

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.31289 of 2017
and WMP Nos.34366 and 34367 of 2017

V. Jagannathan ... Petitioner

Vs

1. Union of India rep by
The Financial Adviser &
The Chief Accounts Officer, (Traffic),
Chennai - 3
2. The Senior Assistant Financial Adviser,
(Traffic),
Trichy Junction,
Trichy - 1
3. The Central Administrative Tribunal,
Chennai Bench, Chennai - 104,
rep by the Registrar
4. The Chairman,
The State Level Scrutiny Commission,
Adi Dravidar Tribal Welfare Department,
Government of Tamil Nadu,
rep by its Principal Secretary
Fort St. George,
Chennai - 9

(Impleaded as per Court Order dated
26.09.2018 in WMP No.29503/2018)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the Third Respondent in connection with the Order passed by him in O.A.No.1754/2013 daed 23.03.2017 and 23.05.2017 and also the order of the First

Respondent in No.C.353/C/Admn/VJ dated 19.11.13 and quash the same and direct the Respondents 1 and 2 to settle all the retirement benefits including the regular pension and its arrears.

For Petitioner : Mr.R. Jayarakash

For R.1 and R.2 : Mr.P.T. Ravindran

For R.3 : Tribunal

For R.4 : Mr.A. Ansar
Govt. Advocate

ORDER

(Order of the Court was made by M. VENUGOPAL,J.,)

Heard the Learned Counsel for the Petitioner, the Learned Counsel for the Respondents 1 and 2 and the Learned Government Advocate for the Fourth Respondent.

2. The Petitioner was selected for appointment to the post of Grade I Clerk, now designated as Junior Accounts Assistant through the Railway Recruitment Board on merits. He joined service on 21.10.82 under the Quota prescribed for Scheduled Tribe called 'Sholaga'. He was promoted to the post of 'Accounts Assistant' in 1985 and from that date he served in the said post without any without any blemish. He retired on 31.01.2014 and there was an Order passed by the Collector, Tiruchirappalli in his Proceedings dated 13.08.90 without following the procedure prescribed by Law, cancelling the Scheduled Tribe Community Certificate issued in his favour.

3. At this juncture, the Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner assailed the Order of the District Collector, Tiruchirappalli dated 13.08.90 in WP No.15738 of 1990 and the same was dismissed on 22.6.99 after nine years from the date of admission and Interim Order. The Petitioner filed W.A.No.811/1999 and this Court, on 23.04.2004 at Paragraph No.8, had observed the following:-

"8. As discussed above, the Order of the District Collector dated 13.09.1990 does not disclose that the petitioner was given copy of the enquiry report or other materials before passing the impugned order. Accordingly, on the ground of

violation of principles of natural justice, the same is liable to be quashed."

9. There is no dispute that after the decision of the Supreme Court in AIR 1995 SC 94 (Cited Supra), the Government of Tamil Nadu have constituted two Committees one at the District Level and another at the State Level. In such circumstances, though we set aside the order of the District Collector, dated 13.08.1990, the certificate secured by the petitioner has to be verified by the District Committee referred above and it is for the petitioner to prove and substantiate that his claim is genuine and acceptable. Accordingly, we permit the District Level Committee to go into the genuineness of the Community,"

and allowed the Appeal.

4. The Learned Counsel for the Petitioner comes out with a plea that though the Order of the Court in W.A.No.811 of 1999 was dated 23.04.2004, the action was taken following the same and the Petitioner was nearing the date of 'Superannuation'. In fact, the Respondents issued a Memo dated 23.04.2013 requiring the Petitioner to submit related documents of W.P.No.15738 of 2009.

5. It transpires that the Petitioner furnished a Reply dated 29.04.2013 seeking time to submit the documents since he was asked about the documents after a lapse of 9 years from the date of dismissal of the Writ Petition.

6. Further, the Revenue Divisional Officer, Karur, issued a Memo dated 03.07.2013 to the Petitioner, requiring him to furnish the details of the aforesaid Writ Petition and through a detailed Reply dated 13.07.2013, the Petitioner submitted necessary details. Also that, he submitted the judgment of the Writ Appeal, passed in his favour, whereby and where under, the Order passed in the Writ Petition was set aside by this Court.

7. It is represented on behalf of the Petitioner that by means of Memo dated 12.08.2013, issued by the Second Respondent/The Senior Assistant Financial Adviser(Traffic), Tiruchirappalli, the Petitioner was required to produce a copy of the Order in WP No.15738 of 1990 and he prayed time through his Letter dated 16.08.2013. Added further, on 10.09.2013, he informed the Respondents that he had already submitted a copy of the Judgment passed in Writ Appeal and hence there was no

requirement to produce the copy of the Order passed in the Writ Petition as well as the Judgment delivered by this Court in W.A.No.811/1999.

8. Not resting with the above, the Petitioner was issued with a memo dated 18.09.2013, in and by which, he was required to produce a copy of the Order in the Writ Petition. He submitted a detailed Representation on 24.09.2013 narrating the history of the case. Apart from that, the Revenue Divisional Officer, Karur had issued a Memo dated 03.07.2013 requiring him to appear for an 'Enquiry' and for that, the Petitioner furnished a 'Reply' stating that he submitted a detailed Representation dated 13.07.2013 pointing out that the Revenue Divisional Officer has no jurisdiction to call him for an 'Enquiry'.

9. Expatiating his submission, the Learned Counsel for the Petitioner points out that the Petitioner projected WP (MD) No.13265 of 2013 assailing the Memo dated 03.07.2013 issued by the Revenue Divisional Officer, Karur and an Order of Interim Stay was granted and later the said Writ Petition was allowed by this Court on 07.12.2016.

10. The Learned Counsel for the Petitioner contends that the First Respondent/Union of India represented by The Financial Adviser and The Chief Accounts Officer (Traffic), Chennai issued a Show Cause Notice dated 19.11.2013 to the Petitioner in the form of Final Order setting out all incorrect particulars which are nothing but a false and baseless one. By virtue of the said Order dated 19.11.2013, the First Respondent had proposed to withhold Petitioner's Retirement Benefits' and pay only the 'Provisional Pension'. Hence the Petitioner was perforced to file O.A.No.1754/2013, assailing the Show Cause Notice dated 19.11.2013 issued by the First Respondent and to quash the same. The said O.A.No.1754/2013 was admitted and Notice was ordered. Furthermore, a Reply was filed by the Respondents 1 and 2 and it was adjourned from time to time for one reason or other.

11. When the matter was listed for 'Dismissal' on 20.09.2016 and on that date, only a Single Member (A) was present and hence the caption 'Dismissal' was refused to be removed inspite of the request made in this regard and it was adjourned to 21.10.2016. Further, on that date also, only the Single Member (A) was present and hence the matter was adjourned again to 11.11.2016. On that date 'Pass Over' was sought for in respect of the case stating that the Learned Counsel on Record was engaged before the Hon'ble High Court, but without accepting the request made on behalf of the Petitioner, the said O.A.No.1754/2013 was dismissed on 22.11.2016.

12. The Learned Counsel for the Petitioner submits that all of a sudden, on 22.11.2016, the matter was taken up and when a 'Pass Over' was sought for on behalf of the Petitioner, the matter was dismissed. In this regard, it is the stand of the Petitioner that the subject matter of the Original Application was already covered by the Orders of the Tribunal and the Order of this Court. Apart from that, the Writ Petition filed before the Madurai Bench of this Court was allowed on 07.12.2016.

13. Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner filed W.P.No.1851 of 2017 to set aside the Order passed by the Third Respondent/Central Administrative Tribunal in dismissing O.A.No.1754/2013 and the same was allowed on 21.01.2017.

14. The Learned Counsel for the Petitioner contends that when the matter was remitted back, the matter was taken up by the Third Respondent/Tribunal without even providing any sufficient time to the Petitioner to argue the matter and further, the Hon'ble Bench of Two Members took two different views. The Learned Counsel for the Petitioner contends that the Third Respondent/Tribunal followed the majority view of the earlier Full Bench of the Tribunal and was pleased to dismiss the case. Again the matter was referred to the III Member and he took a different view from the Order of the earlier Bench dated 12.06.2015 and 09.03.2016.

15. The Learned Counsel for the Petitioner submits that once the Full Bench had decided the issue in question on 12.06.2015 and 09.03.2016, there cannot be any reference again on the same issue to the other Full Bench of same number of Members as it may lead to conflict of decision and the violation of the precedential value of the Full Bench.

16. The Learned Counsel for the Petitioner takes a legal plea that the Learned Administrative Member is bound by the earlier decision of the Central Administrative Tribunal and ought not to have dismissed the Petitioner's case. Besides, the Learned Counsel for the Petitioner points out that the Order passed by the Learned Administrative Member dated 23.03.2017 approved by the Learned III Member dated 23.05.2017 is liable to be set aside as it is not only against the 'Judicial Discipline' but also against the Law laid down by the Apex Court on the above point.

17. The Learned Counsel for the Petitioner contends that the issue involved in the Original Application is set at naught by the very same Bench of the Third Respondent/Central Administrative Tribunal by referring the matter to the Learned Judicial Member as he then was. Further, the Learned

Administrative Member ought not to have taken a different view leading to the reference of the matter to another learned Judicial Member of Ernakulam Central Administrative Tribunal Bench. In fact, the Notice regarding the nomination as a Third Member to hear the matter dated 20.04.2017 was received only on 21.04.2017 mentioning the date of hearing on 26.04.2017. As 26.04.2017 was fixed without hearing the convenience of the parties and the Learned Counsels, a request was made to give another date by the Counsel appearing on his behalf, but it was turned down.

18. The Petitioner, during the interregnum, filed a Writ Petition, assailing the correctness of the Order dated 23.03.2017 passed in O.A.No.1754 of 2013 and this Court was pleased to dismiss the Writ Petition requiring him to face the learned Tribunal Member's view.

19. In the meanwhile, elaborate arguments were projected before the Learned III Member from Ernakulam Bench of the Central Administrative Tribunal and by his Order dated 23.05.2017, he sailed with the Order of the Learned Administrative Member contrary to the majority view of the earlier Full Bench of the Learned Central Administrative Tribunal in the same issue.

20. The Learned Counsel for the Petitioner comes out with a legal plea that the Petitioner has filed the instant W.P.No.31289 of 2017 assailing the majority view of the Learned Tribunal in O.A.No.1754/2013 dated 23.03.2017 and 23.05.2017 on the ground that the Order of the Third Respondent/Central Administrative Tribunal in O.A.No.1754/2013 is against the Order of the Division Bench of this Court in W.P No.19234 of 2014 and WP No.5918 of 2016 dated 07.07.2015 and 18.02.2016 respectively and hence it is liable to be set aside.

21. The Learned Counsel for the Petitioner contends that the issue regarding the settlement of Retirement Benefits by the Railways to the employee facing enquiry before the State Level Scrutiny Committee was the subject matter of O.A.No.146 of 2013 and the same was decided in favour of the employee who was the applicant in that Original Application. Viewed from that angle, the plea of the Petitioner is that the Original Application is also to be allowed. However, a different view was taken and hence the Petitioner has filed the present Writ Petition.

22. The Learned Counsel for the Petitioner takes a stand that the Order passed in O.A.No.1754 of 2013 dated 23.03.2017 and 23.05.2017 of the Majority view is not only contrary to the Order of the earlier Full Bench in O.A.No.1461 of 2013 dated 12.04.2015, 12.06.2015 and 09.03.2016 but also the Orders of the

Division Bench in WP No.19234 of 2014 dated 07.07.2015 and WP No.5918/2016 and 18.02.2016 on the same issue and hence the order of the Majority in O.A.No.1754 of 2013 is liable to be set aside in the interest of Justice,

23 The Learned Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in State of Jharkhand vs Jitendra Kumar Srivastava reported in AIR 2013 SC 3383 at Special Page 3387, wherein, at Paragraph No.11, it is observed as under:

" Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the Departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed misconduct in discharge of his duty while in his office. There is no provision in the Rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending.

At Paragraph No.15, it is held as under:

" It hardly needs to be emphasized that the executive instructions are not having statutory character and therefore cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different."

24. The Learned Counsel for the Petitioner refers to the Order dated 12.06.2015 in O.A.No.1461 of 2013 (between P.R. Kasilingam v Union of India rep by the General Manager, Southern Railway, Park Town, Chennai and two others), wherein, at Paragraph No.11, it is observed as under:

" In the light of the above pronouncements on the same issue, it clearly emerges that the competent authority is fully empowered to withhold the retiral benefits until genuineness of the community certificate, based on which the employment was secured in the first place, is clearly established. The Hon'ble Supreme Court's pronouncements in R. Vishwanatha Pillai's case make it abundantly clear that one has to await the decision of the State Level Committee regarding the genuineness of the community certificate to decide on the question whether the retired employee is entitled to receive the retiral benefits. In the present case, the applicant has already been sanctioned provisional pension and the applicant is in receipt of the same. Now the only aspect that requires to be considered is time frame for the final decision by the State Level Committee. In the present case, the applicant preferred an application before the State Level Committee as directed by the Hon'ble High Court of Madras Bench and the final decision by the State Level Committee is pending from the year 2008 onwards. Since the issue is pending for the last seven years before the State Level Committee defining a definite time frame will be in order at this juncture. However, this Tribunal is not the competent authority to issue any direction to the State Level Committee and only the Hon'ble High Court is empowered to fix such a time frame under Article 226 of the Constitution, as laid down by the Hon'ble Supreme Court in Madhuri Patil's case. However, a duty is cast on the respondents in the present OA to pursue the matter further at their level with the competent authority so as to get the final decision regarding the genuineness of the community certificate in the present case from the State Level Committee as expeditiously as possible.

25. The Learned Counsel for the Petitioner points out the Order dated 09.03.2016 in O.A.No.1461 of 2013 (between P.R. Kasilingam v Union of India rep by the General Manager, Southern Railway, Park Town, Chennai - 600 049 and two others), wherein

at Paragraph No.11, it is observed as under:-

" At the outset itself, we would like to high light and spot light that when the parties are not at variance, then there may be no necessity for the Tribunal to adjudicate the cause. In this connection, the learned counsel for the applicant would produce the recent communication dated 4.2.2016 sent by the Railway Board to the General Manager (P), Southern Railway, Chennai, a portion of which is extracted supra, would evince and evidence that pendency of proceedings before the State Level Committee cannot be treated as trial or judicial proceedings. The maxim 'quod constat clare non debet verificare' what is clearly agreed need not be proved is squarely applicable. As such, the said communication is anathetical to the impugned order as contained in Annexure A14 dated 19.9.2013. Over and above that, the decision of the Division Bench of the Hon'ble High Court dated 7.7.2015 in WP No.19234 of 2014 referred to supra would apparently and palpably, unarguably and indubitably point out that the proceedings pending before the State Level Committee cannot be taken as judicial proceedings and that on that basis pensionary benefits and retirement benefits cannot be withheld. The learned counsel for the applicant would stress upon the fact that the respondent Railways will not be justified in withholding the retirement benefits in view of the decision of the Hon'ble Madras High Court in WP No.19234//2014 dated 7.7.2015. As such, the issue is no more res integra. However, for comprehensively dealing with all the issues raised on the respondents side, we find here that the plea that the State Level Committee is an artifact of the judicial proceedings and that can only be treated as judicial in nature fails to carry conviction with us. To find out whether the proceeding before it is judicial in nature, it has to be scrutinized on the anvil of the concept 'nature of proceeding'. Time and again,

the Hon'ble Apex Court pointed out as to what constitutes judicial proceedings; there should be adjudication preceded by adhering to the principles of natural justice and should have the trappings of a Court. There is nothing to exemplify and demonstrate that the State Level Committee is enjoined to perform anything that could be dignified with the title of a judicial proceeding. Absolutely there is nothing to indicate and exemplify that the proceedings of the State Level Committee has to be treated as judicial proceedings and therefore, we hold that the decision of the Division Bench of the Hon'ble High Court is squarely applicable to the case and also the view taken by the Board in its communication dated 4.2.2016. Accordingly, the view of the Administrative Member cannot be accepted but the view of the Hon'ble Judicial Member is legally tenable. Hence in this view of the matter, the issue is answered to the effect that the pendency of the proceedings before the State Level Committee cannot be a bar for the Railway Administration for releasing the retiral benefits to the applicant and the applicant cannot be embargoed in getting his retiral benefits. Accordingly this OA is decided in favour of the applicant and the respondent authority concerned is directed to release the retiral benefits to him within a period of two months from the date of receipt of a copy of this order. No costs."

26. Besides the above, the Learned Counsel for the petitioner refers to the order of the Division Bench of this Court dated 07.07.2015 passed in in W.P.No.19234 of 2014 (between the Union of India, Ministry of Railways, rep by the Divisional Personnel Officer, Southern Railway, Tiruchirappalli Division, Tiruchirappalli and two Others v The Registrar, Central Administrative Tribunal and two others), wherein at Paragraph Nos.35 to 27, it is observed as follows:-

" 35. In Bank of India, what happened was that a person who joined the services of the Bank on the basis of a Community Certificates, was dismissed from service,

after the Caste Scrutiny Committee cancelled his certificate. There was actually a finding by the Scrutiny Committee in that case that the employee about whom the Scrutiny Committee was concerned, did not belong to the Scheduled Tribe. It is only on account of such a finding rendered by the proper authority, viz., the Scrutiny Committee that the Supreme Court held in Bank of India that the right to salary, pension and other service benefits are entirely statutory in nature in public services and that a person who has played a fraud upon the employer by securing employment on the basis of a false Community Certificate, cannot gain either the terminal benefits or even the sympathy of the Court. Therefore, we are of the view that the said decision can be applied by the Railway Administration after the 2nd respondent is found by the State Level Scrutiny Committee not to be belonging to Kattunaicken Community.

36. That leaves us with one last question as to what would happen in the State Level Scrutiny Committee eventually holds that the 2nd respondent does not belong to the Scheduled Tribe. We cannot shirk the question, but the answer is too obvious. The right of a person pension continues until his final departure. Even after the departure, his family become entitled to Family Pension. Therefore, if the State Level Scrutiny Committee eventually cancels the Community Certificate of the 2nd respondent, the petitioner can always pass orders forfeiting the pension as well as the Family Pension.

37. The Railway Administration cannot raise a question as to how they will recover the terminal benefits that they will be now compelled to pay, as that is a very moot question. Logically, another question would also arise as to how they would recover the salary paid for the past 30 years. For both questions, there cannot be on mover in Law. So long as the Rules contemplate a particular position, it is not only the 2nd

respondent, but also the Railway Administration which is bound by the Rules. The interpretation given to the Rules by various Benches of this Court and of the Supreme Court, in State of Jharkhand v Jitendra Kumar Srivastava are very clear. Therefore, the Tribunal did not commit any error in law warranting interference by this Court. Hence, the Writ Petition is dismissed. The Petitioner-Railway Administration shall settle the terminal benefits within a period of eight weeks from the date of receipt of a copy of this order. The 3rd respondent-State Level Scrutiny Committee is directed to complete the proceedings, in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs."

27. The Learned Counsel for the Petitioner cites an Order dated 22.03.2016 in O.A.No.1444 of 2013 (between R. Gandhinathan vs The Union of India represented by the Chief Workshop Manager, S and T Workshop, Pothanur, Coimbatore 23), wherein at Paragraph No.9, it is observed as follows:

" 9. At the outset itself, we would like to highlight and spot light that when the parties are not at variance, then there may no necessity for the Tribunal to adjudicate the cause. In this connection, the learned counsel for the applicant would produce the recent communication dated 4.2.2016 sent by the Railway Board to the General Manager (P), Southern Railway, Chennai, a portion of which is extracted supra and it evinces and evidences that pendency of proceedings before the State Level Committee cannot be treated as trial or judicial proceedings. The maxim "quod constat clare non debet verificari". What is clearly agreed need not be proved is squarely applicable. As such, ' the said communication is anathetical to the impugned order as contained in Annexure A14 dated 19.9.2013. Over and above that, the decision of the Division Bench of the Hon'ble High Court dated 7.7.2015 in WP No.19234 of 2014 referred to supra would apparently and palpably, unarguably and indubitably point out that the proceedings pending before the State Level Committee

cannot be taken as judicial proceedings and that on that basis pensionary benefits and retirement benefits cannot be withheld. The learned Counsel for the applicant would stress upon the fact that the respondent Railways will not be justified in withholding the retirement benefit in view of the decision of the Hon'ble Madras High Court in WP No.19234/2014 dated 7.7.2015. An found, the issue is no more res integra. However, for comprehensively dealing with all the issues raised on the respondents side, we find here that the plea that the State Level Scrutiny Committee is an artifact of the judicial proceedings and that can only be treated as judicial in nature fails to carry conviction with us. To find out whether the proceedings before it is judicial in nature, it has to be scrutinised on the anvil of the concept 'nature of proceeding'. Time and again, the Hon'ble Apex Court pointed out as to what constitutes judicial proceedings; there should be adjudication preceded by adhering to the principles of natural justice and should have the trappings of a court. There is nothing to exemplify and demonstrate that the State Level Committee is enjoined to perform anything that could be dignified with the title of a judicial proceeding. Absolutely there is nothing to convey and portray that the proceedings of the State Level Committee has to be treated as judicial proceedings and therefore, we hold that the decision of the Division Bench of the Hon'ble High Court is squarely applicable to this case and also the view taken by the Board in its communication dated 4.2.2016. Hence in this view of the matter, the issue is answered to the effect that the pendency of the proceedings before the State Level Committee cannot be a bar for the Railway Administration for releasing the retiral benefits to the applicant and the applicant cannot be embargoed in getting his retiral benefits. The earlier decision of the Hon'ble Madras High Court cited supra to which T. Soundararajan & Anr vs The Chairman, Chennai Port Trust, Chennai & Ors (Cd Law Journal CDJ 2015 MHC 3294) no doubt

is contrary to the recent judgment of the Madras High Court, however, applying the principle

Judicia posteriora sunt in lege fortiora

The latest judgment would have the binding effect.

Accordingly, this OA is decided in favour of the applicant and the respondent authority concerned is directed to release the retiral benefits to him within a period of two months from the date of receipt of a copy of this Order. No costs.

28. Yet another Order dated 18.11.2016 in WP No.28362 of 2016 (between P.Sivaraaj v The General Manager, Human Resources Wing, Canara Bank, Head Office, 112, J C Road, Bengaluru - 560 002) is relied upon on the side of the Petitioner, wherein, at Paragraph No.12, it is observed as under:

" 12. As stated earlier, so far as the case on hand is concerned, as on date, the issue with regard to the community status of the petitioner is still pending before Scrutiny Committee. Therefore, the judgment relied upon by the learned counsel for the respondent reported in AIR 2004 SC 1469 (R. Viswanatha Pillai v State of Kerala and Others) relied upon by the learned counsel for the respondent, wherein the issue with regard to the community certificate of the employee therein was settled, cannot be made applicable to the present facts of the case. Therefore, I am of the opinion that the petitioner is entitled to the relief as prayed for in the present writ petition."

and ultimately, the writ petition was allowed as prayed for and further that, the Respondents therein were directed to disburse the 'Terminal Benefits' and 'Arrears Due', with interest, to the petitioner within a period of four weeks from the date of receipt of a copy of this order. However, the Respondents were granted liberty to move before the Scrutiny Committee for early completion of the proceedings pending before it with regard to the Petitioner's Community Status.

29. Conversely, it is the submission of the Learned Counsel for the Respondents 1 and 2 that there was a discrepancy in regard to the 'Community Status' between the 'Community Certificate' and in Petitioner's 'SSLC Book' and soon after the receipt of a complaint against the 'Community Status' of the Petitioner, the Respondents of the Railway Administration had referred the matter to the District Collector, Trichirappalli in the year 1983 to verify the genuineness of the community certificate issued by Head Quarters Deputy Tahsildar, Karur for further action. As a matter of fact, the District Collector, Trichirappalli vide his Proceedings Mu.Na.Ka.Ma.2/133908/83 dated 13.8.1990 had declared that the Petitioner does not belong to 'Sholaga Community' but, actually her belongs to 'Shozhia Vellalar' Community which is one of the 'Backward Communities' in Tamil Nadu.

30. It is brought to the notice of this Court on behalf of the Respondents No.1 and 2 that the Proceedings of the District Collector dated 13.08.1990 was assailed by the Petitioner by way of WP No.15738 of 1990 before this Court duly impleading the District Collector, Trichirappalli, Sub Collector, Karu and Tahsildar, Karur as Respondents and this Court on 22.04.1999 and finally the Writ was dismissed thereby confirming the Order passed by the District Collector, Tiruchirappalli in his Proceedings dated 13.8.1990.

31. Later, the Petitioner preferred an Appeal in W.A No.811 of 1999 against the Order dated 22.04.1999 passed in WP No.15738 of 1990 and this Court on 23.04.2004 by placing reliance on the Judgment of the Hon'ble Supreme Court of India in Madhuri Patil v Additional Commissioner reported in AIR 1995 SC 94 set aside the Order of the District Collector dated 13.08.1990 and further held that the Certificate secured by the Petitioner has to be verified by the 'District Committee' etc.,

32. In this connection, it is the emphatic plea of the Learned Counsel for the Respondents 1 and 2 that the matter is pending before the State Level Scrutiny Committee from the year 2004 onwards.

33. The Learned Counsel for the Respondents No.1 and 2 refers to the Order of the Division Bench of this Court in WP (MD) No.13265 of 2013 dated 07.12.2016 (between V. Jegannathan vs The Revenue Divisional Officer, Office of the Revenue Divisional Officer, Karur), wherein, at Paragraph No.8, it is observed as under:

“8. In view of the said submission made by the learned counsel for the parties,

we are of the considered view that the impugned notice issued by the respondent is not sustainable. Therefore, the impugned notice, dated 03.07.2013, issued by the respondent is set aside. The State Level Scrutiny Committee is at liberty to expedite the enquiry and complete the same as early as possible, preferably, within a period of three months from the date of receipt of a copy of this order."

34. The core contention projected on the side of the Respondents No.1 and 2 is that even though a direction was issued by the Division Bench of this Court in WP (MD) No.13265 of 2013 dated 07.12.2016, wherein, the State Level Scrutiny Committee was to expedite the enquiry and complete the same as early as possible within a period of three mnths from the date of receipt of a copy of the Order. Inspite of the direction issued, till date, there is no progression in the subject matter, in issue.

35. The Learned Counsel for the Respondents 1 and 2 refers to the Division Bench of this Court dated 29.09.2011 in WP No.17184 of 2011 (between V. Balasubramanian v The Assistant General Manager (Administration), State Bank of India, Kurunchi Complex, State Bank Road, Coimbatore - 18 and another), wherein, at Paragraph Nos.15 and 16, it is observed as under:

" 15. After the order of the Division Bench, admittedly, no notice has been issued by the District Level Vigilance Committee and as on today, the said Committee is not competent to go into that issue. That power has not been vested with the State Level Scrutiny Committee in view of G.O.Ms.No.108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007.

16. In view of the above, we direct the District Level Vigilance Committee, Coimbatore to forward all the records pertaining to the verification of the community certificate of the petitioner within a period of fifteen days from the date of receipt of a copy of this order either from the petitioner or from the first respondent. On receipt of the records, the State Level Scrutiny Committee shall pass orders in a period of two months therefrom. The payment of terminal benefits

to the petitioner would depend upon the order that may be passed by the State Level Scrutiny Committee. As the matter is pending from the year 2005 and the petitioner has also retired on attaining the age of superannuation the time fixed by this Court shall be strictly adhered to by the State Level Scrutiny Committee and the matter has to be considered on preference basis. No cost."

36. The Learned Counsel for the Respondents 1 and 2 relies on the Order of the Division Bench of this Court dated 06.03.2014 in WP No.1166 of 2014 (between Union of India represented by General Manager, Southern Railway, Chennai - 600 003 v The Registrar, Central Administrative Tribunal, Madras Bench, Chennai - 104 and two others), wherein, at Paragraph No.2, it is observed as under:

"2. In this case, the community certificate of the second respondent is pending verification before the State Level Scrutiny Committee right from 09.10.2009. Unless the same is decided in one way or other, the Community status of the second respondent cannot be taken as a conclusive proof. In such circumstances, we direct the third respondent to complete the verification of the community status of the second respondent, which is pending from 2009, in accordance with law, within a period of three months from the date of receipt of copy of this order and depending upon the orders to be passed by the third respondent regarding the community status of the second respondent, the terminal benefits payable to the second respondent, shall be decided. This writ petition is disposed of. No costs. Consequently, connected MP is closed."

37. The Learned Counsel for the Respondent Nos.1 and 2 draws the attention of this Court to the Order of the Division Bench dated 20.03.2017 in WP No.15666 of 2014 (between S. Ulaganathan vs State of Tamil Nadu represented by its Secretary to Government, Adi Dravidar and Tribal Welfare Department, Government of Tamil Nadu, Fort St. George, Chennai - 600 009 and three others), wherein, at Paragraph No.54(b), a direction was issued to the State Level Scrutiny Committee to complete the enquiry and submit its report to the Respondents No.2 and 3 by giving fair opportunity to the Petitioner within a period of

three months from the date of receipt of a copy of this order and the Petitioner was also directed to co-operate for the enquiry with the State Level Scrutiny Committee.

38. The Learned Counsel for the Respondents 1 and 2 cites the Order of the Division Bench of this Court dated 30.03.2015 in WP No.3056 of 2015 (between Union of India represented by the General Manager, Southern Railway, Park Town, Chennai - 600 003 and three others v The State of Tamil nadu represented by the Secretary to Government, Adi Dravidar and Tribal Welfare Department, Fort St. George, Chennai - 600 009 and two others), wherein, at Paragraph No.7, it is observed as under:

" 7. In the light of the above stated position, as the Second Respondent-State Level Scrutiny Committee had ultimately fixed the enquiry for hearing during April 2015, as the Government/respondents 1 and 2 are not in a position to state in the counter affidavit the time frame for conclusion of the matter to take a decision thereon, we are of the considered opinion, as suggested by the Learned Special Government Pleader appearing for the respondents 1 and 2 that the respondents 1 and 2 shall conclude the enquiry proceedings initiated against the third respondent with regard to his community status, in accordance with law based on the documents available on record and upon conducting enquiry and upon hearing the parties concerned, including the third respondent, within a period of four weeks from the date of receipt of a copy of this order, without further delaying the matter, taking into account the fact that already sufficient opportunity had been given to the third respondent in the matter, coupled with the fact that though notice had been served on him, he did not appear before this Court in person or through counsel and it is expected that the third respondent shall co-operate in the matter in finalising the enquiry."

39. The Learned Counsel for the Respondents 1 and 2 points out the Order of the Division Bench of this Court dated 08.12.2017 The Union of India Represented by General Manager, Southern Railway, Chennai v The Registrar, Central Administrative Tribunal, Madras Bench and two others, wherein,

at Paragraph No.7, it is observed as under:-

" 7. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court directs the second respondent to appear before the third respondent, viz., State Level Scrutiny Committee, with relevant documents, if any, for enquiry, within a period of one month from the date of receipt of a copy of this order. On such appearance and upon enquiry, the third respondent shall submit a detailed report with regard to the community certificate produced by the second respondent, to the petitioners within a period of two months thereafter. On receipt of the same, the petitioners shall do the needful in accordance with law."

40. In response, the Learned Government Advocate for the Fourth Respondent submits that the Deputy Chief Accounts Officer (Traffic), Southern Railway, Chennai -3 had requested the Chairman, State Level Scrutiny Committee to cause the verification of genuineness of 'Hindu-Sholaga' Scheduled Tribes Community Certificate issued to the Petitioner, S/o Thiru.T.R. Vairapperumal issued by the Head Quarters Deputy Tahsildar, Karur District on 30.10.1981.

41. In fact, the District Collector, Karur was requested to send the original issuance records of 'Hindu-Sholaga' Scheduled Tribe Community Certificate issued to the person along with the spot enquiry report of the present Revenue Divisional Officer to Government (vide Government D.O.Letter No.3122/ADW-5/2013-1, dated 28.02.2013) and reminded on 20.06.2013.

42. The Learned Government Advocate appearing for the Fourth Respondent informs this Court that the Revenue Divisional Officer, Karur has reported as under:

" The individual refused to attend the Revenue Divisional Officer enquiry and also stated that the Revenue Divisional Officer has no power to enquire him as the District Level Vigilance Committee/State Level Scrutiny Committee has only to verify the genuineness."

and the present case was referred to the Deputy Superintendent of Police, SC/ST Vigilance Cell, Tiruchirappalli Region for verification of 'Hindu-Sholaga' Scheduled Tribe Community

Certificate issued by the Head Quarters Deputy Tahsildar, Karur District on 30.10.1981 in respect of the Petitioner, as per the guidelines issued by the Hon'ble Supreme Court of India in Kumari Madhuri Patil vs Additional Commissioner reported in Judgement Today 1994 (5) SC 488 dated 02.09.1994 (through Government Letter No.3122/CV-4(2)/2013-3, dated 22.02.2017.

43. The substance of the stand of the Fourth Respondent is that as on date, the Report of the Deputy Superintendent of Police, SC/ST Vigilance Cell, Trichy Region is still awaited and that the verification of genuineness of the community claim of the Petitioner will be finalised by the Fourth Respondent/ State Level Scrutiny Committee only after the receipt of the Report from the Deputy Superintendent of Police, SC/ST Vigilance Cell, Chennai Region, as per the guidelines issued by the Hon'ble Supreme Court of India in Kumari Madhuri Patil vs Additional Commissioner reported in Judgement Today 1994 (5) SC 488.

44. The Learned Government Advocate for the Fourth Respondent contends that on receipt of the Vigilance Cell Report, the Director of Tribal Welfare, Chennai-5 will issue a Show Cause Notice along with the copy of Vigilance Cell Report and documents to the

Petitioner, if/he/she found the claim for social status to be 'not genuine' or 'doubtful' or 'spurious' or 'falsely or wrongly claim' and obtain his/her explanation from the Petitioner within a period of thirty days. Soon after the receipt of the explanation, the Petitioner will be required to attend an enquiry and to appear before the State Level Scrutiny Committee for submitting the reliable documents, in support of the claim of the Petitioner, so as to prove the community status of the Petitioner and after a careful examination of the records/documents submitted by the Petitioner before the Fourth Respondent/State Level Scrutiny Committee, the available record/documents with the file and the view of the Anthropologist, State Level Scrutiny Committee will take a final decision regarding the community status of the Petitioner and issue proceedings accordingly.

45. In the present case, although a fervent plea is made by the Learned Counsel for the Petitioner before this Court to set aside the Order dated 23.05.2017 in O.A.No.1754/2013 passed by the Third Respondent/Central Administrative Tribunal (filed by the Writ Petitioner as an applicant), this Court is of the considered view that the Tribunal at Paragraph Nos.42 to 44 had observed the following:

"42. Since the specific direction given to the applicant in W.A.No.811/1999 is

to prove the genuineness of the caste certificate produced by him since it is his duty to prove the same before the State Legal Scrutiny Committee he cannot ignore by bypass that direction and get an order of disbursement of retirement benefits as it the community certificate produced by him is valid. Since in the judgment dated 07.12.2016 the Hon'ble High Court has directed that it is to be done within three months from the date of receipt of a copy of the order, it is for the applicant to produce the order before the State Legal Scrutiny Committee (as SLSC is not a party to the proceedings and request for a decision to be rendered within the time stipulated by the High Court.

43. Therefore, in view of the specific direction issued by the Division Bench of the Hon'ble High Court in the two cases referred to above the contention that the Respondents should be directed to disburse the retirement benefits without waiting for the report of the SLSC cannot be sustained at all. The applicant has already been granted provisional pension. That is not denied. The directions sought by the applicant that all other retirement benefits should be now disbursed to him cannot be sustained at all. So much so, the view taken by the learned Administrative Member that the original application is liable to be dismissed is found to be correct and acceptable though on different grounds as well.

44. It is for the applicant to move the State Level Scrutiny Committee to expedite the enquiry; if for any reason they fail to comply with the direction issued by the Hon'ble High Court it is for the applicant to move the Hon'ble High Court for appropriate directions. This O.A. Is dismissed. No order as to costs.

46. Further, this Court, on going through the tenor and spirit of the Order passed by the Tribunal, comes to an irresistible conclusion that the said order in dismissing the Original Application is a 'Fair', 'Just', 'Equitable' and 'Prudent' one, considering the facts and circumstances of the present case in a conspectus manner. To put it precisely, the Order dated 23.05.2017 in O.A.No.1754 of 2013 passed by the Third Respondent/Central Administrative Tribunal, Madras Bench is free from any legal flaw.

47. Insofar as the plea of the Petitioner that the 'Show Cause Notice' dated 19.11.2013 is to be quashed because of the reason that the Petitioner's terminal benefits were withheld because of the reason that the matter relating to Community Certificate is pending before the Fourth Respondent/State Level Scrutiny Committee and that the provisional pension was sanctioned after his retirement, till the case is finalised, the said Show Cause Notice is legally tenable and valid one because of the reason that the Petitioner, who had retired on 31.01.2014 is to necessarily wait for the final outcome of the verification of the Scheduled Tribe Community Certificate by the Fourth Respondent/State Level Scrutiny Committee. Only based on the Final orders of the Fourth Respondent/State Level Scrutiny Committee in regard to the Petitioner's Scheduled Tribe Community Status, the parties are directed to act.

48. In regard to the procedure pertaining to the verification of the Community Certificate, this Court at this juncture worth recalls and recollect the decision of the Hon'ble Supreme Court (between Anand v Committee for Scrutiny and Verification of Tribe Claims and Others reported in (2012) 1 SCC 113 at Special Pages 120 and 121 at Paragraph Nos.21 to 23, it is observed as under:

" 21. We are of the view that for the purpose of examining the case claim under the Rules, the following observations of this Court in Kumari Madhuri Patil (supra), still hold the field:-

" The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parpent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who

have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc., by the castes or tribes or tribal communities concerned etc.,”

22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim.

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological

connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc., Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

23. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim.'

49. A closure scrutiny of ingredients of Article 14 and 16 (1) of the Constitution of India, without any haziness, an employer owes a 'Public Duty' and especially in the teeth of Article 16 (4) of the Constitution of India to assure that the benevolent aspects of 'Reservation' in the matter of 'Public Employment' are not allowed to be utilised by an individual, who is not eligible to that, of course, resting upon the Community Certificate secured by him.

50. It cannot be brushed aside that a deliberate act of 'Deceit' with a view to obtain some thing, of course, to which, a person is not entitled to, then, it amounts to an element of 'Fraud'.

51. It is to be pointed out that if an 'Employee' or a Government Servant has no right to a post or a certain status and notwithstanding the fact when the Concerned Authority had issued a Status Certificate to the person, which is incorrect in Law, then, it is categorically quite clear that the said person is not validly appointed to the post or he cannot be conferred with a particular status, more particularly, as per Government Order Ms.No.111 dated 06.07.2005(pursuant to the orders passed by this Court in W.A.No.1645 of 2001 etc., batch dated 22.07.2005), the State Level Scrutiny Committee alone is having the necessary competence and power to determine the issue of Scheduled Tribe Community Certificate.

52. In the instant case, the Petitioner was appointed on 21.10.1982 as Office Clerk Grade-I and recruited under Scheduled Tribe quota. In fact, the Petitioner claims that he belongs to 'Sholaga' Scheduled Tribe Community. However, the District Collect, Trichirappalli issued Proceedings No.Na.Ka.M2/133908/83, dated 13.08.1990 stating that the Petitioner, S/o Thiru.T.R. Vairapperumal does not belong to 'Sholaga' Community and he belongs to 'Hindu Shozhiya Vellalar' (Backward Class Community) and therefore, his Certificate was cancelled. There is two opinion on the present factual scenario that as on date the Report of the Deputy Superintendent of Police, SC/ST Vigilance Cell, Tiruchirappalli Region is awaited.Only after receipt of the Report from the Deputy Superintendent of Police, SC/ST Vigilance Cell, Tiruchirappalli, Chennai Region, as per guidelines issued by the Hon'ble Supreme Court of India in Kumar Madhuri Patil v Additional Commissioner reported in Judgment Today 1994(5) SC 488, the Community Certificate of the Petitioner is to be finalised by the Fourth Respondent/The State Level Scrutiny Committee. Thereafter, only on receipt of Vigilance Report, the Director of Tribal Welfare, Chennai - 5 will issue a 'Show Cause Notice' along with copy of 'Vigilance Cell Report' and documents to the Petitioner , if he is found to have claimed the social status as 'not genuine' or 'doubtful' or spurious or falsely or wrongly claimed one. Certainly, an explanation will be sought for from him within a period of thirty days and later he will be required to appear for an Enquiry before the Fourth Respondent/Tamil Nadu State Level Scrutiny Committee as claimed together with necessary Documents/Records to prove his 'community status' as the case may be. Thereafter, it is for the Fourth Respondent/State Level Scrutiny Committee to take a 'Final call' after scrutinizing the

relevant Materials/Relevant Records/Documents and also after looking into the view of Anthropologist etc.. In this regard, the Fourth Respondent will necessarily take some time to complete its task.

53. in view of the aforesaid qualitative and quantitative details and also this Court on a meticulous and careful consideration of the divergent contentions advanced on either side and after going through the contents of the Status Report of the Fourth Respondent dated 07.03.2019, to advance the cause of Justice, simpliciter, directs the Fourth Respondent/State Level Scrutiny Committee to obtain the Report of the Deputy Superintendent of Police, SC/ST Vigilance Cell, Tiruchirappalli Region within a period of six weeks from the date of receipt of a copy of this Order. The Deputy Superintendent of Police, SC/ST Vigilance Cell, Tiruchirappalli Region is directed to submit his 'Complete and Comprehensive Report' with regard to the claim of the Petitioner of his caste/community within the time, as determined by this Court.

54. Soon after the receipt of the Report of the Deputy Superintendent of Police, SC/ST Vigilance Cell, Trichy Region, the Fourth Respondent/State Level Scrutiny Committee is directed to finalise its proceedings. Thereafter, the Fourth Respondent/State Level Scrutiny Committee is directed to receive the copy of the 'Vigilance Cell Report' and after issuance of Show Cause notice by the Director of Tribal Welfare, Chennai - 5 along with the copy of the Vigilance Cell Report and documents to the Petitioner, then, it is open to the Authorities concerned to seek explanation from the Petitioner within thirty days, if his claim is found to be 'not genuine' or Doubtful' or 'False'/'spurious'/'incorrect' one.

55. On receipt of the Explanation from the Petitioner, the Fourth Respondent/State Level Scrutiny Committee is directed to call the Petitioner for an Enquiry to appear before it to substantiate his claim of 'Community Status'. The Fourth Respondent/State Level Scrutiny Committee shall specify the date of hearing and time well in advance to the Petitioner by intimating the same in writing, of course, after providing adequate and necessary opportunity by adhering Principles of 'Natural Justice'. The Fourth Respondent/State Level Scrutiny Committee is to pass final orders based upon the available materials/documentary evidence on record and also after taking into account of the view of the Anthropologist to arrive at a resultant conclusion in the subject matter in issue.

56. It is made quite clear that the Fourth Respondent shall not grant frequent/too many 'Adjournments' in the said matter in issue

since the verification of the Community Certificate of the Petitioner is pending well over a 'Decade'. It is open to the Petitioner to raise all factual and legal pleas before the Fourth Respondent/State Level Scrutiny Committee. He is to avail the opportunity of hearing before the Fourth Respondent/Committee at the specified place and time without offering any lame duck excuses. He is also directed to offer his unstinted co-operation to the Fourth Respondent/State Level Scrutiny Committee so as to enable it to finalise the proceedings within the time specified by this Court.

57. Before parting with the case, this Court makes lucidly quite clear that if the Petitioner fails to turn up for an Enquiry before the Fourth Respondent/State Level Scrutiny Committee at the specified time and date, then it is open to the Fourth Respondent/State Level Scrutiny Committee to proceed further in the subject matter in issue and pass Final Orders on merits, of course, based on the available Materials/Records (including the views obtained from 'Anthropologist').

58 . In fine, the Writ Petition is disposed of in above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

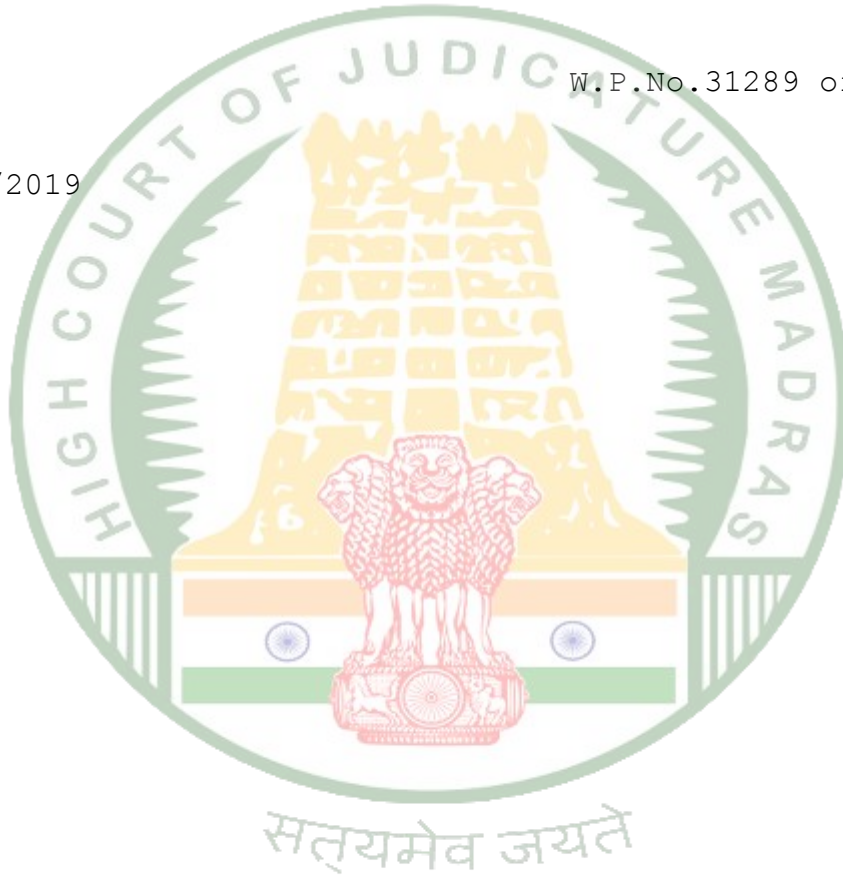
1. Union of India rep by
The Financial Adviser &
The Chief Accounts Officer, (Traffic),
Chennai - 3
2. The Senior Assistant Financial Adviser,
(Traffic),
Trichy Junction,
Trichy - 1
3. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai - 104.

4. The Chairman,
The State Level Scrutiny Commission,
Adi Dravidar Tribal Welfare Department,
Government of Tamil Nadu,
rep by its Principal Secretary
Fort St. George,
Chennai - 9.

+1cc to M/S.R.Jayaprakash, Advocate Sr.23661
+1cc to Mr.P.T.Ramkumar, Advocate Sr.23572

W.P.No.31289 of 2017

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srg 30/03/2019



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