

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.07.2019

Pronounced on : 07-08-2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition No. 9321 of 2019
and
W.M.P. No. 9882 of 2019

S. Natarajan .. Petitioner

Versus

1. The Registrar General
High Court of Judicature at Madras
Chennai - 600 104
 2. The State of Tamil Nadu
represented by its Principal Secretary to Government
Home (Courts-1A) Department
Fort St. George
Chennai - 600 009
- (R2 impleaded as per order dated 26.04.2019
made in WMP No. 12449 of 2019 in WP No.
9321 of 2019) by MVJ & SKRJ ... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order in R.O.C. No. 03/2018-Con.B.2.(ACR) dated 10.12.2018 passed by the first respondent and quash the same and consequently direct the respondents to retain the petitioner in service upto the age of 60 years.

For Petitioner : Mr. P. Wilson, Senior Advocate
for Mr. T.K. Saravanan

For Respondents : Mr. K. Elango for R1

Mr. V. Shanmuga Sundar
Special Government Pleader for R2

ORDER

R. SUBBIAH, J

The petitioner has filed this writ petition to quash the proceedings dated 10.12.2018 of the first respondent, wherein and whereby, he was relieved from the Tamil Nadu State Judicial Service with effect from 10.12.2018 A.N. and to consequently direct the respondents to retain his service upto the age of 60 years.

2. As per the averments made in the affidavit filed in support of the writ petition, the petitioner was initially appointed in the category of Civil Judge - Junior Division by virtue of an order passed by the Government in G.O. Ms. No.21, Home (Courts-1A) Department dated 06.01.1998 followed by a notification No.26 of 1998 passed by the first respondent in R.O.C. No.22/1998 posting the petitioner as District Munsif at Paramakudi. According to the petitioner, his service was regularised as per the order in G.O. (3D) No.289, Home (Courts-1A) Department dated 31.12.2001. Thereafter, the petitioner was posted in various Districts and he rendered his service without any blemish. On 25.06.2009, the petitioner was promoted in the category of Civil Judge (Senior Division) and posted in various Districts, where he discharged his service meticulously without giving any room for any complaint. Further, he was appointed to the category of District Judge (Entry Level) by promotion as per G.O. Ms.No.225 dated 11.06.2015 and in that cadre, he served in various places. While the petitioner was serving as Sessions Judge, Magailr Neethimandram (Fast Track Mahila Court), Tiruvannamalai, the first respondent, by proceedings dated 17.05.2018 allowed the petitioner to continue his service beyond the age of 58 years and upto 60 years, subject to the approval of the Full Court of this Court. It is the further case of the petitioner that after getting extension of service, he was rendering his service satisfactorily with the hope that he would be permitted to continue his service till he attains the age of 60 years. While so, to the shock and surprise of the petitioner, by the proceedings dated 10.12.2018, which is impugned in this writ petition, he was relieved from the services of Tamil Nadu Judicial Service with effect from 10.12.2018. The petitioner has therefore filed this writ petition challenging the order dated 10.12.2018 of the first respondent.

3. The learned Senior counsel appearing for the petitioner would contend that the Administrative Committee of this Court had taken a decision to permit the petitioner to continue in service beyond 58 years until he attains the age of 60 years and at the same time directed to place the matter before the Full

Court of this Court for approval. Though the matter was placed before the Full Court only for a mere approval of the decision taken by the Administrative Committee, the Full Court had taken a decision to relieve the petitioner from judicial service and such a decision is not supported by any material. Therefore, according to the learned Senior counsel for the petitioner, such a decision taken by the Full Court is arbitrary and unreasonable and consequently, the impugned order passed by the first respondent is liable to be set aside. The petitioner was permitted to continue in service beyond the age of 58 years by the Administrative Committee upon considering his unblemished service and pursuant to such a decision, the petitioner had rendered nearly eight months of service after completion of 58 years. Thus, the petitioner's legitimate expectation to continue in service until he attains the age of 60 years has been unreasonably denied and the non-extension of service of the petitioner, in the absence of any material, is nothing but an arbitrary exercise of power by the administrative side of the High Court. According to the learned Senior counsel for the petitioner, the Administrative side of this Court ought to have evaluated the continued utility of the petitioner and taken a decision before the petitioner attains the age of 58 years and not thereafter. In this context, the learned Senior counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of All India Judges Association and others vs. Union of India and others reported in 1993 (4) Supreme Court Cases 288 wherein it was held that the evaluation exercise should be undertaken by the High Court before the attainment of 58 years of age. It was further held that such an assessment is for the purpose of finding out the suitability of the concerned officers for entitlement of the benefit of extension of service beyond 58 years of age. According to the learned Senior counsel for the petitioner, in the present case, having allowed the petitioner to continue his service for eight months beyond 58 years of age, the respondents ought not to have relieved the petitioner from continuing his service until he attains the age of 60 years. Further, it is submitted that in the above decision, the Honourable Supreme Court has held that the enhancement of age of superannuation upto 60 years coupled with the provisions of compulsory retirement at 58 years has introduced a change in service condition. In para Nos. 31 and 32 of this Judgment, the Honourable Supreme Court held as follows:-

"31. The High Court should undertake and complete the exercise in case of officers about to attain the age of 58 years well within time by following the procedure for compulsory retirement as laid down in the respective Service Rules applicable to the judicial officers. Those who will not be found fit and eligible by this standard

should not be given the benefit of the higher retirement and should be compulsorily retired at the age of 58 by following the said procedure for compulsory retirement. The exercise should be undertaken before the attainment of the age of 58 years even in cases where earlier the age of superannuation was less than 58 years. It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective Service Rules.

32. The enhancement of the superannuation age to 60 years coupled with the provision for compulsory retirement at the age of 58 years does introduce a change in the service condition of the existing personnel. There may be judicial officers who are not desirous of availing of the benefit of the enhanced superannuation age, with the condition of compulsory retirement and may like to opt for retirement at the age of 58 years. In such cases, the concerned officers should intimate in writing their desire to retire at the age of 58 years well in advance and in any case before they attain the age of 57 years. Those who do not do so will be deemed to have exercised their option to continue in service till they attain 60 years of age subject to the liability of being retired compulsorily at the age of 58 years according to the procedure for compulsory retirement laid down in the Service Rules."

4. By placing reliance on the above decision, the learned Senior counsel for the petitioner would contend that in this case, since the petitioner was allowed to continue in service beyond the age of 58 years, for a period of eight months, there is a change in the service condition and thereafter, he cannot be relieved by not extending his service.

5. For the very proposition, the learned Senior counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of Bishwanath Prasad Singh vs. State of Bihar and others reported in 2001 (2) Supreme Court Cases 305 to drive home the point that evaluation as to the requirement to continue the service of the Judicial Officers has to be done before attaining the age of 58 years. By placing reliance on

this decision, the learned Senior counsel for the petitioner would contend that the respondents, having permitted the petitioner to continue in service for about 8 months beyond 58 years of age, ought not to have relieved him from service before completion of the balance 16 months of service.

6. The learned Senior counsel for the petitioner also invited the attention of this Court to Rule 9 of The Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 wherein it was held that "All the regulating conditions of service of members of the State Civil Services, made from time to time under any law of the proviso to Article 309 of The Constitution of India shall subject to Articles 233, 233-A, 234 and 235 of The Constitution of India, apply to the members governed by these Rules. By placing reliance on the aforesaid Rules, the learned Senior counsel for the petitioner would contend that the Fundamental Rules made under Article 309 of The Constitution of India governs the conditions of service of the Tamil Nadu Government employees and it is equally applicable to the members governed by the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007.

7. The learned Senior counsel for the petitioner also relied on Rule 56 (1) and 56 (2) of the Fundamental Rules, which relates to retirement on superannuation and compulsory retirement respectively. Rule 56 (1) and (2) of the Fundamental Rules, 2007 reads as follows:-

"56. (1) Retirement on superannuation:- (a)
Every Government servant in the Superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government Servants as well as all basic servants shall retire on attaining the age of sixty years;

Provided further that on and from 1st January 1993, a District Judge, Chief Judicial Magistrate, Subordinate Judge or District Munsif-cum-Judicial Magistrate, who in the opinion of the High Court, Madras has potential for continued useful service

beyond the age of fifty-eight years, shall retire from service on attaining the age of sixty years.

(G.O. Ms. No.365, Personnel and Administrative Reforms (FR-IV) Department dated 4th October 1996 - with effect from 1st January 1993).

(2) Compulsory Retirement:- Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice at any time after he has attained the age of fifty years or fifty five years in the case of Basic Servants, as the case may be, or after he has completed thirty years of qualifying service."

8. The learned Senior counsel for the petitioner, by citing the above proviso, would contend that the second proviso to Rule 56 (1) was brought by way of an amendment vide G.O. Ms. No.365, Personnel and Administrative Reforms (FR-IV) Department dated 04.10.1996 with effect from 01.01.1993 and such amendment came to be made as per the directions given by the Honourable Supreme Court in the All India Judges case mentioned supra. It is further contended that in this case, only Rule 56 (1) and (2) of Fundamental Rules would apply to the matter concerning retirement and compulsory retirement to the members governed by the Tamil Nadu State Judicial Service (Recruitment and Cadre) Rules, 2007 and the conditions contemplated under Rule 56 (1) are different from Rule 56 (2). Thus, the learned Senior counsel for the petitioner submits that Rule 56 (1) mandates every Government servant in the superior service to retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. As this Rule applies to Judicial Officer, the petitioner shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. Further, as per second proviso to Rule 56 (1) a District Judge, Chief Judicial Magistrate, Subordinate Judge or District Munsif-cum-Judicial Magistrate, who, in the opinion of the High Court, Madras, has potential for continued useful service beyond the age of fifty eight years, shall retire from service on attaining the age of sixty years. Therefore, according to the learned Senior counsel for the petitioner, there is no retirement contemplated under Rule 56 during the period commencing after the last day of the month in which the officer attains the age of fifty-eight years and before the day of attaining the age of sixty years. As regards compulsory retirement, Rule 56 (2) provides that if the

appropriate authority is of the opinion that it is in the public interest to do so, then the appropriate authority will have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice at any time after he has attained the age of fifty years or fifty five years in the case of Basic Servants, as the case may be, or after he has completed thirty years of qualifying service. Thus, (i) formation of opinion by the appropriate authority (ii) public interest and (iii) notice of not less than three months in writing or three months' pay and allowance in lieu of such notice are essential ingredients contemplated under Rule 56 (2). If the case of the petitioner is to be covered under compulsory retirement, the order passed by the first respondent did not contain anything about the necessity of public interest and therefore it is not sustainable. Further, neither a three months' notice in writing nor three months' pay and allowance in lieu of such notice was given to him and therefore, the case of the petitioner will not fall under compulsory retirement also. In this case, since the petitioner was permitted to continue his service for eight months beyond the age of 58 years, there is a change in condition of service and therefore, thereafter, the petitioner can be relieved only by way of compulsory retirement, if there is public interest and he cannot thereafter be relieved otherwise.

9. Countering the submissions of the learned Senior counsel for petitioner, the learned counsel for the first respondent would contend that the Administrative Committee of this Court considered the case of the petitioner for extension of service, when he was likely to attain the age of superannuation on reaching 58 years. In other words, even before the petitioner reached the age of 58 years, a decision has been taken by the Administrative Committee, by considering the guidelines issued in W.P. (C) No. 1022 of 1989 and Review Petition No. 249 of 1992 in W.P. (C) No. 1022 of 1989, by the Honourable Supreme Court and resolved to extend the services of the petitioner beyond the age of 58 years and upto 60 years, however, it was made clear that such decision is subject to approval to be accorded by the Full Court of this Court in this regard. However, when the Full Court meeting was convened on 04.12.2018, it was resolved not to extend the service of the petitioner beyond 58 years and accordingly, the petitioner was relieved from the Tamil Nadu State Judicial Service with effect from 10.12.2018. When the Full Court of this Court resolved not to extend the service of the petitioner and he was relieved from service on 10.12.2018, it is futile on the part of the petitioner to contend that he had rendered 8 months service beyond the age of 58 years and therefore he must be permitted to continue for the remaining period until he attains the age of 60

years. The petitioner cannot, as a matter of right, assert that he is entitled to be retained in service and it is subject to the approval to be accorded by the Full Court of this Court.

10. The learned counsel for the first respondent proceeded to contend that even in the decision relied on by the learned Senior counsel for the petitioner in Bishwanath Prasad Singh case, in para No.4, it was held that if the High Court finds a judicial officer not entitled to the benefit of extension of service beyond the period of his superannuation, he would retire at the age of superannuation as per the Service Rules. Further, it was held that such retirement cannot be construed as a compulsory retirement in the sense of its being passed as a measure of penalty in disciplinary proceedings or even by way of 'compulsory retirement' in public interest. It was also held that in such event, the right of the judicial officer is not taken away. Therefore, as enunciated by the Honourable Supreme Court in the above referred decision, the refusal to extend the petitioner's service beyond the age of 58 years cannot be construed as a punishment in a disciplinary proceedings and it is a discretionary decision taken by the Full Court of this Court.

11. The learned counsel for the first respondent further contended that the members of the Administrative Committee, who have taken a decision to extend the service of the petitioner beyond the age of 58 years, are also members of the Full Court, who have taken a decision not to extend the service of petitioner and such a decision of the Full Court cannot be subjected to judicial review at the instance of the petitioner. The learned counsel for the first respondent also relied on the decision of the Honourable Supreme Court in the case of S.D. Singh vs. Jharkhand High Court, through Registrar General and others reported in (2005) 13 Supreme Court Cases 737 wherein in para No.13, the Honourable Supreme Court has relied on the earlier decision rendered in Syed T.A. Naqshbandi vs. State of J & K, (2003) 9 SCC 592, in which it was held as follows:-

"13. Neither the High Court nor this Court, in exercise of its power of judicial review, could or would at any rate substitute themselves in the place of the Committee/Full Court of the High Court concerned, to make an independent re-assessment of the same, as if sitting on an appeal. On a careful consideration of the entire materials brought to our notice by learned counsel on either side, we are satisfied that the evaluation made by the Committee/Full Court forming their unanimous opinion is neither so arbitrary or capricious nor can be said to be so irrational as to shock the conscience of the Court to warrant or justify any interference. In

cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be overblown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court, to judicial review except in an extraordinary case when the Court is convinced that some monstrous thing which ought not to have taken place has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court."

12. By placing reliance on the above decision, the learned counsel for the first respondent would contend that the decision taken by the Full Court of this Court cannot be subjected to judicial scrutiny at the instance of the petitioner and he prayed for dismissal of the writ petition.

13. We have heard the counsel for both sides and perused the materials placed on record. The main contention of the learned Senior counsel for the petitioner is that the petitioner was permitted to continue beyond the age of 58 years for about eight months pursuant to a decision taken by the Administrative Committee of this Court and the sudden refusal to continue the rest of the period until the petitioner attains 60 years had in fact clipped the legitimate expectation of the petitioner to continue such service and it would amount to change in service conditions. In this context, the learned Senior counsel for the petitioner placed reliance on the decision of the Honourable Supreme Court in All India Judges Association Case mentioned supra to contend that a decision to continue in service beyond the age of 58 years ought to have been taken before the petitioner reach the age of 58 years and having permitted him to continue the service beyond the age of 58 years for about 8 months, the first respondent is not justified in relieving the petitioner from the service. The learned Senior counsel for the petitioner also placed reliance on Rule 56 of the Fundamental Rights as well as Article 309 of The Constitution of India in support of his case.

14. Article 309 of The Constitution of India deals with recruitment and conditions of service of persons serving the Union or a State, it reads as follows:-

"309. Recruitment and conditions of service of persons serving the Union or a State:- Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the

recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State;

Provided that it shall be competent for the President of such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

15. It is evident that Article 309 of The Constitution of India confers certain power on the President of the Country and the Governor of the State, as the case may be, with respect to regulating the recruitment and conditions of service of certain persons appointed to certain cadre. Accordingly, the second proviso to Fundamental Rules 56 (1) was introduced making it applicable to the members governed by Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007. The second proviso was brought in by way of amendment on 04.10.1996 with effect from 01.01.1993, with an intention to give effect to the direction given by the Honourable Supreme Court to extend the service of the judicial officers, if, in the opinion of the High Court, an officer has the potentiality to serve beyond the age of 58 years. A reading of Rule 56 of Fundamental Rules would show that every government servant in the superior service will retire on the last day of the month on attaining the age of 58 years. However, for the Judicial Officers, their extension of service depends on their potentiality to serve beyond the age of 58 years and such potentiality will be assessed and evaluated on various aspects by the High Court i.e., Full Court of the High Court as contemplated under the second proviso to Rule 56 (1) of The Fundamental Rules. The words used in Rule 56 (1) is clear and explicit that the extension of a judicial officer is based on "the opinion to be formed by the High Court". The words "in the opinion of the High Court" could be interpreted in such a way that a discretion is conferred to the High Court to evaluate and decide as to whether a particular officer is having the potentiality to serve beyond 58 years and therefore he or she can be permitted to continue in service. Such a discretionary powers to be exercised by the Full Court to either continue or discontinue the service of a judicial officer beyond the period of his or her 58 years, being the age of retirement, cannot be

subjected to judicial review.

16. In the present case, before the petitioner could attain the age of retirement, being 58 years, the Administrative Committee of this Court extended his service beyond the age of 58 years until he attains the age of 60 years. However, while extending the service of the petitioner, as per the decision taken by the Administrative Committee, the first respondent, in the order dated 17.05.2018 has clearly indicated that "Accordingly, as directed above, Thiru. S. Natarajan, formerly XIV Additional Judge (CBI Cases), City Civil Court, Chennai, now functioning as Sessions Judge, Magailr Neethimandram (Fast Track Mahila Court), Thiruvannamalai, is permitted to continue in service beyond the age of 58 years and upto 60 years, subject to approval of the Honourable Full Court. (emphasis supplied). It is evident from the order dated 17.05.2018 of the first respondent that the extension of service conferred to the petitioner beyond the age of 58 years is not without any pre-condition, rather, it was subject to the outcome of or a decision to be taken by the Full Court of this Court, meaning thereby, the petitioner may or may not be permitted to continue in service beyond the period of 58 years, as, such continuance is subject to the decision of the Full Court. It is also an admitted fact when the Full Court was convened on 04.12.2018, it was unanimously resolved that the services of the petitioner beyond the age of 58 years need not be continued and therefore, he was relieved from service from the date of communication of the decision of the Full Court on 10.12.2018. The extension of service beyond the age of retirement i.e., 58 years is a benefit conferred on the judicial officer, subject to assessment of his or her potentiality, by forming an opinion thereof by the High Court. Hence, the petitioner, as a matter of right, cannot be permitted to seek interference of such a discretionary decision by this Court especially when there is no procedural violation in such decision making process.

17. It is vehemently contended by the learned Senior counsel for the petitioner that there is no material available to the Full Court, which resulted in the discontinuance of service of the petitioner beyond the age of 58 years. We are not inclined to accede to such submission of the learned Senior counsel for the petitioner. At the first blush, when the Full Court of this Court unanimously resolved not to extend the service of the petitioner beyond the age of 58 years, it cannot be subjected to judicial review. Moreover, the Full Court always will be in possession of all the requisite records in relation to the service of the petitioner, from the date of his appointment till his retirement. Therefore, it cannot be gainsaid that the Full Court has taken such a decision to discontinue the service of the petitioner without any material

records. In any event, such a decision taken by the Full Court cannot be re-appreciated by this Court in exercise of powers conferred under Article 226 of The Constitution of India. The judicial review over such decision of the Full Court is very limited. Only when there is a procedural violation in the decision making process, this Court can interfere. In this case, the Administrative Committee of this Court decided to extend the service of the petitioner beyond 58 years subject to approval of the Full Court and thereafter, it was placed before the Full Court along with the service particulars of the petitioner. After discussion on the subject, the Full Court decided not to extend the service of the petitioner beyond 58 years. We do not find any procedural violation in the decision making process to discontinue the service of the petitioner beyond the age of 58 years. Hence, judicial review over such decision taken by the Full Court is legally impermissible and consequently, no relief can be granted to the petitioner in this writ petition.

18. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

rsh

To

1. The Registrar General
High Court of Judicature at Madras
Chennai - 600 104
2. The Principal Secretary to Government
The State of Tamil Nadu
Home (Courts-1A) Department
Fort St. George
Chennai - 600 009

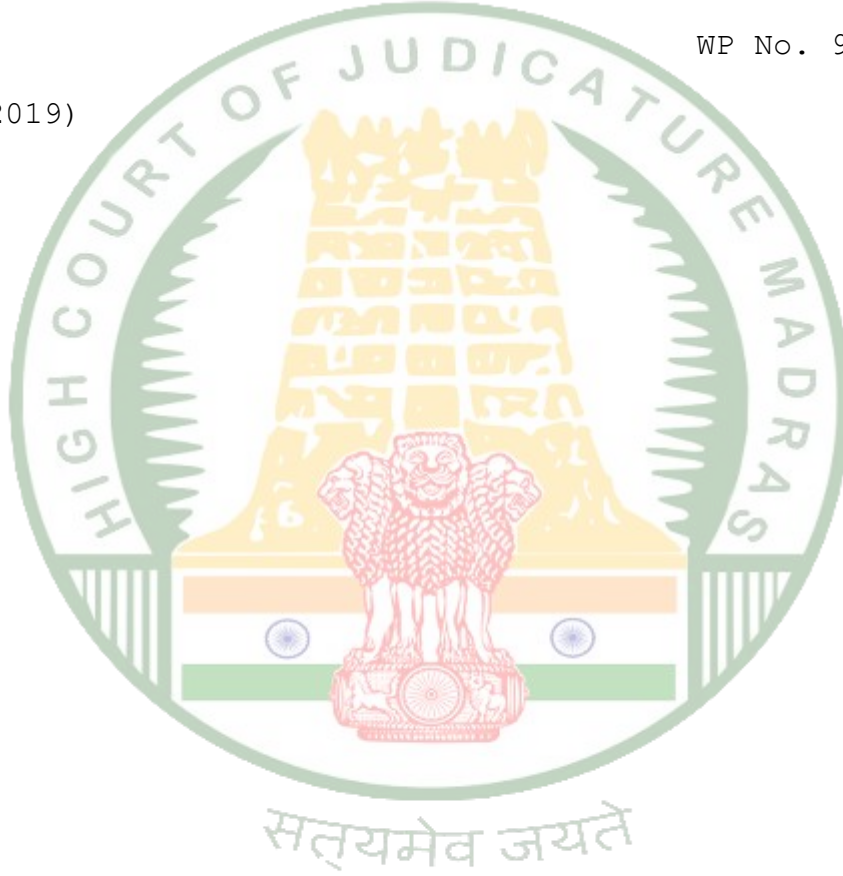
Copy TO

1. The Section Officer,
'B' Section,
High court, Madras.
2. The Section Officer,
Legal Cell, High Court,
Madras.

+1cc to Mr.T.K.Saravanan, Advocate, S.R.No. 67295

WP No. 9321 of 2019

NRL (CO)
GN (16/08/2019)



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