

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.18387, 18388, 18874 & 18875 of 2018  
and

W.M.P.Nos.21696, 21699, 22258, 22261, 23005 & 23006 of 2018

1.V.M.Madhusoodhanan  
2.S.Senduran  
3.S.Arunachalam  
4.K.M.Gopal  
5.K.Gurusamy  
6.S.Gandhi  
7.G.Mani

...Petitioners in W.P.No.18387 of 2018

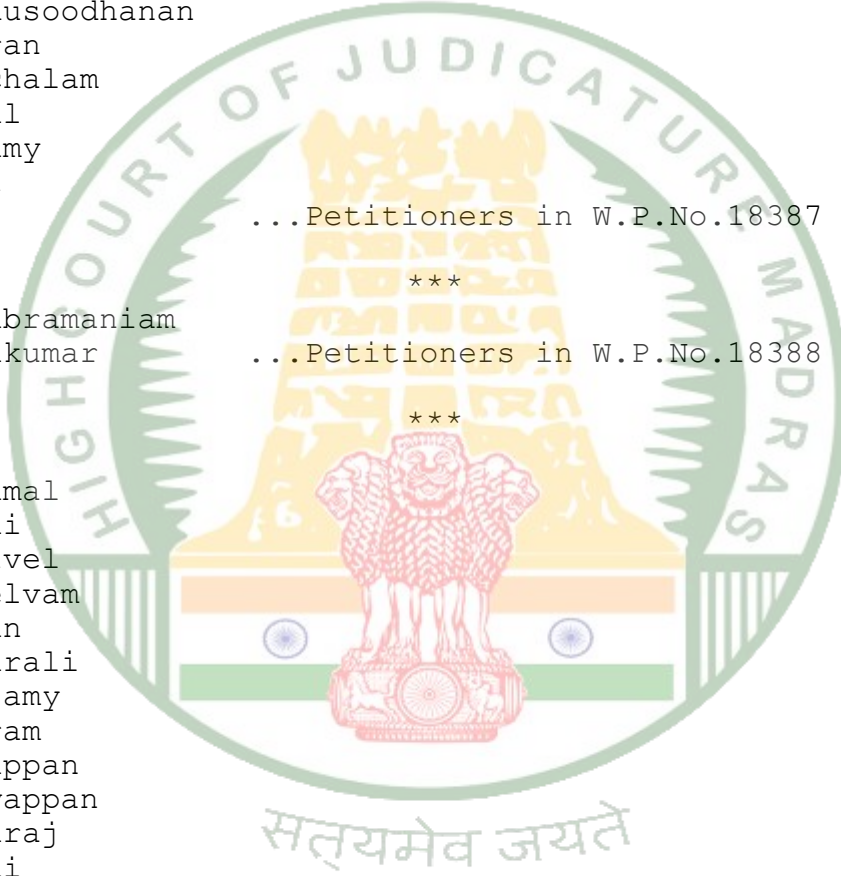
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1.V.Balasubramaniam  
2.P.Vijayakumar

...Petitioners in W.P.No.18388 of 2018

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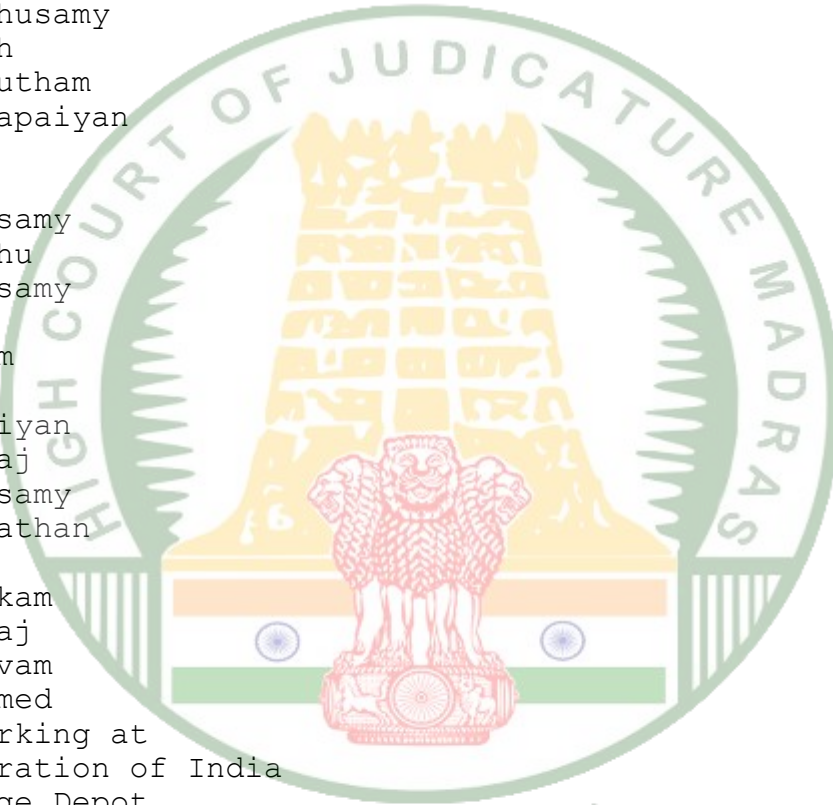
1.K.K.Perumal  
2.P.Ammasai  
3.P.Sakthivel  
4.M.mariselvam  
5.M.Murugan  
6.M.Khadharali  
7.C.Periasamy  
8.P.Sundaram  
9.M.Pachiappan  
10.K.Kaliyappan  
11.R.Selvaraj  
12.N.Palani  
13.R.Thampan  
14.S.V.Shanmuga Raja  
15.K.Arumugan  
16.B.Rangasamy  
17.K.Udaiyar  
18.R.Palanivel  
19.A.Kannan  
20.R.Pachiappan  
21.M.Seerangan  
22.O.Arumugam  
23.G.Kandan  
24.P.Sadhasivam



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25.P.Rajendran  
26.D.K.Perumal  
27.N.Venugopal  
28.P.Kuppusamy  
29.C.Subramani  
30.P.Mahalingam  
31.M.Nagaraj  
32.R.Selvan  
33.K.Bhoopathy  
34.S.Murukesan  
35.K.M.Balan  
36.M.Paulraj  
37.M.M.Muthusamy  
38.C.Madesh  
39.M.Velayutham  
40.R.Chinnapaiyan  
41.N.Rajan  
42.E.Ramer  
43.K.Rangasamy  
44.D.P.Madhu  
45.K.Muthusamy  
46.S.Rajan  
47.S.Selvam  
48.P.Madhu  
49.P.Kannaiyan  
50.K.Devaraj  
51.S.Rangasamy  
52.K.Jaganathan  
53.N.Mani  
54.N.Manikkam  
55.K.Chinraj  
56.S.P.Selvam  
57.S.Mohammed

All are working at  
Food Corporation of India  
Food Storage Depot,  
Peelamedu  
Coimbatore-4.



..Petitioners in W.P.No.18874 of 2018

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1.T.Vasanthamani  
2.R.Kumar  
3.G.Ramesh  
4.M.Murugan  
5.L.Muthusamy  
6.S.R.Kathiravan  
7.S.Maheswari  
8.P.Lalitha  
9.N.Lakshmi

10.S.Poun  
11.B.Leelavathi  
12.R.Rajammal  
13.K.Vanaja  
14.K.Saraswathi  
15.A.Gowriammal  
16.M.Eswari  
17.C.Mani  
18.R.Kalamani  
19.M.Baggiyam  
All are working at  
Food Corporation of India  
Food Storage Depot,  
Peelamedu  
Coimbatore-4.

..Petitioners in W.P.No.18875 of 2018

vs

- 1.The Food Corporation of India,  
Rep.by its Chairman/Managing Director,  
No.16 to 20, Barakhamba Lane,  
New Delhi - 110 001
- 2.The Executive Director,  
Food Corporation of India,  
Zonal Office-South,  
Opp.to Sastri Bhavan,  
No.3, Haddows Road,  
Chennai - 600 006
- 3.The General Manager-Tamil Nadu  
Food Corporation of India,  
No.8, Sathyamoorthy Road,  
Chepet,  
Chennai - 600 031.
- 4.The Area Manager,  
Food Corporation of India,  
District Office,  
TATABAD,  
Coimbatore.

... Respondents in all W.Ps

Prayer in W.P.No.18387 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3<sup>rd</sup> respondent in connection with the impugned Transfer Order dt.27.06.2018 in reference No.IR(L)/25(5)/P&T/DPS/RO/2018 and quash the same as far as the petitioners 1 to 7 are concerned and direct the 1<sup>st</sup> respondent to refrain from transferring

petitioners 1 to 7 from peelamedu FSD to any other Depot till they are paid salary, allowances, perquisites, etc., equal to the FCI Departmental labour.

Prayer in W.P.No.18388 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3<sup>rd</sup> respondent in connection with the impugned Transfer Order dt.27.06.2018 in reference No.IR(L)/25(5)/P&T/DPS/RO/2018 and quash the same as far as the petitioners 1 and 2 are concerned and direct the 1<sup>st</sup> respondent to refrain from transferring petitioners 1 and 2 from Peelamedu FSD to any other Depot till they are paid salary, allowances, perquisites, etc., equal to the FCI Departmental labour.

Prayer in W.P.No.18874 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3<sup>rd</sup> respondent in connection with the impugned Transfer Order dt.27.06.2018 in reference No.IR(L)/25(5)/P&T/DPS/RO/2018 and quash the same as far as the petitioners 1 to 57 are concerned and direct the 1<sup>st</sup> respondent to refrain from transferring petitioners 1 to 57 from Peelamedu FSD to any other Depot till they are paid salary, allowances, perquisites, etc., equal to the FCI Departmental labour.

Prayer in W.P.No.18875 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3<sup>rd</sup> respondent in connection with the impugned Transfer Order dt.27.06.2018 in reference No.IR(L)/25(5)/P&T/DPS/RO/2018 and quash the same as far as the petitioners 1 to 19 are concerned and direct the 1<sup>st</sup> respondent to refrain from transferring petitioners 1 to 19 from Peelamedu FSD to any other Depot till they are paid salary, allowances, perquisites, etc., equal to the FCI Departmental labour.

For Petitioners : Mr.R.Srinivas(in all W.Ps)

For Respondents : Mr.S.Vijaya kumar  
Standing counsel(in all W.Ps)

#### WEB COPY COMMON ORDER

The order of transfer dated 27.06.2018, transferring the writ petitioners from Peelamedu Depot, Coimbatore to Avadi Depot at Tiruvallur District is under challenge in the present writ petitions.

2.The learned counsel appearing on behalf of the writ petitioners strenuously contended that the order of transfer is bad in law as the same violates the Model Standing orders issued under the Statute as well as the Rules. The Administrative exigencies stated in the impugned order is incorrect and false. The Administrative exigencies are not established either in the impugned order or in the counter affidavit filed in support of the contentions raised by the respondents. Thirdly, it is contended that the writ petitioners are working under Direct Payment System(DPS) and they are not the regular employees of the Food Corporation of India and therefore, the regular service conditions are not applicable to these employees as they were not appointed in a sanctioned post in a regular time scale of pay, which is applicable to the regular employees of the Food Corporation of India. These petitioners are working under the Direct Payment System, wherein the Department is paying the salary and extending other benefits as per the Standing orders of the respondent Management. Thus, these labourers cannot be treated on par with the regular employees, so as to effect transfer from Peelamedu to Avadi Depot, which is far away.

3.The learned counsel for the writ petitioners further contended that the impugned transfer order has been issued with a mala fide intention, in order to harass the writ petitioners , who all are working as labourers and performing the duties of loading and unloading in the Food Storage Depot maintained by the Food Corporation of India. Transferring such employees to a far off place will affect the normal life of these employees and the employees may not be in a position to meet out the expenditures of the family in order to maintain the family with the meagre amount of salary, which they are receiving under the Direct Payment System. For all these reasons, the impugned order of transfer is liable to be scrapped.

4.The learned counsel for the writ petitioners relied on the judgment of the Hon'ble Supreme Court of India in the case of M.Sankaranarayanan, IAS Vs. State of Karnataka and Others, reported in (1993) 1 SCC 54 and the relevant paragraph 12 is extracted hereunder:-

"12. After considering the respective contentions of the learned counsels appearing for the parties, it appears to us that the appellant has not been able to lay any firm foundation warranting a finding that the impugned order of transfer was passed mala fide and/or for an oblique purpose in order to punish the appellant and/or to humiliate him. The pleadings of the appellant before the Central Administrative Tribunal only indicate that some of his suggestions in the matter of posting of senior bureaucratic officers of the State had not been

accepted by the present Chief Minister of the State. Such facts alone do not constitute any foundation for a finding that because the appellant was not agreeable to oblige the Chief Minister by accepting all his suggestions and putting up notes to that effect, he had incurred the displeasure of the Chief Minister and the impugned orders had been passed not on administrative exigencies but only to malign the appellant and to humiliate him. It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. In the instance case, we are unable to find that there are sufficient materials from which a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn. It is an admitted position that the Chief Secretary and the Chief Minister had differences of opinion on a number of sensitive matters. If on that score, the Cabinet and the Chief Minister had taken a decision to relieve the appellant from the post of Chief Secretary and post a very senior officer of their confidence to the post of Chief Secretary, it cannot be held that such decision is per se illegal or beyond the administrative authority. The position in this regard has been well explained in Royappa case [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] by this Court."

5.Relying on the above judgment, it is stated that "It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established".

6.Relying on the said judgment, it is stated that though the writ petitioners are not in a position to submit documents, establishing mala fide intention of the authorities, the factual details submitted by the writ petitioners are sufficient to draw a factual inference that the authorities have issued the order of transfer with mala fide intention. Thus, the said statement made are to be considered for the purpose of assailing the impugned order of transfer.

7.The learned counsel for the petitioners further submitted that as far as the Direct Payment System labourers are concerned, they are governed under the Model Standing orders published in the Industrial Employment(Standing Orders) Act,

1946 and its Rules. Thus, the Standing orders cited by the Management cannot be relied upon for the purpose of considering the case of an administrative transfer, which is under challenge in these present writ petitions.

8.The learned counsel appearing on behalf of the respondents disputed the contentions raised on behalf of the writ petitioners by stating that the order of transfer was issued on Administrative grounds and in order to meet out the Administrative exigencies. The respondents normally would not transfer the labourers from one Depot to another Depot unless the necessity arises.

9.In the present case on hand, relying on the judgment of the Kerala High Court and Bombay High Court and considering the facts and circumstances prevailing in Peelamedu Depot, an Administrative decision was taken and the writ petitioners were transferred from Peelamedu to Avadi Depot.

10.This apart, it is stated in the impugned order itself that "the workers are being transferred with the stipulation that their salary and other service conditions shall be fully protected for which guidelines have already been issued vide communications referred above. Transfer benefits and joining time will be admissible as per rules applicable to them".

11.Citing the above assurances given by the Management, the learned counsel for the respondents states that the administrative transfers are issued to meet out the exigencies and therefore, the writ petitions are liable to be rejected.

12.The learned counsel for the respondents referred the Standing orders in respect of Food Handling workers engaged in various Industrial Establishments of the Food Corporation of India under Direct Payment System of Labour. As per the Standing orders, transfers are contemplated and a worker shall be liable to be transferred administratively from one place of work to another place of work of the Corporation as per practice in existence with the whole gang, except in the case of request for transfer from the individual worker.

13.This apart, the judgment of the Hon'ble Division Bench of the High Court of Kerala at Ernakulam is referred by the learned counsel for the respondents. The very same issue was adjudicated before the Kerala High Court and the primary issue before the Kerala High Court was that "Does the Circular of June 14, 1996 debar the Food Corporation from transferring labour from one depot to another?"

14. Another judgment of the Kerala High Court in WPC No.35398/2016 is also referred by the respondents, wherein also, the very same issue of Whether the DPS workers cannot be transferred like departmental workers and transfer would effect substantial earnings of DPS workers were under challenge. The Hon'ble Judges observed that the case of the FCI is that there is no impediment in transferring the workers. However, it is made that the transfer cannot be treated like a transfer of regular employees. The transfer in fact is required to serve the interest of FCI. There may be a situation in which FCI may not be in a position to give work on all days in which they are engaged at Kollam. As a result of their decision, FCI may be able to award loading work to contract labour for Karunagappilly and Aleppey. It is also open for the FCI to engage petitioners simultaneously at Kollam, Karungappally and Alleppey depots. However, it is for the FCI to decide. However, monetary benefits hitherto enjoyed by DPS workers cannot be deprived consequent to transfer.

15. It is further observed in the judgment that the FCI also shall consider payment of Travelling Allowance to the workers as they have to report duty at Kollam even though there is no work for them. This Court is of the view that FCI has to consider this matter without any delay as the travelling expenses would substantially erode the minimum wages earnings of the workers.

16. After adjudicating the issues, the Kerala High Court passed the following orders:-

"i) Challenge regarding transfer to Kollam depot by the petitioners is repelled.

ii) The FCI shall protect the average wages drawn by each workers at Karungappally and Alleppey before their transfer to Kollam depot.

(iii) The Regional Manager, FCI, shall consider the payment of travelling allowance to report for duty at Kollam. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

(iv) The Government of India, Ministry of Labour, the sixth respondent in W.P.(C).No.36743 of 2016 is directed to consider Ext.P2 therein, to de-notify Kollam depot of FCI after obtaining the views of FCI, within a period of three months from the date of receipt of a copy of this judgment. No costs."

17. Relying on these judgments, the learned counsel for the respondents made a submission that the writ petitioners are given complete protection in respect of the salary, which they are already receiving in Peelamedu Depot and protection are extended in respect of the service conditions also. This apart,

the Travelling Allowance will also be considered by the Management. Under these circumstances, the writ petitioners have not established any valid ground for the purpose of setting aside the transfer.

18. Considering the arguments, this Court is of an opinion that as per the submission made by the learned counsel for the petitioners, the Standing orders as applicable to the regular employees may not be applicable to the labourers working under Direct Payment System. In this regard, it is relevant to refer the provisions of the Industrial Employment (Standing Orders) Central Rules 1946. The Rules provide Model Standing orders, which is to be followed in the absence of any approved Standing orders in respect of the labourers working in various establishments. As per the Model Standing order contemplated in the above Rules, "A workman may be transferred according to exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer: Provided that the wages, grade, continuity of service and other conditions of service of the workman are not adversely affected by such transfer."

19. It is emphatically contemplated under the provisions of the Rules. There is no impediment for the management to transfer a labour from one Station to another Station or one Depot to another Depot. However, the protection in respect of wages, grade, continuity of service and other conditions of services, are to be protected. Thus, transfer is permissible. However, on transfer, the Direct Payment Labourers are protected in respect of their salary and all other service conditions.

20. This being the legal position with reference to the Rules cited supra, this Court is of the considered opinion that the transfer order cannot be assailed, merely on certain facts and circumstances narrated by the writ petitioners. When the administrative exigencies are contemplated in the order of transfer, the Hon'ble High Court cannot consider certain administrative exigencies, which all are to be considered only by the competent authorities of the Management. Certain administrative decisions in respect of transfers are the prerogative of the competent authorities and the High Court would not interfere with the routine administration of the Food Corporation of India. The Constitutional Courts are bound to exercise the powers of judicial review on limited grounds, especially, while entertaining the writ petition against the orders of administrative transfers. The scope of judicial review undoubtedly is limited. Thus, certain reasons stated may not be sufficient to set aside the order of transfer as the transfer even in the present case is an incidental to service and a condition of service. It is established that as per the Standing

orders, the labourers under the Direct Payment System are also liable for such administrative transfers. When it is established that these labourers are liable to be transferred from one place to another place or one Depot to another Depot, this Court is of the considered opinion that such administrative reasons can never be interfered with in a routine manner and only on exceptional circumstances, such orders can be set aside.

21. On a perusal of the order of transfer, it is the transfer of about 72 labourers, who all are working under Direct Payment System. Reading of the order of transfer, says that there are certain administrative grounds. Further, the authorities came to the conclusion that it may not be possible to accommodate of these employees in Peelamedu Stating on various reasons. This being the administrative decision taken, the Hon'ble High Court cannot force the Management to retain all the 72 employees in one Depot, so as to affect the interest of the public administration and further, in the event of such retention, huge monetary implications are also involved.

22. Transfer being a condition of service, this Court is of the considered opinion that it is not affecting the other service conditions of the labourers, who all are working under the Direct Payment System. This apart, the writ petitioners have stated that the issue relating to the transfer are now pending before the Labour Court also. It is for them to pursue the matter and this Court would not express any opinion in relation to the pending proceedings before the Labour Court.

23. However, as far as the impugned order of transfer is concerned, this Court is not inclined to interfere and the writ petitioners are bound to join to the transferred place, both in the interest of public administration as well as in their interest. Accordingly, the following orders are passed:-

(1) The relief as such sought for in the present writ petitions stand rejected.

(2) The respondents / Food Corporation of India shall protect the average wages drawn by each workers at Peelamedu Depot, Coimbatore before their transfer to Avadi Depot, Tiruvallur District.

(3) The respondents / Food Corporation of India is directed to pay the Travelling Allowance as applicable to the regular employees to all these writ petitioners, enabling them to join at Avadi Depot at Tiruvallur District, including the writ petitioners, who had already joined in the transferred place.

(4) In respect of the seven labourers, who have not been paid the wages on par with the other writ petitioners, the respondents are directed to settle the

amount as applicable and on par with other writ petitioners.

(5) The writ petitioners are permitted to submit the representations, in respect of their personal grievances to the competent authorities of the respondents / Food Corporation of India, who in turn, is at liberty to consider the grievances based on the availability of vacancies and in accordance with the Standing orders and the rules in force.

24. With the above directions, all the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman/Managing Director,  
The Food Corporation of India,  
No.16 to 20, Barakhamba Lane,  
New Delhi - 110 001

2. The Executive Director,  
Food Corporation of India,  
Zonal Office-South,  
Opp.to Sastri Bhavan,  
No.3, Haddows Road,  
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3. The General Manager-Tamil Nadu  
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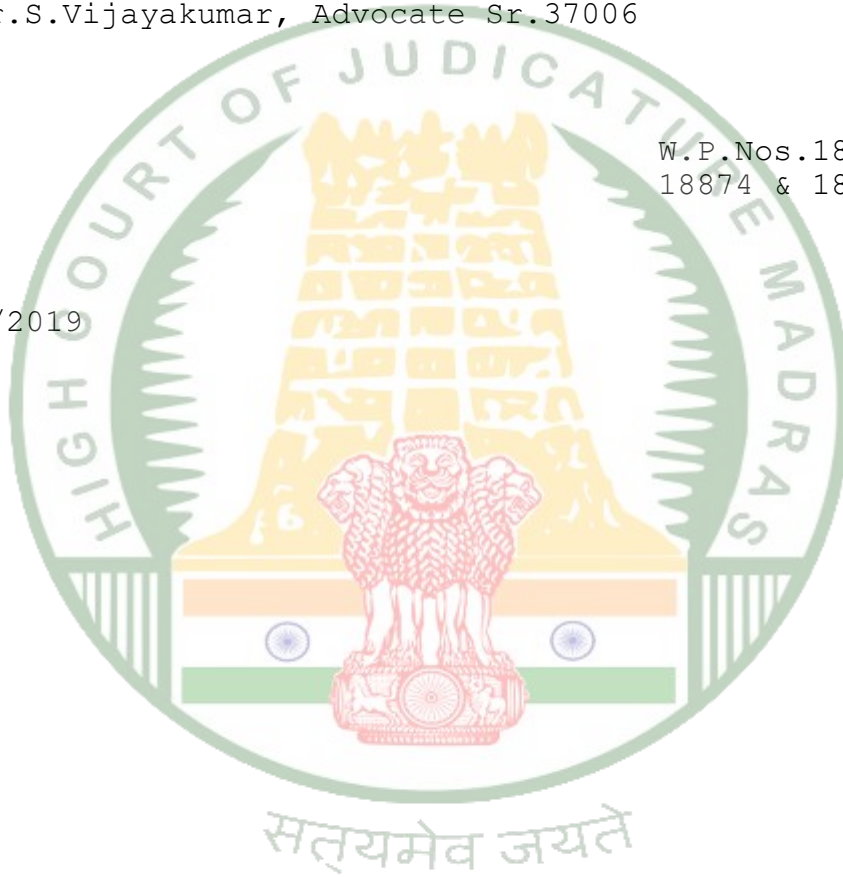
4.The Area Manager,  
Food Corporation of India,  
District Office,  
TATABAD,  
Coimbatore.

+4cc to Mr.R.Srinivas, Advocate Sr.37128, 37129, 37130, 37131

+2cc to Mr.S.Vijayakumar, Advocate Sr.37006

W.P.Nos.18387, 18388,  
18874 & 18875 of 2018

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