



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.11.2019

CORAM :

THE HONOURABLE MS. JUSTICE V.M. VELUMANI

W.P. (MD) Nos. 19144 and 9691 of 2018 and 11409 of 2019

and

W.M.P. (MD) Nos. 16996 of 2018, 8941 & 8942 of 2018 and 8682 & 8683 of 2019

V. Bagyalakshmi

... Petitioner in
all the W.Ps.

vs.

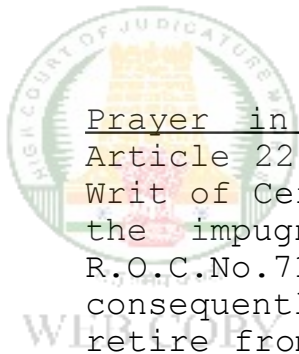
1. The Principal Secretary to Government,
Social Welfare and Nutritious Meal Programme
Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Director of Social Welfare,
Saidapet,
Chennai - 600 015.

... Respondents in
all the W.Ps.

Prayer in W.P. (MD) No. 19144 of 2018:- Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned charge memo issued by the second respondent in Na.Ka.No.31869/Nir 5 (3)/2014, dated 03.08.2018, quash the same and consequently, direct the respondents to allow the petitioner to retire from service on the date of retirement on 30.09.2017 with payment of retirement benefits and all consequential benefits, including regular pension, within a time frame to be fixed by this Court.

Prayer in W.P. (MD) No. 9691 of 2018:- Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of suspension issued by the first respondent in G.O. (D) No. 201, dated 28.09.2017 and further another order not allowing to retire from service in G.O. (2D) No. 21, dated 28.09.2017, quash the same and consequently, direct the respondents to allow the petitioner to retire from service from the post of Social Welfare Officer on the date of retirement on 30.09.2017 and to settle the retirement benefits to the petitioner as on the date of retirement including regular pension along with interest for the belated payment with all consequential and other attendant benefits including arrears of salary, within a time frame to be fixed by this Court.



Prayer in W.P.(MD)No.11409 of 2019:- Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned charge memo issued by the second respondent in R.O.C.No.7149/Admin 5(3)/2019, dated 25.03.2019, quash the same and consequently, direct the respondents to allow the petitioner to retire from service as on the date of retirement on 30.09.2017 with payment of retirement benefits and all consequential benefits including regular pension, within a time frame to be fixed by this Court.

For Petitioner : Mr.K.K.Senthilvelan
(in all the W.Ps.)

For Respondents : Mr.VR.Shanmuganathan
(in all the W.Ps.) Special Government Pleader

COMMON ORDER

W.P.(MD)No.19144 of 2018 has been filed seeking to quash impugned charge memo issued by the second respondent in Na.Ka.No.31869/Nir 5 (3)/2014, dated 03.08.2018, and a consequential direction to the respondents to allow the petitioner to retire from service on the date of retirement i.e., on 30.09.2017 with payment of retirement benefits and all consequential benefits, including regular pension.

2.W.P.(MD)No.9691 of 2018 has been filed seeking to quash the impugned order of suspension issued by the first respondent in G.O.(D)No.201, dated 28.09.2017 and another order not allowing to retire from service in G.O.(2D)No.21, dated 28.09.2017, and a consequential direction to the respondents to allow the petitioner to retire from service from the post of Social Welfare Officer on the date of retirement i.e., on 30.09.2017 and to settle the retirement benefits to the petitioner as on the date of retirement including regular pension along with interest for the belated payment with all consequential and other attendant benefits including arrears of salary.

3.W.P.(MD)No.11409 of 2019 has been filed seeking to quash the impugned charge memo issued by the second respondent in R.O.C.No.7149/Admin 5(3)/2019, dated 25.03.2019, and a consequential direction to the respondents to allow the petitioner to retire from service as on the date of retirement i.e., on 30.09.2017 with payment of retirement benefits and all consequential benefits including regular pension.

4.The issues involved in the Writ Petitions are interlinked and therefore, they are heard together and disposed of by way of this



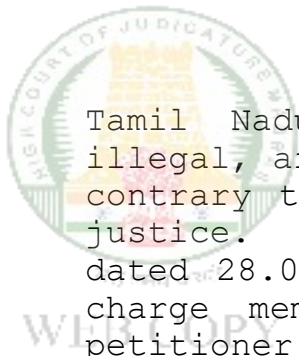
common order.

5. The case of the petitioner is that she was appointed as Child Nutritious Instructor in Social Welfare Department on 16.08.1982. After various promotions, she was promoted as Social Welfare Officer, Thanjavur District, on 30.10.2015. She was due to retire from service on attaining the age of superannuation on 30.09.2017. While so, the petitioner was placed under suspension by the first respondent, vide G.O.(D)No.201, Social Welfare and Nutritious Meal Programme (SW-1) Department, dated 28.09.2017 and not allowed the petitioner to retire from service, vide G.O.(2D)No.21, Social Welfare and Nutritious Meal Programme (SW1) Department, dated 28.09.2017.

6. The learned counsel appearing for the petitioner contended that the petitioner was placed under suspension on the verge of her retirement on the ground that the enquiry into grave allegation against the petitioner is pending. On the date of retirement, there were no charges pending against her. The order of suspension is not sustainable and the order not permitting the petitioner to retire from service, based on such order of suspension, is invalid. She filed W.P.(MD)No.9691 of 2018 challenging the above said two Government Orders, suspending her from service and not allowing her to retire from service. While the said Writ Petition was pending, after receipt of notice in the said Writ Petition, in order to overcome the lapses, the petitioner was suspended from service without there being any pending charges. Thereafter, the second respondent issued a charge memo dated 03.08.2018, containing three charges. The said charge memo is issued after one year of date of retirement of the petitioner. The Charges 1 and 2 are vague without referring to any incident and there is no allegation of misappropriation against the petitioner. The third charge is based on the anonymous complaint made against the petitioner in the year 2016. The said complaint was enquired into by one Revathi, Joint Director [Women Welfare] and a report dated 18.09.2017, was submitted holding that the charges are false and not proved.

6(i). Without any reason, the charge memo dated 03.08.2018, was issued on the same set of charges, when the same were already enquired into and a report was filed. Hence, the petitioner filed W.P.(MD)No.19144 of 2018. While the two Writ Petitions referred to above filed by the petitioner, are pending, the second respondent issued another charge memo dated 25.03.2019 containing two charges. Challenging the said charge memo, dated 25.03.2019, the petitioner has filed W.P.(MD)No.11409 of 2019.

6(ii). The learned counsel appearing for the petitioner contended that the two impugned orders dated 28.09.2017, suspending the petitioner from service and not allowing her to retire from service on the date of superannuation and the two charge memos, dated 03.08.2018 and 25.03.2019, issued under Rule 17(b) of the



Tamil Nadu Civil Services (Discipline and Appeal) Rules, are illegal, arbitrary and against law. The impugned orders were passed contrary to the records and in violation of principles of natural justice. The petitioner was suspended from service by the order dated 28.09.2017, i.e., two days prior to her retirement, when no charge memo and criminal proceedings were pending against the petitioner. No enquiry into grave charges was pending on the date of suspension and the reason given for suspending the petitioner was not in existence on the date of suspension. As per Rule 56(1)(c) of the Fundamental Rules, a Government Servant shall not be permitted to retire from service on attaining the age of superannuation, only based on the valid suspension order. When the suspension order dated 28.09.2017 is not valid, the order not permitting her to retire from service, is also not valid. The order of suspension issued on the verge retirement is against the directions issued by the Government in G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007. There cannot be an order of suspension on the last date of retirement without even framing the charges.

6(iii).The learned counsel appearing for the petitioner further contended that the two charge memos issued after lapse of ten months and 1 ½ years from the date of the petitioner's superannuation respectively, is invalid, as the alleged incident had occurred in the years 2015-2016 and 2016-2017 and the petitioner attained the age of superannuation on 30.09.2017. The second respondent has not initiated any disciplinary proceedings within a reasonable time after the alleged incident.

6(iv).In support of his submissions, the learned counsel appearing for the petitioner relied on the order of this Court, in the case of **M.Janarthanan Vs. Chairman, Tamil Nadu Slum Clearance Board and others** reported in **2014 (2) CWC 261**, and submitted that any disciplinary proceedings must be initiated at-least three months before the date of retirement of Government Servant and enquiry must be conducted on war-footing and completed before the date of retirement of the Government Servant. The relevant Paragraphs of the said order read as follows:-

'11.The above observation of the Apex Court deprecating the practice of initiating departmental proceedings with a huge delay of ten years, in my view, can be applied to the present case as well because, in the case on hand, the impugned charge memo was issued with a huge and unexplained delay of 14 years for the alleged commissions and omissions said to have taken place during the month of August, 1997 when the petitioner was serving as Executive Engineer, totally contrary to the G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department dated 8.6.2007 directing the disciplinary authority not to resort to last minute suspension of the Government employee, namely, on the date of retirement. In this context, the following directions issued by the



Government to avoid last minute suspension order on the date of retirement of the Government servant may also be usefully referred to in the present case:-

5. The Government direct that the following guidelines be followed to avoid suspension orders on the date of retirement of the Government servants in supersession of orders issued in the reference second read above:

(i) The disciplinary authority should not resort to last minute suspension of the Government servants (i.e.) on the date of their retirement. A decision either to allow Government servant to retire from service or suspend him from service should be taken well in advance (i.e.) three months prior to the date of retirement on superannuation and orders issued in the matter and such a decision should not be taken on the date of retirement, if final orders could not be issued in a pending disciplinary case against a Government servant retiring from service due to administrative grounds.

(ii) If an irregularity or an offence committed by the Government servant comes to notice within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the Government servant to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension, based on gravity of the irregularities committed by him.

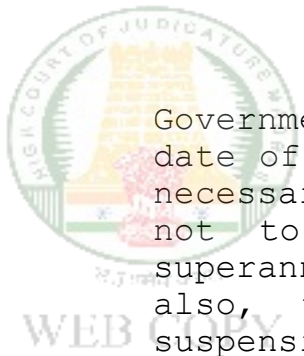
(iii)

(iv) Any failure on the part of the disciplinary authority to issue final orders three months before the date of retirement of a delinquent officer will be viewed seriously and it will entail severe action to be initiated against the officials responsible for dragging on the case to the date of retirement of Government servant concerned.

(v) Where the delinquency committed by a Government servant is very grave which warrants imposition of major penalty such as dismissal or removal from service and if it is not possible to pass final orders in such departmental proceedings, then it is necessary to suspend the Government servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56 (1)(c). In such cases also, the disciplinary authorities have to ensure that the suspension orders are not issued on the date of retirement of the Government servants. However, where a Government servant is already under suspension, orders retaining the services of Government servant beyond the date of superannuation under Fundamental Rule 56(1)(c) have to be issued on the date of retirement only.

(vi)

(vii) If the disciplinary authority comes to know of the commission of a delinquency which warrants imposition of major penalty such as dismissal or removal from service, three months prior to the date of retirement of the



Government servant and charges could not be framed before the date of retirement of the Government servant, then also it is necessary to suspend the Government servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56(1)(c). In such cases also, the disciplinary authorities may ensure that the suspension orders are not issued on the date of retirement of the Government servant.

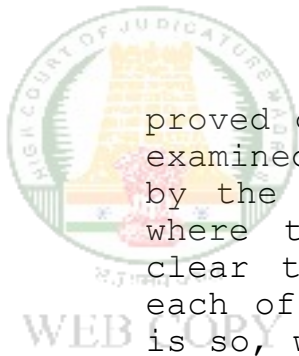
(viii)''

12. In spite of the above repeated directions and guidelines issued by the Government in the G.O.Ms.No.144 dated 8.6.2007, placing the petitioner under suspension just six days before he reached the age of superannuation and further retaining him in service for the purpose of issuing the charge memo after the date of his retirement being contrary to their own G.O.Ms.No.144, keeping in mind that there is no preliminary or discreet enquiry conducted to find out any specific loss caused to the department, this Court is of the considered opinion that the disciplinary proceedings initiated against the petitioner with an unexplained and inordinate delay of 14 years should be held as non est in the eye of law. For all these reasons, the impugned orders are set aside and both the writ petitions are allowed. Needless to mention that the respondents will settle the terminal benefits by treating the petitioner as having retired from service on 31.10.2011. Consequently, M.P.Nos.1 of 2012 are closed. No costs.''

6(v). The learned counsel appearing for the petitioner further relied on the order of this Court in **M.Nainar Mohammed Vs. The State of Tamil Nadu, Rep. by the Principal Secretary to Government, Environment and Forests Department, Chennai and another** reported in **2017 (5) CTC 536** and submitted that in the said order, this Court has deprecated the action of the Department in not taking disciplinary proceedings within a reasonable time of alleged incident and suspending the employee on the verge of retirement and not allowing him to retire.

6(vi). The charges now levelled against the petitioner were already enquired into by the Joint Director [Women Welfare], Chennai, and report has been filed that the charges were not proved. If the Disciplinary Authority is not accepting the report of the Enquiry Officer, he cannot appoint another Enquiry Officer to get a favourable report. In support of the said contention, the learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of **Union of India Vs. K.D.Pandey and another** reported in **2002 (10) SCC 471**, wherein at Paragraph 5, it has been held as follows:-

''5. Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be



proved on the available material, which had not been properly examined in the earlier inquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly.''

6(vii) The learned counsel appearing for the petitioner further relied on the judgment of the Hon'ble Apex Court in **Vijay Shankar Pandey Vs. Union of India and another** reported in **2014 (10) SCC 589** and contended that if the disciplinary authority is not accepting the report of the Enquiry Officer, cannot order for second enquiry after rejecting the report of the Enquiry Officer.

6(viii). The learned counsel appearing for the petitioner submitted that the charges are vague and the charge memos are issued belatedly and therefore, the charge memos are liable to be quashed. In support of the said contention, the learned counsel relied on the judgment of the Hon'ble Apex Court in **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board** reported in **2005 (4) CTC 403**, wherein at Paragraphs 14 and 15, it has been held as follows:-

'14. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department



in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No costs.'

6(ix). The enquiry, after retirement of an employee, can be held only after obtaining permission and sanction from the Government. The second respondent did not obtain any permission and sanction. The petitioner was placed under suspension, vide G.O.(D) No. 201, Social Welfare and Nutritious Meal Programme (SW-1) Department, dated 28.09.2017, on the premise that the enquiry into grave offence is pending, whereas on the date of retirement i.e., on 30.09.2017, there were no charges pending against the petitioner. On the same date, the petitioner was issued with another order, not permitting her to retire from service based on such invalid suspension order and prayed for allowing all the three Writ Petitions.

7. The respondents filed counter affidavit in W.P.(MD) No. 19144 of 2018 and denied all the averments made by the petitioner. The learned Special Government Pleader appearing for the respondents contended that the Writ Petitions filed challenging the charge memos are not maintainable. The enquiry conducted by S.Revathy, Joint Director [Women Welfare] is only informal enquiry and she is not competent Officer and it is for the competent authority to accept or reject the said report. Subsequently, the Government appointed one Saroja Thiruvengadam, Deputy Director, Social Welfare Department, who held the enquiry and gave a report that the charges were proved. As per Rule 9(2)(b) of the Tamil Nadu Pension Rules, enquiry after retirement is permissible. The petitioner has suppressed the fact that after enquiry by S.Revathi, Joint Director [Women Welfare], Chennai, another enquiry was held by Saroja Thiruvengadam, Deputy Director, Social Welfare Department, who gave report that the charges leveled against the petitioner were proved. The petitioner has not offered any explanation to the charge memos and has filed the present Writ Petitions. In view of the same, the domestic enquiry cannot be proceeded with. The Government after receiving the complaint, placed the petitioner under suspension by invoking the power under Rule 56(1)(c) of the Fundamental Rules. Even though the charges have been framed against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the petitioner was retained in service in terms of Rule 56(1)(c) of the Fundamental Rules, the respondents have power to take disciplinary proceedings against the petitioner in terms of the Tamil Nadu Pension Rules.

<https://hcservices.ecourts.gov.in/hcservices/> 7. The learned Special Government Pleader further contended



that the disciplinary proceedings can be continued even after the retirement of the employee and relied on the judgment of the Division Bench of this Court in **N.Kunnai Gowder Vs. The Coimbatore District Co-operative Milk Producers' Union Ltd. and others** reported in **2008 (1) MLJ 119** and the judgment of the Hon'ble Apex Court in **UCO Bank and others. Vs. Rajinder Lal Capoor** reported in **2008 (5) SCC 257** and contended that the Hon'ble Apex Court has held that the authorities can continue the disciplinary proceedings even after the retirement of the delinquent under Rule 9(2) of the Tamil Nadu Pension Rules and prayed for dismissal of all the Writ Petitions.

8.I have heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials on record.

9.From the materials on record, it is seen that the petitioner has been proceeded with departmental enquiry for the alleged incident that has occurred in the years 2015-2016 and 2016-2017. In both the charge memos, the second respondent has not given particulars as to when the incident had occurred except stating that the third charge in the first charge memo that the enquiry was conducted on 10.05.2016 and the first charge in the second charge memo relates to the years 2015-2016 and 2016-2017. In spite of having knowledge of alleged incident in the year 2016 itself and having held the enquiry on 10.05.2016, the second respondent has not explained as to why the disciplinary proceeding was not initiated till 03.08.2018 and 25.03.2019. The second respondent has passed the order of suspension on 28.09.2017, i.e., just two days prior of the date of retirement of the petitioner. The said action of the second respondent is contrary to the direction of the Government issued in G.O.(Ms)No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007. Further, this Court in the judgment reported in **2014 (2) CWC 261 [supra]** has held that departmental proceedings must be initiated at-least three months prior to the date of retirement and must be completed before the date of retirement. This Court quashed the charge memo on the ground of delay. Similarly, in the judgment reported in **2017 (5) CTC 536 [supra]**, this Court held that the suspension order issued after long delay is not valid and set aside the said order of suspension. Both the orders of this Court are squarely applicable to the facts of the present cases.

10.In the judgment reported in **2005 (4) CTC 403 [supra]**, the Hon'ble Apex Court quashed the charge memo on the ground of delay in issuing the same. Further, it is an admitted fact that initially one S.Reavthi, Joint Director [Women Welfare], Chennai, was appointed as Enquiry Officer to enquire into the complaints received against the petitioner. The said Joint Director, after enquiry, has given a report holding that the complaints were not proved. The said report is not in favour of the second respondent. In such circumstances, the second respondent appointed one Saroja



Thiruvengadam, Deputy Director, Social Welfare Department, to enquire into the same allegations again. The Deputy Director has given a report holding that the complaints against the petitioner are proved. The action of the second respondent for not accepting the report of the Joint Director and appointing the Deputy Director again to enquire into the very same complaints shows *mala fide* on his part. The contention of the learned counsel appearing for the petitioner that when the departmental proceedings are initiated against the Government Servant, after her retirement, the action against her can be taken only after obtaining sanction from the Government, has considerable force. In this context, Rule 9(2)(a) and (b) of the Tamil Nadu Pension Rules, is extracted hereunder:-

"9(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Government, that authority shall submit a report recording its findings to the Government.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

11. From Rule 9(2)(b) of the Tamil Nadu Pension Rules, it is clear that when the departmental proceedings are initiated against the retired Government Servant, the charge memos shall not be instituted without sanction of the Government. In the present cases, the charge memos were issued by the second respondent only after ten months and 1 ½ years from the date of her superannuation respectively. The respondents have not stated that the said charge memos were issued after obtaining sanction from the Government. The impugned order of suspension and the order retaining the petitioner in service are set aside for the following reasons.



12. The petitioner was suspended from service on 28.09.2017, i.e., two days before the date of retirement, which is contrary to G.O. (Ms) No. 144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007 and the order of this Court reported in **2014 (2) CWC 261** [supra] and **2017 (5) CTC 536** [supra].

W.P. (MD) Nos. 19144 of 2018 and 11409 of 2019:-

13. The second respondent has issued charge memos dated 03.08.2018 and 25.03.2019 for the alleged incident that had occurred in the years 2015-2016 and 2016-2017 and has not given any reason for initiating departmental proceedings before the petitioner retired from service. The second respondent has not obtained sanction from the Government to initiate departmental proceedings after the retirement of the petitioner, which is mandatory provision under Rule 9(2)(b)(i) of the Tamil Nadu Pension Rules.

14. In view of the above observations, the impugned orders in all the Writ Petitions are liable to be set aside and accordingly, set aside and the Writ Petitions are allowed. The respondents are directed to settle all the eligible benefits to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Principal Secretary to Government,
Social Welfare and Nutritious Meal Programme
Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Director of Social Welfare,
Saidapet,
Chennai - 600 015.

+1 cc Mr. K.K. SENTHILVELAN, Advocate, SR.No. 97894
+1cc to M/s. Special Government Pleader, SR.No. 98424

W.P. (MD) Nos. 19144 and 9691 of 2018 and 11409 of 2019
13.11.2019

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