

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.10.2018

DELIVERED ON : 12.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Writ Appeal No.740 of 2017

and

C.M.P.No.10154 of 2017

1.The State of Tamil Nadu
represented by its
Secretary to Government,
Home Department,
Secretariat, Chennai - 9.

2.The Additional Director General of Police,
Armed Police,
Kilpauk, Chennai - 10.

.. Appellants/Respondents

Vs

1.A.Hariharaputhiran
S/o.S.Arunachalam

2.K.Ganapathy Subramanian
S/o.Kanniperumal

3.V.R.Sampath
S/o.N.Venugopal

4.Nithinn John
S/o.John Samuel

5.M.Selvaraju
S/o.Murugaiyan

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6.R.Suganthi
D/o.Late Ramachandran

7.R.Priya Bharathi
D/o.M.K.Raghunathan

8.D.Vimalarani
D/o.Dhanasekaran

9.R.Prabakaran
S/o.Rajagopal

10.V.Chitrarasu
S/o.M.Velu

11.D.Muthamil
S/o.Dhayalan

[R2 to R11 impleaded as party respondents
vide order of Court dated 28.07.2017 in
C.M.P.No.11608/2017 in W.A.No.740/2017]

12.P.Maheswari
D/o.G.Pongiannan

13.N.Mansingh
S/o.Narayana Singh

14.J.Berlin Selma
D/o.Late P.James

[R12 to R14 impleaded as party respondents
vide order of Court dated 01.08.2018 in
C.M.P.No.12211/2013 in W.A.No.740/2017]

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against
the order passed by this Court in W.P.No.6540 of 2016 on
20.04.2016.

W.P.No.6540 of 2016

Writ Petition filed under Article 226 of the Constitution of
India praying for issuance of writ of certiorarified mandamus to
Call for records of the 2nd respondent and quashing the impugned
order vide C. No. Estt.II (2) / 1288 /2015 dated 15.2.2016 of
the 2nd respondent rejecting the relief of restropective
promotion to the petitioner on and from 18.3.2006 in the cadre
of Sub-Inspector of Police which was served on the petitioner
vide C. No. A1/ Sec/ 120/ 2016 dated 19.2.2016 and consequently

direct the 2nd respondent to grant promotion to the petitioner on permanent basis on and from 18.3.2006 in the cadre of Sub-Inspector of police (General)

Appellants: Mr.Vijay Narayan, Advocate General
assisted by Mr.S.N.Parthasarathy,
Government Advocate

Respondents : Mr.N.G.R.Prasad for
M/s.Row and Reddy [R1]
Mr.S.Sivakumar [R2 to R11]
Mr.V.Raghavachari [R12 to R14]

J U D G M E N T

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against the order passed in W.P.No.6540 of 2016 on 20.04.2016.

2. First respondent submitted a representation dated 05.01.2016 to second appellant seeking revision of his seniority in the rank of Sub-Inspector (G) from the year 2008 to the year 2007 in keeping with his earlier representation dated 03.07.2015 and in support of his claim, he quoted the case of one P.Govindaraj, Hay (Armr). Second appellant, under communication dated 15.02.2016, informed first respondent that he had projected his case for seniority in the rank of Sub-Inspector in July 2015 after a lapse of more than 7 years and the same was impermissible as Rule 35(f) of Tamil Nadu State and Subordinate Services required that application for revision of seniority had to be submitted within a period of three years from the date of fixation thereof. Stating so, the request of first respondent was rejected. Aggrieved, first respondent preferred W.P.No.6540 of 2016 seeking the following relief:

'Issuance of a Writ of Certiorarified Mandamus calling for records of second respondent and quash the impugned order vide C.No.Estt.II (2)/1288/2015 dated 15.02.2016 of the second respondent rejecting the relief of retrospective promotion to the petitioner on and from 18.03.2006 in the cadre of Sub-Inspector of Police, which was served on the petitioner vide C.No.A1/Sec/120/2016 dated 19.02.2016 and consequently direct the second respondent to grant promotion to the petitioner on permanent basis on and from 18.03.2006 in the cadre of Sub-Inspector of Police (General).'

Such Writ Petition was allowed on the reasoning that first respondent had been promoted on temporary basis with effect from 08.12.2006 and about 3 years later he was promoted as Sub-

Inspector on permanent basis with effect from 28.04.2008. Learned Single Judge found merit in the contentions of first respondent that his case was similar to that of P.Govindaraj, who under proceedings of second appellant in C.No.A1/10291/2013/R.O.No.214/2013 dated 30.07.2013 had been given benefit of seniority as Sub-Inspector of Police (Armr) with effect from 18.03.2004 although such person's promotion in the rank of Sub-Inspector of Police had been effected from 05.06.2005 and observed: 'Therefore, the contention made by the petitioner that the reason cited by the Additional Director General of Police in his proceedings dated 30.7.2013 stating that after publishing the 'C' list on 18th March, if there are vacancies as on 18th March, applied to the case of the petitioner finds merits.' Learned Single Judge reasoned that unless there were vacancies on 18.03.2006 petitioner would not have promoted on temporary basis with effect from 08.12.2006. Learned Single Judge further observed thus:

'8 (ii) Secondly, it is the admitted case of the respondent that they were not able to give benefit of permanent promotion to the petitioner and others in view of pending receipts of orders on scrapping of the efficiency test. Finally the efficiency test came to be scrapped by order dated 27.2.2008. Therefore it is seen from paragraph 4 of the counter affidavit filed by the respondent that the remaining 26 vacancies for the Sub-Inspector of Police estimated for the year 2006 and 2007 were not filled up due to the pendency of file seeking clarification from the Government regarding test held for selection to the post also shows that there were vacancies even on the date when the petitioner was given temporary promotion with effect from 18.3.2006.

9. Therefore, the order passed by the Additional Director General of Police dated 30.7.2013 in favour of Mr.Govindarajan, Mr.Karuppasamy, Mr.Prakasam and Mr.Thiyagarajan has to be applied even for the year 2006 for the petitioner. Therefore, the Writ Petition stands allowed as prayed for and the impugned order is set aside.'

3. Heard Mr.Vijay Narayan, learned Advocate General for appellants assisted by Mr.S.N.Parthasarathy, learned Government Advocate, Mr.N.G.R.Prasad, learned counsel for first respondent, Mr.S.Sivakumar, learned counsel for impleaded respondents 2 to 11, permitted to implead themselves under orders in C.M.P.No.11608/2017 dated 28.07.2017 and Mr.V.Raghavachari for respondents 12 to 14 impleaded respondents, permitted to implead themselves under orders in C.M.P.No.12211/2013 dated 01.08.2018.

4. Learned Advocate General submitted that proceedings of Inspector General of Police in Rc.No.A1/2612/2006 reflected

that as against the norm of 60% direct recruit Sub-Inspectors and 40% rank promotee Sub Inspectors, the number of promotee Sub-Inspectors was far in excess. Informing that the shortage of direct recruit Sub-Inspectors was not to be filled up from rank promotees and the number of vacancies was 46, paragraph No.6 of such communication which read as follows was approved:

'6) In view of the reasons stated above, request orders whether we may request the Chairman, APRPB and Commandant TSP II Battalion, Avadi to draw the proceedings accordingly explaining the position in detail and to send the Combined Seniority List of the Hav (G) to SI (G) for the year 2006-07 and forward the recommendation roll for 46 cases.'

Accordingly under proceedings in C.No.A1/20733/2006 dated . 06.2006, the Chairman & Commandant, APRPB, TSP II Battalion, Avadi, Chennai - 54, informed the number of vacancies and the crucial date of such Board to be 31.12.2015. The Board recommended 20 persons for promotion from Havildars to Sub-Inspector of Police (G) (for the year 2006-07). Reasons were also informed for not recommending promotion to 13 other Havildars. Learned Advocate General informed that the name of first respondent/Writ Petitioner found not mention either in the list of approved promotees or in those rejected. In keeping with the proceedings a combined seniority list of 35 persons was prepared. The Board, again on 16.11.2006, recommended promotions of certain persons out of the combined seniority list which contained the names of 58 Havildars. Again, first respondent's name did not find mention in the list of 58 persons whose names were mentioned for consideration. 40% of Sub-Inspector posts was to be filled up by promotion and selection was not from year to year. As posts could not be left unmanned, temporary promotions were made. Thus, first respondent/Writ Petitioner was appointed temporarily as Sub-Inspector against the vacancies for direct recruitment. When he came into the zone of consideration he was granted regular promotion as Sub-Inspector in 2008. None of his juniors have been promoted before him. Explaining thus, learned Advocate General submitted that learned Single Judge had erred in presuming that since first respondent/Writ Petitioner had been appointed on temporary basis, there necessarily must have been vacancies for the post. Although such position had been explained in the counter affidavit filed by appellants, learned Single Judge has failed to consider the same. Learned Single Judge had misconstrued the proceedings of learned Additional Director General of Police dated 30.07.2013 to the effect that if there were some vacancies on 18th March, orders should be published for promotion on such date failing to see that such communication was in respect of persons who became eligible for promotion in the year 2004. Learned Advocate General submitted that implementation of the order of learned Single Judge would have the effect of first respondent overtaking impleaded

respondents and others in the promotional queue. Impleaded respondents were but a few and more than a thousand others were likely to be affected. First respondent/Writ Petitioner ought to have impleaded persons who were likely to be affected as parties in the writ proceedings. Learned Advocate General also invited attention to the communication of the Additional Director General of Police in Estt.II(2)/11815/2017 dated 22.11.2017 wherein the request for permanent promotion from an earlier date by persons similarly placed like the first respondent/Writ Petitioner was rejected.

5. Mr.V.Raghavachari, learned counsel for impleaded respondents 12 to 14, submitted that such respondents had been directly recruited as Sub-Inspector of Police in the year 2006, 2007 and 2008. In paragraph No.4 of the affidavit in support of their impleading petition, they had submitted as follows:

'4. I state that the recruitment rules fix a ratio of 60:40 between direct recruits and promotees. This ratio is immutable. In fact, the sanctioned strength was 354 as in the year 2006. But 158% over and above the sanctioned strength were appointed and I am furnishing herewith the particulars for better appreciation of our case.

Sl. No.	Sanctioned Strength	Actual Strength	
1.	354	391 + 90 (deputation) = 481	127 excess
2.	Direct SI as per 60% ratio 212	136 + 25 (deputation) = 161	51 less than the sanctioned strength
3.	Rank promote SI as per 40% ratio 142	245 + 65 (deputation) = 310	158 excess than the sanctioned strength

As the parties who were likely to be affected by the order were not made parties, the court was handicapped to get the materials. Based on the selective representation, the learned judge had allowed the writ petition without appreciating the rights of the direct recruits.'

Learned counsel submitted that appellants in their counter in the Writ Petition had informed that first respondent/writ petitioner after having been promoted as Sub-Inspector of Police on temporary basis on 08.12.2006 had kept quite for 7 years. He submitted petitions on 08.03.2013 and 14.11.2013 requesting advancement of date of promotion as Sub-Inspector of Police and second appellant under memo C.No.A1/6712/2013 dated 18.03.2014 had explained that the request could not be considered informing

that the rank promotee Sub-Inspectors of Police were already in excess of 40%. First respondent/Writ Petitioner filed W.P.No.5603 of 2014 and this Court directed consideration of the representation. Under communication dated 19.03.2014, second appellant reiterated its earlier stand. First respondent/Writ Petitioner has been promoted as Sub-Inspector on temporary basis only against the direct recruits vacancy. He filed W.P.No.28420 of 2015 and under orders dated 09.09.2005, this Court directed second appellant to consider the representation seeking his being considered as regular promotee from 08.12.2006. Appellants, under reply dated 09.12.2015, mistakenly had informed that out of 46 vacancies for the year 2006-07, 20 Havildars, who had passed the prescribed test for promotion to the post of Sub-Inspector of Police (General) alone were included in the 'C' list 'leaving the remaining 26 vacancies in anticipation of clarification from Government regarding scrapping of test for Tamil Nadu Special Police Personnel' and since orders are awaited the test was not conducted to assess the eligibility for the next batch of Havildars for promotion as Sub-Inspector of Police (General) to fill up the remaining 26 vacancies estimated under promotee quota for the year 2006-07. Learned counsel also submitted that first respondent/Writ Petitioner has not applied for revising the seniority within three years as per Rule 35 of Tamil Nadu State and Subordinate Services. By mere inclusion in the panel they have no right to promotion. First respondent/Writ Petitioner had not even been included in the 'C' list.

6. First respondent/Writ Petitioner had been appointed on probation in the category of Sub-Inspector only on 03.04.2009 while respondents 2 to 11 were appointed as probationers in the year 2008 and their probation has been declared even before first respondent/Writ Petitioner became eligible. After determining the posts vis-a-vis sanction post, permanent post, temporary post, the direct recruits and rank promotee ratio etc. the vacancy figure of 46 was arrived at in proceedings of Inspector General of Police Rc.No.A1/2612/2006. First respondent/Writ Petitioner had been actually promoted in the year 2006 and even if eligible, he ought to have sought revision within 3 years. He had done so only in the year 2013.

7. As explained in the counter of appellants in the Writ Petition, second appellant had, in deference to directions of this Court in W.P.No.28420 of 2015 dated 09.09.2015 requiring appellant to consider the representation of first respondent dated 03.07.2015 seeking advancement of his case in 'B' list in the rank of Sub-Inspector of Police with effect from 08.12.2006 i.e., the date of temporary promotion as Sub-Inspector of Police against existing rank promotees quota for the year 2006-07, under communication in C.No.Estt.II(1)/13774/2015 dated

09.12.2015, explained thus:

'3. A close analysis of your request with relevant promotion Board files reveals that though there were 46 vacancies estimated under rank promotee quota for drawal of 'C' list for the year 2006-2007, names of only 20 Havildars, who had passed the prescribed test for promotion to the post of SI(G) alone, were included in the 'C' list, leaving the remaining 26 vacancies in anticipation of clarification from Govt. regarding scrapping of test for TSP Personnel. Since orders on scrapping of test for promotion to the post of SI(G) was awaited from Government, test was not conducted to assess the eligibility of next batch of Havildars for promotion as SI(G) to fill up the remaining 26 vacancies estimated under promotee quota for the year 2006-07.

4. Pending receipt of Govt. orders on scrapping of efficiency test, 26 (21+5) Havildars were promoted as SIs temporarily vide R.O.348/2006, dated 18.11.2006 (21.Nos) and R.O.121/2006, dated 18.11.2006 (5.Nos) of Dy.Inspectors General of Police, Armed Police, Chennai and Trichy respectively, as against the vacancies estimated for rank promotee quota for the year 2006-07. Likewise, you were also promoted as SI(G) w.e.f. 08.12.2006 on temporary basis as against the rank promotee quota vacancies for the year 2006-07 vide this office R.O.No.89/2008, dated 06.03.2008. And then, your services in the rank of SI(G) was regularised by including your name at Sl.No.6 in the 'C' list drawn for the year 2007-2008. Your date of 'B' list in the rank of SI(G) was declared as 28.04.2008. (i.e date of officiating in the rank of SI on regular basis.)

5. Mere reason stating non-conducting of test for selection to the post of SI(G) due to administrative reasons cannot be held in favour of you for revision of your seniority in the rank of SI(G) retrospectively with effect from 18.12.2006. As such, you are not eligible for advancement of date of 'B' list as SI(G) from 28.04.2008 to 18.03.2006 as the promotion given to you as SI(G) retrospectively from the year 2006 was only on temporary basis on the grounds that the system of holding test for selection to the post of SI(G) was kept in abeyance at that time. Moreover, Havildars who passed the prescribed test alone on the crucial dated i.e. 18.03.2006 are

entitled to get inclusion in the 'C' list year 2006-07 for the promotion as SI(G) on regular basis.'

8. Pertinently, the order of temporary promotion of first respondent dated 06.03.2008 informs:

'2) The above mentioned Havildar (G) who is promoted as SI(G) on temporary basis according to his seniority shall not be considered as a regular promotion but temporary only. The SI so promoted cannot be regarded as probationer in the post of entitled by reasons only of such appointment, if any preferential claim, to future appointments to the post.

3) The Havildar (G) now ordered to be promoted as SI(G) on temporary basis shall be liable to be reverted by the appointing authority at any time without prior notice or without assigning any reasons thereof.'

9. Shri.N.G.R.Prasad, learned counsel for first respondent, submitted that some promotions have been kept in abeyance on the question of whether conduct of efficiency test was necessary or not and on the same being found unnecessary, first respondent had been promoted on 28.04.2008. Such test was informed to be unnecessary on 27.02.2008. He had been temporarily promoted on 06.03.2008 with effect from 08.12.2006. Others have already been promoted from 18.03.2006 on 03.04.2009. First respondent had been regularly promoted with effect from 28.04.2008. For such submissions, learned counsel relies heavily on the counter filed by appellant in the Writ Petition. Learned counsel contended that while respondents 2 to 14 had been directly recruited only in the year 2008, first respondent and his batch were in service from 2006.

10. Learned Advocate General submitted that learned Single Judge erred in treating the case of first respondent as similar to that of one Govindaraj and 3 others. A perusal of proceedings of second appellant in C.No.A1/10291/2013/R.O.No.214/2013 dated 30.07.2013 would show that the request of the said Govindaraj, who had been promoted as Sub-Inspector of Police (Armr) on 13.06.2005 with effect from 04.06.2005 instead of 18.03.2004 was favourably considered since his name had already been included in the 'C' list of Havildar fit for promotion as Sub-Inspector of Police (Armr) for the year 2004-05 reasoning as follows:

'3. While scrutinizing the connected records and relevant rules, reveals that 4 vacancies in the rank of Sub-Inspector of Police (Armr) were exist from 31.12.2003. The panel for drawal of 'C' list for the year 2004-05, which is due for approval on 18.03.2004 has been drawn and approved only on 05.05.05. In which, names of the following Sub-Inspectors of Police (Armr) have been included - vide this office Proceedings second cited and they have been ordered to

be promoted as SI of Police (Armr) on 04.06.2005 - vide orders of the Inspector General of Police, Armed Police, Trichy third cited.

1. Tr.Karuppasamy, TSP XIV BN
2. Tr.Prakasam, TSP IV BN
3. Tr.Thiyagarajan, TSP I BN
4. Tr.Govindarajan, TSP RC BN

4) In this connection, Instructions issued in this office circular memorandum in C.No.A1/30200/05, dt.02.12.05 is recalled that after publishing the 'C' list on 18th March, if there are vacancies as on 18th March, orders should be issued for promotion as on 18th March.

5) In the light of above, the petitioner and above Sub-Inspectors of Police (Armr) are fully eligible to get promotion as Sub-Inspectors of Police (Armr) with effect from 18.03.2004. Due to administrative reasons only, their promotion in the rank of SI of Police (Armr) has been effected from 05.06.2005. It is hence ordered to restore their seniority as SI of Police (Armr) with effect from 18.03.2004 retrospectively instead of their actual officiation.'

Learned Advocate General submits that besides the reasoning of learned Single Judge treating as similar dissimilar cases being erroneous, first respondent's name had not even been included in the 'C' list for the year 2006-07, i.e. seniority list prepared in keeping with Rule 24 of the Tamil Nadu Special Police Subordinate Service Rules, 1978.

11. Learned counsel for first respondent relied on judgment of this Court in W.P.Nos.7242 and 7243 of 2009 dated 12.02.2014 and W.P.Nos.19914 and 19915 of 2012 dated 04.07.2014 to inform that in like cases this Court had granted relief to petitioners before it.

12. By way of reply, learned counsel for respondents 2 to 11 explains that the order in W.P.Nos.7242 and 7243 of 2009 dated 12.02.2014 related to a case where promotion had been denied since criminal cases were pending against petitioners and such persons had been considered eligible on their being acquitted therein while W.P.Nos.19914 and 19915 of 2012 dated 04.07.2014 related to persons who initially had been found medically unfit and hence, denied promotion but on subsequent examination found otherwise and hence, eligible for promotion.

13. We have considered the rival submissions.

14. Consideration of the submission of learned Advocate General makes clear that the first respondent was temporarily promoted as Sub-Inspector as against a direct recruitment post.

This Court readily accepts the submission of learned Advocate General that the post came to be filled up since the same had to be manned. Learned Advocate General has clearly explained how the first respondent came to be promoted on permanent basis once he attained eligibility. As rightly contended by learned counsel for respondents 2 to 11, implementation of the order of learned Single Judge would lead to first respondent stealing a march over respondents 2 to 11, who had been directly recruited as Sub-Inspectors and had completed probation even before the regularization of the promotion of first respondent. As rightly pointed out by learned Advocate General, under proceedings of second appellant in C.No.A1/10291/2011/R.O.No.214/2013 dated 30.07.2013, 4 persons who stood wrongly deprived of promotions, their names having figured in the 'C' list for the concerned year 2004-05, have been granted relief. The name of first respondent has not been included in the 'C' list for the year 2006-07. Learned counsel for first respondent has submitted that appellant was bound by its pleadings which informed that 26 posts had not been filled up owing to confusion over the necessity or otherwise of efficiency test and once it had been decided that the same was not necessary first respondent was entitled to promotion and at par with 20 others who earlier had been promoted. The intent behind this Court reproducing relevant paragraphs of the proceedings of second appellant herein above is only to explain why submissions made on behalf of first respondent are unacceptable. Holding that the temporary promotion of first respondent indeed only was a temporary one and against the quota fixed for direct recruitees as informed in the communication of second appellant in C.No.Estt.II(1)/13774/2015 dated 09.12.2015, that first respondent was ineligible for promotion for the year 2006-07 since his name had not been included in 'C' for promotion, that he has been duly granted promotion when he became eligible and further, learned Single Judge has erred in treating dissimilar cases as similar to that of first respondent, this Court allows the present Writ Appeal.

The Writ Appeal shall stand allowed. The order passed in W.P.No.6540 of 2016 dated 20.04.2016 shall stand set aside. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

gm

To

1. The Secretary to Government of Tamil Nadu,
Home Department,
Fort St. George,
Secretariat, Chennai - 9.

2.The Additional Director General of Police,
Armed Police,
Kilpauk, Chennai - 10.

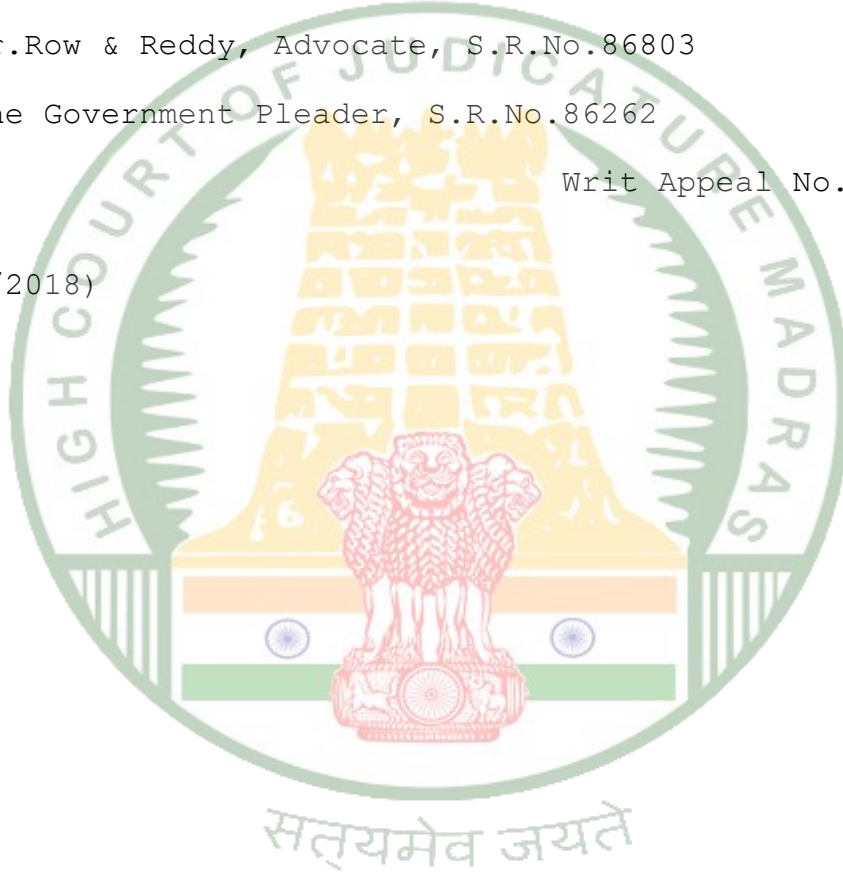
+1cc to Mr.S.Sivakumar, Advocate, S.R.No.86315

+1cc to Mr.Row & Reddy, Advocate, S.R.No.86803

+1cc to the Government Pleader, S.R.No.86262

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GSP(31/12/2018)



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