

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	DELIVERED ON
19-09-2018	26-09-2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**W.A.(MD)No.1247 of 2018**

and

C.M.P.(MD)No.8710 of 2018

1. State Bank of India,
Rep. by The Regional Manager,
Region IV, (Disciplinary Authority),
Disciplinary Proceedings Section,
Administrative Office, Mc Donald Road,
Tiruchirapalli-620 001.
2. The Enquiry Officer,
Chief Manager, State Bank of India,
RASMECC, Office of the State Bank of India,
Tiruchirapalli-1.

: Appellants

Vs.

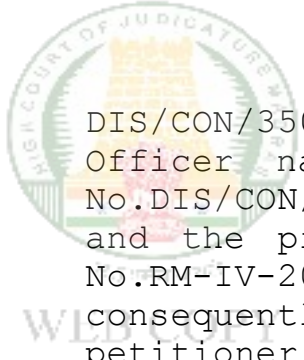
1. M.Raja
2. A.Karunakaran,
Enquiry Officer & Chief Manager,
State Bank of India,
RASMECCC, Office of the State Bank of India,
Trichy-1,
(2nd Respondent is only made as a proforma
party and no relief is sought against the second
respondent)

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 04.06.2018, made in W.P.(MD) No.21275 of 2014.

Prayer in WP(MD)No. 21275 of 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records from the pertaining to the proceedings issued by the first respondent dated 19.09.2018 along with Enquiry report in respect of charge sheet No.DIS/CON/310 dated 20.11.2003,



DIS/CON/350 dated 17.12.2003 issued by the erstwhile Enquiry Officer namely M.Srinivasan, and in respect of charge sheet No.DIS/CON/368 dated 15.12.2004 issued by the second respondent and the proceedings of the first respondent in his proceedings No.RM-IV-2006/84, dated 19.12.2014 and quash the same and consequently direct the first respondent to reinstate the petitioner into service with all attendant benefits including the continuity of service, arrears of salary and allowances to the petitioner.

For Appellants : Mr.Om.Prakash,
Senior Counsel,
For Mr.Pala Ramasamy

For Respondent No.1 : Mr.V.P.Raman,
For Mr.P.Mahendran

J U D G M E N T

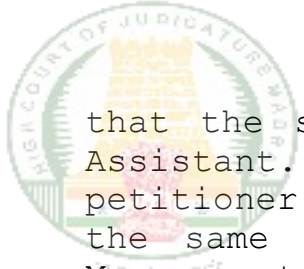
N.SATHISH KUMAR, J.

Aggrieved over the order of the learned Single Judge dated 04.06.2018, in W.P.(MD)No.21275 of 2014, the present Writ Appeal came to be filed by the appellants.

2. The brief facts leading to the filing of the present Writ Appeal are as follows:

The first respondent/writ petitioner was employed as Assistant (Accounts) in Kulithalai Branch of the State Bank of India. He was issued with a charge memo dated 20.11.2003 for alleged preparation of ledger sheets and the ACC cash withdrawal slips in respect of 70 ACC loan accounts, since the relative borrowers are not traceable. Accordingly, charge memo was proceeded on the ground that the first respondent/writ petitioner and others, with an ulterior motive to defraud the bank, prepared false documents and vouchers and caused sanction of loans by the Branch Manager. Prior to the issuance of charge memo, the first respondent/writ petitioner was placed under suspension on 03.03.2002. As many as 17 charges were issued. Necessary explanation was also submitted by the first respondent/writ petitioner.

3. When the matter stood thus, the first respondent/writ petitioner was also issued with another charge memo dated 15.12.2004, in respect of which, he has given a proper explanation. The first respondent/writ petitioner has obtained permission to be represented by one Thiru.M.Rajarathinam in the departmental enquiry as his Defence Representative. The first appellant/Disciplinary Authority passed an order to the effect



that the said Rajarathinam should no longer continue as Defence Assistant. Challenging the same, the first respondent/writ petitioner filed a Writ Petition in W.P.(MD)No.7999 of 2005 and the same was allowed on 16.07.2007. Writ Appeal filed by the Management was also dismissed. However, Review Application filed by the Management was allowed on 13.03.2013, which reached finality.

4. In the meanwhile, for the same set of allegations, prosecution also launched against the first respondent/writ petitioner in C.C.Nos.494 to 496 of 2006. The Management proceeded with the enquiry, in which, the first respondent/writ petitioner has engaged one S.Gunasekhar as his Defence Representative. The first respondent/writ petitioner gave a representation dated 31.12.2013 to the Enquiry Officer requesting him to defer the disciplinary proceedings till the conclusion of the prosecution. As the same has not been considered, he filed another Writ Petition in W.P.(MD)No.679 of 2014 for deferring the departmental action. This Court disposed of the said Writ Petition, with a direction to the Management to pass orders on the representation of the first respondent/writ petitioner. However, the first respondent has already rejected his representation, by his order dated 17.01.2014 and appointed one Thiru.M.Srinivasan as Enquiry Officer. An enquiry was fixed on 04.02.2014. The first respondent/writ petitioner sought an adjournment on medical ground and also submitted a Medical Certificate. However, the said Enquiry Officer submitted an *exparte* enquiry report. Based on that, consequential proceedings dated 05.03.2014 were also issued by the first appellant. Those enquiry report as well as the consequential proceedings were challenged by the first respondent/writ petitioner in W.P.(MD)No.5224 of 2014. The learned Single Judge, by his order dated 23.07.2014, allowed the Writ Petition, wherein at Paragraph Nos.25, 26 and 30, it was held as follows:

"25. The enquiry officer issued a communication to the petitioner on 28.01.2014 intimating him that the enquiry would be conducted at 11.30 a.m., on 04.02.2014. The petitioner, through his letter dated 04.02.2014, expressed his inability to attend the enquiry, on medical ground. The enquiry officer rejected the said request and conducted the enquiry on 04.02.2014 and 05.02.2014 and ultimately, submitted a report holding that the charges 1 to 9, 11 and 13 to 17 were proved.

26. There is no dispute that the petitioner submitted an application for adjournment on 04.02.2014 along with a medical certificate for postponement of enquiry. The endorsement made by the enquiry officer shows that it was received by him on 04.02.2014. The enquiry officer should have passed a speaking order rejecting the said request. In case the enquiry officer



was of the view that there was no reason to accept the adjournment application, he should have given a reasonable time to the petitioner to appear before him along with the defence representative for the purpose of continuing with the enquiry proceedings.

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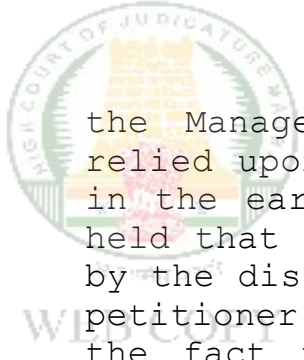
30. The enquiry report dated 04.03.2014 and the consequential show cause notice dated 05.03.2014 issued by the first respondent are set aside and the matter is remitted to the enquiry officer. The enquiry officer is directed to continue the enquiry from the stage at which it stood on 04.02.2014. The petitioner should be given two weeks' time from the date of next posting to appear for the enquiry along with his defence representative. In case the petitioner fails to avail the said opportunity, without any reasonable cause, it is open to the enquiry officer to proceed further, after setting him *exparte*."

5. In the meanwhile, the earlier Enquiry Officer Thiru.M.Srinivasan had retired from service. The new Enquiry Officer Thiru.A.Karunakaran assumed charge. The enquiry was posted on 16.08.2014, 22.08.2014 and 25.08.2014. The first respondent/writ petitioner sought an adjournment on the ground that his Defence Representative Thiru.S.Gunasekhar was not well. However, the Enquiry Officer concluded enquiry and submitted a report dated 10.11.2014. Based on the above report, explanation was called for from the first respondent/writ petitioner, for which, he submitted his explanation on 01.12.2014 and he sought for re-opening of enquiry.

6. When the matter stood thus, the first appellant, by proceedings dated 13.12.2014, proposed the punishment of dismissal from service. Forfeiture of the entire gratuity payable under the Gratuity Act was also proposed. The first respondent/writ petitioner was directed to appear on 18.12.2014 for personal hearing regarding the proposed punishment. Questioning the above proceedings, the present Writ Petition was filed.

7. During the pendency of the proceedings, the first respondent/writ petitioner was dismissed from service, by order dated 19.12.2014. In fact, an interim order was granted in favour of the first respondent/writ petitioner on 23.12.2014. Therefore, the first respondent/writ petitioner amended the prayer by questioning the order dated 19.12.2014 dismissing him from service.

8. The learned Single Judge, considering the earlier Writ Petitions and orders and also the additional affidavit filed by



the Management, found that the subsequent Enquiry Officer has relied upon the earlier report, which was set aside by this Court in the earlier Writ Petition. The learned Single Judge, in fact, held that a report that was quashed by this Court was relied upon by the disciplinary authority to dismiss the first respondent/writ petitioner from service. Taking note of the above facts and also the fact that the cause of action arose in the year 2002 and charge memos were issued on 20.11.2003 and 15.12.2004, this Court held that the order passed is not maintainable. The learned Single Judge also held that the first respondent/writ petitioner was discriminated while imposing punishment.

9. The allegations pertained to processing of loan applications. Apart from the first respondent/writ petitioner, disciplinary proceedings were initiated against the Branch Manager and other officials. The first respondent/writ petitioner, admittedly, was an Assistant. The Branch Managers, Assistant Managers (Accounts) and Officiating Branch Manager, who were responsible for sanction of loans, were let off with minimum punishment. In fact, one of the Branch Managers, viz., S.Padmanabhan was let off with the punishment of Censure. Another Branch Manager, namely M.Vijayakumar was imposed with the punishment for reduction of scale of pay by two stages for a period of two years and the Assistant Manager (Accounts) one R.Palani was let off with Censure. Similarly, K.Thillaivillalan, Officiating Branch Manager, was administratively warned and one R.Venkatesan, Assistant Manager (Accounts) was imposed with the punishment of reduction of scale of pay by one stage for a period of one year. Having taken lenient view against the persons who were actually responsible for sanction of loan, the first respondent/writ petitioner was made a scapegoat and a discriminatory yardstick was applied against him.

10. The learned Single Judge, while allowing the Writ Petition in W.P.(MD)No.21275 of 2014, at Paragraph Nos.21 to 23, has held as follows:

"21. For all these reasons, the impugned order is set aside.

22. This Court is of the view that the petitioner can be permitted to go on voluntary retirement with effect from 04.06.2018. The learned counsel for the petitioner on instructions submitted that the petitioner shall forego 75% of backwages from the date of passing of the dismissal order till today. However, the petitioner will have to be paid the Subsistence Allowance payable to him upto the date of dismissal. The petitioner will be entitled to pension, gratuity and other service benefits.

23. The Writ Petition is allowed on these terms. No costs."



11. Assailing the same, the present Writ Appeal came to be filed.

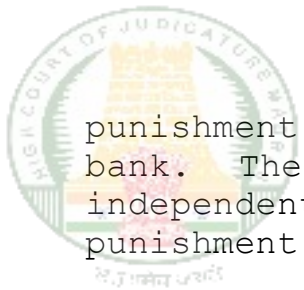
12. The main contention of the appellants is that without exhausting the alternative remedy, Writ Petition is not maintainable. The delay in passing the disciplinary proceedings is only due to various proceedings initiated by the first respondent/writ petitioner. Therefore, the Management cannot be held responsible for the same. It is the further contention that despite several opportunities given during enquiry, the same has not been availed by the first respondent/writ petitioner. Thus, it would not amount to violation of principles of natural justice.

13. Adding further, the learned Senior Counsel for the appellants would contend that the disciplinary authority has applied his mind and perused the enquiry report and passed the dismissal order. The learned Single Judge has not appreciated the facts in entirety. The charges framed against the first respondent/writ petitioner are grave in nature. Hence, it is submitted that the order of the learned Single Judge is not according to law and the same is liable to be interfered with.

14. The learned Senior Counsel appearing for the appellants, in support of his contention, has placed reliance on the following judgments:

- "(i) **Bank of India vs. Apurba Kumar Saha [1994(2) SCC 615];**
- (ii) U.P.State Spinning Co.Ltd., vs. R.S.Pandey and another [2005(8) SCC 264]; and**
- (iii) State Bank of India v. R.Periyasamy [2015(3) SCC 101]."**

15. Per contra, the learned counsel for the first respondent would contend that despite the order passed by this Court on an earlier occasion in setting aside the earlier enquiry report, the same has been followed by the subsequent Enquiry Officer and without giving any opportunity, despite the request made by the first respondent/writ petitioner to defend the charges through his representative, enquiry has been conducted in a hasty manner and the first respondent/writ petitioner was discriminated and removed from service. The finding of the disciplinary authority is nothing but re-production of the enquiry report. He has not applied his mind independently and he has not arrived at a definite conclusion with regard to the findings of the Enquiry Officer. The other officials, who were all responsible for sanction of loan, were let off with lesser punishment. The first respondent/writ petitioner, who was only an Assistant, was discriminated and imposed with major penalty. The entire



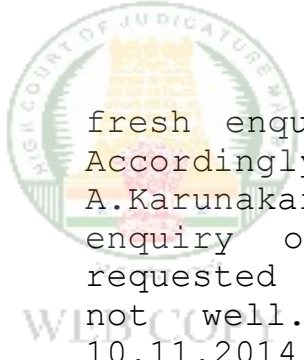
punishment is nothing but pre-determined action on the part of the bank. The disciplinary authority has not passed the order independently assigning the reasons for warranting such major punishment.

16. It is the further contention of the learned counsel for the first respondent that the loan amounts said to have been sanctioned to various people also recovered. Even the affidavit filed by the bank, pursuant to the directions issued by the learned Single Judge, proves the same. That being the position, charging the person, who was in the bottom level in the rank and dismissing him from service, is nothing but discriminatory and it is submitted that the learned Single Judge has taken note of all these facts and allowed the Writ Petition. It is further contended that even before the learned Single Judge, the first respondent/writ petitioner agreed to forego 75% of backwages from the date of passing of the dismissal order till the date of order. According to the learned counsel, even he is prepared to forego 100% of the backwages from the date of passing of the dismissal order till the date of the order passed by the learned Single Judge. Hence, it is submitted that the Writ Appeal lacks *bona fide* and prayed for dismissal of the appeal. In support of his contention, he has relied upon the judgment of the Supreme Court in **Tata Engineering & Locomotive Co. Ltd. v. Jitendra PD.Singh [2001(10) SCC 530]**.

17. We have perused the entire materials placed before us.

18. It is not in dispute that the first respondent/writ petitioner was issued with a charge memo relating to 17 charges. The charges were mainly in respect of sanctioning of loan to various persons. The charges were proceeded under the premise that though the documents were available, loanees are not traceable. The fact that the first respondent/writ petitioner and five others were charged with similar line is not in dispute. Pending charges, as against him, another charge memo dated 15.12.2004 was also issued. The above charge proceeded on the premise that while scrutinizing the documents relating to the charge dated 20.11.2003, the first respondent/writ petitioner has interlineated the documents and vouchers.

19. The factual narration would make it clear that it is also not in dispute that there were two Enquiry Officers appointed by the appellants. After the retirement of Thiru.M.Srinivasan, one A.Karunakaran was appointed as Enquiry Officer. As observed by the learned Single Judge in W.P.(MD)No.5224 of 2004, in paragraph Nos.25, 26 and 30, as referred to above, the enquiry was conducted in a hurried manner and *exparte* report has been filed. This fact is not in dispute. The same was challenged and the enquiry report was set aside by this Court and there was a direction to conduct



fresh enquiry from the stage at which it stood on 04.02.2014. Accordingly, fresh enquiry commenced and the Enquiry Officer A.Karunakaran, on assumption of charge, issued a notice for enquiry on 16.08.2014. The first respondent/writ petitioner requested adjournment on the ground that his representative was not well. However, *exparte* report has been submitted on 10.11.2014. Thereafter, the first respondent/writ petitioner was dismissed from service by order dated 19.12.2014. The learned Single Judge has gone into the factual aspects and found that the finding of the Enquiry Officer is based on the earlier report, which was quashed by this Court. When serious allegations have been made against any delinquent, which has a civil consequence, a reasonable opportunity ought to have been given to the first respondent/writ petitioner, which was not done so not only by the subsequent Enquiry Officer but also the previous Enquiry Officer. Taking note of the above facts, this Court, on an earlier occasion, has set aside the enquiry report and directed fresh enquiry to be conducted from the stage as on 04.02.2014. However, once again *exparte* report has been filed.

20. We have also perused the materials. The alleged loan accounts, in respect of which, charges were framed, most of the loans have been settled. The other delinquents, namely, Branch Managers, Assistant Managers (Accounts) and Officiating Branch Manager were let off with only lesser punishment, i.e., censure, administrative warning, reduction of scale of pay by two stages for a period of two years and reduction of scale of pay by one stage for a period of one year respectively. The first respondent/writ petitioner alone has been dismissed from service. Such serious punishment, in our view, is nothing but discriminatory in nature.

21. In **Tata Engineering & Locomotive Co. Ltd. v. Jitendra PD.Singh [2001(10) SCC 530]**, the Hon'ble Supreme Court, at Paragraph Nos.2 and 3, has held as follows:

"2. On an inquiry being held, the inquiry authority found that the allegation of misconduct is proved and the disciplinary authority on consideration of the report of the enquiry authority and the other relevant material dismissed the first respondent from service. Thereafter, a reference to the Labour Court at the instance of the first respondent was made. The Labour Court though held on a preliminary question that the disciplinary enquiry conducted against the first respondent is valid came to the conclusion after perusing the documentary and oral evidence on record that the dismissal was not justified and held that he was entitled to reinstatement with full back-wages with continuity in service and other consequential benefits.

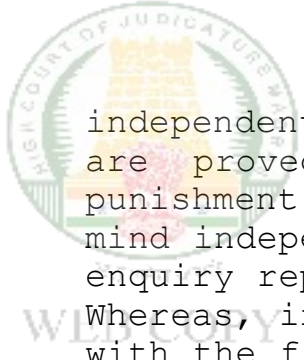


A writ petition was filed in the High Court which was allowed but on the basis of certain offer made, the learned single Judge also directed that the appellant shall pay to the first respondent salary from the date of discharge till the date of the order in a lump sum of Rs. 50,000/-. Thereupon, both the management and the workman filed two appeals. In the appeals several questions were raised as to whether the act attributed to the first respondent would amount to misconduct at all which will entail a disciplinary inquiry at the instance of the management to end up with his dismissal; strong reliance was placed on Glaxo Laboratories (I) Ltd. v. The Presiding Officer, Labour Court, Meerut. Ultimately, however, the two learned Judges were agreed on one aspect of the matter that the question, whether on misconduct attributed to the workman there should have been causal connection between misconduct and employment of the workman may not be of much significance when such acts have taken place within premises of the factory, should be decided in an appropriate case. What influenced the Court in deciding the matter is that:

"Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service."

3. As the judgment is rested upon this position, whatever other views may have been expressed in the course of the judgment may be of no significance. In that view of the matter, we think there is no need to interfere with the order made by the High Court, that too in a proceeding arising under Article 136 of the Constitution. Hence we decline to interfere with the order made by the High Court. The appeals are dismissed accordingly."

22. The above case is squarely applicable to the facts of the present case. In the case on hand, the disciplinary authority, just re-production of the Enquiry Officer's findings, has merely concurred with the findings and held the charge No.2 as proved. The entire order of the disciplinary authority is nothing but re-production of the Enquiry Officer's report. The disciplinary authority has not considered the entire documents and report

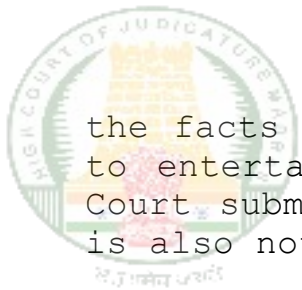


independently and arrived at to find out as to whether the charges are proved or not and the delinquent deserves any maximum punishment. Being the disciplinary authority, he has to apply his mind independently to come to the specific finding on the basis of enquiry report as well as the materials, namely the documents etc. Whereas, in this case, the disciplinary authority simply concurred with the findings of the Enquiry Officer. The reason has also not been assigned by the disciplinary authority to arrive at the finding to concur with the Enquiry Officer's finding. Any punishment on the employee would lead to civil consequences and the decision making authority, particularly, the appointing authority, who decides any matter, which leads to the civil consequences, has to apply his mind independently and arrive at a decision. The disciplinary authority is vested with the power even to review the findings of the Enquiry Officer and arrive his own finding.

23. On perusal of the materials placed on record, it is seen that the disciplinary authority has not passed any order independently applying his mind. It is also one of the grounds on which the disciplinary proceedings stands vitiated, apart from other factual aspects, as found out by the learned Single Judge and also the factual matrix narrated above.

24. No doubt, in the judgment reported in **Bank of India vs. Apurba Kumar Saha [1994(2) SCC 615]**, the Hon'ble Apex Court has held that refusal to participate in enquiry without any valid reason cannot be a ground to plead violation of natural justice. Absolutely, there is no dispute in the above proposition. Whereas, in this case, the factual matrix shows that any Defence Representative appointed by the first respondent/writ petitioner was not allowed to be represented on his behalf in the disciplinary proceedings. Thereafter also, even after submitting Medical Certificate, his request for adjournment was negatived. All these facts clearly indicate that in fact, the first respondent/writ petitioner was not given proper opportunity to defend his case and the disciplinary proceedings concluded hastily. Therefore, the above judgment cited by the learned Senior Counsel for the appellants is not applicable to the facts of the present case.

25. In **U.P.State Spinning Co.Ltd., vs. R.S.Pandey and another [2005(8) SCC 264]**, the Hon'ble Supreme Court held that normally Writ Petition shall not be entertained when the statutory remedy is available under the ID Act, 1947. The learned Single Judge has entertained the Writ Petition and passed the order mainly on the ground that the earlier orders or directions by this Court were flouted and the disciplinary proceedings were concluded hastily and there was discrimination in the case of the first respondent/writ petitioner alone. Hence, we are of the view that



the facts and circumstances of this case would not bar this Court to entertain the Writ Petition. Hence, the judgment of the Apex Court submitted by the learned Senior Counsel for the appellants is also not applicable to the case on hand.

26. In **State Bank of India v. R.Periyasamy [2015(3) SCC 101]**, the Hon'ble Supreme Court has dealt with the manner in which the power of writ can be exercised as against the punishment imposed in the departmental proceedings. The above judgment also is not applicable to the facts of the present case, as the disciplinary authority has also not applied his mind independently and passed the dismissal order and the dismissal order is also discriminatory in nature and the officers, who were placed under similar charges, were given leniency and one of the *defacto* complainants in the criminal prosecution has also faced charges and also gave evidence as against the first respondent/writ petitioner in the domestic enquiry.

27. In view of the facts narrated above, we are of the view that the order of the learned Single Judge does not require any interference at the hands of this Court.

28. However, the learned counsel appearing for the first respondent/writ petitioner would submit that the first respondent/writ petitioner is prepared to forego 100% of backwages from the date of passing of the dismissal order till the date of the order passed by the learned Single Judge.

29. Recording the above submission, the order of the learned Single Judge that the first respondent/writ petitioner shall forego 75% of backwages is modified to the effect that he shall forego 100% of backwages from the date of passing of the dismissal order till the date of the order passed by the learned Single Judge. The other findings of the learned Single Judge are confirmed. Accordingly, the Writ Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is also dismissed.

After pronouncement of the order, the learned counsel appearing for the first respondent would submit that the issue of subsistence allowance will have to be left open, as, according to the first respondent, he is entitled for more.

Considering the above submission, we leave the above issue open.

Sd/-

Assistant Registrar(CO)



+1cc to Mr.P.Mahendran, Advocate Sr.No.86898

+2cc to Mr.Pala Ramasamy, Advocate Sr.No.87353,86857

SML

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Judgment made in
W.A. (MD) No.1247 of 2018

Delivered on:
26.09.2018