



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.17677 of 2013

and

M.P. (MD) Nos.1 & 2 of 2013 and 1 of 2014

U.Yasin

: Petitioner

Vs.

1. The District Collector,
Ramanathapuram,
Ramanathapuram District.
2. The Revenue Divisional Officer,
Paramakudi,
Ramanathapuram District.
3. The Assistant Director,
District Employment Office,
Ramanathapuram,
Ramanathapuram District.
4. The Thasildar,
Taluk Office,
Paramakudi,
Ramanathapuram District.
5. S.Sheik Mukthar,
Village Assistant,
Village Administrative Office,
Pottagavayal,
Paramakudi Taluk,
Ramanathapuram District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order issued by the fourth respondent in his proceedings in ந.க.அ.5/10592-2013 dated 25.06.2013 and quash the same as illegal and consequentially appoint the petitioner as Village Assistant in the Village Administrative Office, Pottagavayal, Paramakudi Taluk, Ramanathapuram District within the period that may be stipulated by this Court.



For Petitioner : Mr.C.Venkateshkumar
For Respondents 1 to 4 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader
For Respondent No.5 : Ms.Abisha Isaac
for Isaac Chambers

WEB COPY

O R D E R

The prayer sought for in this writ petition is for a writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the fourth respondent in his proceedings in ௩௧.௮/10592-2013 dated 25.06.2013 and to quash the same as illegal and consequently appoint the petitioner as Village Assistant in the Village Administrative Office, Pottagavayal, Paramakudi Taluk, Ramanathapuram District.

2.The short facts which are required to be noticed for the disposal of this writ petition are as follows:

2.1.The petitioner having completed 8th standard has been waiting for a suitable job. He belong to the village called Pottagavayal of Paramakudi Taluk, Ramanathapuram District.

2.2.In the meanwhile, on 16.04.2013, a news item appeared in a Tamil Daily, where it was stated that the third respondent was proposing to sponsor candidates with 5th standard pass as a qualification for the appointment to the post of Village Assistant, for the said village, Pottagavayal.

2.3.Following the said proposal, the name of the petitioner, since has already been registered in the third respondent employment exchange, had been forwarded to the fourth respondent for consideration of appointment as Village Assistant. The petitioner was also called to attend an interview with necessary certificates such as community certificate, residence certificate, educational qualification, conduct certificate and other documents. On 19.06.2013, the petitioner attended the interview and thereafter, when the petitioner was awaiting order of appointment as the petitioner is the only person belonging to Pottagavayal village, to his shock and surprise, the fourth respondent has issued the impugned order dated 25.06.2013, whereby the fifth respondent had been appointed as Village Assistant of that village.

2.4.Challenging the said order of appointment of Village Assistant made in favour of the fifth respondent, the petitioner has approached this Court with the present petition with the aforesaid prayer.

3.On behalf of the fifth respondent, counter affidavit has been filed, where it has been averred that the fifth respondent belongs to a village called Emaneswaram, which is also located in the same Paramakudi Taluk and since his name was also sponsored by the third respondent for the said post of Village Assistant of Pottagavayal, he also attended the interview.



4. It is the case of the fifth respondent that he had completed B.C.A. degree as well as B.B.A. degree and with that qualification, he had registered with the third respondent employment exchange even prior to the said registration, in the year 2003 itself i.e., from 02.06.2003, and all along he had been waiting for a suitable job. The fifth respondent has also stated in his counter affidavit that, based on his qualification, the fifth respondent had been considered by the fourth respondent and accordingly, appointment was made as Village Assistant in the said village.

5. I have heard the learned Counsel for the petitioner as well as the learned Additional Government Pleader appearing for the official respondents and the learned Counsel appearing for the fifth respondent.

6. Mr. C. Venkateshkumar, learned Counsel appearing for the petitioner has assailed the impugned order on the ground that the appointment and conditions of service of the post of Village Assistant is governed by Rule 4 of the Tamil Nadu Village Assistant Service Rules. The said rule was framed under the proviso to Article 309 of the Constitution of India and was issued by the Government in G.O. (Ms.) No. 521, Revenue (Ser. VII (2) Department dated 17.06.1998. He would further state that Rule 6 speaks about the educational qualification. Under the heading other qualification under Rule 7, the following has been prescribed:

"7. Other qualifications

a) No person shall be eligible for appointment to the post unless;

i) he is able to ride a bicycle;

ii) he satisfies the appointing authority;

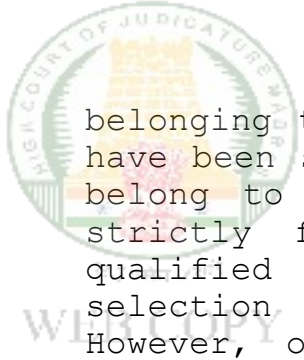
iii) produces a certificate regarding his physical fitness for the post in the Form prescribed under Rule 10 of the Fundamental Rules.

b) No person shall be eligible for appointment to the post if he has more than one spouse living or if such a person has entered into or contracted a marriage with a person having a spouse living.

c) The person appointed to the post shall belong to the Village to which he is appointed or the adjoining village if no suitable candidate is available from that village."

[extracted as such]

7. Relying upon Rule 7(c) as aforesaid, the learned Counsel appearing for the petitioner would submit that under Rule 7(c), since it has been mandated that the person appointed to the post shall belong to the village to which he is appointed or the adjoining village if no suitable candidate is available from that village, the said Rule should have been scrupulously followed by the appointing authority. The learned Counsel would further submit that, in the case on hand, the petitioner is the only candidate

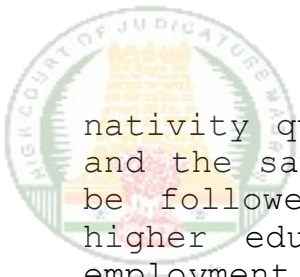


belonging to the said village and all other candidates whose names have been sponsored including the fifth respondent, admittedly, not belong to the said village, and therefore, if the Rule 7(c) is strictly followed, certainly, the petitioner who is otherwise qualified alone should have been eligible to be considered for selection and appointment to the post of Village Assistant. However, omitting the candidature of the petitioner, the fourth respondent had selected the fifth respondent knowing well that he does not belong to the said village, namely, Pottagavayal, for which the post of Village Assistant was made and had selected the fifth respondent for unknown reasons. Therefore, the learned Counsel appearing for the petitioner submits that, the said appointment is unlawful as it violates the mandatory requirement of nativity of the same village as envisaged under Rule 7(c) of the relevant service rules referred to above.

8. The learned Additional Government Pleader appearing for the official respondents has produced the copy of the relevant document from the fourth respondent office and on perusal, it reveals that for the said post of Village Assistant of that village, five eligible persons were called for interview. Since, the said post had been reserved for Backward Class Muslim, all the five candidates were called for interview, as they belong to the said community. However, out of the five, only three attended the interview and remaining two did not attend. Among the three persons who attended the interview which includes both the petitioner as well as the fifth respondent, the fourth respondent had selected the fifth respondent for the reason that even though he does not belong to the same village, considering his age, qualification as well as the employment registration seniority, he was selected. According to the fourth respondent, insofar as the petitioner is concerned, though he belongs to the same village, he did not have the employment seniority and accordingly, his candidature was rejected.

9. By relying upon these documents of the fourth respondent office, the learned Additional Government Pleader would submit that, though Rule 7(c) prescribes that the person to be selected to the post of Village Assistant has to belong to the same village, if there is no suitable candidate available or more suitable candidate is available than the one who belongs to the same village, considering the qualification and other eligibility criteria, the most suitable candidate would be selected. In the case on hand, though the petitioner is having the required educational qualification and belongs to the same village, since the fifth respondent is having higher educational qualification and also having long years of employment seniority, he was considered to be the most suitable candidate and accordingly, his candidature was taken into consideration for selection by rejecting the candidature of the petitioner.

10. Ms. Abisha Isaac, the learned Counsel appearing for the fifth respondent would submit that though, Rule 7(c) prescribed for such a



nativity qualification, the said proposal is only a guiding factor and the same cannot be considered to be the mandatory principle to be followed, leaving the other criteria of a candidate such as higher educational qualification, more suitability for the job, employment seniority etc.,

WEB COPY

11.The learned Counsel appearing for the fifth respondent would submit that, the very prescription of the nativity criteria that too from the same village is in violation of Article 16(2) of the Constitution of India. In support of the said contention, the learned Counsel relied upon the judgment of a Division Bench of this Court in the matter of **S.Manjula Vs. The District Collector, Sivagangai District, Sivagangai and others** reported in **2013 (2) CWC 900**. By relying upon the said judgment, the learned Counsel would submit that since the prescription of nativity has been declared to be violative of Article 16(2) of the Constitution of India in the said judgment, the argument advanced by the petitioner side that Rule 7(c) should have been followed strictly has already lost its significance and therefore, merely on the strength of Rule 7(c), the petitioner cannot claim any priority right to get appointment to the post of Village Assistant.

12.I have heard the learned Counsel appearing for the respective parties and have perused the materials placed before this Court.

13.The only issue which arise for consideration before this Court in this writ petition is as to whether the requirement of nativity as contemplated under Rule 7(c) of the said Rule is to be strictly construed as a mandatory principle or the same can be taken as a directive principle for consideration of candidature for the appointment to the post of Village Assistant.

14.No doubt, Rule 7(c) of the said Rule states that the persons appointed to the post of Village Assistant shall belong to the village to which he is appointed. It further states that if no suitable candidate is available from that village, then the candidate belonging to adjoining villages can be taken into account.

15.If the plain meaning of Rule 7(c) is taken as if, it requires that the candidates belonging to the particular village alone shall be eligible for appointment to the said post of Village Assistant. However, the said interpretation or meaning in the opinion of this Court cannot be given to the said Rule 7(c), in view of the reason that under the very same Rule, Rule 11 speaks about the transfer and posting and the said Rule 11 is extracted hereunder for easy reference:

"11.Transfer and Postings

Every person appointed to the post shall be

liable to be transferred to any place

(i) Within the Taluk by the Taluk Tahsildar

(ii) Within the Revenue Division by the



Revenue Divisional Officer

(iii) Within the District by the District Collector and

(iv) On administrative grounds, outside the district by the Commissioner of Revenue Administration."

[extracted as such]

16. As per Rule 11, the post of Village Assistant is a transferable post and it can be transferred within the Taluk or within the Revenue Division or within the Revenue District or even beyond the Revenue District. Therefore, it becomes clear that persons appointed as Village Assistants in a particular village, can be transferred to any other village belonging to the same Taluk or a Division or District or in some cases on administrative grounds such transfer can also be made outside the Revenue District. Since the transfer is one of the essential service condition of this post also, the element of mandatory requirement allegedly attached with Rule 7(c), in the opinion of this Court, has lost its significance or it may even be called as redundant.

17. Though the stand of the Government as reflected in G.O. (Ms.) No.429, Revenue (Ser 8(1) Department, dated 08.08.2007, has been relied upon by the learned Counsel appearing for the petitioner, whether the said stand of the Government can be reconciled if Rule 11 is pressed into service is also yet another issue to be looked into. Paragraph No.4 of G.O. (Ms.) No.429, prescribed the following:

"4. In the letter 4th read above, the Special Commissioner and Commissioner of Revenue Administration has stated that the post of Village Assistant should be recruited from among the persons who are resident of same village and also know cycle riding. The purpose of selecting local people for the job is that they would be available for officials as well as for the public round the clock and very familiar with the public as well as local issues including land particulars. At the time of any emergencies of Natural Calamities, their services will be very vital in Disaster Management. That is why the Government are very particular about recruiting the Village Assistants belonging to the same Revenue Villages. Further, he has also stated that if we follow 1:1 ratio in getting the candidates sponsored from the Employment Exchange this will delay recruitment process unnecessarily. On the other hand if 1:20 ratio is adopted this problem could easily be sorted out."

[extracted as such]

<https://hcservices.courts.gov.in/hcservices> been envisaged above, if the purpose of selecting local people for the job of Village Assistant is for ensuring their availability both for official as well as the public round the clock



with their familiarity with the public as well as the local issues including land particulars, then no Village Assistants can be transferred from the village for which he has been selected and appointed. As has been referred to above, since transfer is one of the service conditions, even for the said post of Village Assistant, such transfer can be made either within the Taluk or Revenue Division or Revenue District or even beyond the Revenue District, the very reasoning cited at paragraph No.4 of the said Government Order would also lose its significance.

19. Therefore, in order to reconcile the said requirement as indicated at paragraph No.4 of G.O.(Ms.)No.429, and also Rule 11 of the said Rule, it shall only be construed that, whenever selection and appointment is made to the post of Village Assistant, the most suitable candidate belonging to that village can be given priority and when most suitable candidate comes from the neighbouring villages and comparing the suitability of that person with the candidate belonging to the same village, certainly, the authorities can choose the most suitable candidate because merit shall always play a pivotal role in selection to the public employment.

20. The contradiction between Rule 7(c) and Rule 11 had already been noticed by the learned Judge of this Court in a matter in **M. Govindaswamy Vs. The Collector, Office of the Collectorate, Dharmapuri District and another** reported in **2015 SCC Online Mad 4217**. In the said case, the learned Judge of this Court after having gone into the import of Rule 7(c) has held as follows:

"37. Further, the Government should also clarify as to what is the adjoining village, that is, used in Rule 7(c) of the Special Rules. As detailed above, the persons belonging to far off villages are also appointed defeating the present Rule 7(c) of the Special Rules. Further, confining the appointment within the village causes difficulty in the matter of application of rule of reservation also. The village is not taken as a unit for the purpose of reservation. The Taluk is taken as a unit for the purpose of reservation. Hence, the Government can also consider to delete Rule 7(c) of the Special Rules, particularly, since Rule 10 of the Special Rules relating to residence makes it compulsory that the Village Assistant shall reside in the village to which he is appointed and the Rule 11 of the Special Rules provide for transfer of Village Assistants even to other Taluks and District. Hence, I am of the view that the residence within Taluk may be prescribed as a requirement in the Special Rules. It is left to the Government to make suitable amendments to the Special Rules in this regard.



38.I am also of the view that the rule 7(a)(i) of the Special Rules that prescribes that one shall be able to ride a bi-cycle as an eligible condition for appointment to the post of Village Assistant is redundant. It could have been relevant upto the early part of nineties. Thereafter, it is a known fact that even in villages, two-wheelers replaced the bi-cycles effectively. Further, the transportation is not like the one in the olden days and now all the villages, particularly in Tamil Nadu, are well-connected by bus routes and even the remote villages are connected by mini buses. One can take a judicial notice of the fact that even the lost grade servants, like Office Assistants, in the Judicial Ministerial Service within Taluk level Courts do not use bi-cycles and they use two wheelers. It is also a known fact that cycle-rickshaws are replaced by auto-rickshaws. Hence, I am of the view that this Clause 7(a)(i) of the Special Rules is not necessary and the Government may consider to delete this clause in Rule 7 of the Special Rules."

21.I am in complete agreement with the said view expressed by the learned Judge **(Justice D.HARIPARANTHAMAN)**.

22.Probably pursuant to the said judgment, or otherwise, the Government subsequently has come forward to amend the said Rule 7(c) by G.O.(Ms.)No.375, Revenue (Ser 8(1)) dated 19.10.2015. According to the said amendment, Rule 7(c) has been amended as follows:

"No.SRO B-85/2015.

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendments to the Special Rules for the Tamil Nadu Village Assistants Service (Section 53 in Volume III of the Tamil Nadu Services Manual, 1987).

AMENDMENTS

In the said Special Rules, -

(1) for rule 2, the following rule shall be substituted, namely:-

"2.Appointment - Appointment to the post shall be made by direct recruitment after calling for applications through advertisement in news papers, by Tom-Toming and by affixing notices or circulars in all the important Government Offices in the local area apart from calling for list from the Employment Exchange;"

(2) in rule 7,-

(i) in sub-rule (a), clause (I) shall be omitted;

(ii) for sub-rule (c), the following sub-



rule shall be substituted, namely:-

"(c) The person appointed to the post shall belong to the Taluk to which he is appointed".

WEB COPY

R. VENKATESAN
Secretary to Government."
[extracted as such]

23. Therefore, the Government thought it fit to give a suitable amendment to the said Rule 7(c), whereby, the mandatory nature of nativity of the candidate particularly belonging to the same village has been taken away and by virtue of the amendment, it has now been made that candidates belonging to the same Taluk can be considered.

24. However, the learned Counsel appearing for the petitioner would contend that the said amendment was introduced only on 19.10.2015 and it came into effect from 03.09.2014. Whereas the appointment for the present post had been made in the year 2013 ie., on 25.06.2013. Therefore, the subsequent amendment made in Rule 7 (c) will have no bearing on the selection and appointment made prior to the amendment came into effect. No doubt, the amended Rule 7(c) does not have any retrospective effect and also it is a fact that the selection for the present appointment was made and appointment had been given on 25.06.2013 ie., well before the amendment came into being. However, the fact remains that, even under the original Rule, along with Rule 7, Rule 11 also find place. Since the intention of the Rule makers is to ensure that the person who will be appointed as Village Assistant must be in a position to look after the job entrusted to him then and there and whenever his service is called for, he should be immediately available and ready to look into the said job and that is the reason to ensure that the person to be appointed for the post of Village Assistant shall belong to the same village or neighbouring village. At the same time, the rule makers have also made Rule 11, giving transfer policy that the post of Village Assistant is also a transferable job and such transfer can be made within the Taluk or within the Revenue Division or within the District or even beyond that District on administrative grounds.

25. When Rule 7(c) and Rule 11 are put in a juxta-position, whether both Rule reconciled with each other, if it is to be probably, the natural answer would be that those who get appointment as Village Assistant, in general, must belong to the same village and if no suitable candidate is available from the same village or more suitable candidate is available, but does not belong to the same village, but belong to some other villages of the same Taluk, preference can be given to such most qualified candidates. This interpretation of Rule 7(c) even prior to the amendment can be possible, because the rule makers also had made Rule 11 as part of the service condition. If at all the intention of the rule makers is to speak of that persons belonging to the same village or



neighbouring villages alone to be considered in the post of Village Assistant, then there can be no scope for transferring the Village Assistants from that village and if at all transfer is given, he cannot be transferred beyond the neighbouring village ie., at least within the firka and not beyond the firka level.

WEB COPY

26. Realising the difficulty in reconciling with both Rule 7(c) and Rule 11, probably the rule makers had come forward to make the amendment and merely because the amendment has subsequently come into force, not only the eligibility criteria but the consideration of more suitability cannot be brushed aside.

27. It is a settled legal proposition that whenever authorities go for recruitment or selection to public employment, the most suitable candidates or more or most qualified candidates will alone be selected. Merely because candidates applying for such public employment is having the minimum required qualification, that alone shall not be the criteria, making such candidate to claim entitlement to be selected for the said public employment.

28. Here, in the case on hand, the petitioner even though fulfilled the required educational qualification of 5th standard pass (8th standard pass) and belongs to the same village, the fifth respondent is a degree holder and the fifth respondent had enrolled in the employment in the year 2003, whereas, the petitioner enrolled in the year 2013 and only few days prior to the present recruitment. Therefore, considering all these criteria and the qualification and suitability, the fourth respondent, being the selection authority, had selected the fifth respondent for the said post of Village Assistant of that village. The reasons for such selection of fifth respondent and the reasons for rejection of the candidature of the petitioner has been specifically given in the document filed by the learned Additional Government Pleader from the office of the fourth respondent. On perusal of the same, this Court is of the view that the fourth respondent, while making the selection, has not intentionally violated any of the Rules which is governing the selection for the appointment to the said post and no other extraneous or un-lawful reasons can be attributed to the selection authority ie., the fourth respondent who made selection of the fifth respondent.

29. That apart, the criteria of fixing the nativity as a mandatory requirement for consideration of public employment, since has already engaged indulgence of this Court in the afore-cited Division Bench judgment in **S.Manjula's case (cited supra)**, where the Division Bench of this Court has held as follows:

"6. It is well settled position that the appointment of Anganwadi Worker which is a Public Employment, cannot be based on the residence of the candidate. However, in the instant case, it is seen from the file produced by the Second Respondent, in the remarks column, it has been noted parallel to the



name of the Petitioner that she belongs to local place (cs;Sh;). The issue regarding preference based on the village was already considered by this Court in the decision reported in P.Vasantha & others v. The District Collector, Dindigul District, Dindigul & others, 2007 (6) MLJ 402, wherein it is held that giving of such preference based on residents is in violation of Article 16(2) of the Constitution. In Paragraphs 17 & 18, it is held thus:

"17. Therefore, if the contentions of the Petitioners is to be accepted then the preference should be given solely on the basis of the residence, and that will be hit by Article 16(2) of the Constitution. However, considering the fact that the post requires constant attention towards the children and the availability of the person in a nearby area is preferable and a proximity of distance by the eligible candidates may be constitutionally permissible but the selection cannot be solely on the ground of residential preferences to the exclusion of other criteria has to be accepted as it will hit Article 16(2) of the Constitution. As rightly contended by the official Respondents, the proximity of residence/locality is only a preference and not a qualification by itself. Once it is established that none of the selected candidates are otherwise disqualified they cannot be edged out of consideration only on the ground that they were not being the residents of the locality.

18. Further, preferring a candidate from a particular hamlet to the exclusion of candidates from other hamlets in the same Village Panchayat Union or in respect of Panchayat Union Centres preferring the candidates from only one village to the exclusion of other villages living in the same Panchayat Union may also be arbitrary and in many times, it may also result in violating the Communal Roster being followed."

The said order was approved by the Division Bench in W.A.No.1707/2009 by the Division Bench (HLG, CJ & NPV, J) by Judgment dated 1.12.2009. Hence, the action of the respondents 1 & 2 in selecting the Third Respondent only on the basis of her residential parameter without having any other distinguishing factor is definitely in violation of the Constitutional provision contained in Article 16(2) of the Constitution of India.

7. Under such circumstances, we are not inclined



to accept the submission made by the learned Government Advocate, since the Petitioner was residing 3 kms away from the place, where the Anganwadi Centre is situated she is not eligible for the post. Hence, we are of the opinion, the impugned Order is liable to be set aside and accordingly, the same is set aside. The Respondents are directed to consider the case of the Appellant and the third respondent by affording them opportunity of hearing for the appointment to the post of Mini Anganwadi worker at Sethambal Centre, in accordance with law, within a period of six weeks from the date of receipt of a copy of this Order."

30. Though, it has been submitted by the learned Counsel appearing for the petitioner that some contra view had also been taken by yet another Division Bench of this Court on the aforesaid subject of nativity as to whether it violates Article 14 & 16 of the Constitution of India, since, the aforesaid judgment deals exactly the points raised in this writ petition and also in view of the rule makers who made subsequent amendment to the Rule 7(c) itself and also in view of the Rule 11 of the said Rules, this Court is of the considered view that there is absolutely no infirmity in making the selection of the fifth respondent to the post of the Village Assistant. Since, the fifth respondent also belongs to the very same Taluk of Paramakudi Division, he has fulfilled the said criteria of belonging to the same Taluk as per the amended rule.

31. For all the reasons stated above and the discussion herein above made, the impugned selection made in favour of the fifth respondent under challenge is justifiable and sustainable and hence, the writ petition fails.

32. Accordingly, the writ petition stands dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

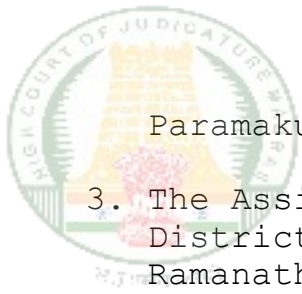
Sub Assistant Registrar (CS-IV)

To

1. The District Collector,
Ramanathapuram,
Ramanathapuram District.

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

2. The Revenue Divisional Officer,



Paramakudi, Ramanathapuram District.

3. The Assistant Director,
District Employment Office,
Ramanathapuram, Ramanathapuram District.

4. The Thasildar,
Taluk Office,
Paramakudi,
Ramanathapuram District.

+ 1 CC TO M/s.ISAAC CHAMBERS, IN SR No. 60131
+ 1 CC TO M/s.AJMAL ASSOCIATES, IN SR No. 59816
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 59930

MR

TE/SKN/SAR-4 : 15/11/2018 : 13P/8C

ORDER MADE IN
W.P. (MD) No.17677 of 2013
04.04.2018