

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.08.2019

Delivered on : 27.08.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

W.A.Nos. 2782 of 2012 and 28, 181 to 183, 1029, 1601, 1602,
1684 and 1956 of 2013

1.State of Tamil Nadu, represented by
The Secretary to Government,
Handlooms, Handicrafts, Textiles & Khadi
Department, Secretariat,
Chennai-600 009.

R1 in WPs 2782/12, 28, 181, 182, 183, 1029,
1601, 1602, 1684 & 1956/13

2.The Chief Conservator of Forests &
Director of Sericulture,
Foulkes Compound, Anaimeedu,
Salem-636 001.

R2 in WP.No. 2782/12, 181 to 183, 1029,
1601, 1602

3.The Director of Sericulture,
249 II,
Agraharam, Salem 636 001.

R2 WA 1684/13 & 1956/13

The Assistant Director of Sericulture,
Parvathanahalli post,
Pennagaram Taluk, Dharmapuri District.

P3 in WA.No. 1956 of 2013

The Chief Conservator of Forests,
Salem 636 001.

P2 in W.A.28/13 & WA 182/13

The Assistant Director of Sericulture,
Pennagaram Dharmapuri District

P3 in W.A. 181/2013

The Director,
Sericulture Department,
Foulker compound,
Anaimeadu,
Salem 636 001.

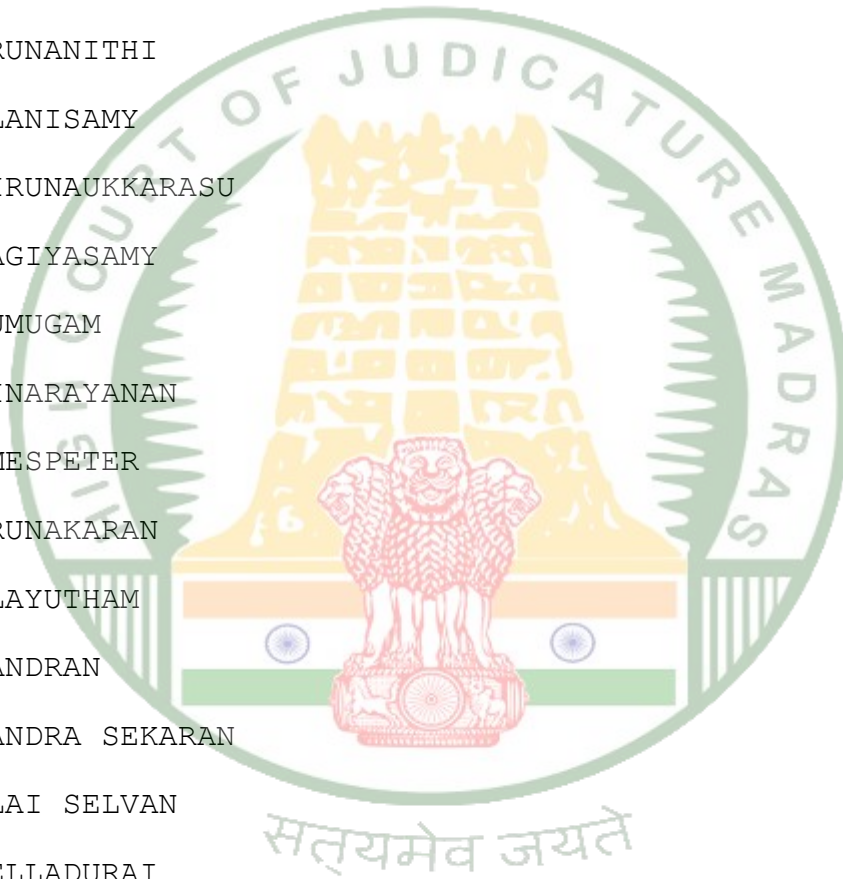
R3 in WA. 28/13 & 182/13

Vs.

M.Anjappa

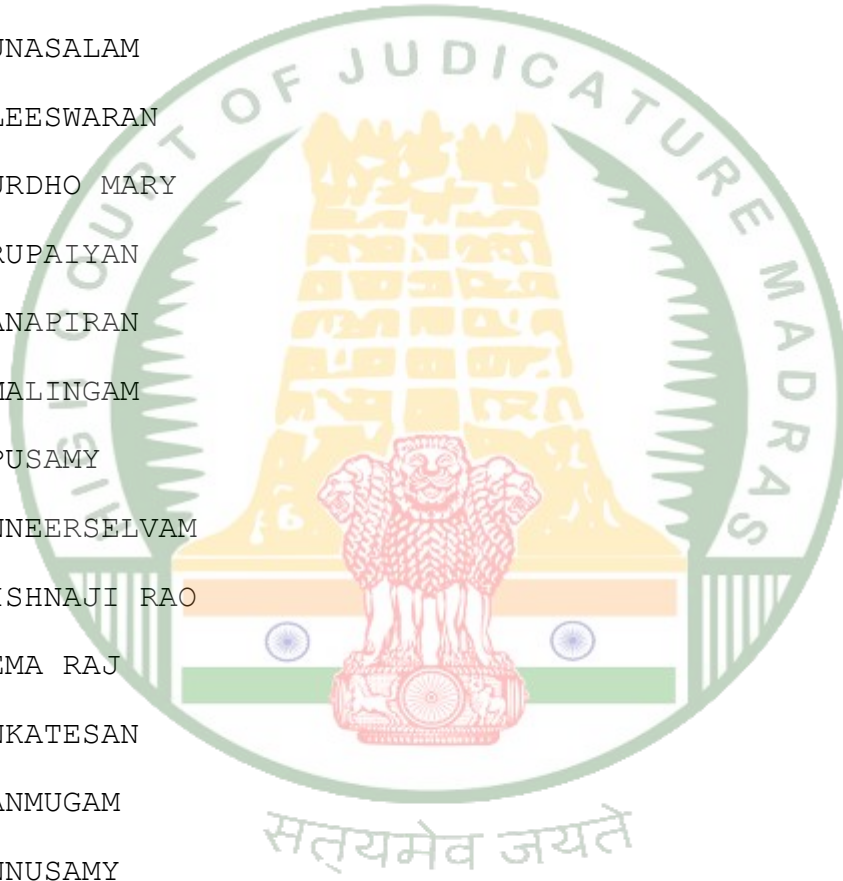
... Respondent in WA. 2782 of 2013

- 1 V. SEKARAN
- 2 G. KARUNANITHI
- 3 M. PALANISAMY
- 4 D. THIRUNAUKKARASU
- 5 J. BHAGIYASAMY
- 6 C. ARUMUGAM
- 7 D. ADINARAYANAN
- 8 A. JAMES PETER
- 9 R. KARUNAKARAN
- 10 K. VELAYUTHAM
- 11 S. CHANDRAN
- 12 S. CHANDRA SEKARAN
- 13 S. KALAI SELVAN
- 14 S. CHELLADURAI
- 15 S. ARILINGAM
- 16 P. RAJENDRAN
- 17 S. CHANDRA SEKARAN
- 18 S. PANDI
- 19 E. KALYANI
- 20 M. K. THIYAGARAJAN



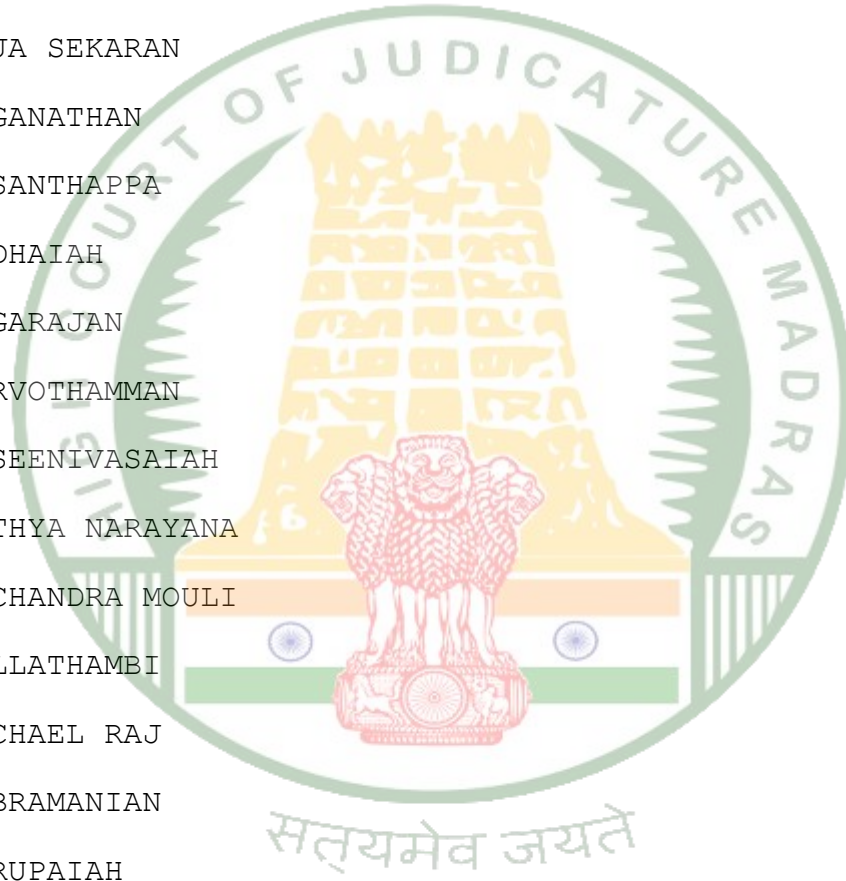
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21 R.ARUMUGAM
22 R.MURUGAIAH
23 V.RAMASUBRAMANIYA RAJA
24 S.LAKSHMANAN
25 S.VENKATASALAM
26 V.JAYALAKSHMI
27 S.ARUNASALAM
28 I.KALEESWARAN
29 M.LOURDHO MARY
30 V.KARUPAIYAN
31 P.GNANAPIRAN
32 G.RAMALINGAM
33 M.APPUSAMY
34 K.PANNEERSELVAM
35 R.KRISHNAJI RAO
36 S.BEEMA RAJ
37 D.VENKATESAN
38 P.SHANMUGAM
39 P.KANNUSAMY
40 S.V.AYYAPPAMURTHY
41 P.CHINNAPPAN
42 S.THANGARAJ
43 P.MUTHIAH
44 R.VELUMANI
45 M.PANEER SELVAM



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46 M.MARAPPAN
47 M.MUTHAIAH
48 S.SAKTHIVEL
49 A.V.MURTHY
50 M.MUNIYAPPAN
51 J.AKASTIN CHELLADURAI
52 P.RAJA SEKARAN
53 S.LOGANATHAN
54 C.S.SANTHAPPA
55 D.MADHAIAH
56 R.NAGARAJAN
57 R.SARVOTHAMMAN
58 T.R.SEENIVASAIAH
59 R.SATHYA NARAYANA
60 T.R.CHANDRA MOULI
61 C.NALLATHAMBI
62 L.MICHAEL RAJ
63 S.SUBRAMANIAN
64 P.KARUPAIAH
65 M.VENKATASAMY
66 A.PITCHIMANI
67 D.SOUNDRAPANDI
68 R.GOVINDARAJAN
69 P.GNANA SEKARAN
70 A.RAMA MURTHY



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71 V.SERALATHAN

72 B.NAGARAJAN

73 S.MOODALI

74 M.C.CHIKKANNA

75 K.VENKATARAMANAN

76 GOPALAKRISHNAN.E.

77 P.JAYAVEL

78 S.MURUGAN

79 M.SRINIVASAN

80 K.MUTHU

81 S.RADHA

82 M.P.SUBRAMANIAN

83 V.MANOCHARAN

84 K. RADHA KRISHNAN

85 S.SAKTHIVEL

86 M.S.PRAKASAM

87 R.SADHASIVAM

RESPONDENTS/PETITIONERS IN WA. 28 OF 2013

1 R.MOHANRAM

2 K.SINGARAVELU

3 M.PARASURAMAN

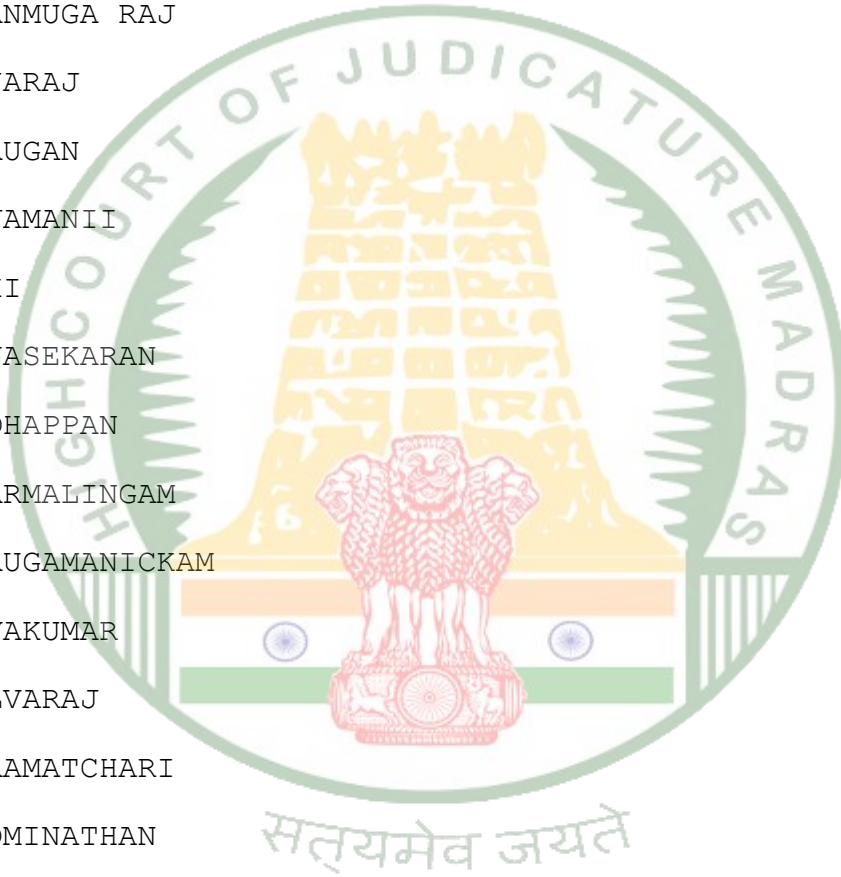
4 R.KUMARESAN

5 K.MANNU

RESPONDENTS IN WA. 181 OF 2013

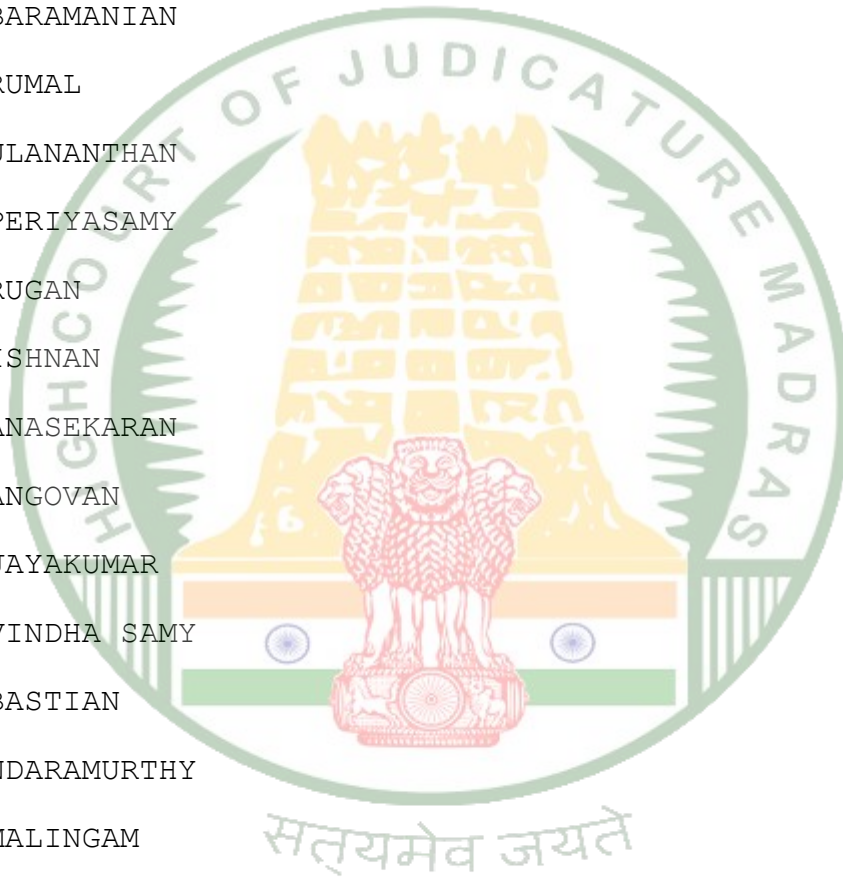
1 P.GOVINDASAMY

2 N.GOPAL
3 R.MANI
4 N.SUNDARAJAN
5 K.MANOCHARAN
6 V.RAMACHANDRAN
7 T.GANESAN
8 R.SHANMUGA RAJ
9 A.JAYARAJ
10 M.MURUGAN
11 S.RAJAMANII
12 K.ADHI
13 G.GUNASEKARAN
14 S.MADHAPPAN
15 P.DHARMALINGAM
16 N.MURUGAMANICKAM
17 V.SIVAKUMAR
18 V.SELVARAJ
19 G.S.RAMATCHARI
20 M.BOOMINATHAN
21 H.A.JOSEPH
22 V.JAGADEESAN
23 V.RAMACHANDRAN
24 J.MARIASOOSAI
25 R.NAGARAJAN
26 M.BASAPPA



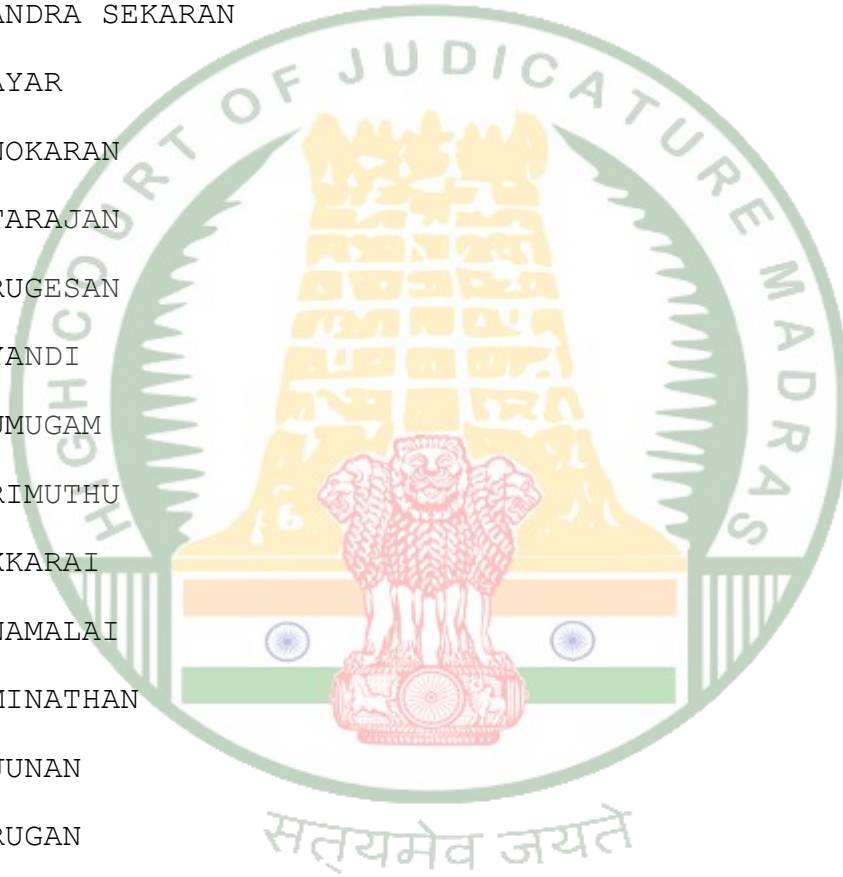
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27 M.NAGABOOSANAM
28 M.THIMMAPPA
29 A.ANANDHAKUMAR
30 G.VENKATESAN
31 K.JAYAKUMAR
32 M.CHENNAKESAVAN
33 P.SUBARAMANIAN
34 M.PERUMAL
35 A.ARULANANTHAN
36 P.K.PERIYASAMY
37 P.MURUGAN
38 K.KRISHNAN
39 A.GNANASEKARAN
40 S.ELANGO VAN
41 S.VIJAYAKUMAR
42 M.GOVINDHA SAMY
43 A.SEBASTIAN
44 M.SUNDARAMURTHY
45 C.RAMALINGAM
46 V.JAYARAMAN
47 R.JAYABALAN
48 K.PASUPATHI
49 R.ULAGANATHAN
50 P.MARIYAPPAN
51 G.ASAITHAMBI



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52 T.RAJAMUTHU
53 M.NAINA MOHAMAD
54 K.SUGUMARAN
55 T.PANDIAN
56 A.RAJ BABU
57 M.KALEESWARAN
58 C.CHANDRA SEKARAN
59 V.UDAYAR
60 I.MANOKARAN
61 A.NATARAJAN
62 M.MURUGESAN
63 M.MAYANDI
64 K.ARUMUGAM
65 E.MARIMUTHU
66 K.SAKKARAI
67 A.ANNAMALAI
68 M.SAMINATHAN
69 A.ARJUNAN
70 A.MURUGAN
71 A.MARIAPPAN
72 A.PERUMAL
73 S.MURUGESAN
74 P.GANAPATY
75 S.SIDDA BAJEE
76 L.KALASAMAPPA



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77 V.MUTHU RAJ

78 M.NARAYANAN

79 P.KANAGARATHINAM

80 K.SUBRAMANIAN

81 CHARLESTHENNARASU

82 A.KANTHA SAMY

83 N.JAYABALAN

84 M.S.CHANDRAMOULI

85 M.RANGASAMY

86 A.PREMKUMAR

87 K.S.PADMANABAN

88 G.VENKATARAMAN RESPONDENTS IN WA. NO 182 OF 2013

1 S.SWAMINATHAN

2 S.THULASIDOSS

3 N.CHANDRASEKAR

4 P.RAJAPPA RESPONDENTS IN WA NO. 183 OF 2013

1 A.FAZULU

2 V.SIVAJI RAO

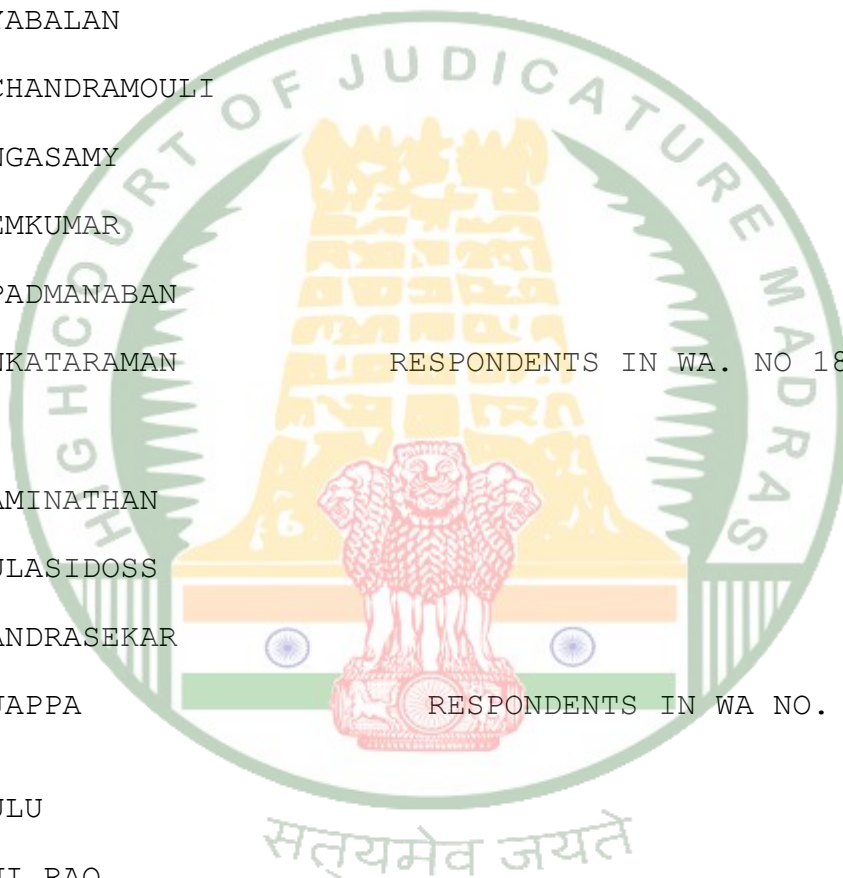
3 V.NARAYANAN RESPONDENTS IN WA.NO. 1029 OF 2013

1 C.POONGOTHAI RESPONDENTS IN WA.NO. 1601 OF 2013

1 M.SYED SULAIMAN RESPONDENTS IN WA.NO.1602 OF 2013

1 R.RAJENDRAN

2 V.GOPALSAMY



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3 S.KANNAN

4 J.RAJENDRAN

5 T.SIVAKUMAR

6 N.SIVAPPA RESPONDENTS IN WA.NO. 1684 OF 2013

1 K.VISWANATHAN

2 A.ALAGESAN

3 R.HARIHARAN

4 C.VENKATACHALAM

5 A.PARAMASIVAM

6 S.R.DHARMALINGAM

7 T.JEGADEESAN

8 R.SREERAM

9 K.E.DEVENDRAN RESPONDENTS IN WA. 1956 OF 2013

Writ Appeal No.2782 of 2012 is preferred under Clause 15 of the Letters Patent against the order dated 29.02.2012 made in W.P.No.28403 of 2011.

Writ Appeal No.28 of 2013 is preferred under Clause 15 of the Letters Patent against the order dated 18.10.2012 made in W.P.No.18031 of 2012.

Writ Appeal Nos.181 to 183 of 2013 are preferred under Clause 15 of the Letters Patent against the common order dated 26.04.2012 made in W.P.Nos.9859, 10548 and 11098 of 2012 respectively.

Writ Appeal No.1029 of 2013 is preferred under Clause 15 of the Letters Patent against the order dated 13.07.2012 made in W.P.No.25690 of 2011.

Writ Appeal Nos.1601 and 1602 of 2013 are preferred under Clause 15 of the Letters Patent against the common order dated 21.08.2012 made in W.P.Nos.24111 and 24112 of 2011.

Writ Appeal No.1684 of 2013 is preferred under Clause 15 of the Letters Patent against the order dated 27.06.2012 made in W.P.No.16076 of 2012.

Writ Appeal No.1956 of 2013 is preferred under Clause 15 of the Letters Patent against the order dated 19.06.2012 made in W.P.No.27719 of 2011.

WP.NO. 28403 OF 2011:

calling for the records relating to the Common Order Rc. No.7477/E2/2011 dt 16.8.2011 issued by the 2nd respondent rejecting the representation made by petitioner and quash the same as being illegal arbitrary and unconstitutional and consequently direct the respondents to extend the benefits of the order of this Honourable Court dt 1.7.2008 in WP No. 28492 of 2006 as confirmed in WA No.1398 of 2008 dt 21.4.2009 and grant all attendant service benefits to the petitioner including monetary benefits award costs.

WP.NO. 18031 OF 2012:

directing the respondents to grant selection grade and special grade to the petitioners by Continuing their entire service as Sericulture Operator/Sericulture Demonstrator and Junior Inspector of Sericulture with all revisions and attendant service benefits to the petitioners including arrears award costs

WP.NO. 9859 OF 2012: Calling for the records relating to the Common Order Rc. No.7477/E2/2011 dt 16.8.2011 issued by the 2nd respondent and quash the same as being illegal arbitrary and unconstitutional and consequently direct the respondents to grant selection grade and special grade to the petitioners by counting their entire service as Sericulture Operator/Sericulture Demonstrator and Junior Inspector of Sericulture with all revisions and attendant service benefits to the petitioners including arrears award costs.

WP.NO. 10548 OF 2012:

Calling for the records relating to the proceedings of the 2nd respondent in Ref. No. RC. No. 30980/E2/2010 dt 18.7.2011 quash the same and consequently direct the respondents to confer selection grade/special grade to the petitioners in the post of Junior Inspector of Sericulture on completion of 10 years/20 years respectively by taking into account the total service put in by them in the post of Sericulture Demonstrator (earlier called as Sericulture Operative) which was re-designated as Junior Inspector of Sericulture and to pay the arrears of salary

with all consequential revision of Pay Pension and all other benefits together with interest within a time that may be stipulated by this Honourable Court

WP.NO. 11098 OF 2012:

directing the respondents to grant selection grade and special grade to the petitioner by counting their entire service as Sericulture Operator/Sericulture Demonstrator and Junior Inspector of Sericulture with all revisions and attendant service benefits to the petitioners including arrears award costs

WP.NO. 25690 OF 2011:

Calling for the records relating to the Common Order Rc.No.7477/E2/2011 dated 16.08.2011 issued by the 2nd respondent rejecting the representation made by the respective petitioners and quash the same as being illegal arbitrary and unconstitutional and consequently direct the respondents to extend the benefits of the order of this Honourable Court dated 1.7.2008 in W.P.No.28492 of 2006 as confirmed in W.A.No.1398 of 2008 dated 21.4.2009 and grant all attendant service benefits to the petitioners including monetary benefits award costs.

WP.NO. 24111 OF 2011:

Calling for the records relating to the Order Rc.No.30980/E2/2011 dated 31.05.2011 issued by the 2nd respondent rejecting the representation dated 9.2.2011 of the petitioner and quash the same as being illegal arbitrary and unconstitutional and consequently direct the respondents to extend the benefits of the order of this Honourable Court dated 01.07.2008 in W.P.No.28492 of 2006 as confirmed in W.A.No.1398 of 2008 dated 21.4.2009 and grant all attendant service benefits to the petitioner including monetary benefits award costs.

WP.NO. 24112 OF 2011:

Calling for the records relating to the Order Rc.No.30980/E2/2011 dated 05.08.2011 issued by the 2nd respondent rejecting the representation dated 4.5.2011 made by the petitioner and quash the same as being illegal arbitrary and unconstitutional and consequently direct the respondents to extend the benefits of the order of this Honourable Court dated 01.07.2008 in W.P.No.28492 of 2006 as confirmed in W.A.No.1398 of 2008 dated 21.4.2009 and grant all attendant service benefits to the petitioner including monetary benefits award costs.

WP.NO. 16076 OF 2012:

to call for records in respect of the proceedings of the 2nd respondent herein dated 16.8.2011 in R.C.No.7477/E2/2011 and

quash the same and consequently direct the respondents to grant Selection Grade in the Post of Junior Inspectors by taking their total service from their initial date of appointment as Sericulture Demonstrators (earlier Operatives) with all revisions and attendant service benefits to the petitioners including arrears award cost.

WP.NO. 27719 OF 2011:

To call for records in respect of the proceedings of the 2nd respondent herein dated 16.08.2011 in R.C.No.7477/E2/2011 and quash the same and consequently direct the respondents to grant Selection Grade in the post of Junior Inspectors by taking their total service from their initial date of appointment as Sericulture Demonstrators (earlier Operatives)

For Appellants : Mr.Aravind Pandian,
in all appeals Additional Advocate General
Assisted by Mr.Shailendran,
Government Advocate

For Respondents in : Mr.C.K.Chandrasekar for R1 in
W.A.Nos.2782 of 2012, W.A. 2782 of 2012 and R1 to R3
1029 & 1601 of 2013 in W.A. 1029 of 2013 & for R1
in W.A.1601 of 2013

For Respondents in : Ms.R.Vaigai S.C., for R1 to R87
W.A.28 of 2013 & in W.A.28 of 2013, for R1 to 5 in
WA 181/13 W.A.183 of 2013 RR1 to R88 in W.A.182 of 2013 &
R1 to R3 in WA.183 of 201

For respondents in : No appearance
W.A.Nos.1602, 1684 &
1956 of 2013

COMMON JUDGMENT

M.M.SUNDRESH, J.

All these appeals involve similar issues, though filed against different orders of the learned single Judges, we deem it appropriate to dispose of them by way of a common judgment.

2. The Department of Sericulture was bifurcated from Industries and Commerce Department with effect from 01.04.1979 as per G.O.Ms.No.236 (Industries Department) dated 28.02.1979. There were originally four categories in existence as per the Special Rules for Tamil Nadu Industries Subordinate Service amended in G.O.Ms.No.1248 (Industries, Labour & Commerce Department) dated 31.03.1958. The following are their categories.

Category - I - Inspector of Sericulture

Category - II - Assistant Inspector of Sericulture

Category - III - Junior Inspector of Sericulture

Category - IV - Sericulture Demonstrator

Category - V viz., Sericulture Operative, was a feeder category for the promotion to the post of Sericulture Demonstrator, which is in category IV. Similarly, category -IV to III, III to II, II to I as per the Government Order.

3. All these respondents before us were originally appointed as Sericulture Operatives. Within few years of their appointment, a decision was made by the appellants to merge the posts of Sericulture Demonstrator and Operative got re-designated as Sericulture Demonstrator. Accordingly, amendment to the Special Rules for Tamil Nadu Industries Subordinate Service was issued under G.O.Ms.No.603, Industries Department dated 08.05.1981. This was done by taking note of the fact that the duties and responsibilities of both posts were almost identical though the scales of pay were different and the post of Sericulture Demonstrator got no supervisory control over the Operatives. Pursuant to the merger, the existing Sericulture Demonstrators were allowed to continue in the scale of pay of Rs.280-5-320-10-450 till the incumbent continues in the said post. The others were in the scale of pay of Rs.265-5-325-10-425. This Government Order was given effect to and accordingly, the respondents became Sericulture Demonstrators.

4. The Department of Personnel and Administrative Reforms (Services) has passed an order in G.O.(Ms) No.898 dated 23.09.1983 while dealing with the awarding of Selection Grade and Special Grade. The effect of amalgamation on the merged post has been dealt with in paragraph vii. As per the said paragraph, in amalgamation of merger posts, a person working in the lower category would be entitled for Selection Grade after completion of 10 years from the date of such merger. It is apposite to place on record the relevant paragraph.

"In amalgamation of merger posts, before such merger of a post (for e.g. Manager) the category carries higher pay merged with lower category with lower pay, in the higher category above selection Grade can be awarded (as usual) and in the case of lower category Selection Grade can be awarded by counting the 10 years period of service from the date of merger."

5. The Government of Tamil Nadu passed an order in G.O.Ms.No.694 (Finance (Pay Cell) Department) dated 11.08.1986 accepting the recommendation of One Man Committee constituted in the G.O.Ms.No.1267, Finance (Pay Cell-I) Department dated 08.12.1985, and accordingly, revised the scale of pay for the category of Sericulture Demonstrator by enhancing the ordinary grade and Selection Grade to be merged with Junior

Inspector of Sericulture. Thus, such a decision was made by the Finance (Pay Cell) Department in tune with the decision made by the appellants to merge the post of Sericulture Demonstrator with that of the Junior Inspector of Sericulture. This was done with effect from 01.10.1984, but the monetary benefits from 01.04.1986. As stated above, the Sericulture Demonstrator was originally under category IV as against Junior Inspector of Sericulture, which came under category-III.

6. Accordingly, the first appellant passed the Government Order in G.O.Ms.No.310, Handlooms, Textiles & Khadi (G1) Department dated 07.11.1987, ordering the merger of the posts of Sericulture Demonstrator with that of the Junior Inspector of Sericulture. Consequently, re-designation was ordered as Junior Inspector of Sericulture by fixing the seniority of the erstwhile Sericulture Demonstrators below the existing Junior Inspector of Sericulture. Therefore, the respondents have got two benefits by way of mergers with the promotional posts from the feeder category. It is needless to state that the scale of pay in the post of Sericulture Demonstrator and Junior Inspector of Sericulture upto 30.09.1984 were different, since the post of Sericulture Demonstrator was obviously a feeder post to that of Junior Inspector of Sericulture. Prior to the merger, whenever a promotion was made to the post of Sericulture Demonstrator to that of Junior Inspector of Sericulture, such promotee was only allowed to the ordinary grade scale, which is normally admissible for promotion to higher cadre. Hence, there is no difficulty to understand from the abovesaid facts, merger has happened by absorption from the feeder category to that of a promotional one. This move is obviously a beneficial one since it paves way for promotion. We may also note that as per the Government Order passed in G.O.Ms.No.68, Personnel & Administrative Reforms (Per-M) Department, dated 23.01.1986, for advancement from the Selection Grade to Special Grade, only an employee, who has put in 10/20 years of service in a particular post alone shall be eligible. The said period of 10 years or 20 years shall only be reckoned from the date of appointment in the said post.

7. The respondents filed writ petitions placing reliance upon similarly placed persons, who have been given favourable orders by taking into consideration the service rendered by them either at the level of Operative or Demonstrator to be counted in the post of Junior Inspector of Sericulture. To put it differently, the respondents want their services rendered in the feeder categories before merger to be counted for the purpose of Selection Grade and Special Grade in the promotional post of Junior Inspector of Sericulture. The learned single Judges allowed the writ petitions by taking note of the fact that the exercise done by way of mergers was only an upgradation

and the appellants are borne by the earlier orders passed in the case of similarly placed persons, which have been given effect to. Challenging the orders passed by the learned single Judges of this Court, these writ appeals are before us.

8. The learned Additional Advocate General appearing for the appellants would contend that the respondents were admittedly appointed as Sericulture Operator in the year 1979. Their posts were merged in the higher category with the higher scale as per G.O.Ms.No.603, Industries Department, dated 08.05.1981. By the subsequent order, further merger has taken place from the post of Sericulture Demonstrator to Junior Inspector of Sericulture. After that, the decision for enhancement in the pay scale was made. That is the reason why, it was given effect to notionally with effect from 01.10.1984 along with the monetary benefit from 01.04.1986. Therefore, from the abovesaid Government Orders and inasmuch the respondents already got promotion by way of merger, their services would start only from the date of their functioning in the post of Junior Inspector of Sericulture alone. Resultantly, they can never be allowed to contend that their services rendered in the post of Operative or Demonstrator will have to be added and factored into in the post of Junior Inspector of Sericulture. The Courts below having considered these aspects while allowing the writ petitions, the earlier orders though implemented would not enure to the benefit of the respondents. Article 14 of the Constitution of India cannot be pressed into service to enforce negative equality. The respondents were only beneficiaries by way of merger. The object of granting Selection and Special Grades is to hold such of those employees, who are languishing for years without actual promotion. Therefore, there is no right vested with the respondents. In support of his contentions, reliance has been made on the judgment of the Apex Court in Vishal Properties (P) Ltd., State of Uttar Pradesh and others ((2007) 11 Supreme Court Cases 172).

9. Ms.R.Vaigai, learned Senior Counsel and Mr.C.K.Chandrasekar, learned counsel appearing for the respondents would submit that the appellants cannot adopt different yardsticks to similarly placed persons. What has been done is an exercise of re-designation and upgradation. The order passed in G.O.Ms.No.694, Finance (Pay Cell) Department dated 11.08.1986 would show that there is a revision of pay scale on par with the Junior Inspector of Sericulture. The learned Senior Counsel appearing for the respondents would also submit that the appellants were of the view that the respondents are entitled for the benefits. They also sought for extension of time. The relief sought for cannot be denied on the ground of delay. In such view of the matter, the order passed by the

learned single Judges are not required to be interfered with. To buttress their submissions, the learned counsel had relied upon the following judgments.

- (i) M.R. Gupta Vs. Union of India and others (1995 (5) Supreme Court Cases 628); and
- (ii) State of Madhya Pradesh and others V. Yogendra Shrivastava (2010 (12) Supreme Court Cases 538).

10. Discussion:

10.1. A decision rendered without a conscious consideration of the issue can never be called as a binding precedent. Article 14 of the Constitution of India speaks about only a positive equality, subject to reasonable restriction. Thus, an illegality cannot be a ground to seek the same treatment by invoking Article 14 of the Constitution of India. Therefore, merely because some of the similarly placed persons have been granted relief pursuant to the orders of this Court, which attained finality, the same ipso facto would not enure to the benefits when subsequently the Court finds such orders have been passed on wrong appreciation of facts and law.

10.2. The aforesaid principle has also been dealt with in Vishal Properties (P) Ltd., State of Uttar Pradesh and others ((2007) 11 Supreme Court Cases 172). The following paragraphs would be apposite.

"13. Even otherwise, Article 14 is not meant to perpetuate an illegality. It provides for positive equality and not negative equality. Therefore, we are not bound to direct any Authority to repeat the wrong action done by it earlier. In Sushanta Tagore & Ors. Vs. Union of India & Ors., (2005 (3) SCC 16), this Court rejected such a contention as sought to be advanced in the present case by observing:-

Only because some advantages would ensue to the people in general by reason of the proposed development, the same would not mean that the ecology of the place would be sacrificed. Only because some encroachments have been made and unauthorised buildings have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments, if any, may be removed in accordance with law. It is trite law that there is no equality in illegality.

14. This view also finds support from the judgments of the this Court in Snehprabha v. State of U.P. & Ors., (AIR 1996 SC 540); Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jam & Ors., (1997 (1) SCC 35), State of Haryana & Ors. v. Ram Kumar Mann, (1997 (3) SCC 321), and Faridabad C.T. Scan Centre v. D.G. Health Services & Ors. (1997 (7) SCC 752).

15. In Finance Commissioner (Revenue) v. Gulab Chandra & Anr. (2001 AIR SCW 4774) this Court rejected the contention that as other similarly situated persons had been retained in service, persons senior to the petitioner could not have been discharged during the period of probation observing that even if no action had been taken in similar situation against similarly situated persons then too it did not confer any legal right upon the petitioner.

16. In Jalandhar Improvement Trust v. Sampuran Singh, (AIR 1999 SC 1347) and Union of India & Ors. v. Rakesh Kumar (AIR 2001 SC 1877), this Court held that Courts cannot issue a direction that the same mistake be perpetuated on the ground of discrimination or hardship.

17. Any action/order contrary to law does not confer any right upon any person for similar treatment. (See: State of Punjab & Ors. v. Dr. Rajeev Sarwal, (1999 (9) SCC 240); Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors., (2003 (3) SCC 548); Union of India & Anr. v. International Trading Company & Anr., (2003 (5) SCC 437) and M/s Anand Button Ltd. v. State of Haryana & Ors. (2005 AIR SCW 67).

18. Recently in State of Kerala v. K. Prasad & Anr. (JT 2007 (9) SC 140), it was inter alia held as follows:

14. Dealing with such pleas at some length, this Court in Chandigarh Administration & Anr. v. Jagjit Singh & Anr. has held that

'8..... if the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the authority to repeat

the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose.

This position in law is well settled by a catena of decisions of this Court. [See: Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & Ors. and Exta Shakti Foundation v. Govt. of N.C.T. of Delhi. It would, thus, suffice to say that an order made in favour of a person in violation of the prescribed procedure cannot form a legal premise for any other person to claim parity with the said illegal or irregular order. A judicial forum cannot be used to perpetuate the illegalities.

19. In view of the factual position, the actions of the respondents are not without sanction of law. Appeal is sans merit, deserves dismissal, which we direct."

10.3. In the case on hand, the respondents joined the services of the appellants as Sericulture Operatives. The post of Sericulture Demonstrator at the relevant point of time was a promotional one and therefore, the posts of 'Operative' was a feeder category. What was done by the Government Order in G.O.Ms.No.603, Industries Department, dated 08.05.1981 was a merger by way of promotion. It was accordingly done by removing the post of 'Operative'. Therefore, the erstwhile 'Operatives' jumped into the next category of 'Sericulture Demonstrator'. This was done by also taking into consideration the stagnation of promotional opportunities to the Sericulture Demonstrators. Therefore, but for the merger, it would have been difficult for an 'Operative' to be promoted as 'Sericulture Demonstrator'. This decision was made on 08.05.1981 and given effect immediately. At that point of time, none of the respondents were working for 10 years or 20 years, as the case may be, entitling them to the Selection or Special Grade. As stated, they were only working for two years in the post of 'Operative' and without any murmur, they accepted the merger. Thereafter, further merger has taken place in G.O.Ms.No.310 Handlooms, Textiles & Khadi (G1) Department dated 07.11.1987. In the said Government Order itself, the earlier order of the Finance(Pay Cell) Department passed in G.O.Ms.No.694 dated 11.08.1986 has been referred. Thus, we have no difficulty in holding that the order passed by the Finance (Pay Cell) Department in G.O.Ms.No.694, dated 11.08.1986 is in tune with the decision taken earlier by the appellants to merge the posts of 'Sericulture Demonstrator' with that of Junior Inspector of

Sericulture. Ultimately, the order was passed in G.O.Ms.No.310, Handlooms, Textiles & Khadi (G1) Department dated 07.11.1987. That is the reason why, the revised scale of pay was ordered with notional effect from 01.10.1984 with monetary benefit from 01.04.1986. From the above, we have no difficulty in holding that both the mergers were with the promotional posts as per the Government Order passed by the Department of Personnel and Administrative Reforms (Services) Department dated 23.09.1983. Clause 7 as we noted earlier would clearly dis-entitles the respondents from counting their services rendered in the feeder category of Operative and thereafter, Demonstrator. We may note, the very object behind it granting selection grade or special grade is only to give more benefit and relief to such of those persons, who are languishing in the feeder category without any minimum chance of promotion. Therefore, if a person is serving in the said post without any promotion for 10 or 20 years, as the case may be, only he will be entitled for selection or special grade. The respondents have filed the writ petitions in the year 2012 seeking to interpret the Government Orders passed in G.O.Ms.Nos.603, Industries Department, 08.05.1982, G.O.Ms.No.694, Finance(PayCell) Department, 11.08.1986, and G.O.Ms.No.310, Handlooms, Textiles & Khadi (G1) Department dated 07.11.1987. We are of the view, certainly, the respondents are not entitled to any relief in the light of the discussion made. They chose to knock the doors of the Court after getting the benefits. But for the orders referred to above, they would not be working as Junior Inspector of Sericulture at the time of filing the writ petitions. The Government Order passed in G.O.Ms.No. 694, Finance(Pay Cell) Department, dated 11.08.1986 is by the Finance Department and not by the appellants. The said order also was passed keeping in mind the order of merger, which followed it. There was a clear indication about the merger. It was accordingly, referred to in G.O.Ms.No.310, Handlooms, Textiles & Khadi (G1) Department dated 07.11.1987. The aforesaid order also clearly says that the post of 'Sericulture Demonstrator' to be merged with the post of Junior Inspector of Sericulture. Thus, we have no hesitation in holding that the orders passed by the learned single Judges cannot be sustained in the eye of law. The Division Bench of this Court, on an earlier occasion, mainly proceeded to hold that inasmuch as the earlier orders were given effect to, the same will have to be followed. Thus, there was no discussion on merit. Hence, we are of the view that the orders passed are required to be interfered with.

10.4. Since we have dealt with the matter elaborately, we are not inclined to go into the delay, laches and acquiescence, which are nothing but principle governing practice and prudence. Therefore, the judgments relied upon by the learned Senior

Counsel appearing for the respondents would not help their case.

10.5. Yet another submission made by the learned Senior Counsel appearing for the respondents is that there should be an element of fairness insofar as the appellants are concerned. Now all the respondents have reached the age of superannuation. Therefore, this Court can exercise its discretion and mould the relief accordingly.

10.6. Any discretion is to be within the ambit of law. When law is pitted against the equity, it has to prevail. Though they can travel on the same channel, their waters do not mix. The learned Additional Advocate General would submit that any benefit given to the respondents would lead to a situation to extend the same to the similarly placed persons. We could understand the situation which the learned Additional Advocate General seeks to impress upon us. However, we find that similarly placed persons were given certain monetary benefits including higher pension. As the appellants are performing public functions and being public authorities, they must extend and exhibit the element of fairness while dealing with the employees working under them. They have also not made any attempt to rectify the error that has crept in the Court orders. As a model employer, the appellants are expected to conduct this with high probity and candour while dealing with these employees. We feel though the respondents are not entitled for any monetary benefit, a situation has been created, by which, similarly placed employees are receiving different pensions. One set of the employees, who got the orders are get higher pensions by counting their service erstwhile categories as against the respondents and others. Therefore, though we are not inclined to grant any monetary benefits, we feel that it would be appropriate to direct the appellants to revise the pension that is being received by the respondents on the same basis, in which, such of those retired employees who got favourable orders from the Court. In this connection, we would like to quote the following paragraph in the judgment of the Division Bench of this Court in S.Valluvan Vs. Tamil Nadu Civil Supplies Corporation ((2013) 6 MLJ 753), in which, one of us (M.M.Sundresh,J.) is also a party.

"10. Fairness in Action:

The matter can be looked at from a different angle as well. An employer is expected to act fairly. The state Government or its instrumentality will have to be a model employer, with high probity and candour to its employees. Considering the said principle, the Honourable Apex Court, in the recent pronouncement in BHUPENDRA NATH HAZARIKA AND ANOTHER V. STATE OF ASSAM AND OTHERS (2013) 2 Supreme Court Cases, 516, has observed

as follows:

"61. Before parting with the case, we are compelled to reiterate the oft stated principle that the State is a model employer and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.

62. Almost a quarter century back, this Court in Balram Gupta V. Union of India had observed thus: (SCCP.236, para13)

"13.... As a model employer the Government must conduct itself with high probity and condour with its employees."

In State of Haryana V. Piara Singh the Court had clearly stated: (SCC p.134, para 21)

"21....The main concern of the Court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16."

11. Accordingly, the orders passed by the learned single Judges are set aside and the writ appeals are allowed in the following manner.

(i) The appellants are directed to revise the pension being received by the respondents applying the same yardstick followed in the case of similarly placed persons, who got favourable orders;

(ii) Appropriate orders will have to be passed within 12 weeks from the date of receipt of a copy of this order.

(iii) The respondents are entitled for revised pension only prospectively i.e., from the date of the orders passed by the appellants.

No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

raa

To

1.The Secretary to Government,
Handlooms, Handicrafts, Textiles & Khadi
Department, Secretariat,
Chennai-600 009.

2.The Chief Conservator of Forests &
Director of Sericulture,
Foulkes Compound, Anaimeadu,
Salem-636 001.

3. The Director of Sericulture,
249, II, Agraharam, Salem.

4. The Assistant Director of Sericulture,
Parvathanahalli Post,
Pennagaram T.K, Dharmapuri District.

5.The Chief Conservator of Forests,
Salem.

6.The Assistant Director of Sericulture,
Pennagaram, Dharmapuri District.

7.The Director,
Sericulture Department,
Foulker Compound,
Anaimeadu,
Salem- 636 001.

+2cc to Mr.R.Vaigai, Advocate, S.R.No. 74343

+1cc to Mr.C.K.Chandrasekar, Advocate, S.R.No. 73157

+1cc to the Government Pleader, S.R.No. 74680

सत्यमेव जयते

W.A.Nos.2782 of 2012 and
28, 181 to 183, 1029, 1601,
1602, 1684 and 1956 of 2013

RV(CO)
GN(03/10/2019)

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