

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9732 of 2020

and

W.M.P.Nos.11851 & 11852 of 2020

M.Jayaraj

... Petitioner

vs.

1. The Joint Registrar of Cooperative Societies,  
Cuddalore Region,  
Cuddalore, Cuddalore District.
2. The Deputy Registrar of Cooperative Societies,  
Cuddalore Circle,  
Cuddalore, Cuddalore District.
3. The Administrator,  
E.2591 Parvathipuram Urban Cooperative  
Credit Society Ltd.,  
Parvathipuram, Vadalur,  
Cuddalore District.

....Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 3<sup>rd</sup> respondent in her proceedings Na.Ka.No.1/2019 S.O. dated 18.02.2020 and quash the same and consequently direct the respondents to reinstate the Petitioner into service with all attendant monetary benefits and service benefits to the Petitioner.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmugasundaram,  
Special Government Pleader

O R D E R

Petitioner has come up with this Writ Petition challenging the impugned order passed by the 3<sup>rd</sup> respondent vide proceedings in Na.Ka.No.1/2019 S.O., dated 18.02.2020 and for a consequential direction to the Respondents to reinstate him in service with all attendant monetary and service benefits.

2. According to the Petitioner, he was appointed as a Clerk in the 3<sup>rd</sup> Respondent/Society and by an order dated 16.04.2015 passed by the 1<sup>st</sup> Respondent, he was posted at Karunguzhi Primary Agricultural Co-operative Credit Society, on deputation. Then, he was once again posted in the 3<sup>rd</sup> Respondent/Parent Society on 20.05.2018. He was suspended from service on 01.02.2019 by the 3<sup>rd</sup> Respondent, on the instructions given by the 2<sup>nd</sup> Respondent. Subsequently, the 3<sup>rd</sup> Respondent issued a Charge Memo to the Petitioner stating that, while he was working as a Cashier in Karunguzhi Primary Agricultural Co-operative Credit Society, he did not collect proper share amounts from the members in respect of their loan amount.

3. The Petitioner submitted a detailed explanation to the said Charge Memo, stating that, he does not have powers either to sanction loan or collect share amount from the members, who apply for loan and that, the duty of a Cashier is to disburse the amount as quoted by the President and Secretary and hence, the question of negligence does not arise. It is his case that, he has been falsely implicated and suspended from service.

4. It is further stated by the Petitioner that, without accepting his explanation, a domestic enquiry was conducted by the Enquiry Officer, who submitted a detailed report that, the charges framed against the Petitioner were not proved. On receipt of the Enquiry Officer's Report, the 3<sup>rd</sup> Respondent issued a second Show Cause Notice to the Petitioner, calling upon him to submit his explanation. Accordingly, the Petitioner submitted a detailed explanation. The grievance of the Petitioner is that, in spite of receipt of the said explanation, the 3<sup>rd</sup> Respondent passed an order of termination vide Na.Ka.No.1/2019 S.O., dated 18.02.2020, which is under challenge in the present Writ Petition.

5. According to the learned counsel for the Petitioner, in view of the Constitutional Amendment to Section 97, a Writ is maintainable against the Co-operative Society. It is his contention that, though the Disciplinary Authority has powers to disagree with the findings of the Enquiry Officer, the 3<sup>rd</sup> Respondent herein has no powers to take a decision contrary to the findings rendered by the Enquiry Officer and hence, the decision taken by the 3<sup>rd</sup> Respondent is completely against the provisions of law.

6. Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader took notice for the Respondents and submitted that, no counter has been filed in this case. It is his contention that, even after amendment of the Constitution, a Writ Petition is not maintainable against a Co-operative Society, in view of the Full

Bench decision of this Court in the case of Marappan K.V. Vs. The Deputy Registrar of Co-operative Societies, Namakkal, reported in 2006(4) CTC 689. Relevant paragraph of the said judgment is extracted as under:

"21.(iii) Even if a society cannot be characterised as a 'State' within the meaning of Article 12 of the Constitution, even so a writ would lie against it to enforce a statutory public duty cast upon the society.....

(iv) A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions."

7. That apart, learned Special Government Pleader contended that, the Disciplinary Authority is empowered to disagree with the findings of the Enquiry Officer and come to a different conclusion for which, a Show Cause Notice has to be given and thereafter, punishment has to be imposed, in case, the explanation that may be given by the Petitioner is unsatisfactory.

8. In support of his stand, learned Special Government Pleader relied on an Apex Court decision in the case of Punjab National Bank v. Kunj Behari Misra, reported in (1998) 7 SCC 84, relevant paragraphs of which, are extracted hereunder:

"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case [AIR 1963 SC 1612 : (1964) 2 SCR 1 : (1963) 1 LLJ 295] quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier

opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers

succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] ."

9. Learned Special Government Pleader further drew the attention of this Court to a decision rendered by this Court in the case of C.Udayakumar vs. The Deputy Registrar of Cooperative Societies, Hosur Circle, Hosur (W.P.No.32381 of 2017, dated 13.12.2017). Relevant paragraphs of the said decision reads thus:

"5. A perusal of the same shows that the respondents have already prejudged the issue by proposing the punishment. Moreover, the Apex Court has already settled the legal position in the case of Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84 holding that the disciplinary authority should issue notice with the reasons for deviating from the report of the enquiry officer and call for explanation from the delinquent to show cause as to why the disciplinary authority should not deviate from the enquiry officer's report. In this context, the relevant paragraphs of the aforementioned judgment are extracted hereunder:-

'18.....When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority

differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (1994 AIR SCW 1050) (supra). 19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer. That stage has not been complied with."

10. According to the learned Special Government Pleader, the learned counsel for the Petitioner cannot, as a matter of fact contend that, once the Enquiry Officer has given a finding in favour of the Petitioner, he is not entitled to disagree with the findings of the Disciplinary Authority. He submitted that, serious misconduct has been committed by the Petitioner and that, he will not be entitled to any relief.

11. In reply, learned counsel for the Petitioner submitted that, the Petitioner has been transferred from the 3<sup>rd</sup> Respondent/Society and posted on deputation at Karunguzhi Primary Agricultural Co-operative Credit Society vide proceedings dated 16.04.2015 passed by the 3<sup>rd</sup> Respondent. According to the learned counsel, the Authorities have no power to proceed against the Petitioner and that, the parent Department alone has powers to take action against him, as he had been posted at Karunguzhi Primary Agricultural Co-operative Credit Society, on deputation. He submitted that the decisions relied on by the learned Special Government Pleader may not be applicable to the facts of this case, and the same are distinguishable.

12. Heard the learned counsel on either side and perused the material documents available on record.

13. It is not in dispute that, the Petitioner was appointed as a Clerk in the 3<sup>rd</sup> Respondent/Society and was deputed to work in Karunguzhi Primary Agricultural Co-operative Credit Society, where he discharged his duties as a Cashier. He faced a domestic enquiry for being negligent in his duty, however, charges against him were held to be 'not proved'. Though the Petitioner submitted his explanation to the Charge Memo, the 3<sup>rd</sup> Respondent, without realizing the fact that, the Enquiry Officer's finding is in favour of the Petitioner, issued a second Show Cause Notice to him. Not being satisfied with the explanation submitted by the Petitioner to the second Show Cause Notice, the 3<sup>rd</sup> Respondent terminated him from service.

14. In the case on hand, had the Enquiry Officer held that, the charges against the Petitioner are proved, the Disciplinary Authority is empowered to disagree with the findings of the Enquiry Officer and issue a Show Cause Notice to the Petitioner calling for an explanation from him, as to why the disagreement cannot be accepted and punishment should not be imposed. But, such exercise has not been done. Had punishment been imposed straightaway on the Petitioner without issuance of Show Cause Notice, this Court would have interfered with the same. Here, a second Show Cause Notice has been issued to the Petitioner after accepting the findings of the Enquiry Officer, and the

Petitioner has been asked to submit his explanation as to why punishment should not be imposed on him. The question of disagreement is not found.

15. At this juncture, it is worth referring to an Apex Court decision in the case of Union Of India vs Mohd. Ramzan Khan, reported in 1991 (1) SCC 588, relevant paragraphs are extracted as under:

"13. Several pronouncements of this Court dealing with Article 311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Article 311(2) prior to the Forty-second Amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. As this Court rightly pointed out in the Gujarat case [(1969) 2 SCC 128 : (1970) 1 SCR 251] , the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be inflicted. With the Forty-second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching

his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out: [ Administrative Law, 6th edn., p. 10]

"The concept of natural justice has existed for many centuries and it has crystallised into two rules: that no man should be judge in his own cause; and that no man should suffer without first being given a fair hearing... They (the courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly."

15. Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the Forty-second Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would,

therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any change in this position."

16. It is also worth referring to yet another Apex Court decision in the case of ECIL v. B. Karunakar reported in (1993) 4 SCC 727. Relevant portion of the said decision reads thus:

"25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

28. The position in law can also be looked at from a slightly different angle. Article 311 (2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer

being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges."

17. The principle laid down in the aforesaid judgments is very clear that, the Disciplinary Authority is entitled to disagree with the findings of the Enquiry Officer and the matter should be remanded, in case, the Court agrees with the conduct of the Management. Once, findings of the Enquiry Officer is accepted and Show Cause Notice is issued whether erroneously or not, the same will not empower the Management to issue a fresh Show Cause Notice, after rendering findings of disagreement.

18. In this case, the Management could have realized the mistake and withdrawn the second Show cause Notice and issued a disagreement order. But, as on date, the same has not been done. Before that, the Petitioner has approached this Court. If this practice is allowed to continue, till such time, a finding is rendered against the Delinquent, the Management will continue to issue a Show Cause Notice similar to the one on

hand, and thereafter withdraw it, and issue a fresh Show Cause Notice after disagreement. The contention of the Petitioner is supported by a decision of the Apex Court in the case of K.R. Deb vs. Collector of Central Excise reported in AIR 1971 SC 1447, relevant portion of which, reads thus:

"12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

14. Before the Judicial Commissioner the point was put slightly differently and it was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise that the Collector was determined to get some Inquiry Officer to report against the appellant.

15. In the result we hold that no proper inquiry has been conducted in the case and, therefore, there has been a breach of Article 311(2) of the Constitution. The appeal is accordingly allowed and the order, dated June 4, 1962, quashed, and it is declared that the appellant should be treated as still continuing in service. He should be paid his pay and allowances for the period he has been out of office. The appellant will have his costs here and in the Court of the Judicial Commissioner. Fees shall be payable by the appellant to his advocate and be allowed on taxation."

19. The Hon'ble Supreme Court in the case of Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others, reported in (2002) 3 SCC 533, has held that, if it is found that the facts of the case cited in a judgment of the higher Forum totally differs with the one on hand, then there is no compulsion for the subordinate Courts to blindly rely on the same to arrive at a conclusion. For better appreciation, relevant paragraph of the said judgment is extracted hereunder:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

Thus, it has been categorically held that, even a small fact would entitle the High Court to differ/distinguish and not follow the decision of the higher Forum.

20. In the light of the above, this Court is of the view that, the decisions relied on by the learned Special Government Pleader are distinguishable ones and may not be applicable to the case on hand. Hence, I find much force in the contention of the learned counsel for the Petitioner.

21. In view of the foregoing, the impugned order dated 18.02.2020 passed by the 3<sup>rd</sup> respondent, is set aside and the matter is not remanded to the 3<sup>rd</sup> Respondent for fresh consideration.

Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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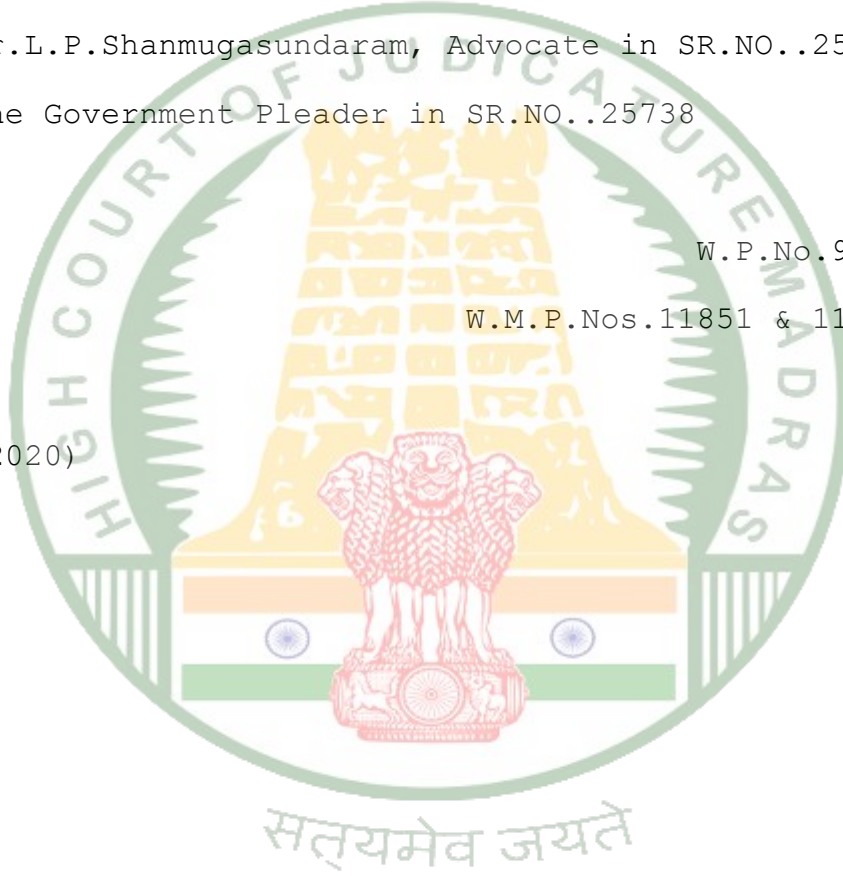
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+1cc to Mr.L.P.Shanmugasundaram, Advocate in SR.NO..25683

+1cc to the Government Pleader in SR.NO..25738

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AJS (CO)  
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