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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	**01.08.2019**
DELIVERED ON	**30.08.2019**

CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.(MD)Nos.942 & 965 of 2018

1) T.Seetha

2) S.S.Rani

3) P.Vasanthi ... Appellants in W.A.(MD) No. 942 of 2018 / Petitioners 2 to 4 in W.P.(MD) No. 18383 of 2017

S.Thirunavukarasu ... Appellant in W.A.(MD) No. 965 of 2018 / 1st Petitioner in W.P.(MD) No.18383 of 2017

Vs.

1) The Secretary to Government,
Revenue Department,
Chennai.

2) The Commissioner of Revenue Administration,
Ezhilagam,
Chepauk, Chennai

3) The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

4) A.Pream Kishore
Former Assistant,
Civil Supply Office.
Madurai North Taluk, Madurai
Now working as
Deputy Tahsildar (Election),
Madurai Corporation,
Madurai

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5) S.Pratheeba
Former Assistant, Revenue Divisional Office,
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Taluk Office, Melur, Madurai.

6) S. Thulasi Brindha
Former Assistant Revenue Divisional Officer,
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Now working as
Deputy Tahsildar (B) Taluk Office,
Madurai South.

7) C.Mughi Balan
Former Assistant Revenue Divisional Officer,
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Now working as
Zonal Deputy Tahsildar,
Kallupatti,
Peraiyur Taluk, Madurai.

8) D.M.Senthil Kumar
Former Assistant, District Collectorate (G Section),
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Now working as
Superintendent (Land reforms),
Collector Office, Madurai.

9) M.R.Muthulakshmi
Former Assistant, District Collectorate,
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10) N.Raghu Ram
Head Assistant(G),
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11) K.Gopalakrishnan
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12) M.Meenakshi Sundaram,
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13) G.Mohan Sundar,
Former Assistant, District Collectorate,
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14) K.Thirunavukkarasu
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15) V.Veera Murugan
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16) R.Damodharan
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17) S.Rajalakshmi
Former Assistant, East Taluk Office,
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18) V.Sundaravel
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19) K.Logeswari
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20) R.Lakshmi Priya
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Kottampatti, Melur, Madurai.

21) B.Esakki Muthukumar
Former Assistant, District Supply Office,
District Collectorate, Madurai
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Assistant, District Supply Office, Madurai

22) M.Poomayee
Former Assistant, Revenue Divisional Office,
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Taluk Office Peraiyur,
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23) R.Manikandan
Former Assistant, Taluk Office, Vadipatti,
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Now working as
Deputy Tahsildar (J Section),
Collector Office, Vadipatti,
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24) M.Gomathi
Former Assistant, Taluk Office,
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25) A.Malathi
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26) J.Karthikeyan
Former Assistant, District Collectorate,
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27) R.Manikandan
Former Assistant, Taluk Civil Supply Office,
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Deputy Tahsildar (Election),
Taluk Office, Usilampatti.

28) S.Sentheeswari
Former Assistant, District Supply Office,
Madurai.
Now working as
Head Clerk District Supply Office,
Madurai.

29) The District Collector,
Collectorate Office,
Madurai. ... Respondents 1 to 29 / Respondents 1 to 29 in both Writ Appeals

30) S.Thirunavukkarasu ... 30th Respondent in W.A. (MD) No.942 of 2018 / 1st Petitioner in W.P.(MD) No.18383 of 2017

31) M.Narayanan ... 31st Respondent in W.A. (MD) No.942 of 2018 / 5th Petitioner in W.P.(MD) No.18383 of 2017

32) T.Seetha

33) S.S.Rani

34) P.Vasanthi ... RR 30 to 32 in W.A. (MD) No.965 of 2018 / Writ Petitioners 2 to 5 in W.P. (MD) No.18383 of 2017

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent Act against the order made in W.P.(MD) No.18383 of 2017 dated 28.06.2018.

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Prayer in WP(MD). 18383/ 2017 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, to call for records in connection with the G.O.Ms.No. 93 dated 20.02.2015 on the file of the 1st respondent quash the same and consequently to follow the Annexure IX (referred to in Rule 38(b) (ii)) of the Tamil Nadu Ministerial Service Rules and file the seniority list direct recruitees and promotes from 2011 onwards before promoting any candidates to the post of Deputy Thasildar with all monetary and service benefits to the post of Deputy Tashildar with all monetary benefits.

In W.A.(MD) No.942 of 2018*:*

For Appellants	:	Mr.R.Singaravelan, Senior Counsel for Mr.D.Selvanayagam
For RR 1 & 2	:	Mr.VR.Shanmuganathan, Special Government Pleader
For R3	:	Mr.D.Sivaraman, Standing Counsel
For RR 4 to 6 & 15	:	Mr.R.R.Kannan
For RR 7,13,16, 18 & 26	:	Mr.V.Panneer Selvam

In W.P.(MD) No.965 of 2018:

For Appellant	:	Mr.A.R.L.Sundaresan,senior counsel for AL.Gandhimathi
For RR 1,2 & 29	:	Mr.K.Chellapandian, Additional Advocate General Assisted by Mr.VR.Shanmuganathan, Special Government Pleader
For RR 6 to 9, 11 to 17, 19 to 26 & 28	:	Mr.R.R.Kannan
For R 27	:	Mr.V.Paneerselvam
For R3	:	Mr.D.Sivaraman
For RR 4,5,10,18,27,30: 31 & 32		No Appearance

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J U D G M E N T

(Judgment of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J.**)

1. The Appellants in W.A.(MD) No.942 are the second, third and fourth Petitioners in the Writ Petition and the Appellant in W.A.(MD)No. 965 of 2019 is the first Petitioner in the Writ Petition. The Writ Petition was filed by the Appellants herein, i.e. in the above mentioned two Writ Appeals, and the 31st Respondent in W.A. No.942 of 2019 to quash G.O.Ms.No.93 dated 20.02.2015 (the Impugned G.O.) and consequently follow Annexure IX read with Rule 38 (b) (ii) of the Tamil Nadu Ministerial Service Rules (the Ministerial Service Rules) for the preparation of the seniority list of promotees and direct recruits from the year 2011 onwards before promoting any candidate to the post of Deputy Tahsildar with all service and monetary benefits. The said Writ Petition was dismissed by Order dated 28.06.2018 whereby the impugned G.O. was upheld. The said Order is impugned in these Writ Appeals.

2. The primary and ancillary questions that arise for consideration in these Writ Appeals are whether the Impugned G.O. is liable to be quashed, whether the Impugned G.O. has the effect of amending Clause 8(v) of Annexure IX to the Ministerial Services Rules and, if not, whether the requirement of undergoing training for one year and eight months in the office of the Collector continues to be binding as on date. In order to consider these questions, it is necessary to examine the relevant rules before examining the Impugned G.O. Rule 38 (b) (ii) of the Ministerial Service Rules provides that direct recruitment of assistants in the revenue department shall be done as per Annexure IX notwithstanding anything stated in the said Rules. The said Annexure IX specifies the training requirements for assistants, who are appointed by direct recruitment. Clause 8(v) thereof specifies that after undergoing training as a firka revenue inspector for two years, the assistants concerned shall undergo training for the next one year and eight months in the collector's office. By virtue of the Impugned G.O., this requirement is proposed to be relaxed by providing that the training may be undergone in any of the offices of the revenue department as an alternative to undergoing training in the office of the collector. The said relaxation is challenged in the Writ Petition and the Writ Appeals arising there from.

3. The learned senior counsel for the Appellant in Writ Appeal No. 942 of 2018, Mr. R. Singaravelan, made oral submissions and also submitted a written brief. He opened his oral arguments by submitting that service law does not recognise the concept of calendar year but only recognises the concept of panel year. He further submitted that the crucial date for the purposes of the panel year varies from service to service and that the panel is

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required to be drawn every year but this is not being done. In order to emphasise that it is necessary to draw the panel every year, he referred to the first proviso to Rule 4 (a) of the Tamil Nadu State and Subordinate Services Rules (the TNSSS Rules) and Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (the TNGS Conditions of Service Act). He also referred to the judgment of the Supreme Court in **Union of India vs. Hemraj Singh Chauhan (2010) 4 SCC 290** wherein, in the context of Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954, which mandates that ordinarily a cadre review should be done every five years, it was held that the right to be considered for promotion is virtually a fundamental right and that the legitimate expectation, in that regard, was defeated due to the delay in carrying out cadre review. As regards seniority, he submitted that the seniority list is different from the panel or list of approved candidates for promotion and that this list should be drawn at least three months before the crucial date in respect of the relevant promotion post so as to ensure that the seniority list is available in advance and the panel or list of approved candidates may be drawn after reckoning eligibility and suitability.

4. With specific reference to direct recruitment of assistants in the revenue department, he submitted that the appointment, training and conditions of service of such directly recruited assistants is governed by Annexure IX of the Ministerial Service Rules as provided in Rule 38(b)(ii) thereof. He further submitted that Clause 2(a) of Annexure IX imposes a restriction on the number of vacancies that may be filled up by direct recruitment (pursuant to Rule 1 thereof) by stipulating that it "shall not exceed in any year one third of the total number of vacancies arising in such district in that year". He pointed out that this safeguard and the ratio safeguard in Clause 9 of Annexure IX are intended to protect, preserve and balance the interest of promotees and direct recruits. In this connection, he also pointed out that G.O. Ms. No.698 Revenue [Ser 9(2)] Department dated 29.12.2010, which was issued by exercising powers under Rule 48 of the TNSSS Rules, enabled the recruitment of a larger number of directly recruited assistants but did not enable any deviation from the requirements of Clause 9 of Annexure IX. For the purpose of giving effect to Clause 9, he submitted that it is necessary to prepare both a seniority list every year by following the cyclical order and ratio in the said Clause 9 and, thereafter, a panel or list of approved candidates for the next promotion post of Deputy Tahsildar. However, he stated that this was not done regularly in the recent past and that after issuance of the Impugned G.O. in February 2015, the DRO Madurai prepared the seniority list for the year 2011 to 2015 by accommodating more directly recruited assistants without following the cyclical order and ratio.

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5. In order to fortify his submissions on the significance of

and necessity to adhere to the ratio between promotees and direct recruits, in the context of preparation of seniority list and consideration for the next promotion post, the learned senior counsel referred to and relied upon the judgments that are set out below with a brief description of context and principle:

(a) **Maharashtra Varikar Karamchari Sangathan vs. State of Maharashtra (2000) 2 SCC 552** wherein, in the context of excessive promotion of promotees on temporary promotion basis, the Supreme Court held, at paragraph 26, that such promotees cannot take advantage of the patent violation of the quota rule.

(b) **M. Rathinaswami vs. State of Tamil Nadu, (2009) 5 SCC 625**, wherein it was held that there is no rational basis to give preference to a directly recruited assistant over a promotee if they are equally qualified.

(c) **Union of India vs. G.R. Ramakrishna (2013) 12 SCC 582**, wherein the Supreme Court interfered with an order of the High Court whereby relaxation of the 8 year experience rule was granted for promotion to a selection grade post.

(d) **Bhupendra Nath Hazarika vs. State of Assam (2013) 2 SCC 516**, wherein the Supreme Court held that special batch candidates who were appointed earlier in breach of recruitment rules cannot claim priority over those appointed subsequently in accordance with extant recruitment rules.

(e) **M.S. Sandhu vs. State of Punjab (2014) 6 SCC 514**, wherein the Supreme Court held, in the context of Rule 10 of the Punjab Police Service Rules, 1959, that the quota rule should be followed not only at the time of appointment but also at the time of confirmation.

(f) **The Secretary to Government vs. S.D. Madasamy 2018-2-Writ L.R.381 (DB)** wherein it was held, at paragraph 22, that ".... the proper procedure for determination of seniority for the purposes of promotion by transfer from among the lower cadre employees working in the Panchayat Service should be based on the cadre wise seniority and not the general seniority (based on date of joining into service)...."

(g) **Order in W.P. (MD) No. 15932 of 2017**, wherein Annexure IX was directed to be followed for the preparation of the seniority list.

(h) **Order in A. Parvathi vs. The State of Tamil Nadu, W.P. No. 2241 of 2018 dated 09.03.2018 as affirmed in judgment dated 28.04.2018 in W.A. No. 1038 of 2018**, wherein the seniority list was directed to be prepared in accordance with Annexure IX, including Clauses 2(a) and 9 thereof.

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After relying upon the above judgments, Mr. Singaravelan concluded his submissions by contending that the Impugned G.O. was only a proposal for amendment and that it did not have the effect of relaxing the requirements of Clause 8(v) of Annexure IX.

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6. The learned senior counsel for the Appellant in W.A. No.965 of 2019, Mr.ARL. Sundaresan, also made oral submissions and circulated a memorandum of written submissions. The main contention of Mr. Sundaresan was that the Impugned G.O. is a proposal for an amendment to Clause 8(v) of Annexure IX but not an amendment thereof. In order to substantiate this submission, G.O. Ms. No.368 P&AR Department dated 18.10.1993 and Government Letter No.18824/S/2005-2 of P&AR Department dated 24.02.2014 were referred to and relied upon and it was contended that it is emphasised and reiterated in the above orders/communications that the preparation of panels and grant of promotions should be based on rules in force and not proposed rules, which have not been duly notified as per Article 309 of the Constitution. It was further submitted that in spite of the fact that the Impugned G.O. is only a proposal for amendment, promotions were given on that basis to assistants who did not complete the mandatory training for one year and eight months in the Collector's office. In support of these contentions, judgments of the Hon'ble Supreme Court that are reported in (2009) 5 SCC 625, (2010) 4 SCC 290, (2013) 12 SCC 582, (2013) 2 SCC 516 and (2014) 6 SCC 514, all of which are cited and discussed briefly supra, were relied upon.

7. In response and to the contrary, submissions were made by Mr. K. Chellapandian, the learned Additional Advocate General, assisted by Mr. VR. Shanmuganthan, the learned Special Government Pleader, on behalf of the official Respondents. Their main contentions were that the Impugned G.O. was issued in 2015 but was challenged belatedly in the year 2017 after the lapse of more than 2 years. In addition, it was contended that the Appellants herein were promoted as assistants in 2013 and 2014 and, therefore, they are not affected by the drawing of panels for the years 2011 on the basis of the Impugned G.O. in as much as they are admittedly ineligible and outside the zone of consideration during the relevant period. In effect, the submission is that they are not affected by and do not have the locus standi to question the Impugned G.O. It was further contended that the Government has both the power and prerogative to amend recruitment rules and that by this amendment, the place of training and not the length thereof is modified in view of the impracticability of imparting the said training to all concerned at the collector's office.

8. The learned counsel for the directly recruited assistants, Mr Kannan, submitted that there was a ban on filling up posts through direct recruitment from the year 2011 and that the said ban was lifted only on 7.2.2006. He further submitted that, therefore, large-scale recruitment was done after the ban was lifted. He also

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submitted that insufficient number of eligible promotees were available at the relevant time and, therefore, the ratio as between direct recruits and promotees was relaxed so as to ensure that adequate number of qualified persons could be appointed as per requirements. He further submitted that the Impugned G.O. was necessitated by this situation wherein large numbers of direct recruits could not be accommodated in the office of the collector and, therefore, it was decided that they could undergo training for the said one year and eight months in any of the offices within the purview of the revenue administration. In this regard, he pointed out that the one year taluk service for promotees was relaxed by G.O.Ms. No.1090. In effect, he contended that promotees have already derived the benefit of the said relaxation in training requirements and having derived such benefit, they cannot approbate and reprobate. He further submitted that by virtue of the Impugned G.O., it is only the place of training that is changed and not the length of training. Consequently, it is a modification and not an amendment and that there is no infirmity in the Impugned G.O. and that it was correctly upheld by the Writ Court. On this basis, he concluded his submissions by contending that the Writ Appeals are liable to be dismissed.

9. The records were examined and the oral submissions were carefully considered. In view of the fact that it was contended that the Government has the power to amend recruitment rules, it is pertinent to consider if an amendment was made. For this purpose and in order to decide whether the Impugned G.O. is liable to be quashed and, more importantly, to decide on the implications and consequences of the Impugned G.O., the said document should be examined. The Impugned G.O. records that representations were made by the Association of Directly Recruited Officers that it is not possible to undergo training for one year and eight months in the office of the collector on account of inability to accommodate all concerned and that, therefore, this requirement should be relaxed. It further records that the Joint Chief Secretary of the Revenue Administration, by order dated 30.12.2014, recommended that Rule 38 (b) (ii) read with Annexure IX, clause 8 (v) should be amended so as to permit the persons concerned to undergo training in any of the offices under the revenue administration as an alternative to undergoing the training at the office of the collector. On that basis, an amendment was proposed to Rule 38 (b) (ii) read with Annexure IX, Clause 8 (v) of the Ministerial Service Rules. The Joint Chief Secretary/Commissioner Revenue Administration was requested to take steps in aid of bringing about the requisite amendment for the above purpose. On close examination, it is clear that the Impugned G.O. does not make the amendment. Instead, it is clear that the Impugned G.O. was issued on acceptance of the recommendation of the Joint Chief Secretary and that the said Joint Chief Secretary was called upon to take necessary steps for making the amendment pursuant to the Impugned G.O. Significantly, it also does not refer to any rule or section pursuant to which the Impugned

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G.O. was issued. By contrast, G.O. Ms.No.192 Revenue [Ser 9(2)] Department dated 08.06.2009 expressly referred to Rule 48 of the TNSSS General Rules as the source of the power to relax the application of Clause 2 of Annexure IX read with Rule 38(b)(ii) of the Ministerial Service Rules. Similarly, G.O. Ms. No.166 Revenue [Ser 9(2)] Department dated 05.04.2010 and G.O. Ms. No.698 Revenue [Ser 9(2)] Department dated 29.12.2010, which also deal with relaxation of the requirements of Annexure IX of the Ministerial Services Rules, expressly trace the power to Rule 48 of the TNSSS Rules. Thus, it may be concluded that the Impugned G.O. does not amend Clause 8(v) of Annexure IX.

10. Given the fact that no amendment has been made to clause 8 (v) of Annexure 9 of the Ministerial Services Rules, as correctly contended by Mr. Sundaresan, as per G.O. Ms. No.368 P&AR Department dated 18.10.1993 and Government Letter No.18824/S/2005-2 of P&AR Department dated 24.02.2014, the preparation of panels and grant of promotions should be based on rules in force and not proposed rules, which have not been duly notified as per Article 309 of the Constitution. The contention of the learned Additional Advocate General that the Appellants are not affected by the Impugned G.O. on the basis that their names are included in the inter-se seniority list of assistants in 2013 and 2014 and that they are, consequently, unaffected by the Impugned G.O. may be true in respect of particular panel years but the Impugned G.O. is not limited to particular panel years. Therefore, we are of the considered view that the relaxation in the requirement of undergoing training in the office of the collector for a period of one year and eight months after undergoing the two-year training as a revenue firka inspector cannot be implemented at this juncture. Consequently, as correctly contended by the learned senior counsel for the Appellants, the Impugned G.O. cannot be relied upon for the purposes of preparing inter se seniority lists or determining eligibility while drawing the panel of approved candidates for promotion as Deputy Tahsildar. In this regard, it is also relevant to note that Clause 10 of Annexure IX provides as follows:

> "Consistent with his seniority, a directly recruited assistant shall be eligible for promotion to any selection category posts provided he has put in one year service in the Collector's office after he has completed the period of training as Firka Revenue Inspector and has also passed the tests prescribed".

This Clause is not proposed to be amended by the Impugned G.O. and would also be applicable. As a result of the above discussion and analysis, the order of the Writ Court whereby the Writ Petition was dismissed is liable to be interfered with. In effect, although the Impugned G.O. is not liable to be quashed, in light of our finding that the Impugned G.O. merely proposes but does not actually make an amendment, as stated earlier, the existing training requirements as per Annexure IX, including clauses 8 (v) and clause 10, would have to be fulfilled by directly recruited assistants.

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11. In the result, these Writ Appeals are liable to be and are hereby allowed by setting aside the order of the Writ Court and holding that the requirements of Rule 38(b)(ii) read with Annexure IX of the Ministerial Service Rules continue to be binding notwithstanding G.O. Ms.No.93 dated 20.02.2015. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

sts

To

1) The Secretary to Government,
Revenue Department,
Chennai.

2) The Commissioner of Revenue
Administration,
Ezhilagam,
Chepauk, Chennai

3) The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

4) The District Collector,
Collectorate Office,
Madurai.

+2 CC to M/s.V.PANNEER SELVAM, Advocate (SR-84547,84548[F] dated 30/08/2019)
+1 CC to M/s.D.SIVARAMAN, Advocate (SR-84660[F] dated 30/08/2019)
+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-84664[F] dated 30/08/2019
+1 CC to M/s.AL. GANTHIMATHI, Advocate (SR-84939[F] dated 03/09/2019)
+2 CC to M/s.RR. KANNAN, Advocate (SR-85019[F] dated 04/09/2019)

W.A.(MD)Nos.942 & 965 of 2018

Dated:
30.08.2019

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