

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22/01/2018

Delivered on : 14.03.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.19670 to 19672 of 2010

1 S.PALANISAMY

2 G.MUTHUSAMY

3 M.MANI

4 R.RAJAMANICKAM

5 T.GANESAN

6 N.PANDURANGAN

7 K.JOTHIMANI

8 P.THULASIMANI

9 M.GUNASEKARAN

10 K.CHINNASAMY

11 P.PONNUSAMY

12 M.MANI

13 V.ARUMUGAM

A.KOLANDAISAMY (SINCE DECEASED) REP. BY HIS
LEGAL HEIRS.

14 MADESWARI

15 KARUNAKARAN

16 KASILINGAM

17 DHANALAKSHMI

18 V.MUTHUSAMY

19 V.PONNUSAMY

M.RANGASAMY (SINCE DECEASED) REP. BY HIS

LEGAL HEIRS.

20 RADHA

21 SARAVANAN

22 MEENATCHI

23 A.NARAYANASAMY

24 V.RAMASAMY

25 R.DHANAPAL

26 A.PALANISAMY
N.SUBRAMANI (SINCE DECEASED) REP. BY HIS
LEGAL HEIRS.

27 PALANIAMMAL

28 P.VASANTHI

29 KANCHANA

30 PRABU
S/O.N.SUBRAMANI V.RAJAMANICKAM (SINCE
DECEASED) REP. BY HIS LEGAL HEIRS.

31 GANDHIMATHI

32 RAMESH

33 DEVARAJ

34 T.SUBRAMANIAM

35 R.KESAVAN

36 R.MANOCHARAN

37 N.MOZHIRASU

38 C.MANI

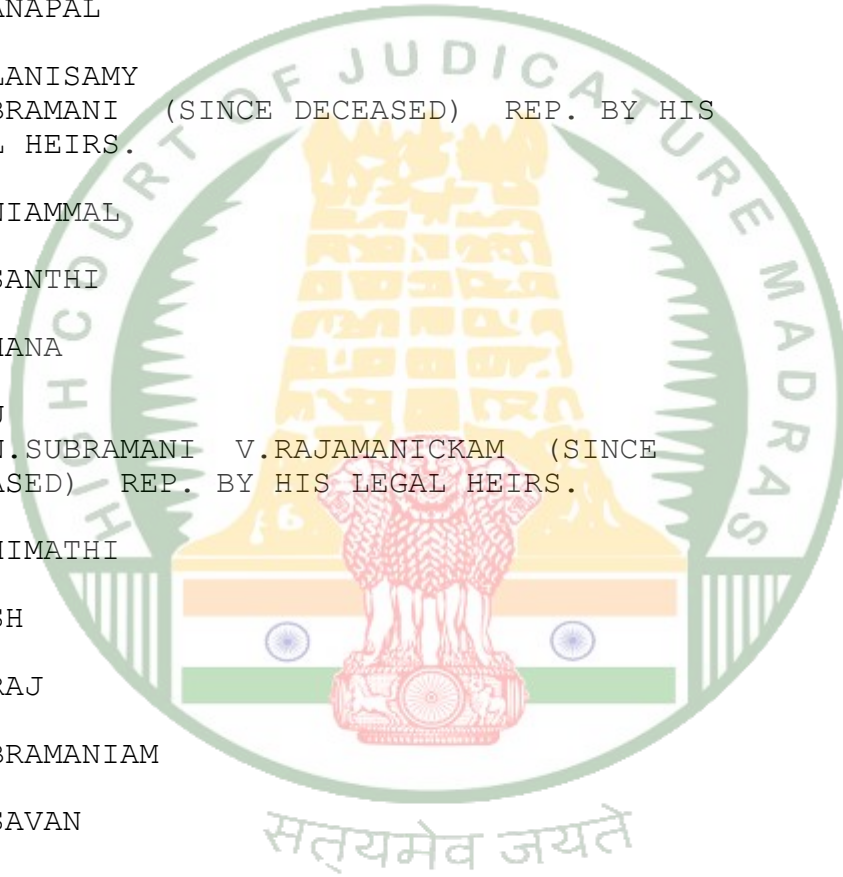
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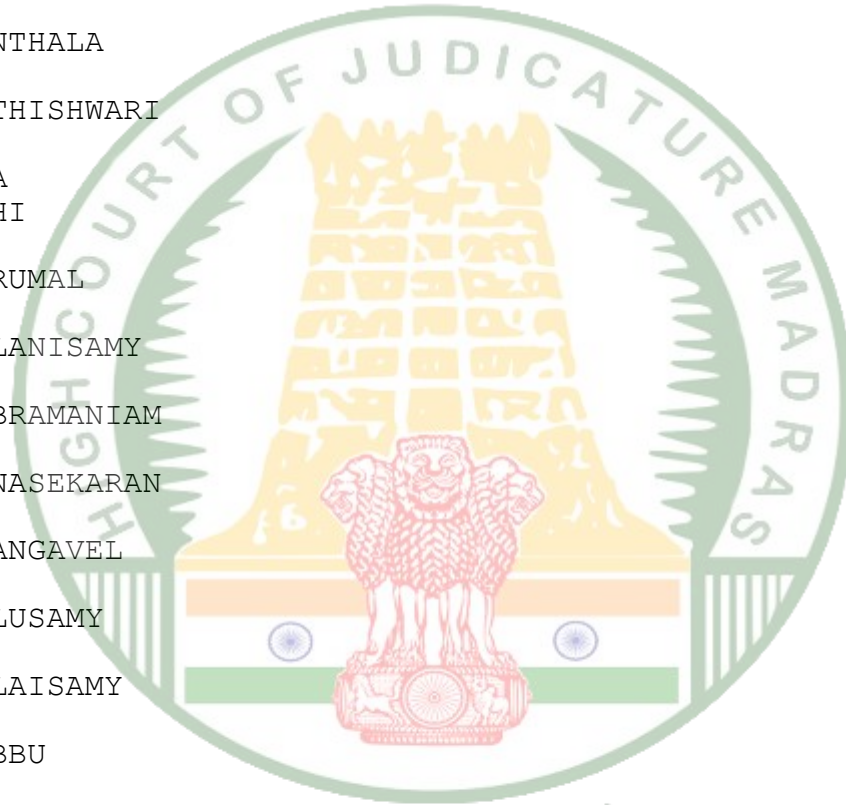
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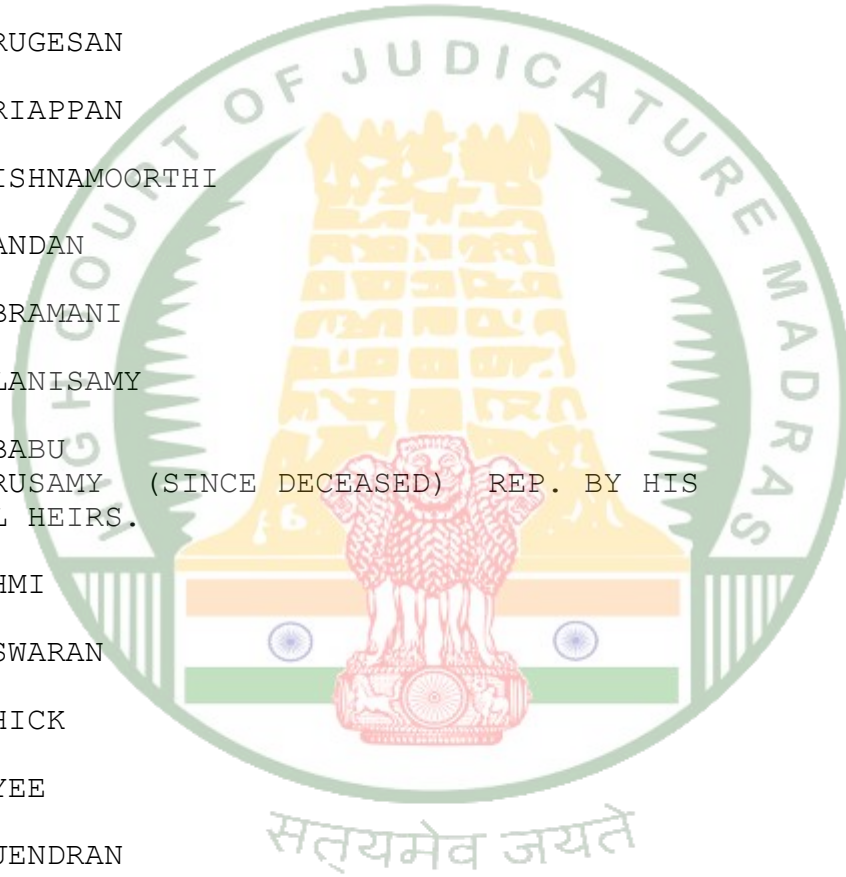
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45 A.PERIYANAYAGAM
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V.KUPPUSAMY (SINCE DECEASED) REP. BY HIS
LEGAL HEIRS.
49 SAGUNTHALA
50 JAGATHISHWARI
51 LATHA
52 SANTHI
53 B.PERUMAL
54 C.PALANISAMY
55 A.SUBRAMANIAM
56 K.GUNASEKARAN
57 P.THANGAVEL
58 T.VELUSAMY
59 P.MALAISAMY
60 S.SUBBU
61 A.S.RADHAKRISHNAN
62 T.RAMASAMY
63 N.PERUMAL
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69 D.MICHELRAJ



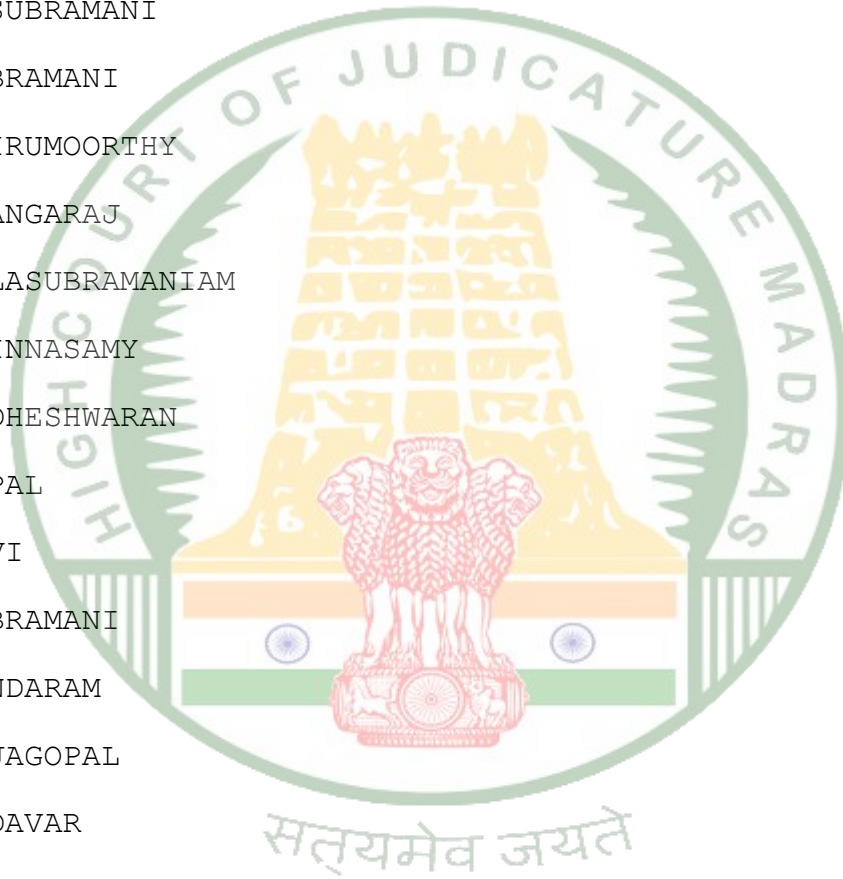
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77 P.MARIAPPAN
78 K.KRISHNAMOORTHY
79 G.CHANDAN
80 A.SUBRAMANI
81 P.PALANISAMY
82 M.P.BABU
K.GURUSAMY (SINCE DECEASED) REP. BY HIS
LEGAL HEIRS.
83 LAKSHMI
84 MADESWARAN
85 KARTHICK
86 MARAYEE
87 S.RAJENDRAN
88 S.SEETHARAMAN
89 V.PERUMAL
90 K.MADHAPPAN
91 S.MOHANRAJ
92 C.RAMASAMY
93 T.NAGARAJAN
94 S.POORNACHANDRAN



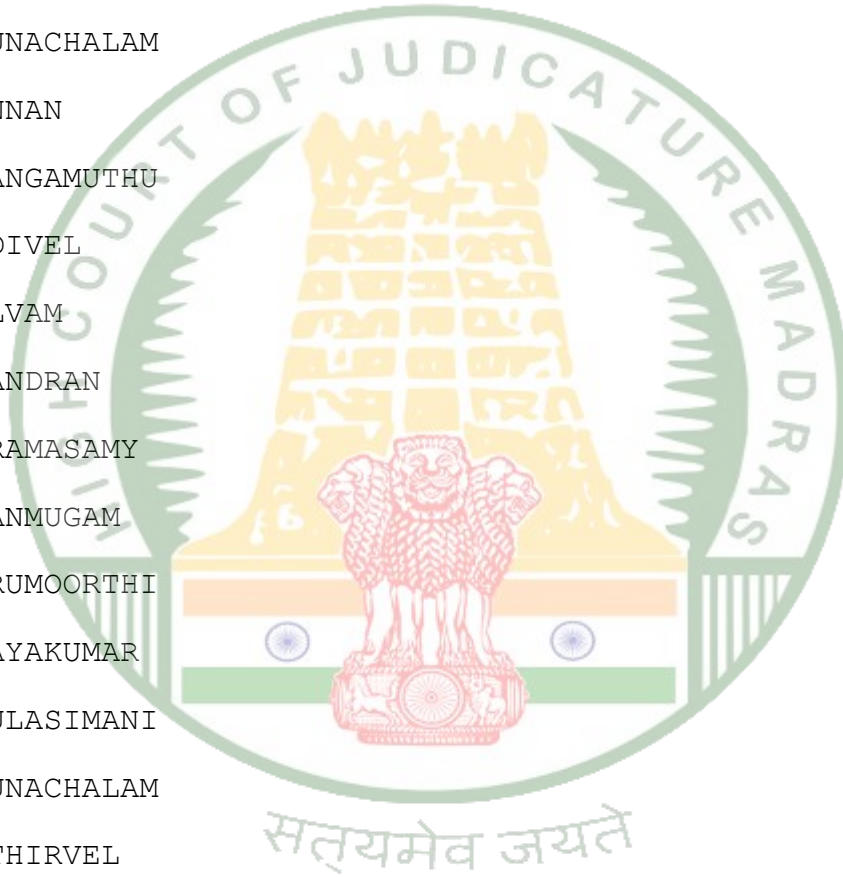
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102 A.SUBRAMANI
103 B.THIRUMOORTHY
104 C.THANGARAJ
105 P.BALASUBRAMANIAM
106 A.CHINNASAMY
107 R.MADHESHWARAN
108 K.GOPAL
109 K.RAVI
110 M.SUBRAMANI
111 P.SUNDARAM
112 M.RAJAGOPAL
113 S.ANDAVAR
114 K.RAJI
115 V.RAMANATHAN
116 S.THANGAVEL
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121 N.ASHOKKUMAR



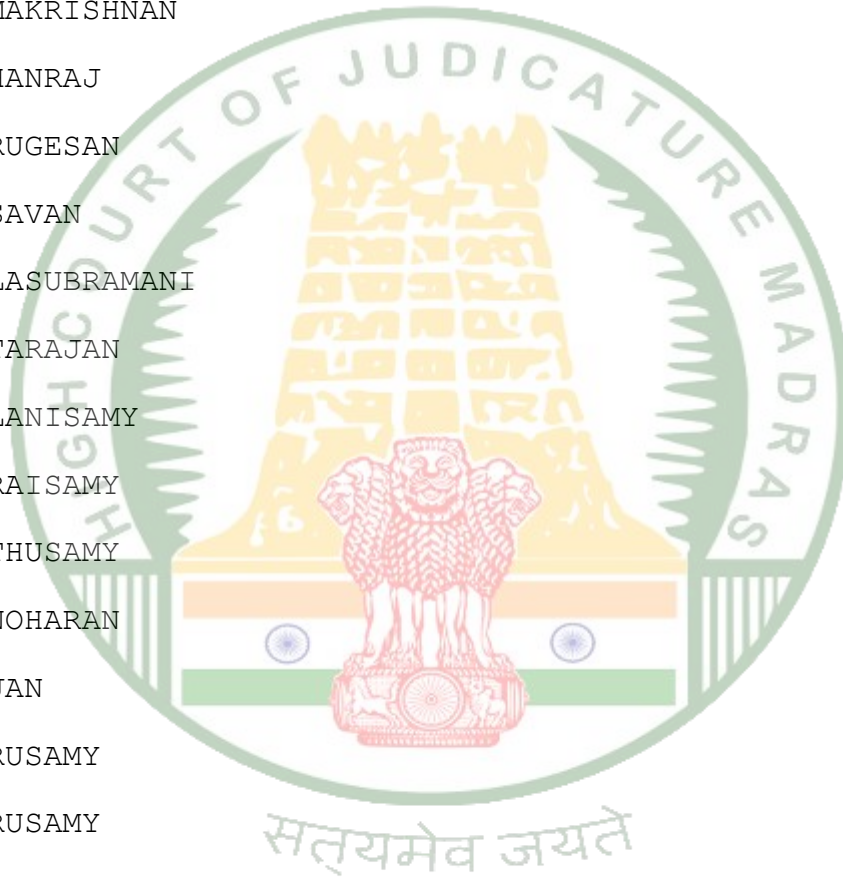
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130 P.THANGAMUTHU
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132 K.SELVAM
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135 N.SHANMUGAM
136 G.GURUMOORTHY
137 A.UDAYAKUMAR
138 M.THULASIMANI
139 R.ARUNACHALAM
140 A.KATHIRVEL
141 B.MUNUSAMY
142 M.ARUNAGIRI
143 G.RAJENDRAN
144 C.LOGANATHAN
145 R.RAJAN
146 P.PERIYANNAN
147 K.SIVALINGAM



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166 V.GURUSAMY
167 C.ARICHAMI
168 M.S.SARAVANABHAVA
169 P.SHANMUGAM
170 A.SANGAMESHWARAN
171 R.MADHESHWARAN
172 S.JAYARAMAN
173 S.RAMASAMY
174 A.PALANISAMY



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175 V.ESWARAN

176 K.KANAGARATHINAM
P.DHAKCHINAMOORTHY (SINCE DECEASED) REPBY
HIS LEGAL HEIRS

177 TAMILSELVI

178 SATHYA (MINOR)
D/O.P.DHAKCHINAMOORTHY REP BY HER MOTHER
AND NATURAL GUARDIAN TAMILSELVI

179 P.RANGASAMY

180 V.VISWANATHAN

181 K.PERIYASAMY

182 S.GANESAN

183 R.KUMAR

184 S.MAGENDRAN

185 K.KUMAR

186 N.LOGANATHAN

187 C.M.SUBRAMANIAM

188 B.BALAKRISHNAN

189 G.RAVICHANDRAN

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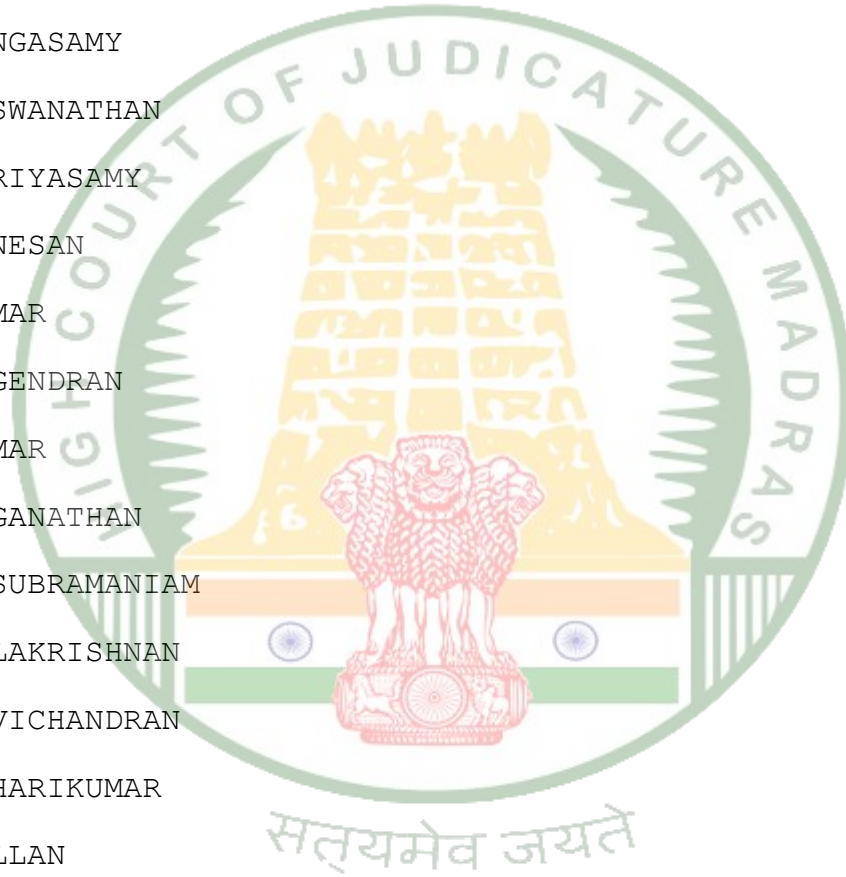
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206 J.G.BHARATHI

207 M.BALASUBRAMANIAM

208 S.RAJENDRAN

209 P.DUR AISAMY

210 K.M.SUBRAMANIAM

211 T.MANI

212 R.PALANISAMY

213 M.S.BASKARAN

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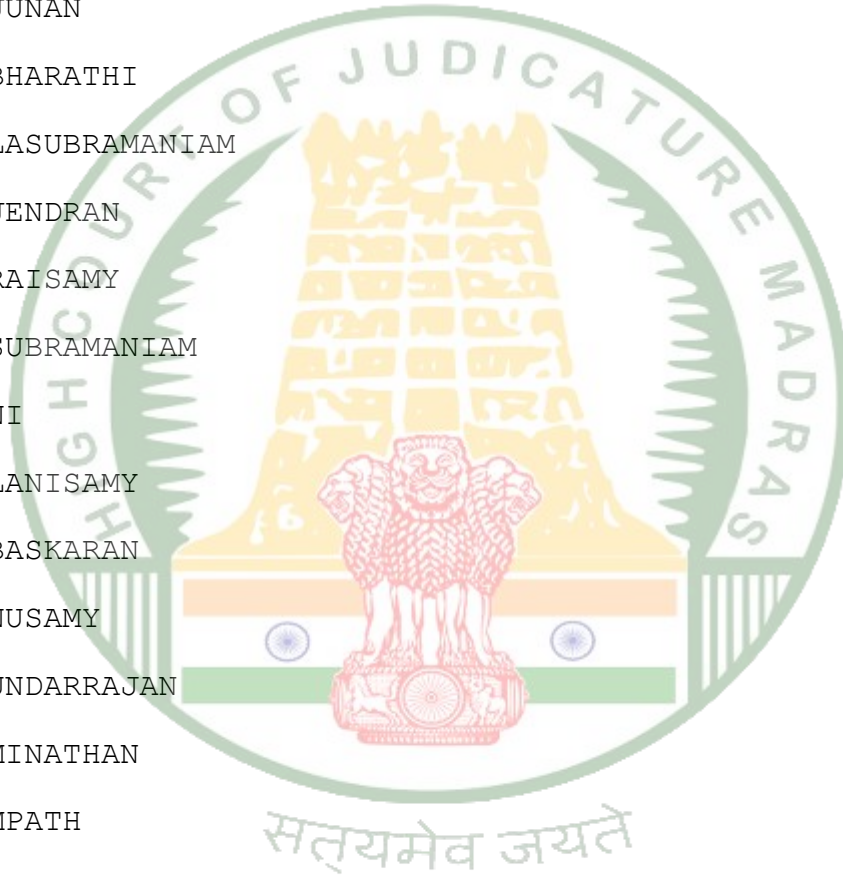
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R.SUBRAMANI (SINCE DECEASED) REP BY HIS
LEGAL HEIRS

221 DHANABAKKIYAM

222 S.KALAIVANNAN

223 S.MASILADEVI

224 C.SUNDARAM



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225 A.R.KUPPUSAMY

226 V.BALU

227 A.RATHINAM

228 S.DURAIRAJ

229 K.SEKAR

230 R.SAMIYAPPAN

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232 R.SANTHALINGAM

233 S.MANICKAM

234 C.AYYASAMY

235 C.NAGARAJ

236 G.RAMASAMY

237 A.PALANISAMY

A.SELLAVEL (SINCE DECEASED) REP BY HIS LEGAL
HEIRS

238 MALLIKA

239 S.M.VASUKI (MINOR)

D/O.A.SELLAVEL REP BY HER MOTHER ANDNATURAL
GUARDIAN MALLIKA

240 V.SHANMUGAM

241 M.SELVARAJ

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243 S.GANESAN

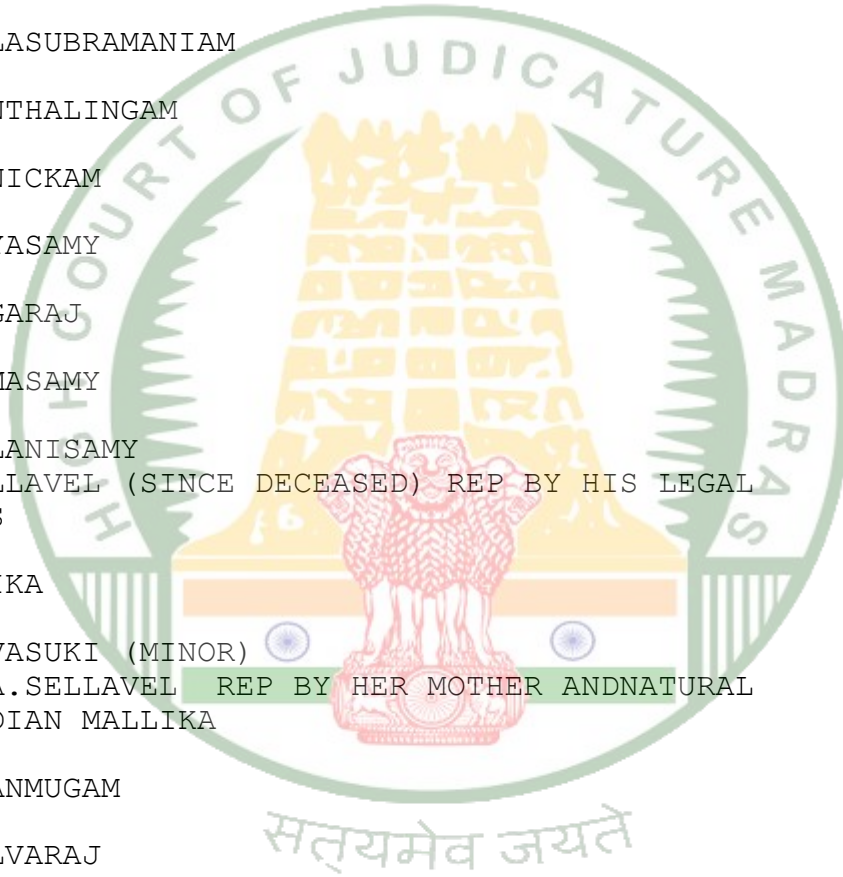
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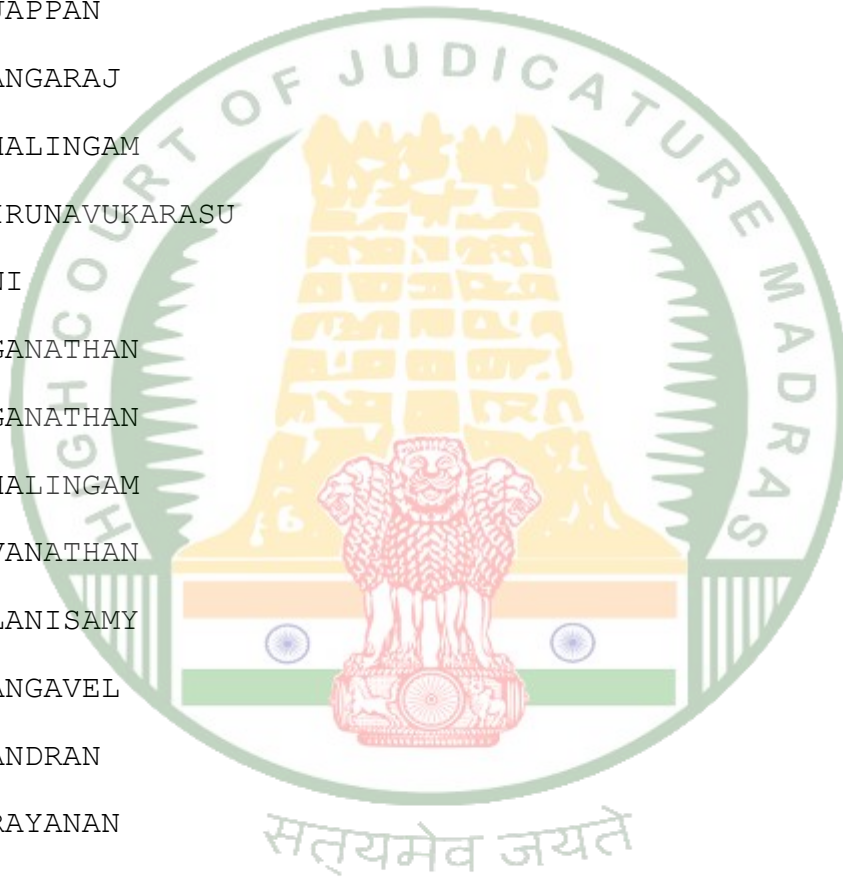
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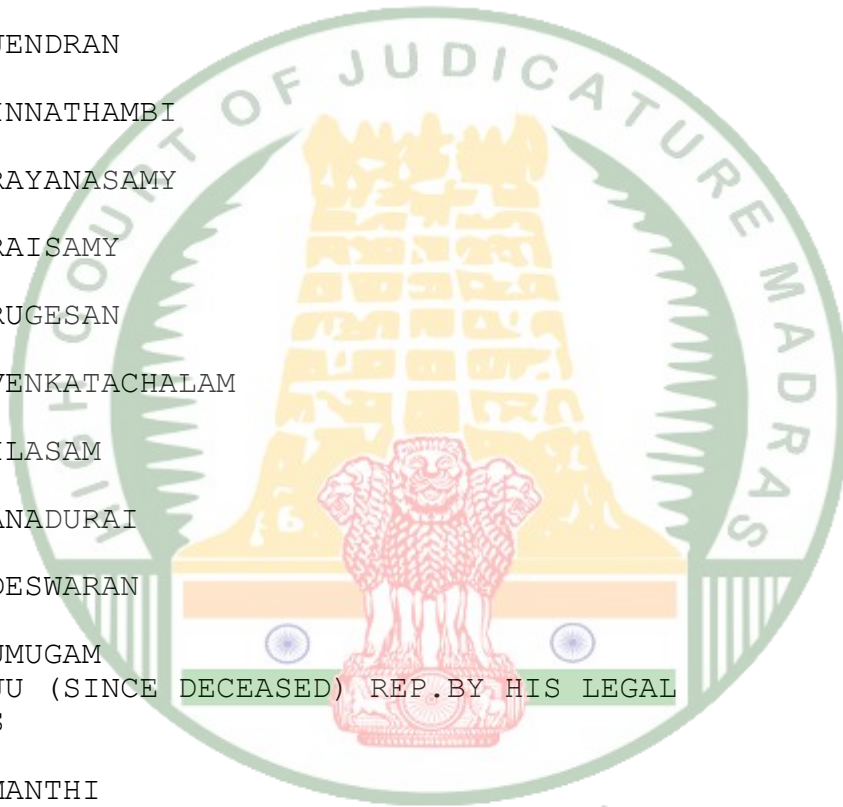
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257 O.MAHALINGAM
258 P.THIRUNAVUKARASU
259 K.MANI
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262 L.MAHALINGAM
263 S.SIVANATHAN
264 S.PALANISAMY
265 K.THANGAVEL
266 A.CHANDRAN
267 P.NARAYANAN
268 V.THANGAVEL
269 P.RAMASAMY
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271 P.GOPAL
272 M.RATHINASAMY
273 N.VENKATACHALAM
274 E.MURUGESAN
275 M.SHANMUGAM



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276 A.SYED MOHAMED
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278 G.RAJENDRAN
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283 A.CHINNATHAMBI
284 P.NARAYANASAMY
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287 N.S.VENKATACHALAM
288 P.KAILASAM
289 T.GNANADURAI
290 M.MADESWARAN
291 R.ARUMUGAM
K.RAJU (SINCE DECEASED) REP.BY HIS LEGAL
HEIRS
292 R.SUMANTHI
293 SOWMIYA (MINOR)
D/O.K.RAJU REP.BY HER MOTHER AND NATURAL
GUARDIAN R.SUMATHI
294 SANTHA (MINOR)
D/O.K.RAJU REP.BY HER MOTHER AND NATURAL
GUARDIAN R.SUMATHI
295 PONGIAMMAL
296 K.CHANDRAN
297 K.N.ARUMUGAM
298 K.PERIYASAMY



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299 B.M.PERIYASAMY

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302 K.D.MADHESWARAN

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304 M.MAYILSAMY

305 S.SAKTHIVEL

306 K.NAGARAJ

307 A.ARJUNAN

308 E.P.RAJU

309 M.SINGARAYAN

310 S.SIVALINGAM

311 C.JOTHIMUTHU
C.M.GOVINDASAMY (SINCE DECEASED) REP.BY HIS
LEGAL HEIRS

312 PUSPALATHA

313 DEEPANRAJ
S/O.C.M.GOVINDASAMY

314 G.KRISHNAMOORTHY

315 K.THANGAVEL

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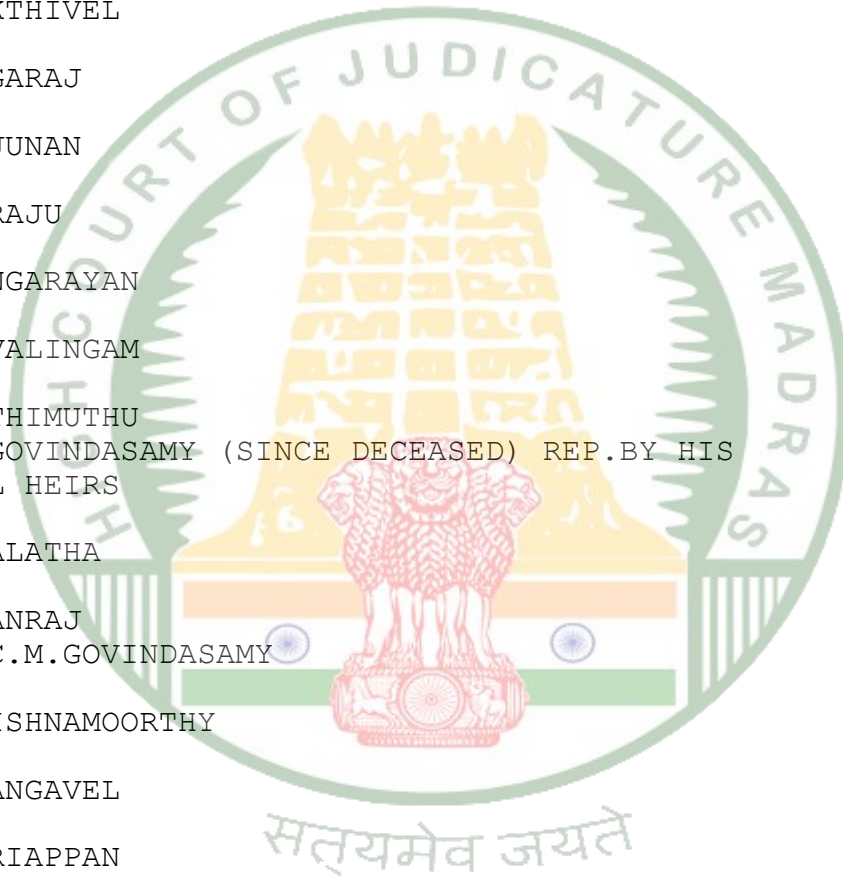
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325 S.SAVUTHIRI

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327 S.PAVALAYEE

328 P.KUMAR

329 K.PADMAVATHI

330 M.RENUGA

331 S.MALATHI

332 V.VISALATCHI

333 K.VIJAYA

334 K.PUSHPA
J.M.MADHESHWARAN (SINCE DECEASED) REP.BY
HIS LEGAL HEIRS.

335 BUVANESHWARI
W/O.J.M.MADHESHWARAN.

336 SATHISHKUMAR (MINOR)
S/O.J.M.MADHESHWARAN REP. BY HIS MOTHER AND
NATURAL GUARDIAN BUVANESHWARI.

337 NIRMALKUMAR (MINOR)
S/O.J.M.MADHESHWARAN REP. BY HIS MOTHER AND
NATURAL GUARDIAN BUVANESHWARI.

338 K.RAMASAMY

339 G.KRISHNAMOORTHY

340 P.NATARAJAN

341 R.THANGAVELU

342 K.GANESAN

343 K.PALANISAMY

344 M.SENGODAN

345 T.PERUMAL

346 C.SENGODAN

347 N.ANGAMUTHU

348 S.MURUGAN

349 K.RAMAN

350 M.SHANMUGAM

351 D.VENKATACHALAM

352 P.V.SUBRAMANIAM

353 A.ANGUKANNAN

354 S.GOVINDAN

355 V.KUPPUSAMY

356 C.P.RAJENDRAN

357 K.MATHESWARAN

358 M.ARUMUGAM

359 S.RAVI

360 V.KUMARASAMY

... PETITIONERS
IN ALL WRIT PETITIONS

VERSUS

1 THE PRESIDING OFFICER
LABOUR COURT HASTHAMPATTI SALEM

2 M/S. KANDASAMY SPINNING MILLS
PRIVATE LIMITED, SURIYAMPALAYAM, BHAVANI
MAIN ROAD VASAVI COLLEGE POST ERODE TALUK
ERODE DT.

.. RESPONDENTS
IN ALL WRIT PETITIONS

Prayer in WP No.19670 of 2010:

This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the orders of the 1st respondent Labour Court dt. 16.04.2009 in I.D.Nos. 88 of 2004 to 397 of 2004 and 671 of 2004 to 694 of 2004 quash the same and consequently, direct the 1st respondent Labour Court to hear and decide on merits the issue relating to the non-employment of the workers

concerned and pass appropriate Award granting relief to the workers together with costs.

Prayer in WP No.19671 of 2010:

This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the orders of the 1st respondent Labour Court dt. 8.4.2002 in I.A.No.8/2001 in I.D.No.123 of 1998 quash the same and consequently direct the 1st respondent Labour Court to hear and decide on merits the issue relating to the non-employment of the workers concerned and pass appropriate Award granting relief to the workers together with costs.

Prayer in WP No.19672 of 2010:

This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the orders of the 1st respondent Labour Court dt. 16.04.2009 in I.A.Nos. 197 of 2008 to 530 of 2008 in I.D.Nos. 88 of 2004 to 397 of 2004 & 671 of 2004 to 694 of 2004 quash the same and consequently direct the 1st respondent Labour Court to hear and decide on merits the issue relating to the non-employment of the workers concerned and pass appropriate Award granting relief to the workers together with costs.

For petitioners: Mr.N.G.R.Prasad for
M/s.Row & Reddy in all WPs

For Respondents: Mr.V.Raghavachari for
Mr.N.Manokaran for R2 in WPs

COMMON ORDER

These Writ Petitions have been filed by the petitioners, who are the workmen of M/s.Kandasamy Spinning Mills Private Limited, the second respondent herein, praying for the following reliefs, viz.,

W.P.No.19670 of 2010:

"To issue Writ of Certiorarified Mandamus, to call for the records relating to the orders of the 1st respondent Labour Court dt. 16.04.2009 in I.D.Nos. 88 of

2004 to 397 of 2004 and 671 of 2004 to 694 of 2004 quash the same and consequently, direct the 1st respondent Labour Court to hear and decide on merits the issue relating to the non-employment of the workers concerned and pass appropriate Award granting relief to the workers together with costs.

WP No.19671 of 2010:

"To issue Writ of Certiorarified Mandamus, to call for the records relating to the orders of the 1st respondent Labour Court dt. 8.4.2002 in I.A.No.8/2001 in I.D.No.123 of 1998 quash the same and consequently direct the 1st respondent Labour Court to hear and decide on merits the issue relating to the non-employment of the workers concerned and pass appropriate Award granting relief to the workers together with costs.

WP No. 19672 of 2010:

"To issue of Writ of Certiorarified Mandamus, to call for the records relating to the orders of the 1st respondent Labour Court dt. 16.04.2009 in I.A.Nos. 197 of 2008 to 530 of 2008 in I.D.Nos. 88 of 2004 to 397 of 2004 & 671 of 2004 to 694 of 2004 quash the same and consequently direct the 1st respondent Labour Court to hear and decide on merits the issue relating to the non-employment of the workers concerned and pass appropriate Award granting relief to the workers together with costs."

2. Since common issues and grounds raised in all these three Writ Petitions, they are taken up together for common disposal.

3. The brief facts necessitating the filing of the above Writ Petitions, are stated hereunder:

4. The petitioners were all workmen of the second respondent management. On 26.8.1982, a strike notice was

given by the Union representing the workmen, stating that the strike would be commenced from 11.9.1982 pressing for charter of demands. But even before commencement of strike, there was a large scale violence in the mill premises and unfortunately, one worker died in the violence and nearly 190 workers were booked by the local police and a case was registered under Section 302 IPC for murdering of a co-employee. In view of the tense situation, police help was sought and according to the workers, the other workers were prevented from attending the work. In the above circumstances, a dispute under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act') was raised by the Union representing the workers, for their non-employment. Before the Conciliation Officer, the management filed their counter and on submission of failure report on 24.3.1984, the Government took a decision not to refer the dispute for certain reasons by its order dated 1.8.1984. In the meanwhile, the Sessions Court which tried the workers for the charge of murder and other related charges under the provisions of the Indian Penal Code, pronounced its verdict on 31.7.1984 by sentencing five workers to life, one year imprisonment to twelve workers and six months imprisonment to six workers and others stood acquitted. However, in the appeal filed by the convicted workers, this Court acquitted all the workers by its judgment dated 15.12.1998.

5. According to the workers, even after the closure of the criminal case in favour of the workers, the Management refused to provide employment to the workers. Therefore, the Union was constrained to approach the Government once again in 1989 for reconsideration of the whole issue and refer the matter for adjudication before the Labour Court. The Conciliation was resisted by the Management on the ground that the claim had become stale and no change of circumstances which called for reconsideration. On consideration of the submissions made on behalf of the workers as well as the Management, the Government once again declined to refer the dispute by its order dated 21.11.1990. The order of the Government refusing to refer the dispute was put to challenge by the Union in W.P.No.5055 of 1991.

6. This Court, after adverting to the submissions of the parties, by order dated 19.1.1998, disposed of the writ petition with the following observation:

"This writ petition by a registered Trade Union which claims to have 625 workmen as members. The workmen

are employed in the second respondent-Spinning Mills. They had made a charter of demands on 26.08.1982. The second respondent closed the Mills with effect from 1-9-1982. It transpires that on 6-9-1982, one Subramanian is said to have been assaulted by some of the workers as a result of which he died. About 188 workmen being the members of the petitioner-Association, were arrested in connection with the said murder. Though they came out on bail, they were not allowed to work. The trial Judge, on 31-7-1984, convicted - workers of the murder charge, But, appeal, by judgment dated 15-12-1988, all the accused were acquitted. In the meanwhile, the question of non-employment of the workmen was raised as a dispute and on the basis of there part of the Commissioner of Labour, the Government, by order dated 1-8-1984, passed a detailed order declining to refer the dispute for adjudication by a Labour Court. The reasoning of the Government was follows:

"It has been reported that out of the 131 permanent workers, 38 workers have either settled their accounts with the management or have resigned and left the service or continue in employment.

In respect of the remaining 93 workers it is reported that they had left their job on their own accord as they failed to report for employment when the strike was called off and that there is no question of the management terminating their services. Out of the 64 apprentices, it is reported that 18 have settled their accounts and that the remaining 46 did not report for duty. Hence they will be deemed to have left the services on their own accord.

As regards casuals it is reported that they did not report for work when the mill was reopened and hence there is no question of termination of employment by the

Management. Moreover as causals, they have no right to demand continuous employment."

However, it has to be remembered that the judgment in the murder case, on appeal, was rendered only on 15-12-1988. Thereafter, there were several applications for re-consideration of the decision of the Government. Again by order dated 21-11-1990 the Government has refused to re-consider the decision declining a reference.

2) It is against the said order that the present writ petition has been filed seeking to quash the same and also for a direction refer the matter to the Labour Court for adjudication. I am of the opinion that there is considerable delay in seeking reference, even though it may not be entirely due to the workmen. I am, therefore, not inclined to direct the Government to make a reference. However, it is now seen from Section 2-A of the Industrial Disputes Act and the amended Act providing for each individual workman to apply in the prescribed manner to the Labour Court for adjudication of the validity of his non-employment. It goes without saying that each workman who is today aggrieved by the alleged non-employment can approach the Labour Court under the above provision. Therefore, giving liberty is the workmen to approach the Labour Court under the above provision, this writ petition is dismissed. There will be no order as to costs."

7. In view of the above observation made by this Court in the aforesaid Writ Petition, the workers had approached the first respondent Labour Court seeking to challenge their non-employment in I.D.No.No.123 of 1998. In the proceedings before the Labour Court, the Management filed an interlocutory application vide I.A.No.8 of 2001, raising the issue of maintainability of the industrial dispute. The objection of the Management was that the workers had directly approached the Labour Court without

undergoing the procedure contemplated under Section 2(A)(2) of the I.D.Act meaning that the individual conciliation was not resorted to and therefore, the I.D. filed by them was not maintainable. As far as the workers were concerned, in view of the ruling of this Court in W.P.No.5055 of 1991 dated 19.1.1998 that the workmen can approach the Labour Court for adjudication regarding the validity of their employment, they approached the Labour Court as such, as per the direction.

8. The Labour Court, on consideration of preliminary issue of maintainability, passed orders on 8.4.2002 in I.A.No.8 of 2001 in I.D.No.123 of 1998, dismissing the ID as not maintainable. The Labour Court considered both the submissions placed on behalf of the workmen as well as the objections of the Management and finally concluded against the workmen and dismissed the ID as not maintainable and consequently, all other individual disputes were not proceeded further. The discussion and conclusion of the Labour Court as found in paragraphs 15 and 16, are reproduced as under:

"15. Much reliance was placed by both sides on the order passed by the Hon'ble High Court, Madras in W.P.No.5055/91 dated 19.01.1998. Each side interpreted the judgment to its own advantage. This Court has perused the order of the Hon'ble High Court, Madras with care. The respondent has stated in para 10 of his counter that

"Once the Hon'ble High Court was pleased to condone the respondent and other workers and directed them to approach the Labour Court, their ends the matter of raising a fresh dispute once again before the Conciliating Officer."

But, a careful perusal of the order of Hon'ble High Court, madras does not warrant to that effect. In the tail end of the order it is like this,

"Therefore, giving liberty to the workmen to approach the Labour Court under the above provision this writ petition is dismissed. There will be no order as to costs".

What is important to note here is "under the above provision". That is, by the words "under the above provision" Section.2-A of the I.D.Act and the Amended Act made by the Tamil Nadu Government by Act 5/1988 is referred to, that provides for each individual workman to apply in the prescribed manner to the Labour Court for adjudication of the validity of his non-employment. A careful reading of the order shows that the final verdict is given in para 2 by the words

"I am, therefore, not inclined to direct the Government to make a reference".

After this final verdict, the Hon'ble Judge proceeds further to give a suggestion to the respondent out of goodwill and sympathy. So that this respondent (petitioner in the Writ) can avail himself the benefit of the amended Section 2-A(1) and to comply "in the prescribed manner". Hence, Sec.2(m) of I.D.Act 1947 defines that "prescribed" means prescribed by rules under this Act. The words "prescribed manner" in the order of Hon'ble Judge denotes that this respondent should comply with Section 2-A (1) before-ever approaching Labour Court. Again the words "under the above provision" the Hon'ble Judge once again reminds the respondent of the amended section. In general, the latter part of para 2 of the order strikes a chord in sympathy with the writ petitioner and is only suggestive of what he could legally do further if he still persists in his endeavor. Nothing more can be interpreted than this. The respondent has read the order between the lines and has misinterpreted the same to mean that he can directly approach the Labour Court by straight away filing claim statement without any conciliation report. By no stretch of imagination the latter part of para 2 of the order can be termed as "direction" to this respondent. It is only "suggestion". Even that suggestion is not

an unqualified suggestion. The suggestion underscores that this respondent may apply "in the prescribed manner", " under the above provisions", to the Labour Court for adjudication of the validity of his non-employment. This suggestion is not properly complied with by the respondent. In other words the respondent has not complied with the Sec.2-A(1) before he filed the claim statement u/s.2-A(2) in this Court.

16. Under these circumstances, for the aforesaid reasons, this petition is allowed and a preliminary issue as to maintainability of the dispute is framed and again for the same foregoing reasons the preliminary issue is simultaneously decided and answered against the respondent as the dispute is basically and legally not maintainable and the questions are answered accordingly."

9. Thereafter, in order to cure the procedural defect, the individual workmen approached the Labour Officer, Erode on 31.3.2003 and since the conciliation failed on 29.8.2003, a conciliation failure report was submitted. Subsequently on 1.3.2004, the petitioners filed individual claim statement enclosing the conciliation failure report before the first respondent Labour Court. Even in the subsequent proceedings, the Management filed I.A.Nos.197 to 506 of 2008 in I.D.Nos.88 to 397 of 2004 and 671 to 694 of 2004, raising once again preliminary objection that the petition filed under Section 2(A) (2) of the ID Act by the workmen was not maintainable on the ground of res judicata as the earlier dispute was dismissed by the Labour Court vide its order dated 8.4.2002. The Labour Court once again by its order dated 16.4.2009 allowed I.A.Nos.197 to 530 of 2008 filed on behalf of the Management, upholding their contentions that I.Ds. are not maintainable in view of applying the principle of res judicata and in that view of the matter, all I.Ds. came to be dismissed. The said order/award is now put to challenge in these Writ Petitions by the petitioners workmen.

10. Writ Petition in W.P.No.19670 of 2010 has been filed challenging the order/Award of the first respondent Labour Court dated 16.04.2009 in I.D.Nos. 88 of 2004 to 397 of 2004 and 671 of 2004 to 694 of 2004; Writ Petition in

W.P.No.19670 of 2010 has been filed, challenging the order of the first respondent Labour Court dated 8.4.2002 in I.A.No.8/2001 in I.D.No.123 of 1998 dismissing the ID on the ground of maintainability by not following the procedure contemplated under Section 2(A)(2) of the ID Act; Writ Petition in W.P.No.19672 of 2010 has been filed, challenging the order passed by the first respondent Labour Court, dated 16.04.2009 in I.A.Nos. 197 of 2008 to 530 of 2008 in I.D.Nos. 88 of 2004 to 397 of 2004 & 671 of 2004 to 694 of 2004 allowing the preliminary objection of the Management that I.As. were not maintainable on the principle of res judicata.

11. Shri N.G.R.Prasad, learned counsel appearing for the petitioners would submit that the impugned dismissal of the I.Ds. by the first respondent Labour Court on the ground of res judicata suffers from miscarriage of justice in the teeth of the fact that earlier the I.D.was dismissed on 9.4.2002 only on the ground that the individual workers had not resorted to procedure to Section 2(A)(2) of the ID Act before approaching the Labour Court. Once the Labour Court had taken a stand that it was imperative on the part of the individual workmen to resort to proper procedure contemplated under the ID Act and in the absence of the same, the ID was not maintainable, the Labour Court cannot turn around and dismiss the IDs of the workmen on the principle of res judicata when the workers had chosen to comply with the procedural requirement of the ID Act particularly, under Section 2(A)(2). Such approach on the part of the Labour Court is contrary to the ID Act particularly when the Act itself was designed to protect the rights and interest of the workmen.

12. Shri N.G.R.Prasad, learned counsel would also contend that principle of res judicata cannot be strictly applied to the industrial proceedings particularly in the facts and circumstances of the case. He would also submit that the principal of res judicata would be applied only when the Labour Court had gone into the merits of the claim and taken any decision. In the instant case, the Labour Court has not delved into the merits of the case at all. Therefore, the question of invoking the principal of res judicata does not arise, in the first place.

13. The learned counsel would rely on the following decisions in support of his contentions.

i) "1999(2) LLN 674 (Ajaib Singh versus Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. and another), the Hon'ble Supreme Court has held that reference of the industrial dispute for adjudication cannot be generally questioned on the ground of delay. Delay of seven years shown to be existing and admitted by workmen and in such circumstances, the Court can mould the relief by refusing the back wages or in appropriate case, direct part amount of back wages instead of full back wages.

The above decision relied upon by the learned counsel in view of the stand taken by the Management in the counter affidavit that there was inordinate delay in raising the dispute and claim had become stale.

ii) "(1970) 1 SCC 1 (M/s.Avon Services Production Agencies (P) Ltd., versus Industrial Tribunal, Haryana and others)". This decision was relied upon by the learned counsel for the petitioners that the Government can always make a reference of the dispute subsequently even if the same was declined earlier even in the absence of fresh and additional material shown to be existing in the subsequent reference. The Hon'ble Supreme Court has held that substance of the dispute is more important than the form.

iii) "(1987) 1 SCC 479 (V.Veerarajan and others versus Government of Tamil Nadu and others)". In this case, the Hon'ble Supreme Court has directed the Government to make reference of the dispute for termination of service of the workmen in the context earlier the Government refused to make reference on the basis of its own opinion. Therefore, Shri N.G.R.Prasad would contend that for more than 30 years, the workers were denied fair adjudication of the dispute on merits and in the absence of such adjudication, the workers were prevented from having access to justice. Therefore, he would implore this Court to set aside the order/award of the first respondent Labour Court and remand the matter to the first respondent for adjudication of the dispute on merits and on such remand, it is always open to the Labour Court to take a call on the aspect of passage of three decades from the date of commencement of non-employment of the workers/petitioners and the relief can be moulded, accordingly.

14. Per contra, Shri V.Raghavachari, learned counsel appearing for the second respondent Management would submit that at every stage, there was a delay on the part of the workmen in prosecuting the claim. he would foremost

submit that the original Government Order, namely, G.O.Ms.No.172, dated 1.8.1994 which declined the reference had not been challenged at all and in the absence of challenge, the subsequent challenge to the Government Order declining reference in 1989 was not maintainable. In any event, he would submit that the Union representing the workmen, had approached the Government for referring the dispute for adjudication after a lapse of five years from the date when the Government originally declined to refer by its order dated 1.8.1994. According to him, there was no proper explanation for such long delay in approaching the Government for reconsideration. He would further submit that earlier the Labour Court while allowing the IA filed by the Management, had given sound legal reasoning and held that the ID was not maintainable and the order passed by the Labour Court dated 8.4.2002 as extracted supra, was self-explanatory. He would submit that no liberty was given to the workers to have the procedural defects cured. In the circumstances, the workers approached the Conciliation Officer once again in 2003 and approaching the Labour Court in 2004 for cause of action that had arisen as early as in 1982 is hopelessly time barred and the issue had become more than stale. He would submit that due to passage of three more decades, the composition of the Management was changed and many workers died and many more of them have attained the age of superannuation. There would be practically nothing left for adjudication for the Labour Court today. According to the learned counsel, it is practically impossible for the Labour Court to find any solution for the dispute due to efflux of long years, i.e. nearly three decades. According to him, the delay was entirely on the part of the workers and no way the Management is contributed to the same. Such being the case, the Courts have recognized that the stale claims need not be adjudicated since they would unsettle the settled matters. He would further contend that the first respondent Labour Court has rightly dismissed all the IDs by invoking the principle of res judicata since the workers cannot be allowed to approach the Labour Court repeatedly for the same dispute. If such dispute is entertained, there would not be any finality in the industrial proceedings.

15. The learned counsel would place reliance on the decision of the Hon'ble Supreme Court of India, reported in "2017(6) SCC 787 (Jasveer Singh and others versus State of U.P. & others)" wherein the Hon'ble Supreme Court has made some observations regarding latches and delay. The said decision was rendered in the context of land acquisition

proceedings under Land Acquisition Act, 1894. This Court is unable to see as to how the observations made by the Hon'ble Supreme Court can be made applicable to the present case, which arose under the industrial proceedings. In any event, the decision relied upon by the second respondent Management not even remotely is relevant to the point, which he is trying to canvass and no legal statement has been made by the Hon'ble Supreme Court in the said decision.

16. Be that as it may, this Court, after considering the factual and legal submissions made on behalf of the petitioners as well as on behalf of the second respondent Management, has to see whether the impugned order/award passed by the second respondent Labour Court is sustainable in law. No doubt, the issue of non-employment related to the year 1982, i.e. more than three decades, unfortunately, there was a refusal of the reference by the Government initiated in 1994 and for unknown reasons, the Union representing the workers at that time, did not choose to challenge the Government's action declining to refer the dispute. However, the dispute was sought to be revived and the Union approaching the Government for reconsideration in 1999. Once again, the Government took the stand against the workmen and that was the subject matter of challenge in the earlier writ petition in W.P.No.5055 of 1991.

17. As rightly contended by the learned counsel for the respondents, on behalf of the workmen, no valid reasons were spelt out as to why the initial refusal was not put to challenge and why there was delay of 5 years in seeking reconsideration of the dispute by the Government. In the absence of any valid explanation forthcoming, the dispute was to be termed as stale one. However, this position had undergone a change when this Court passed an order in W.P.No.5055 of 1991 dated 19.1.1998 wherein, this Court had given liberty to the workmen to resort to Section 2(A)(2) of the ID Act for raising disputes individually in view of the amendment brought in by the Government of Tamil Nadu in 1988 to Section 2(A)(2) of the ID Act. Once such liberty was given to the petitioners/workmen, any delay in the past, cannot be held against the petitioners for refusing to adjudicate the dispute on merits. Of course, it was always open to the Labour Court to consider the aspect of delay and relief could be moulded accordingly.

18. Moreover, the first respondent Labour Court, having dismissed the earlier ID, i.e. ID No.123 of 1998

dated 8.4.2002 on the ground that the workmen had not resorted to procedure contemplated under Section 2(A)(2) of the ID Act, cannot turn around subsequently and dismiss all the industrial disputes on the ground of res judicata. It is not open to the Labour Court to non-suit the workmen on one hand that they have not resorted to procedure contemplated under ID Act, and on the other, dismiss the ID after the workmen resorted to the procedure in compliance with the provisions of the ID Act. Such approach on the part of the Labour Court, cannot be appreciated as a fair adjudication of the dispute, particularly when the livelihood of hundreds of workers was involved. The approach of the Labour Court in this regard amounts to non-application of industrial responsibility vested in the Labour Court under the scheme of the ID Act. The role of the Labour Court in the industrial proceedings is not to frustrate the attempt of the workers to have access to justice, but its role is primarily intended in the scheme of the Act to find just and equitable solution to the dispute raised by the workmen. Further, invoking the principle of res judicata suffers from misapplication and non-application on the part of the Labour Court since there was no adjudication of the claim of the workmen on merits and no decision was rendered in respect of the validity and correctness of non-employment of the workers. In the circumstances, this Court is unable to appreciate as to the legal basis of the decision of the Labour Court in dismissing the claim of the petitioners at the threshold by shutting doors on the workers. Such a decision is opposed to equity, fair play, good conscience and justice. No doubt, this Court is conscious of the fact that there may be practically difficulties in adjudication of the disputes on merits in view of passage of more than three decades, but at the same time, this Court has to take into consideration larger issue of suffering of workmen and their families for many years without recourse to any form access to justice in having their claim adjudicated on merits.

19. As regards the delay is concerned, the workers alone cannot be blamed since justice delivery system is also responsible for pendency of dispute before this Court and Labour Court. As saying was 'justice delayed is justice denied'. The workers have been denied all these years to have proper access to justice, as their claim is still not seen the light before appropriate judicial forum in regard to the merits of their claim. In industrial proceedings, the hyper technicalities such as res judicata has to take the back-burner paving way to justice oriented approach.

Even assuming res judicata is applied in this case, though this Court is of the contrary view, such principle can be applied only between two parties who are placed on equal footing and not between the workers and the management. Moreover, in the instant case, it is the Labour Court which driven the workers to resort to procedure contemplated under Section 2(A)(2) of the ID Act and having driven them to exhaust the procedure, cannot turn around and then dismiss their dispute on the principle of res judicata. Such approach brought and adopted by the Labour Court per say unreasonable and unjust and cannot stand the test of proper judicial scrutiny.

20. It is also rather unfortunate, the first respondent Labour Court, in its impugned award does not disclose as to the basis of its conclusion. The order/award is completely non-speaking and bereft of any discussion or reasons. Any conclusion without reasons, cannot be appreciated to be worthy order in the eye of law. The first respondent Labour Court by passing such a laconic order, shirked its responsibility particularly without delving with the issue of livelihood of hundreds of workers and their families in not discharging its duties to adjudicate the claim of the petitioners on its merits.

21. For the above said reasons, this Court set aside the impugned order/award passed by first respondent Labour Court dated 16.04.2009 in I.D.Nos. 88 of 2004 to 397 of 2004 and 671 of 2004 to 694 of 2004 and also the order/award, dated 16.02.2009 passed by the same Court in I.A.Nos. 197 of 2008 to 530 of 2008 in I.D.Nos. 88 of 2004 to 397 of 2004 & 671 of 2004 to 694 of 2004. Accordingly, the Writ Petitions, viz., W.P.Nos.19670 and 19672 of 2010 are allowed.

22. In view of the orders passed in W.P.Nos. 19670 and 19672 of 2010, the Writ Petition in W.P.No.19671 of 2010 is closed since no orders are necessary.

23. The matter is remanded back to the first respondent Labour Court, which in turn, is directed to adjudicate the dispute of the petitioners on merits and in accordance with law and pass a considered award. The Labour Court may also take into consideration the passage of more than three decades since commencement of the dispute between the workmen and the management while adjudicating the dispute. Since already three decades have gone by, the Labour Court is directed to pass award as expeditiously as possible preferably within a period of nine months from the date of receipt of copy of this order. No costs.

suk

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To,

1 The Presiding Officer,
Labour Court,
Hasthampatti, Salem

2 The Section Officer,
V.R.Section,
High Court, Madras

+3CC to Mr.N.Manokaran Advocate SR.NO.19407 to 19409
+1CC to M/s.Row & Reddy Advocate SR.NO.19526

सत्यमेव जयते

Pre delivery order in
W.P.Nos.19670 to
19672 of 2010

AK[CO]
MK:28/03/2018

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