of the appellant, the Executive Director (Training) has taken a decision on 13.10.2011 deciding to put on hold the services of the appellant as a Check Pilot.

8. In the oral arguments submitted by the appellant/party-in-person, the sum and substance could be on three grounds. The Check Pilot was put on hold by the Executive Director (Training) due to reasons that (a) the conduct of the appellant in stopping payment of the cheque for a sum of Rs.44,100/- was not correct; (b) the appellant has circumvented CTE procedures and obtained his wife's licence directly from DGCA's office without the knowledge and consent of the authorities concerned and (c) he was indulging in smearing Senior AIL Executive Pilots with concocted allegations directly to external agencies.

9. Per contra, Mr.N.G.R.Prasad, learned counsel appearing on behalf of Air India/respondents 2 to 4 in W.A.Nos.1648 & 1650 of 2016 and respondents 2 to 6 in W.A.Nos.1649 and 1651 of 2016, would contend that the performance of the appellant is not satisfactory and hence, he has to undergo certain trainings as noted in the impugned order for the reasons mentioned in paragraph Nos.11, 12, 13 and 20 of the counter affidavit which are extracted hereunder:-

"11. On 28.08.2012 the Grievance Committee gave reasons as to why the appellant cannot be utilised as a Check Pilot. They stated that his relationship with Pilots/Cabin Crew/Training Department/Roaster etc., was not good. He was of such a nature that he cannot give best as Training Captain/Check Pilot. Because of all these, it was stated that he cannot be utilised as the Training captain on a regular basis on different kinds of training. They stated that he was vindictive towards his seniors in the base. They found that senior Pilots of his base had alleged that the appellant had tampered with official documents.

12. The appellant on 09.12.2012 apologised for his earlier actions and promised better relationship with people. Therefore, the General Manager (Operations), in-charge-Training wanted to give him another chance to restore his Check Pilotship provided he did

(a) RHS flying on line (Two sectors) with Instructor/Examiner

(b) FOI will carry out Standardisation/Revalidation check as applicable.

It was also stated that he will be under observation for the next 6 months.

13. When the appellant was kept under observation, he involved in an incident while landing the Muscat-Chennai flight Aircraft on 10.04.2013. The investigation conducted by the Permanent Investigation Board (PIB), Flight Safety Department, revealed a number of violations.

"poor technical understanding of the communication system & Associated abnormal procedure by Capt. M.S.Krishna KUMar coupled with disregard for Company Procedure not only resulted in an Avoidable Pre-cautionary Landing but also raise a serious question mark in his Command Capabilities."

10. Mr.N.G.R.Prasad, learned counsel appearing on behalf of respondents/Air India submitted that proper communication has already been sent to the appellant herein on 16.05.2012 stating that the issue concerning his Check Pilot assignment and the training of his wife are two different aspects. He has also submitted that the appellant has made another representation and thereon, further enquiry has been conducted and having not satisfied with the same, he also made an appeal to the Grievance Committee and on 29.04.2013, a recommendation was made by the respondents that the appellant should undergo Safety Enhancement Training inclusive of Extended Technical Refresher followed by corrective session.

11. Mr.N.G.R.Prasad, learned counsel also drawn our attention to the Letter dated 29.04.2013, in which it is stated that "it is recommended that Cap.Kirshna Kumar should undergo safety enhancement training which should include extended technical refresher followed by corrective session on A-320 simulator. In the meanwhile, he should not be utilized as Training Captain till further instructions from the office of the undersigned."

12. The learned counsel further submitted that though the Grievance Committee has passed an order for restoration of the status of the Check Pilot, the said Committee does not have any

jurisdiction and in any case, the same is not binding upon the respondents especially, when they are not being heard and the relevant records are not perused and also in the absence of any discussions. On the contrary, it is the specific case of the appellant that the decision of the Grievance Committee dated 14.03.2014 is binding upon the respondents herein for which, he has filed the writ petition in W.P.No.32885 of 2014.

13. Mr.N.G.R.Prasad, learned counsel appearing for the respondents-Air India would submit that the Check Pilot is only a privilege. It can be withdrawn at any point of time on the assessment of performance. Considering the nature of assignment, a decision was taken by the officers of High level integrity and proficiencies and further submitted that the role of the Pilot is different from the Check Pilot. According to the learned counsel for the respondents-Air India, there is no promotion involved in being a Check Pilot and the conduct of the appellant was not good for a number of years, as the records filed by the respondents would demonstrate. As per the records, the appellant was asked to undergo further training and the decision of the Grievance Committee does not have any bearing on the duties assigned to the Training Committee.

14. The learned counsel has relied on a decision of the Division Bench of this Court in Review Application Nos.111 & 120 of 2010 dated 29.06.2011.

15. During the pendency of the writ petitions, it appears that by way of another communication dated 01.04.2014, the General Manager (Operation) asked the appellant to attend the classes scheduled on 04.04.2014 for which, the appellant, citing ill-health of the family members, did not participate in the classes and thereafter, it appears that the Technical Committee consisting of more than 15 officers have resolved the matter by taking a decision in the following manner:

"After an incident on A319 A/c A1 908 of 15th July 2012, FSD had counseled Capt MS Krishna Kumar on 29th April 2013 and was of the opinion that Capt. MS Krishna Kumar does not have adequate knowledge of abnormal Procedures and checklist and was not receptive to the counseling session. He was recommended to undergo Safety enhancement training comprising of A320 Extended Technical refresher followed by corrective session on A320 Simulator. FSD had further informed that he should not be utilised as Training Captain till further instructions from FSD. Capt. MS. Krishna Kumar till date has not reported for A320 Extended Refresher/corrective simulator training at CTE.

The then CFOI-DGCA while conducting the FOI interview for Capt. MS Krishna Kumar has informed GM(OPs)-Training-CTE to subject him to undergo CAT II/III B (LVO) Performance/Technical classes which he has not undergone informing the ill health of his family member.

Finally when Capt. MS Krishna Kumar was slated for B787 ground classes from 19th Aug, 2014, he did not report for the same and sent a mail stating that I am unable to go till I am upgrade on Airbus.

Such instances of his disrespect for the higher-ups and the regulatory authority (DGCA), the committee is of the opinion that Capt. MS Krishna Kumar lacks the integrity and not to be taken up for LTC (Line Training Captain) revalidation."

16. Finally, the Technical Committee has opined that "the appellant lacks integrity and hence, he should not be considered for Line Training Captain revalidation. The said order was under challenge in the subsequent writ petition in W.P.No.124 of 2016.

17. The appellant/party-in-person would contend that the problem with the respondents started when the appellant stopped the payment of cheque issued on behalf of his wife in respect of the training programme and he had done so, since his wife was not liable to pay. It is further contended by the appellant that for not heeding to the boycott calls and other Air India staff, in order to victimise the appellant, they have dugged the past and commenced the proceedings belatedly, contrary to the instructions received by way of circulars. It is his further submission that despite the decision of the Grievance Committee, which is binding on the official respondents, they are not implementing the order, which has resulted in filing of the writ petition in W.P.No.32885 of 2014. Stating so, he prayed for restoring his original position qua the Check Pilot.

18. After hearing both the parties and also after going through the voluminous documents filed by the appellant relating to the matter in dispute, the role of the Grievance Committee and appeal thereon and also taking note of the report of the Training Committee, it is seen that the case in issue does not relate to promotion since the Check Pilot is only an assignment with a specific role attached to it and the said assignment would be decided as per the Circulars as found in the typed set

of papers and the duty of the Check Pilot is to check the proficiency of the other pilots. Therefore, as a Check Pilot, one is required to have requisite parameters and there is no permanency which are attached to the Check Pilot. Further, it is seen that the character, conduct, seniority, managing skills, knowledge about the technicalities are subjected to review from time to time.

19. It is seen from the order passed by the learned Single Judge that after taking note of all the communications and also after going through the letter of apology given by the appellant herein and the communications dated 20.10.2011, 28.08.2012 and 16.05.2012, the learned single Judge came to the conclusion that the contention of the appellant regarding non supply of reason for the earlier decision and subsequent report dated 19.03.2012 cannot be accepted. Further, the fact remains that the appellant did not even sign the said enquiry conducted, which also assumes significance. The appellant having given apology letter cannot now turn around and challenge the earlier proceedings, in view of the letter given by him followed by orders dated 26.12.2012 and 29.04.2013 and thus, the learned Single Judge came to the conclusion that the only remedy available to the appellant at that given point of time, was to comply with the directions issued by the respondents on 26.12.2012. Furthermore, the subsequent letter dated 09.04.2013 is also binding on him.

20. After hearing the submissions made by the learned counsel Mr.N.G.R.Prasad appearing on behalf of respondents-Air India and also going through the records connected thereon, we find that the Grievance Committee also lacked the technical expertise of the Training Committee. In fact, the proceedings of the Grievance Committee does not discuss the question as to whether the appellant has satisfied the requisite criteria or not and therefore, based upon the Circular produced by the respondents, we find that there is no binding effect on the said decision of the Grievance Committee upon the Training Committee, whose order has been challenged in the subsequent Writ Petition in W.P.No.124 of 2016.

21. As rightly pointed out by Mr.N.G.R.Prasad, learned counsel appearing on behalf of respondents/Air India in the oral arguments and also through written arguments, as per the impugned order, the Training Committee has asked the appellant to undergo ground classes. However for the reasons best known, the appellant has given a reply citing illness of his family members and he has not attended the classes and hence, it is not open to him to question its validity. It is also seen from the records that after passing of the said order, the Training

Committee consisting of 15 officials on analysis of his conduct in the past, have come to the conclusion that the appellant falls short of required conduct and hence he has to undergo further training and till such time, his Check Pilot has to be kept in abeyance, which finding, according to us, does not amount to perversity. It remains to be stated that even according to the appellant, the work of the Line Training Captain does not involve integrity free from prejudice and impartial conduct and hence, the decision taken by the Training Committee in the order impugned in W.P.No.124 of 2016, cannot be termed as punitive or lack of jurisdiction and hence, the finding of the learned single Judge is well considered and well merited and it does not warrant any interference by this Court at this appellate stage.

22. The learned Judge, after analysing the report of the Training Committee which was the subject matter of the impugned orders in the writ petitions, has held that under judicial review, this Court under Article 226 of the Constitution of India cannot decide on the necessity and desirability to send an Officer for training. Similarly, the training undergone qua a Pilot would be read into a training meant for Check Pilotship which does not merit acceptance. In short, when the Technical Expert Committee as in the instant case, has dealt with the matter in an elaborate manner, taking into consideration the conduct of the appellant, the finding given by the Technical Committee and the orders passed thereon cannot be subjected to judicial review under Article 226 of the Constitution of India.

23. It remains to be stated that the role of a Pilot is different from that of a Check Pilot and unless the appellant satisfies the requisite parameters, he cannot automatically become a Check Pilot. Hence, the order passed by the learned single Judge, rejecting the contention of the appellant in implementing the recommendations of the Grievance Committee in W.P.No.32885 of 2016 and the rejection order passed by the Training Committee which is subject matter in W.P.No.124 of 2016, does not call for any interference by us in this appellate Stage.

24. Accordingly, all the writ appeals are dismissed. However, as observed by the learned single Judge, the dismissal of the writ appeals will not stand in the way of the respondents to consider the request of the appellant for Check Pilotship, upon satisfaction of the appellant's compliance and performance. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

Jr1/Ksa-2

To

1. The Secretary,
Union of India,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi-110 003.
2. The Chairman and Managing Director,
Air India Limited,
Airlines House,
Gurudwara Rakabganj Road,
New Delhi-110 001.
3. Executive Director of Operations,
Air India Limited,
New Delhi-110 003.
4. The General Manager,
Air India Limited,
Operations Department,
Meenambakkam,
Chennai - 600 027.
5. The Executive Director of Flight Safety,
Air India Limited,
New Delhi-110 003.
6. The Director of Training,
Central Training Establishment,
Air India Limited,
(CTE) Ferozguda,
Hyderabad-500 011.

+4cc to Mr.M.S.Krishnakumar, Advocate SR.No.67620,67621

+1cc to Mr.J.Madanagopal Rao, Advocate SR.No.67376

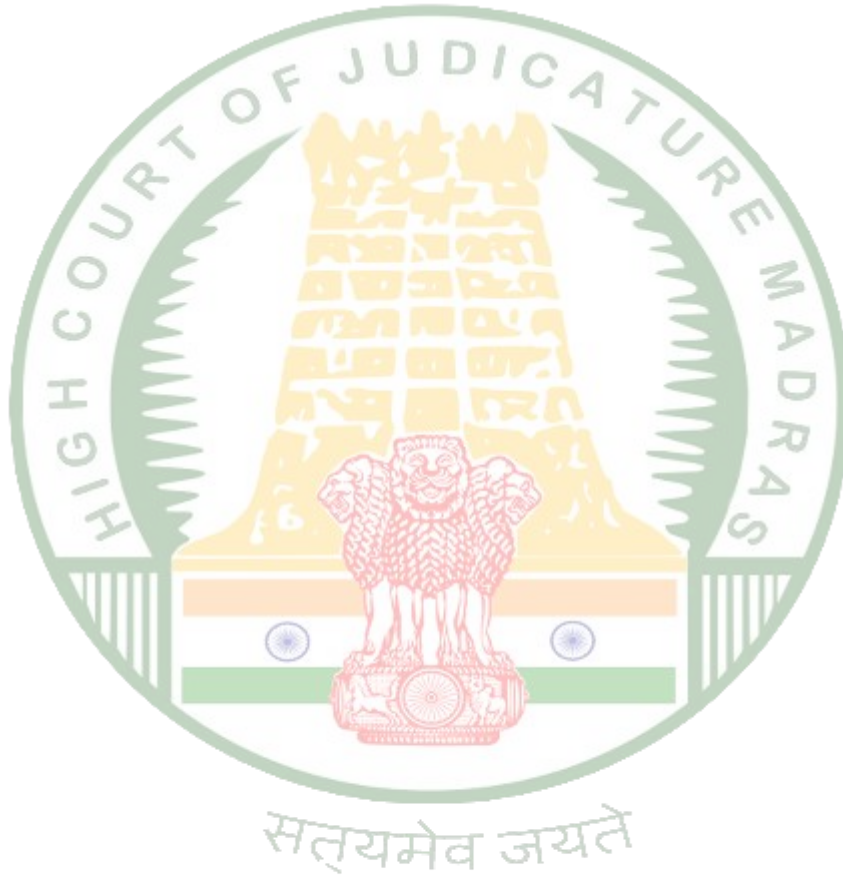
+1cc to Mr.NGR. Prasad, Advocate SR.No.68253

+4cc to Mr.M.S.Krishnakumar, Advocate SR.No.67618,67619
(27/11/2018)

W.A.Nos.1648 to 1651 of 2016

JP (CO)

GMV (22/11/2018)



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