



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.2315 of 2015

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R.Balameena

... Petitioner

vs.

1.The Chief Engineer / Personnel
Tamilnadu Generation and
Distribution Corporation Limited
Administrative Branch
No.144, Anna Salai, Chennai

2.The Superintending Engineer (I/C)
Operation and Maintenance
T(K) GTPS, Thirumakkottai
Mannargudi-614 017

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for records relating to the impugned order passed by the 2nd respondent in his proceedings in Lr.No.SE/O&M/T(K) GTPS/Admn/F.Doc/D.2626/14 dated 08.10.2014 and quash the same and consequently direct the respondents to disburse the gratuity, pension and other benefits payable to the petitioner for the unblemished service put under the respondents for 13 years 10 months and 12 days.

For Petitioner : Mr.R.Rajaraman

For Respondents: Mr.M.Balasubramanian

O R D E R

The order of rejection, dated 08.10.2014, passed by the second respondent, rejecting the claim of the writ petitioner for grant of pension under the provisions of the Tamil Nadu Pension Rules, 1978 (hereinafter, referred to as "the Rules"), is under challenge in the present writ petition.

2. The learned counsel appearing for the writ petitioner states that the writ petitioner was working as Assistant Engineer (Mechanical) in the respondent / Transport Corporation and on account of certain domestic problems, she submitted a letter of resignation on 13.04.2010 and the same was accepted by the



competent authority and thereafter, she was relieved from service.

3. The impugned order itself states that the writ petitioner had resigned her job and accordingly, she was relieved from service.

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4. The learned counsel appearing for the writ petitioner further states that in certain peculiar circumstances, the resignation can be treated as a voluntary retirement and pension can be granted to the employee concerned. The Honourable Division Bench of this Court has also considered the issue in this regard.

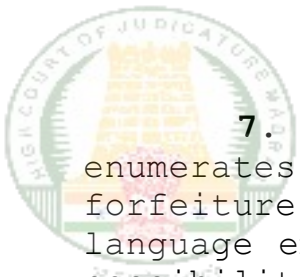
5. This Court is of the considered opinion that the earlier orders of the Honourable Division Bench were overruled by the Honourable Supreme Court of India and subsequently, the Division Bench of this Court has held that the scope of interpretation of rules should not exceed the very intention and the language employed in the rules.

6. The rule of interpretation is that the Courts cannot travel beyond the scope of the intention as well as the language employed in the statutes or rules. In the event of travelling beyond the scope of the language adopted in the statutes or rules, then its' very purpose and object will be defeated. The Honourable Supreme Court of India, in the matter of interpretation of statutes, has held that though ordinarily literal rule should be applied while interpreting a statute, yet literal rule is not always the only rule of interpretation. Literal rule can be departed in exceptional cases. One has sometimes to consider the context in which a statute has been made and the object it seeks to achieve. In the present case on hand, let us now consider the spirit of Rule 23 of the Rules, which reads as under:

"23. Forfeiture of service on resignation. - (1) Resignation from a service or post entails forfeiture of past service:

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave or any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the



7. A plain reading of Rule 23 of the Rules unambiguously enumerates that "resignation from a service or post entails forfeiture of past service". There is no ambiguity in the language employed in the Rules. Even otherwise also, there is no possibility of any other opinion in this regard.

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8. The Government employees are provided with many such facilities, like, voluntary retirement scheme, medical invalidation etc. Thus, an employee, who is very much aware of the rules and intended to resign the job and after acceptance of such resignation by the authorities competent, cannot claim pension, on the ground that he/ she has rendered a qualifying period of service for the purpose of grant of pension. Once the resignation is declared as forfeiture of the past service, then, the employee is not entitled for any pension as per the Rules. Even recently, the Honourable Division Bench of this Court in case of **A.I.Agnel Ilangovan v. The Government of Tamil Nadu**, reported in **2016 (2) LLN 254 (DB) (Mad.)**, has held as follows:

"7. Proviso to rule 23, makes it abundantly clear that there shall not be any forfeiture of past services, if the resignation is submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government, where service qualifies. Exclusion is only to the specific instance of taking up another employment, whether temporary or permanent, with the permission of the competent authority.

8. As rightly observed by the Writ Court, when the provision is plain and unambiguous, there cannot be any addition or substitution of words. Resignation could be due to misconduct or adverse record or ill-health or family problems or for any other justifiable cause. When the statute has excluded all the above, with the only specific inclusion, for consideration of the past services, for pension, in the event of taking up another appointment, whether temporary or permanent, under the Government, with proper permission, benefit of the said proviso, cannot be extended to a case of resignation due to ill-health. The Writ Court has adverted to the abovesaid aspect, placing reliance on the decisions of the Hon'ble Apex Court. We wish to add few more judgments, on the aspect as to how a section and proviso has to be interpreted.

(1) In the words of Tindal, C.J., in **Sussex Peerage case** 1844 (11) Cl & F 85, wherein, he said thus, "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in



their natural and ordinary sense. The words themselves so alone in such cases best declare the intent of the lawgiver."

(2) In **Nairin v. University of St. Andrews** reported in 1909 AC 147, the Apex Court held, "Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice."

(3) In **Ram Rattan v. Parma Nand**, AIR 1946 PC 51, the Hon'ble Mr.S.R.Das, held as follows:

"The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."

(4) In **Poppatlal Shah v. State of Madras**, AIR 1953 SC 274, the Supreme Court held, "It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself."

(5) In **Rao Shive Bahadur Singh v. State**, AIR 1953 SC 394, the Supreme Court held, "While, no doubt, it is not permissible to supply a clear and obvious lacuna in a statute, and imply a right of appeal, it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application."

(6) What is the spirit of law, Hon'ble Mr. Justice S.R.Das in **Rananjaya Singh v. Baijnath Singh**, AIR 1954 SC 749, said that, "The spirit of



the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the Sections of the Act."

(7) In **Hari Prasad Shivashankar Shukla v. A.D. Divelkar**, AIR 1957 SC 121, the Apex Court held, "It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended, Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

(8) In **Kanai Lal Sur v. Paramnidhi Sadhukhan**, AIR 1957 SC 907, the Supreme Court held, "it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act."

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction.

It is only in such cases that it becomes relevant to consider the mischief and defect which the, Act purports to remedy and correct."

(9) In **State of W.B. v. Union of India**, AIR 1963 SC 1241, the Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the



aim, object and scope of the statute to be read in its entirety.

(10) In **State of Uttar Pradesh v. Dr. Vijay Anand Maharaj**, AIR 1963 SC 946, the Supreme Court held as follows:

"But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p. 68, and in Crawford on 'Statutory Construction' at p. 492, that it is the duty of the Judge "to make such construction of a statute as shall suppress the mischief and advance the remedy," and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason. But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p.68 of his book:

"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature.

The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature."

(11) In **Inland Revenue Commissioner v. Joiner**, (1975) 3 All. ER 1050, it has been held that normally a statutory provision consists of a general description of some factual situation and the legal consequences ensuing from it. Whether the general description is wide or narrow, it will have some limits. The question before a court of law in dealing with a statute is whether the factual situation proved before it falls within the general description given in the statute. A real difficulty in determining the right answer can be said to arise from an "ambiguity" in the statute. It is in this sense that the words,



"ambiguity" and "ambiguous" are widely used in judgments.

(12) In **Commissioner of Sales Tax v. Mangal Sen Shyamlal**, 1975 (4) SCC 35 : AIR 1975 SC 1106, the Hon'ble Apex Court held, "A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it". From that function the court is. not to resile. It has to abide by the maxim, "ut res magis valiat quam pereat", lest the intention of the legislature may go in vain or be left to evaporate into thin air."

(13) In **C.I.T., Madras v. T.Sundram Iyengar (P) Ltd.**, 1976 (1) SCC 77, the Hon'ble Supreme Court held, if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.

(14) If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature. In **Ku.Sonia Bhatia v. State of U.P. and others**, 1981 (2) SCC 585 : AIR 1981 SC 1274, the Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.

(15) It is a well settled law of interpretation that when the words of the statute are clear, plain or unambiguous, ie., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. Reference can be made to the decision of the Apex Court in **Nelson Motis v. Union of India**, AIR 1992 SC 1981.

(16) In **Oswal Agro Mills Ltd. v. Collector of Central Excise and others**, 1993 Supp (3) SCC 716 : AIR 1993 SC 2288, the Hon'ble Apex Court held that, where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation, which are merely presumption in cases of ambiguity in the statute. The Court would interpret them as they stand.

<https://hcservices.ecourts.gov.in/hcse/vices/> (17) In **Nasiruddin v. Sita Ram Agarwal**, (2003) 2 SCC 577, the Hon'ble Supreme Court held as follows:



"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....

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37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used.But the intention of the legislature must be found out from the scheme of the Act."

(18) In **Indian Dental Association, Kerala v. Union of India**, 2004 (1) Kant. LJ 282, the Court held, "The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well- accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the language of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as found. It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something



which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected."

(19) In **State of Jharkhand v. Govind Singh**, (2005) 10 SCC 437, the Hon'ble Supreme Court held:

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes functus officio so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See Frankfurter: "Some Reflections on the Reading of Statutes" in Essays on Jurisprudence, Columbia Law Review, p. 51.)"



(20) In **Vemareddy Kumaraswamy Reddy v. State of A.P.**, (2006) 2 SCC 670, the Hon'ble Supreme Court held that:

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous."

(21) In **A.N.Roy Commissioner of Police v. Suresh Sham Singh**, AIR 2006 SC 2677, the Hon'ble Apex Court held:

"It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."

(22) In **Adamji Lookmanji & Co. v. State of Maharashtra**, AIR 2007 Bom. 56, the Bombay High Court held that, when the words of statutes are clear, plain or unambiguous, and reasonably susceptible to only meaning, Courts are bound to give effect to that meaning irrespective of the consequences. The intention of the legislature is primarily to be gathered from the language used. Attention should be paid to what has been said in the statute, as also to what has not been said.

(23) In **State of Haryana v. Suresh**, 2007 (3) KLT 213, the Hon'ble Supreme Court held, "One of the basic principles of Interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary, to or inconsistent with any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid



such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

(24) In **Visitor Amu v. K.S.Misra**, 2007 (8) SCC 594, the Hon'ble Supreme Court held that, "It is well settled principle of interpretation of the statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

(25) In **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.**, (2008) 4 SCC 755, the Hon'ble Supreme Court, at Paragraphs 52, 54, 55 and 56, held as follows:

"52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd."

(26) In **Phool Patti v. Ram Singh**, (2009) 13 SCC 22, the Hon'ble Supreme Court held:

"9. It is a well-settled principle of interpretation that the court cannot add words to the statute or change its language, particularly when on a plain reading the meaning seems to be clear."

(27) In **Mohd. Shahabuddin v. Stae of Bihar**, (2010) 4 SCC 653, the Hon'ble Supreme Court held:



"179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in *Ansal Properties & Industries Ltd. v. State of Haryana*, 2009 (3) SCC 553.

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision."

(28) In ***Satheedevi v. Prasanna***, (2010) 5 SCC 622, the Hon'ble Supreme Court held as follows:

"12. Before proceeding further, we may notice two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. See *Kanai Lal Sur v. Paramnidhi Sadhukhan*, AIR 1957 SC 907.



13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission - Union of India v. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323; and Shyam Kishori Devi v. Patna Municipal Corpn., AIR 1966 SC 1678."

(29) In **Sri Jeyaram Educational Trust & ors., v. A.G.Syed Mohideen & ors.**, 2010 CIJ 273 SC (1), it is held,

"6. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

...

...

12. On the principles of *causus omissus*, let us consider the decision of the Hon'ble Supreme Court in **Unique Butyle Tube Industries Pvt. Ltd. v. U.P.Financial corporation and others**, 2003 HKC 852 : 2003 (2) SCC 455 : 2003 (113) Comp Cas 374 : 2003 All LJ 427 : AIR 2003 SC 2103, wherein, it was argued that



the Court cannot supply the omissions by the Legislature. While interpreting a provision, the Supreme Court held that the Court only interprets the law and cannot legislate it and it is for the legislature to amend, modify or repeal it if it is deemed necessary. It is further held that by the principle of *causus omissus*, Court cannot supply the law.

13. In the light of the guiding principles of the Hon'ble Supreme Court, as to how statutes and sections have to be interpreted, we are not inclined to accept the contentions of the appellant, both on law and on facts. Having regard to the above principles of law, we are also constrained to observe that the decision in **D.Vijayarangan's** case, cannot be taken as a precedent, to be applied in similar circumstances."

9. In view of the Judgment of the Honourable Division Bench of this Court as well as with reference to Rule 23 of the Rules, the writ petitioner is not entitled for pension and the impugned order is in consonance with the legal principles settled by the Courts.

10. Accordingly, the writ petition is devoid of merits and it stands dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

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TO

+1CC TO M/S.M.BALASUBRAMANIAN, ADVOCATE, SR.NO72885

+1CC TO M/S.R.RAJARAMAN, ADVOCATE, SR.NO72359

W.P. (MD) No.2315 of 2015
28.06.2019