

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2019

PRONOUNCED ON : 18.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.21521 of 2017

A.Rajasekaran

.. Petitioner

Vs.

The Registrar General,
High Court,
Madras

...Respondent

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the proceedings of theRespondent in ROC No.19 of 2013 Con B2 dated 13.03.2013 and ROC No.3 of 2013 Con.B2 dated 28.06.2013 and quash the same and consequently direct theRespondent to permit the Petitioner to retire with all retiral benefits.

For Petitioner : Mr.V.Bhiman

ForRespondent : Mr.E.K.Kumaresan

O R D E R

M.VENUGOPAL, J.

Heard Mr.V.Bhiman, Learned Counsel for the Petitioner and Mr.E.K.Kumaresan, Learned Counsel for the Respondent and perused the materials placed on record.

2. According to the Petitioner, he joined the Judicial service on 11.11.1988 and posted as Judicial Magistrate. Because of his unblemished service, he was posted as Ad-hoc District Judge (FTC) with effect from 01.11.2006. Based on the out come of the Departmental Enquiry, he was reduced to the post of Civil Judge(Senior Division) and that he filed W.P.No.13511 of 2009, wherein, this Court on 14.08.2009, imposed a punishment of one year.

3. The version of the Petitioner is that he was posted as Fast Track Judge(IV Court) at Bhavani. But his seniority was not fixed, due to his retirement on 30.06.2013, on attaining the age of superannuation. However, he was placed under suspension by means of proceedings of the respondent dated 13.03.2013, in contemplation of an enquiry into grave charges.

4. The Learned Counsel for the Petitioner submits that as per the proceedings of the Respondent dated 28.06.2013, the Petitioner was not permitted to retire from service on attaining the age of superannuation at 58 years i.e., on 30.06.2013 and further, he was under continuous suspension pending disciplinary proceedings as per Rule 56(i) of the Fundamental Rules. Indeed, the Petitioner was retained in service till enquiry into charges pending against him or concluded and final orders passed there on by the appropriate authority.

5. The grievance of the petitioner before this Court is that no charge memo was issued to him and that he was not supplied with any document in imputation against him. Therefore, the Petitioner submitted a representation on 28.03.2014, one year after his suspension. Since there was no action on his representation, he filed WP.No.11937 of 2014, wherein, he prayed for passing of an order by this Court, to dispose of his representation dated 28.03.2014. This Court, was pleased to grant six weeks time to dispose of his representation and the writ petition was accordingly, closed.

6. Advancing his arguments, the Learned Counsel for the Petitioner takes a stand that the Petitioner cannot be kept under suspension indefinitely and since there was no compliance of the order by the Respondent/High Court, Madras, the Petitioner filed W.P.No.29194 of 2015, seeking to quash the suspension order dated 09.08.2016. The said writ petition was withdrawn based on the fact that the matter would be finalised and also resting upon the submission made that the matter was not pressed.

7. The Learned Counsel for the Petitioner brings it to the notice of this Court that the Respondent/High Court, Madras, sought for an explanation from the Petitioner through the proceedings dated 20.04.2016, with regard to the alleged telephonic conversation among one Ramesh kumar/Court Officer/Section Officer/Appeal Examiner, High Court and His Hollyness Jayendra Saraswathi and Gowri Kamakshi. When the Petitioner requested for supply of the copy of the complaint, he received a reply that there was no complaint at all. Further, he submitted his explanation to the Official Memorandum of the Respondent dated 20.04.2016, taking note of the

telephonic conversation with His Hollyness Jayandra Saraswathi and Gowry Kamakshi. Added further, he made a request for the Telephone numbers, Sim Card numbers, the date of the alleged conversation etc. However, there was no reply at all.

8. The primordial contention advanced on behalf of the Petitioner is that as on date there is no charge memo issued to the Petitioner although he was suspended from service with effect from 13.03.2013. Furthermore, it is represented on behalf of the Petitioner that even after four years, no charge memo was issued to him which clearly accepts that there was no initiation of any departmental enquiry during the four years i.e., continued by means of proceedings dated 28.06.2013. The Petitioner's emphatic stand is that 'Departmental Proceedings' are initiated only when charge memo is issued and further, that no proceedings calling for any explanation nor the date of any alleged misconduct was initiated against him. That apart, no departmental proceedings have been initiated against him and no preliminary enquiry was conducted.

9. The Learned Counsel for the Petitioner vehemently contends that the Respondent cannot initiate any Departmental Proceedings against the Petitioner since he attained the age of superannuation on 30.06.2013 and since only a proceeding under Pension Regulations can be initiated by the Respondent. Therefore, the Petitioner has filed a present writ petition seeking to call for the proceedings of the Respondent in ROC No.19 of 2013 Con B2 dated 13.03.2013 and ROC No.3 of 2013 Con.B2 dated 28.06.2013 respectively.

10. The Learned Counsel for the Petitioner projects an argument that the proceedings under FR 53(1), cannot be invoked against the Petitioner in the absence of any disciplinary proceeding as there was no charge framed against him including disciplinary proceedings and also that it is the contention of the Petitioner that the proceedings dated 28.06.2013 does not stands in the eye of law, since no charges were framed against him nor pending against him on the date of suspension order.

11. Yet another plea of the Petitioner is that the proceedings dated 13.03.2013 & 26.06.2013 respectively did not mention the Circumstances nor Instances or Imputations against the Petitioner and under these circumstances, the suspension of the Petitioner without initiation of any Departmental Proceedings for four full years and keeping him under 'Suspension' and are to be quashed in the interest of justice.

12. The Learned Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in the case of Union of

India and Others Vs. Anil Kumar Sarkar in C.A.No.2537 of 2013 dated 15.03.2013, wherein, it is held that "'Departmental Proceedings'" commence only when charge sheet is issued to delinquent employee.

13. The Learned Counsel for the Petitioner relies on the decision of Hon'ble Supreme Court in the case of Chairman-cum-Manager director, Mahanadi Coalfield Limited Vs. Rabinranath Choubey in C A No.9693 of 2013 dated 29.10.2013, wherein, it was held that "'In the instant case serious allegations of dishonestly causing coal stock shortage amounting to Rs.31.65crores were made against appellant, which entailed punishment of dismissal, whereupon in terms of S.4(6), Payment of Gratuity Act appellant could forfeit gratuity payable to Respondent, which would be subject to availability of power to impose major penalty of dismissal and further, the matter was referred to larger Bench.

14. The Learned Counsel for the Petitioner refers to a decision of Hon'ble Supreme Court reported in (2014) 13 SCC 666, in the case of Punjab State Power Corporation Limited, Patiala and Others Vs. Atma Singh Grewal in SLP(C) No.29589 of 2009 dated 17.09.2013, wherein, it was held that in view of crystal clear mandate in second proviso to Rule 2.2 (b) of Punjab Civil Services Rules Vol. II, which bars initiation of disciplinary enquiry more than four years after alleged Act was committed, appeal filed against order of Single Judge of High Court quashing the charge-sheet dated 07.01.2008 for acts allegedly committed in the year 2002 was totally frivolous and imposition of costs quantified at Rs.10,000/- justified.

15. The Learned Counsel for the Petitioner draws the attention of this Court to the decision of Hon'ble Supreme Court reported in (2015) 7 SCC 291, in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary and another in C.A.No.1912 of 2015 dated 16.02.2015, wherein, in paragraph no.17, it is observed as under:

'17.The legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental enquiries has been emphasised by this Court on numerous occasions. The Constitution Bench in Abdul Rehman Antulay Vs. R.S.Nayak 12(1992) 1 SCC 225:1992 SCC (Cri) 93 underscored that this right to speedy trial is implicit in Article 21 of the Constitution and is also reflected in Section 309 of the Code of Criminal Procedure, 1973, that it encompasses all stages viz., investigation, inquiry, trial, appeal, revision and retrial, that the burden lies on the prosecution to justify and explain

the delay, that the Court must engage in a balancing test to determine whether this right had been denied in the particular case before it. Keeping these factors in mind CAT had in the case in hand directed that the appellant's suspension would not be extended beyond 90 days from 19.03.2013. The High Court had set aside this direction, viewing it as a substitution of a judicial determination to the authority possessing that power i.e., the Government.

16. The Learned Counsel for the Petitioner places heavy reliance on the decision of Hon'ble Supreme Court reported in (2016) 9 SCC 20 page 22, in the case of Brajendra Singh Yambem Vs. Union of India and Another in C.A.No.8323 of 2016 dated 26.08.2016, wherein, it was held as follows:

'Rule 9(2) of the CCS (Pension) Rules, 1972 makes it clear that if the disciplinary proceedings are not instituted against the government servant by the disciplinary authority while he was in service, then the prior sanction of the President of India is required to institute such proceedings against such a person which shall not be in respect of an event which took place more than four years before the institution of such disciplinary proceedings. It is an undisputed fact that the appellant retired from service on 31.08.2006. Hence, fresh memorandum of charges dated 22.08.2008 issued to the appellant for the act allegedly committed in the year 1995 was clearly beyond the period of limitation of four years as provided for under the CCS (Pension) Rules, 1972.'

17. The Learned Counsel for the Petitioner refers to a decision of Hon'ble Supreme Court reported in (2018) 14 SCC 92 in the case of Uco Bank and Others Vs. Rajendra Shankar Shukla in C.A.No.2693 of 2013 dated 15.02.2018, wherein, it is held that an employee is entitled to subsistence allowance during pendency of enquiry proceedings and further that if he starved of finances by zero payment, it would not be possible for him to meaningfully participate in departmental enquiry. Further, it was held that access to justice is valuable right available to every person and free legal representation is provided even to criminals. In case of departmental enquiry, delinquent at best is guilty of misconduct but that cannot be a ground to deny subsistence allowance/pension.

18. The Learned Counsel for the Petitioner seeks in aid of the decision of Hon'ble Supreme Court reported in AIR

(2007) SC 906 in C.A.No.5145 of 2006(Arising out of Special Leave Petition(Civil) No.16572 of 2006) dated 22.11.2006 in the case of Union of India(UOI) and Others Vs. Kunisetty Satyanarayana, wherein, in paragraph no.9, it was observed as follows:

" The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet."

19. Lastly, it is the contention of the Learned Counsel for the Petitioner that the moment an employee retires from the Government service, the Employer/Employee relationship comes to an end. He is no longer subject to disciplinary and Conduct Rules and no penalties under Tamilnadu Civil Services (Disciplinary and Appeal) Rules can be imposed on him and after retirement, he is governed by the Statutory Rules, governing Pension and best retirement Conduct, called the Tamilnadu Pension Rules 1978.

20. The Learned Counsel for the Respondent submits that the Departmental enquiry was initiated against the Petitioner in R.O.C.Nos.661/2001, 699/2001, 747, 756, 784 of 2001, 159 of 2002, C.Nos.152, 163, 173/2001 and 23/2002/VC and he was imposed with a punishment of reduction to the post of Civil Judge(Senior Division) with effect from 09.02.2009 for a period of one year.

21. The Learned Counsel for the Respondent contends that the Petitioner was placed under suspension from service, in 'public interest', in contemplation of enquiry into grave charges as per the proceedings of the Respondent dated 13.03.2013. Further in the Meeting that took place on 17.04.2013, of the Hon'ble Administrative Committee of the High Court, it was resolved not to continue the services of the Petitioner beyond the age of 58 years and not to permit him to retire from service and directed to be retained in service under Rule 56(1)(c) of the Fundamental Rules.

22. The Learned Counsel for the Respondent points out that the Petitioner was issued with a proceedings dated 28.06.2013 (then under suspension), to the effect that his case was considered by the High Court as per the guidelines issued in W.P.(C) No.1022 of 1989 and Rev.Petition No.249/1992 in W.P.(C) NO.1022 OF 1989 by the Hon'ble Supreme Court of India, for the purpose of allowing Judicial Officers to continue in service beyond the age of superannuation at 58 years. Furthermore, it was resolved not to permit the Petitioner to retire on attaining the age of superannuation at 58 years i.e., on 30.06.2013 and that the Petitioner could continue under suspension till the 'Disciplinary Proceedings' are concluded and final orders passed thereon by the Appropriate Authority.

23. The Learned Counsel for the Respondent submits that pursuant to the order dated 25.04.2014 in WP.No.11937 of 2014, filed by the Petitioner, a representation dated 28.03.2014 submitted by the Petitioner was placed before the Hon'ble Administrative Committee that took place on 16.06.2014 and the Committee, while resolving to defer the subject for the present, directed the Registry to file a Report in regard to the pending of W.P.S.R.No.15776 of 2013, which is connected with a direction involved in the subject.

24. The Learned Counsel for the Respondent contends that the Status Report was placed before the Hon'ble Administrative Committee on 24.02.2015 and that the Committee was of the opinion that a perusal of the aforesaid Report does not link the Petitioner or Mr.N.Ramesh Kumar, CO/SO/AE, High Court, Madras with any impropriety in respect of the case in question or the trial thereof. Furthermore, the Hon'ble Administrative Committee also perused the Report submitted by Dr.M.Sudhakar, the Additional Deputy Commissioner of Police, Cyber Crime Cell, CCB, Chennai, nominated by this Court in W.P.No.19894 of 2011, to conduct enquiry in respect of the proceedings in ROC Nos.584 (a) & 601/2011/VC and directed the Registry to drop further proceedings in ROC Nos.584(a) & 601/2011/VC as against Tr.T.Ramasamy, then Sessions Judge, Pondicherry (now Principal District Judge, Perambalur). However, in view of the voices of

the aforesaid two individuals havng been verified and certain other subject matters having been discussed in the recordings, a prima facie case is made out for further enquiry against the aforesaid individuals. Therefore, it was resolved to direct the Registry to conduct a further enquiry against the Petitioner, who had already reached superannuation but not permitted to retire and kept under suspension and the subject matter was forwarded to the Registrar(Vigilance) High Court, Madras for conducting further enquiry.

25. The Learned Counsel for the Respondent points out that no charge memo was issued to the Petitioner on the date of his suspension since the matter has connectivity in the enquiry conducted in WP.No.19894 of 2011, relating to the proceedings in ROC Nos.584(a) & 601/2011/VC and that a Vigilance enquiry was ordered only during the year 2015, and the same was informed to the Vigilance Cell, High Court, Madras through the Respondent's letter dated 26.03.2015.

26. The Learned Counsel for the Respondent informs this Court that the ''Draft Charges'' were framed against the Petitioner on 15.05.2017 and the same was approved by the Draft Charges Approval Committee on 28.08.2017. Indeed, charges framed against the Petitioner alongwith annexures were issued to the Petitioner on 07.09.2017. The Petitioner had submitted his written statement of defence on 10.11.2017 and on 06.12.2017, he submitted a additional written statement and that was ordered to be placed before the Hon'ble Administrative Committee on 17.05.2018.

27. The Learned Counsel for the Respondent contends that the Petitioner was placed under suspension, in public interest, in contemplation of enquiry into grave charges, as per the Provisions under Sub Rule(C) of Rule-17 of the Tamilnadu Civil Services(Discipline and Appeal) Rules, itself is initiation of ''Disciplinary Proceedings'' against him. As such, the proceedings is to be carried only under Tamilnadu Civil Services (Discipline and Appeal) Rules 1978, and not as per the TamilNadu Pension Rules, 1978, since the writ Petitioner was not permitted to retire on attaining the age of superannuation at 58 years and continued to be under ''Suspension'' till the conclusion of the disciplinary proceedings initiated against him as per Rule 56(1) (C) of the Fundamental Rules of the Government of Tamilnadu.

28. By way of Reply, the Learned Counsel for the Petitioner submits that the Petitioner was not given FBF, leave Salary, GPF(balance) and the Gratuity and the same cannot be withheld and that the Respondent had failed to appreciate the aspect ''Right to Speedy Trial''. Further, it is the plea of the Petitioner that he was a Government Servant and his

appointment was made through the Tamilnadu Public Service Commission and as such, any proceedings instituted after four years without sanction of the Government is vitiated.

29. It must be borne in mind that the control vested in the High Court by means of Article 235 of the Constitution is complete control subject only to the power of His Excellency in the matter of appointment(including Dismissal and Removal) and posting and promotion of District Judges, and that the High Court can conduct enquiries and impose punishment (other than Dismissal or Removal)subject, however, to the ''Conditions of Service'' and a ''Right of Appeal'' etc. specified in Article 235 of the Constitution of India. In reality the control is vested with the Hon'ble High Court to effectuate the purpose i.e., the securing of an independence of Subordinate Judiciary and unless it includes ''Disciplinary Control'', the very object would be frustrated, as per decision of Hon'ble Supreme Court in the case of State of West Bengal Vs. Nripendra Nath Bagchi, AIR 1966 SC 447.

30. It is to be pointed out by this Court that in the decision of Hon'ble Supreme Court reported in AIR 1986 SC 1814 in the case of Tej Pal Singh Vs. State of Uttar Pradesh, wherein, it is observed and held as under:

''The High Court has exclusive jurisdiction over the District Courts and Courts subordinate thereto in respect of administrative and disciplinary matters excluding dismissal, removal or reduction in rank. Premature retirement is made in the exercise of administrative and disciplinary control. The state Government is not competent to order premature retirement of a District Judge without first obtaining recommendations of the High court. The deviation is not a mere irregularity but an illegality.''

31. It is to be remembered that 'Pension' is a payment for past services rendered and the primordial reason for 'Pension' is the inability to provide for oneself due to old age. Further, it is meant to avoid destitute in old age.

32. It is quite possible to continue with the Departmental Proceedings against an Employee after his retirement during such proceedings or to initiate such proceedings against a ''Retired Employee'' who during the period of his service committed acts of grave Misconduct or Negligence as the case may be.

33. An order of 'Suspension' pending a Departmental Enquiry into the conduct of an Employee is like an 'Interlocutory Order'. As a matter of fact, Suspension of an Employee pending Departmental Enquiry into allegations against his conduct does not involve 'Punishment'.

34. In the instant case on hand, necessary charges framed against the Petitioner was issued to him together with annexures on 07.09.2017. On 10.11.2017, the Petitioner submitted his written statement of Defence and Additional written statement of Defence was given on 06.12.2017 respectively. Earlier, the Hon'ble Enquiring Judge, who was nominated by this court had rescued himself and the matter is pending at that stage. It cannot be ignored that 'Suspension' prior to the framing of charges is basically a temporary one and the same may be of limited duration. However, if 'Suspension' is for an 'Indefinite Period', the same may cause stress and mental agony to the Affected Officer. A diligent and speedy conduct of Enquiry proceeding is undoubtedly a person's right to life and liberty viewed in that perspective and also this Court taking note of the fact that the Petitioner was placed under suspension, in 'public interest', in contemplation of an Enquiry into grave charges as per the Provisions under Sub Rule(C) of Rule-17 of the Tamilnadu Civil Services(Discipline and Appeal) Rules 1955, the Petitioner cannot seek an umbrage under the Tamilnadu Pension Rules, 1978, because of the pertinent reason that he was not permitted to retire on reaching the age of superannuation at 58 years and continued to be under suspension till the completion of Disciplinary Proceedings initiated against him in accordance with Rule 56(1)(C) of Fundamental Rules of the Government of Tamilnadu and as such, the contra plea taken on the side of the petitioner is not acceded to by this Court. Looking at from any angle, the present writ petition sans merits.

35. Continuing further, for a fuller and better appreciation of the 'Subject matter in Issue', this Court pertinently makes a useful reference to Rule 56(1)(C) of the Fundamental Rules, which enjoins as follows:

- '(C)Notwithstanding anything contained in clause (a), a Government servant who is under suspension.
- (i) on a charge of misconduct, or
 - (ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending, or
 - (iii) against whom an enquiry into grave charges is contemplated or is pending, or
 - (iv) against whom a complaint of criminal offence

is under investigation or trial.

shall not be permitted by the 'appointing authority' to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under Rule 17(C) of the Tamil Nadu Civil Services(Discipline and Appeal) Rules or Rule 3(C) of the Tamil Nadu Police Sub-ordinate Service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the Competent Authority or by any higher authority.'

36. In view of the foregoing, this Court taking note of the facts and circumstances of the present case and in view of the fact that a new Hon'ble Enquiring Judge is to be appointed in the subject matter in issue, to prevent an aberration of Justice and to promote substantial cause of Justice, directs the Respondent to take necessary steps for appointment of the Hon'ble Enquiring Judge within a period of four weeks from the date of receipt of copy of this order. Soon after the appointment of the Hon'ble Enquiring Judge, in the subject matter in issue, the Hon'ble Enquiring Judge is required to complete the Enquiry and submit his Report within a period of three months thereafter. It is open to the Petitioner to raise all Factual and Legal issues in the pending Disciplinary Proceedings, during the course of Enquiry. The Petitioner is directed to lend his unstinted co-operation and assistance for the completion of Enquiry within the time adumbrated by this Court.

37. With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Registrar General,
High Court,
Madras

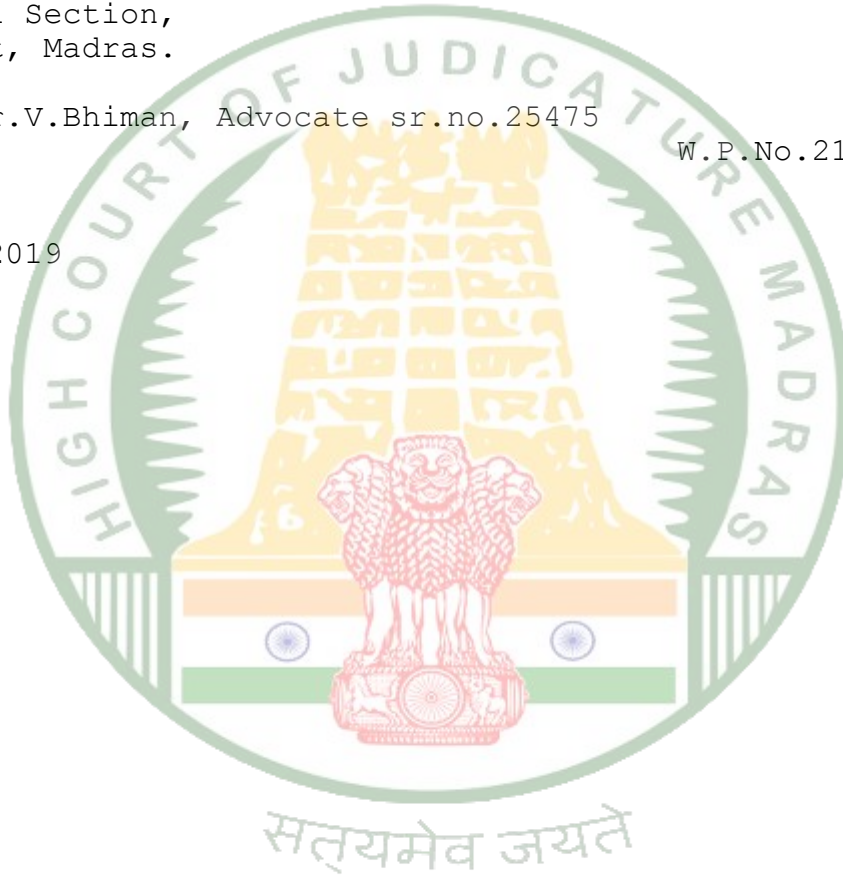
2.The Section Officer,
B-2 Section,
High Court, Madras.

3.The Section Officer,
Legal Cell Section,
High Court, Madras.

+1cc to Mr.V.Bhiman, Advocate sr.no.25475

W.P.No.21521 of 2017

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