



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.5706 and 5707 of 2014, 10743,
10744, 11499 to 11501 of 2016, 12950,
12951, 13959 and 13960 of 2016,
5004 to 5006 of 2017 and connected
all miscellaneous petitions

THE REGIONAL MANAGER,
TAMILNADU CIVIL SUPPLIES CORPORATION,
TRICHY REGION, TRICHY.

... PETITIONER IN WP(MD)NO.5706 & 5707 / 2014

THE REGIONAL MANAGER,
TAMILNADU CIVIL SUPPLIES CORPORATION,
KANYAKUMARI REGION, NAGERCOIL.

... PETITIONER IN WP(MD)Nos. 10743, 10744,
11499 to 11501, 12950, 12951,
13959 and 13960 2016

THE REGIONAL MANAGER,
TAMILNADU CIVIL SUPPLIES CORPORATION,
THENI REGION, BODI ROAD, THENI

...PETITIONER IN WP(MD)Nos.5004 to 5006/ 2017

Vs.

1.THE JOINT COMMISSIONER OF LABOUR,
TRICHY.

2.THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER
OF LABOUR,
TRICHY - 20.

3.L.BOOTHAPPAN ...RESPONDENTS IN WP(MD)NO.5706/2014

1 THE JOINT COMMISSIONER OF LABOUR, TRICHY.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER OF LABOUR,
TRICHY - 20.



1 THE JOINT COMMISSIONER OF LABOUR, MADURAI.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER OF LABOUR,
TIRUNELVELI.

3 M.MATHIYALAGAN

4 THE MANAGING DIRECTOR,
TAMILNADU CIVIL SUPPLIES CORPORATION,
THAMBUSAMY STREET,
CHENNAI -10. (THE 4TH RESPONDENT GIVEN UP)

... RESPONDENTS IN WP(MD). 10743/ 2016

1 THE JOINT COMMISSIONER OF LABOUR,
MADURAI.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER OF LABOUR,
TIRUNELVELI.

3 A.MUTHUSWAMY

4 THE MANAGING DIRECTOR,
TAMIL NADU CIVIL SUPPLIES CORPORATION,
THAMBUSAMY STREET, CHENNAI 10. (THE 4TH RESPONDENT GIVEN UP)

... RESPONDENTS IN WP(MD). 10744/ 2016

1 THE JOINT COMMISSIONER OF LABOUR,
MADURAI.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT, COMMISSIONER OF LABOUR,
TIRUNELVELI.

3 RETHINAM

4 THE MANAGING DIRECTOR,
TAMIL NADU CIVIL SUPPLIES CORPORATION,
THAMBUSAMY STREET, CHENNAI 10, (THE 4TH RESPONDENT GIVEN UP)

... RESPONDENTS IN WP(MD). 11499/ 2016

1 THE JOINT COMMISSIONER OF LABOUR,
MADURAI.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER OF LABOUR,
TIRUNELVELI.



4 THE MANAGING DIRECTOR,
TAMIL NADU CIVIL SUPPLIES CORPORATION,
THAMBUSAMY STREET, CHENNAI 10, (THE 4TH RESPONDENT GIVEN UP)
... RESPONDENTS IN WP(MD). 11500/ 2016

1 THE JOINT COMMISSIONER OF LABOUR,
MADURAI.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER OF LABOUR,
TIRUNELVELI.

3 V.MUTHIYAN

4 THE MANAGING DIRECTOR,
TAMIL NADU CIVIL SUPPLIES CORPORATION,
THAMBUSAMY STREET, CHENNAI-10. (THE 4TH RESPONDENT GIVEN UP)
...RESPONDENTS IN WP(MD). 11501/ 2016

1 THE JOINT COMMISSIONER OF LABOUR,
MADURAI.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER OF LABOUR,
TIRUNELVELI.

3 M.GOBIDHAS

4 THE MANAGING DIRECTOR,
TAMIL NADU CIVIL SUPPLIES CORPORATION,
THAMBUSAMY STREET, CHENNAI -10.(THE 4TH RESPONDENT GIVEN UP)
... RESPONDENTS IN WP(MD). 12950/ 2016

1 THE JOINT COMMISSIONER OF LABOUR,
MADURAI.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER OF LABOUR,
TIRUNELVELI.

3 BABY

4 THE MANAGING DIRECTOR,
TAMIL NADU CIVIL SUPPLIES CORPORATION, THAMBUSAMY STREET,
CHENNAI -10.(THE 4TH RESPONDENT GIVEN UP)
... RESPONDENTS IN WP(MD). 12951/ 2016

1 THE JOINT COMMISSIONER OF LABOUR,
MADURAI.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER OF LABOUR,
TIRUNELVELI.

3 C.NESAIYAN



4 THE MANAGING DIRECTOR,
TAMIL NADU CIVIL SUPPLIES CORPORATION,
THAMBUSAMY STREET, CHENNAI-10. (THE 4TH RESPONDENT GIVEN UP)
... RESPONDENTS IN WP(MD). 13959/ 2016

1 THE JOINT COMMISSIONER OF LABOUR,
MADURAI.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER OF LABOUR,
TIRUNELVELI.

3 K.SELLAN

4 THE MANAGING DIRECTOR,
TAMIL NADU CIVIL SUPPLIES CORPORATION,
THAMBUSAMY STREET, CHENNAI-10. (THE 4TH RESPONDENT GIVEN UP)
... RESPONDENTS IN WP(MD). 13960/ 2016

1 THE JOINT COMMISSIONER OF LABOUR,
TRICHY.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
DINDIGUL.

3 S.INNASI ... RESPONDENTS IN WP(MD). 5004/ 2017

1 THE JOINT COMMISSIONER OF LABOUR,
TRICHY.

2 THE ASSISTANT COMMISSIONER OF LABOUR, DINDIGUL.

3 S.FRANCIS ... RESPONDENTS IN WP(MD). 5005/ 2017

1 THE JOINT COMMISSIONER OF LABOUR,
TRICHY.

2 THE ASSISTANT COMMISSIONER OF LABOUR,
DINDIGUL.

3 I.AROKIYAM ... RESPONDENTS IN WP(MD). 5006/ 2017

Prayer in W.P.(MD) No.5706 of 2014: This writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records pertaining the impugned order passed by the 1st respondent in PGA No.4 of 2012 dated 24.07.2013 confirming the order passed by the 2nd respondent PG No.115 of 2011 dated 08.09.2011 and quash the same.

Prayer in WP(MD). 5707/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, by calling for the records, pertaining the Impugned Order passed by the 1st Respondent in P.G.A.No.6 of 2012 dated 24.07.2013 conforming the order passed by the 2nd respondent in PG No.116 of 2011 dated 29.09.2011 and quash the same.

Prayer in WP(MD). 10743/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, by calling for the records, pertaining the impugned order passed by 1st Respondent in P.G.A.No. 28 of 2013 dated 19.06.2015 confirming the order passed by the 2nd respondent in P.G.No. 70 of 2011 dated 08.04.2013 and quash the same.

Prayer in WP(MD). 10744/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records, pertaining the impugned order passed by 1st respondent in P.G.A.No.24 of 2013 dated 19.06.2015 conforming the order passed by the 2nd respondent in P.G.No.68 of 2011 dated 08.04.2013 and quash the same.

Prayer in WP(MD). 11499/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records, pertaining the impugned order passed by the 1st respondent in P.G.A.No. 22 of 2013 dated 19.06.2015 conforming the order passed by the 2nd respondent in P.G.No.74 of 2011 dated 08.04.2013 and quash the same.

Prayer in WP(MD). 11500/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records, pertaining the impugned order passed by the 1st respondent in P.G.A.No. 30 of 2013 dated 19.06.2015 conforming the order passed by the 2nd respondent in P.G.No.69 of 2011 dated 08.04.2013 and quash the same.

Prayer in WP(MD). 11501/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari by calling for the records, pertaining the impugned Order passed by 1st respondent in P.G.A.No.26 of 2013 dated 19.06.2015 confirming the order passed by the 2nd respondent in P.G.No.73 of 2011 dated 08.04.2013 and quash the same.

Prayer in WP(MD). 12950/ 2016 :

<https://hcservices.ecourts.gov.in/hcservices/>

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of



Certiorari calling for the records, pertaining the impugned order passed by 1st respondent in P.G.A.No. 25 of 2013 dated 19.06.2015 confirming the order passed by the 2nd respondent in P.G.No. 72 of 2011 dated 08.04.2013 and quash the same.

Prayer in WP(MD). 12951/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records, pertaining the impugned order passed by 1st respondent in P.G.A.No. 29 of 2013 dated 19.06.2015 confirming the order passed by the 2nd respondent in P.G.No. 86 of 2011 dated 08.04.2013 and quash the same.

Prayer in WP(MD). 13959/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari by calling for the records, pertaining the impugned order passed by 1st respondent in P.G.A. No.23 of 2013 dated 19.06.2015 conforming the order passed by the 2nd respondent in P.G.No.67 of 2011 dated 08.04.2013 and quash the same.

Prayer in WP(MD). 13960/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari by calling for the records, pertaining the impugned order passed by 1st respondent in P.G.A. No.27 of 2013 dated 19.06.2015 conforming the order passed by the 2nd respondent in P.G.No.71 of 2011 dated 08.04.2013 and quash the same.

Prayer in WP(MD). 5004/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records, pertaining the impugned order passed by 1st respondent in P.G.A.No.3 of 2015 dated 27.01.2016 conforming the order passed by the 2nd respondent in P.G.Case No.11 of 2014 dated 20.08.2014 and quash the same.

Prayer in WP(MD). 5005/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records, pertaining the impugned order passed by 1st respondent in P.G.A.No.2 of 2015 dated 27.01.2016 conforming the order passed by the 2nd respondent in P.G.Case No.10 of 2014 dated 20.08.2014 and quash the same and pass such further or other orders as this Honble Court.

Prayer in WP(MD). 5006/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari by calling for the records, pertaining the impugned order passed by 1st respondent in P.G.A.No.4 of 2015 dated 27.01.2016 conforming the order passed by the 2nd respondent in P.G.Case No. 12



of 2014 dated 20.08.2014 and quash the same.

IN ALL PETITIONS:

For petitioner : Mr.R.Vijayakumar

For Respondents : Mrs.S.Srimathy, Spl.G.P.
For RR1 and 2

WP(MD)Nos.5706 & 5707/2014:

R3 : Mr.N.Balakrishnan for R3

WP(MD)Nos.10743, 10744, 11499 to 11501/2016:

R3 : No Appearance

R4 : Given up

WP(MD)Nos.12950 & 12951/2016:

R3 : Mr.Jerin Mathew

R4 : Given up

WP(MD)Nos.13959 & 13960/2016:

R3 : Mr.Jerin Mathew

R4 : Given up

WP(MD)Nos.5004 to 5006/2017:

R3 : Mr.D.Srinivasa Ragavan

COMMON ORDER

The Regional Managers of Tamil Nadu Civil Supplies Corporation of various Regions are the petitioners in all these writ petitions. The private respondents in each of the writ petitions had been engaged as load men in connection with the loading and unloading activities of Tamil Nadu Civil Supplies Corporation. They have been working under individual Maestris. On completion of 10 years, they were issued with orders of appointment whereby they became the contract employees of the petitioner Corporation. After reaching the age of superannuation, the respective private respondents in all these writ petitions retired from service. They wanted their gratuity dues to be settled. Disputes arose with regard to the quantum. Therefore, in all these cases, applications were filed under the provisions of Tamil Nadu Payment of Gratuity Act, 1972. The controlling authority allowed the applications filed by the petitioners. Aggrieved by the same, the petitioner Corporation preferred statutory appeals before the appellate authority. The appellate authority had also confirmed the orders passed by the controlling authorities. Such orders have been separately put in issue by filing these writ petitions.



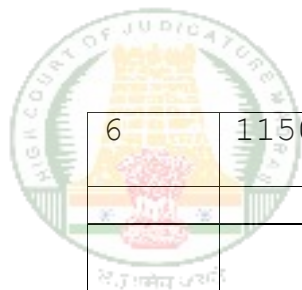
2. Heard the learned standing counsel for the Corporation and the learned counsel for the individual workmen.

3. The individual particulars in all these petitions can be summarised as under:

Item Nos.	Writ Petition No.		Date and Events
1	5706/2014	:	Date of appointment/ regularization -01.05.1999
		:	Date of retirement -30.06.2008
		:	Gratuity claimed from 27.03.1978 as contract labourer
		:	Petition allowed as claimed from -27.03.1978 till 30.06.2008.
2	5707/2014	:	Date of appointment/ regularization -25.05.2006
		:	Date of retirement -30.06.2009
		:	Gratuity claimed from 27.03.1988 as contract labourer
		:	Petition allowed as claimed from -27.03.1988 till 30.06.2009.

3	10743/2016	:	Date of appointment/ regularization -21.02.2000, date of joining 02.03.2000
		:	Date of retirement -30.06.2009
		:	Gratuity claimed from 1978 as contract labourer
		:	Petition allowed as claimed from -01.04.1978 (accounting year) till 30.06.2009.
4	10744/2016	:	Date of appointment/ regularization -21.02.2000, date of joining 02.03.2000
		:	Date of retirement -31.10.2008
		:	Gratuity claimed from 1978 as contract labourer
		:	Petition allowed as claimed from -01.04.1978 (accounting year) till 31.10.2008.

5	11499/2016	:	Date of appointment/ regularization -21.02.2000, date of joining 02.03.2000
		:	Date of death -26.05.2000
		:	The employee had not put in qualified service of 5 years.
		:	Gratuity claimed by legal heirs from 1978 as contract labourer
		:	Petition allowed as claimed from -01.04.1978 (accounting year) till 26.05.2000.



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6	11500/2016	:	Date of appointment/ regularization -21.02.2000, date of joining 02.03.2000
		:	Date of retirement -30.04.2008
		:	Gratuity claimed from 1978 as contract labourer
		:	Petition allowed as claimed from -01.04.1978 (accounting year) till 30.04.2008
7	11501/2016	:	Date of appointment/ regularization -21.02.2000, date of joining 02.03.2000
		:	Date of retirement -31.08.2008
		:	Gratuity claimed from 1978 as contract labourer
		:	Petition allowed as claimed from -01.04.1978 (accounting year) till 30.08.2008.

8	12950/2016	:	Date of appointment/ regularization -21.02.2000, date of joining 02.03.2000
		:	Date of retirement -31.01.2009.
		:	Gratuity claimed from 1978 as contract labourer
		:	Petition allowed as claimed from -01.04.1978 (accounting year) till 31.01.2009.
9	12951/2016	:	Date of appointment/ regularization -21.02.2000, date of joining 02.03.2000
		:	Date of retirement - 30.06.2007.
		:	Gratuity claimed from 1978 as contract labourer
		:	Petition allowed as claimed from -01.04.1978 (accounting year) till 30.06.2007.

10	13959/2016	:	Date of appointment/ regularization -21.02.2000, date of joining 02.03.2000
		:	Date of retirement -30.04.2009.
		:	Gratuity claimed from 1978 as contract labourer
		:	Petition allowed as claimed from -01.04.1978 (accounting year) till 30.04.2009.
11	13960/2016	:	Date of appointment/ regularization -21.02.2000, date of joining 02.03.2000
		:	Date of retirement -30.11.2005.
		:	Gratuity claimed from 1978 as contract labourer



		:	Petition allowed as claimed from -01.04.1978 (accounting year) till 30.11.2005.
12	5004/2017	:	Date of appointment/ regularization -29.04.1999.
		:	Date of retirement -30.06.2012.
		:	Gratuity claimed from 1975 as contract labourer
		:	Petition allowed for the service period + 10 years' service prior to the date of appointment as per the appointment order.
13	5005/2017	:	Date of appointment/ regularization -29.04.1999.
		:	Date of retirement -30.06.2012.
		:	Gratuity paid Rs.58,938/- Gratuity claimed from 01.04.1975 as contract labourer.
		:	Petition allowed for the service period + 10 years service prior to the date of appointment as per the appointment order.
14	5006/2017	:	Date of appointment/ regularization -29.04.1999.
		:	Date of retirement -30.06.2011.
		:	Gratuity paid Rs.56,322/- Gratuity claimed from 01.04.1975 as contract labourer.
		:	Petition allowed for the service period + 10 years' service prior to the date of appointment as per the appointment order.

4.It can be seen that the orders passed by the authorities under the Act can be classified into two. In one set of cases, the authorities have allowed the applications as prayed for. As far as the other set is concerned, the applications were partly allowed.

5.For instance, the workman in W.P.(MD) No.5706 of 2014 was issued with an order of appointment dated 01.05.1999. He reached the age of superannuation on 30.06.2008. However, in his application, he claimed that he was working as a Contract labour right from 27.03.1978. The controlling authority drew adverse inference against the Management Corporation and since the Management Corporation did not produce the relevant records, he allowed the claim as prayed for.

6.W.P.(MD) Nos.5706 and 5704 of 2014, 11499 to 11501 of 2016, 10743 and 10744 of 2016, 12950 and 12951 of 2016, 13959 and 13960 of 2016 fall under one category.



7. As far as W.P.(MD) Nos.5004 to 5006 of 2017 are concerned, the authority had allowed the petitions for the period of service after the order of direct engagement was passed and by including 10 years of service prior to the date of appointment/regularisation.

8. The learned counsel for the petitioner Corporation contended that the service put in by the workmen from the date of regularisation till the date of retirement alone can be taken into account for the purpose of computing gratuity dues.

9. This Court is of the view that this contention is not correct. As rightly pointed by the learned counsel for the workmen, the definition of term "employee" as set out in Section 2(f)(3) would definitely include the service even when the load men working under a Maestri. As per the said definition, even the person or authority who has the ultimate control will have to be termed as the employer. Thus, even when the load men were working under the Maestri, it is the petitioner Corporation which certainly had the ultimate control. It is also evident from a reading of the orders of regularisation or appointment that only if the load men had put in at least 10 years of service under the Maestri, they can become the contract employees of the Corporation. That is why the authority in some of the cases took the view that 10 years of service prior to the date of contract appointment will also have to be included as qualifying years of service for computing the gratuity amount. The said approach of the authority cannot be faulted. On the other hand, it is eminently justified. Therefore, this Court has to necessarily dismiss W.P.(MD) Nos.5004 to 5006 of 2017. Accordingly, they stand dismissed.

10. As regards the other cases, it is seen that the applicants/workmen made a claim that they were working with effect from certain dates which was well beyond the period of 10 years prior to the date of regularisation. But, then the workmen did not furnish any proof of having put in such service. As already pointed out, in W.P.(MD) No.5706 of 2014, the individual workman claims that he was working from 27.03.1978. But, the date of regularisation is 01.05.1999. There is nothing on record to show that the workman was working from 23.07.1978 onwards. The controlling authority however drew adverse inference against the Management and allowed the application filed by the workman as such. It cannot be disputed that the onus lies squarely on the workman. An application seeking a direction for payment of gratuity will have to be filed in Form - N. The application in Form No.7 is filed under Rule 10(1) of payment of gratuities Central Rules 1972. Rule 10(2) states that application under sub rule 1 and other documents relevant to such application shall be presented in person to the controlling authority or shall be sent by the registered post. Since the burden of proof and the onus to establish that the petitioner was employed from a certain date lies squarely on the workman, by taking recourse to the power to draw adverse inference, this burden of proof cannot be shifted.



11. In this case, the workmen concerned have miserably failed to establish that they were employed from the dates claimed in their applications. The learned counsel for the Corporation is therefore justified in his contention that the controlling authority had mechanically accepted the claim of the workmen as if it is gospel truth. This Court therefore has to modify the orders passed in W.P. (MD) Nos. 5706 and 5707 of 2014, 10743, 10744, 11499 to 11501 of 2016, 12950, 12951, 13959 and 13960 of 2016. The workmen would be entitled to gratuity for the period of service put in by them from the date of regularisation till the date of their retirement and 10 years of service prior to the date of regularisation which also have to be included while computing the gratuity payable to the workmen.

12. The order impugned in these writ petitions are modified on the above terms. The writ petitions in W.P. (MD) Nos. 5706 and 5707 of 2014, 10743, 10744, 11499 to 11501 of 2016, 12950, 12951, 13959 and 13960 of 2016 are allowed. The controlling authority is directed to work out the gratuity dues payable to the workman in the light of the direction that has been directed above. The balance amount can be withdrawn by the petitioner. No costs. Consequently, all the connected miscellaneous applications are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar.

To

1. THE JOINT COMMISSIONER OF LABOUR, TRICHY.
2. THE ASSISTANT COMMISSIONER OF LABOUR,
OFFICE OF THE ASSISTANT COMMISSIONER OF LABOUR, TRICHY - 20.
3. THE JOINT COMMISSIONER OF LABOUR, MADURAI.
4. THE ASSISTANT COMMISSIONER OF LABOUR, TIRUNELVELI.
5. THE MANAGING DIRECTOR, TAMIL NADU CIVIL SUPPLIES CORPORATION,
THAMBUSAMY STREET, CHENNAI 10.
6. THE ASSISTANT COMMISSIONER OF LABOUR, DINDIGUL.

+14CC to Mr. R. Vijayakumar, Advocate, SR.Nos. 46352 to 46361, 46333,
46326, 46323, 46324
+3CC to Mr. D. Srinivasa Ragavan, Advocate, SR.Nos. 46463 to 46465
+2CC to Mr. M. E. Ilango, Advocate, SR.Nos. 46456 & 46455
+1CC to the Special Government Pleader SR.No. 46869

W.P. (MD) Nos. 5706 and 5707 of 2014, 10743,
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