

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.02.2020

Pronounced on : 20.03.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI  
AND

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.22949 of 2019  
and W.M.P.No.22595 of 2019

P.Thiagarajan

Vs.

...Petitioner

1. The Registrar General  
High Court,  
Madras - 600 104.

2. V.Jaishankar  
Enquiry Officer,  
Joint Registrar,  
High Court,  
Madras - 600 104.

....Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorari, calling for the records of the first respondent pertaining to the order of the Appellate Authority in his Official Memorandum in Roc.No.47/2014-Con-Estt-II, dated 01.07.2019, confirming the orders of the Disciplinary Authority in his proceedings in Official Memorandum in Roc.No.47/2014-Con-Estt-II, dated 10.09.2018 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan  
Senior Counsel for  
Mr.J.Nagarajan

For Respondents: Mr.P.Kannan Kumar for R1

O R D E R

R.SURESH KUMAR, J

The prayer sought for in this writ petition is for a writ of certiorari, calling for the records of the first respondent pertaining to the order of the Appellate Authority in his Official Memorandum in Roc.No.47/2014-Con-Estt-II, dated 01.07.2019, confirming the orders of the Disciplinary Authority in his proceedings in Official Memorandum in Roc.No.47/2014-Con-Estt-II, dated 10.09.2018 and quash the same.

2. The necessary facts which are required to be noticed for the disposal of this writ petition are as follows :

2.1. That the writ petitioner is working as an Assistant in the Press copy section of the Registry of this Court. When he was working so, the Section Officer of the Press copy section had sent a letter, dated 09.07.2014 to the Registrar General of this Court, stating that, a batch of case bundle relating to serial bomb blast cases in Crl.A.No.798 of 2006 etc., batch were received by the Press copy section for taking photo copy of the records for preparation of typed set of papers on 09.06.2014. On 11.06.2014, since the complainant / Section Officer was on leave, one A.Uma Rani, Assistant had entrusted the work of photo copying of the statements recorded under Section 313 of Cr.P.C pertaining to A15 in the case, which contains in Page Nos.1 to 610 as Volume 19, to the delinquent, i.e., the writ petitioner who was the Assistant in the Press copy section.

2.2. After entrustment, when the said case papers were dealt with by the petitioner / delinquent for taking photo copy, only Pages 1 to 433 alone were available and the remaining pages, i.e., Page Nos.434 to 610 (177 pages) were missing and it could not be traced out. This was not informed by the petitioner to the person, who entrusted the case paper concerned and thereafter on the next day, i.e., on 12.06.2014, when the Section Officer who made the complaint, joined duty, it was brought to the notice that 177 pages were missing.

2.3. Based on the said letter, dated 09.07.2014 given by the Section Officer of the Press copy section, the petitioner / delinquent was called upon to submit his explanation by memorandum, dated 21.07.2014 and on 30.07.2014, the petitioner / delinquent had submitted his explanation. Not satisfying with the said explanation, a disciplinary proceeding was initiated against the petitioner / delinquent, accordingly, the second respondent was appointed as Enquiry Officer, who, having

conducted the enquiry, has given his report on 06.11.2017. In fact the enquiry was conducted against the petitioner / delinquent as well as another person, namely one Sivakumar, who was the Senior Typist in the Press copy section, who claimed to be assisting the petitioner / delinquent.

2.4. The charges framed against the petitioner / delinquent reads as follows :

Charges framed against Thiru.P.Thiagarajan, Assistant : -

"1. That you, Thiru.P.Thiagarajan, Assistant, High Court, Madras, were entrusted with the work of photocopying the case papers viz., Section 313 Cr.P.C. statements pertaining to A 15 containing pages 1 to 610 in the batch cases relating to serial bomb blasts in C.A.Nos.798/2006, 1080/2006 and 962/2006, for the preparation of typed set of papers and out of the said papers, the Original Section 313 Cr.P.C. statements containing 1 to 433 pages alone are available and the remaining portion viz., Pages 434 to 610 (177 pages) were found missing on 11.06.2014. Thus, you have committed the acts of serious misconduct, gross negligence and dereliction of duty thereby you conducted yourself in a manner of unbecoming of a Government Servant and thereby violated Rule 20 (1) of Tamil Nadu Government Servants' Conduct Rules, 1973. Thus you have rendered liable for departmental action, under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

2. That you, Thiru.P.Thiagarajan, Assistant, High Court, Madras, having the responsibility to ensure the safety of the case papers viz., Section 313 Cr.P.C. statements pertaining to A15 containing pages 1 to 610 in the batch of cases relating to serial bomb blasts in C.A.Nos.798/2006, 1080/2006 and 962/2006, which were allotted to you for photocopying the same. But, you have failed to ensure the safety of the aforesaid case papers, which resulted

the missing of the Original Section 313 Cr.P.C. statement - Pages 434 to 610 (177 pages) containing in the said case bundles.

Thus, you have committed the acts of serious misconduct, gross negligence and dereliction of duty thereby you conducted yourself in a manner of unbecoming of a Government servant and thereby violated Rule 20 (1) of Tamil Nadu Government Servants' Conduct Rules, 1973. Thus you have rendered liable for departmental action, under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules."

2.5. Following the said charges, enquiry was conducted under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The Enquiry Officer, in his report has given findings that, the charges framed against the first delinquent, i.e., the writ petitioner stand proved and the charges framed against the second delinquent, who is the other man, has not been proved.

2.6. Thereafter a further chance of representation was given to the writ petitioner, who after having gone through the Enquiry Officer's Report, has given his second reply or representation on 04.12.2017.

2.7. Having considered the Enquiry Officer's Report as well as the second explanation given by the writ petitioner, the first respondent, who is the disciplinary authority, vide his Official Memorandum, dated 10.09.2018, imposed the punishment of withholding two increments with cumulative effect on the petitioner under Rule 8(iii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

2.8. Aggrieved over the said order of punishment awarded by the disciplinary authority, i.e., the first respondent, the petitioner preferred appeal to the appellate authority on 19.12.2018. The said appeal also having been considered by the appellate authority, i.e., a sitting Judge of this Court, was rejected by confirming the punishment awarded against the petitioner by the disciplinary authority.

2.9. As against the said order of the appellate authority, dated 01.07.2019, confirming the disciplinary authority's order, dated 10.09.2018, the writ petitioner has filed the present writ petition with the aforesaid prayer.

3. We have heard Mr.A.R.L.Sundaresan, learned Senior counsel appearing for the writ petitioner who would submit that, there were two staff including the writ petitioner, against whom charges were framed, enquiry was conducted and the Enquiry Officer, i.e., the second respondent has erroneously found that, the second delinquent was not responsible for the said alleged missing papers and therefore he found that, the charges framed against the first delinquent, i.e., the petitioner alone is proved. This report of the Enquiry Officer, according to the learned Senior counsel, is not in consonance with the established procedure of conducting an enquiry in disciplinary matters.

4. The learned Senior counsel would further elaborate his submission stating that, the Enquiry Officer has omitted to take note of the fact that, both the delinquents were incharge of taking photo copy in the Press photo copy section and on the particular day, when the work of taking photo copy were going on, the writ petitioner, for a short break, has left the photo copy section, where the papers were under the custody or incharge of the other delinquent and after sometime when the petitioner came to the photo copy room, then only he found that pages were missing, thereafter a thorough search was conducted, however the papers could not be found.

5. If that being so, there could be a chance that the papers could have been missed when it was handled by the other delinquent, though he was supposed to be considered as an assisting person to the writ petitioner and therefore if at all, any responsibility is to be fixed for the missing papers, that should have been made equally on both the delinquents, however only the writ petitioner, i.e., the first delinquent was fixed and the Enquiry Officer found that, the charges framed were stand proved against the writ petitioner alone and not against the other delinquent, therefore the said approach of the Enquiry Officer was erroneous and therefore on that ground, the punishment awarded by the disciplinary authority as has been confirmed by the appellate authority has to be interfered with.

6. The learned Senior counsel, however would hasten to add in his arguments that, assuming that the petitioner was responsible for the missing papers, for which he has to be dealt with by imposing some punishment, the present punishment given, i.e., withholding of two increments with cumulative effect is too harsh and it is not proportionate to the proven charge and therefore the proportionality of the punishment may be appropriately considered and reduced.

7. However, Mr.P.Kannan Kumar, learned counsel appearing for the first respondent would submit that, in this case, there is

no allegation on the part of the writ petitioner against the disciplinary authority that the procedure to be followed under the Rule has not been followed. The writ petitioner was incharge of the Press copy section and as per the evidence adduced before the Enquiry Officer, the volume of papers consisting of 610 pages for taking photo copy was entrusted only to the writ petitioner and therefore he is responsible for safe handling and custody of papers until the photo copy is taken and it is given back to the person who entrusted the same to him. In this regard, such a responsibility cannot be disowned by the writ petitioner.

8. Moreover in the disciplinary proceedings, definite charges were framed, full opportunity was given to the writ petitioner, before the Enquiry Officer all essential opportunities to be given to the delinquent has been given to the writ petitioner and in this regard, absolutely there has been no complaint from him.

9. He would further submit that, based on the evidence recorded by the Enquiry Officer, especially of the P.W.2, who was incharge of the section, who entrusted the papers consisting of 610 pages only to the writ petitioner, the Enquiry Officer has come to the conclusion that, the charges framed against the writ petitioner was proved and therefore it cannot be said that, the Enquiry Officer has not conducted the enquiry properly.

10. The learned counsel would further submit that, after the Enquiry Officer's report, further opportunity was given and only thereafter the disciplinary authority, on the proven charges, has inflicted the punishment of withholding of two increments with cumulative effect, which is neither disproportionate nor too harsh as contended by the learned Senior counsel.

11. He would further submit that, even by the appellate authority, all these aspects have been considered and ultimately the appellate authority found that, the punishment awarded against the petitioner was only after following the procedure established under the law, especially under the relevant rules and the punishment also cannot be said to be a disproportionate one and accordingly, the disciplinary authority's order of punishment was confirmed by the disciplinary authority. Therefore the learned counsel for the first respondent would submit that, the orders impugned does not warrant any interference from this Court.

12. We have considered the said rival submissions made by both sides and have perused the materials placed before this Court.

13. Initially, Mr.A.R.L.Sundaresan, learned Senior counsel argued before us that, the second delinquent could not have been exonerated or the charges framed against him ought not to have been found unproved as held by the Enquiry Officer and the responsibility if at all to be fixed should have been fixed on both. Therefore on that ground, he attempted to assail the Enquiry Officer's Report and the consequential order of punishment and appellate authority's order. However at one point of time, during his argument, he made an alternative argument before this Court that, the responsibility fixed on the petitioner in Press copy section cannot be disowned by him. Nevertheless, the learned Senior counsel would contend that, there is no other charges framed against the petitioner that, for any ulterior motive, he had purposely stolen the missing pages or he had any other intention to steal the papers, which were found missing. He would therefore submit that, the only delinquency if at all proved is that, he has not taken due diligence and care while taking photo copy of the papers, when it was specifically entrusted to him.

14. In this regard, the learned Senior counsel would contend that, if at all for the proven delinquency on the part of the petitioner punishment should be awarded, the present punishment of withholding two increments with cumulative effect would certainly be a disproportionate one. He would make a fervent plea before this Court that, withholding of two increments with cumulative effect will have a very adverse impact on the service career of the petitioner, which would ultimately have an impact on the pensionary benefits of him after superannuation.

15. The learned Senior counsel as an alternative plea therefore submitted that, the proportionality of the punishment awarded against the petitioner alone may be considered and in this regard, the punishment awarded by the disciplinary authority and confirmed by the appellate authority may be modified.

16. We have gone through the materials placed before this Court, particularly the rule position in this regard. Under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, there are 9 different punishments provided for, out of which, Item Nos.(i), (ii), (iii), (v) and (ix) are to be considered as minor penalties and Item Nos.(iv), (vi), (vii) and (viii) are considered to be major penalties. For easy reference, the relevant rule to that effect is extracted hereunder :

"8. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon every person who is a member of the civil service of

the State and every person holding a civil post under the State specified in rule 2, namely:-

(i) Censure;

(ii) Fine (in the case of persons for whom such penalty is permissible under these rules) ;

(iii) Withholding of increments or promotion ;

Provided that the penalty of withholding of increment shall not be imposed on a Government servant, if the said penalty cannot be given effect to fully while in service :

Provided further that in cases where the penalty of withholding of increment cannot be given effect to fully for any contingency that arose after the penalty of withholding of increment is imposed, the monetary value equivalent to the amount of such increments that can not be given effect to shall be recovered from the person :

Provided also that in cases of withholding of increment with cumulative effect, the monetary value equivalent to three times the amount of increments ordered to be withheld shall be recovered.

(iv) Reduction to a lower rank in the seniority list or to a lower post not being lower than that to which he was directly recruited, whether in the same service or in another service, State or Subordinate, or to a lower time-scale, not being lower than that to which he was directly recruited, or to a lower stage in a time-scale ;

Provided that in cases where the punishment of reduction to a lower stage in a time-scale cannot be given effect to fully, the monetary value equivalent to the difference in emoluments as a result of reduction to such lower stage in the time-scale for the unexpired period of the punishment shall be recovered from

the person.

(v) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to any Government Company or Organisation or Local Authority or to a Local Body, while on deputation, by negligence or breach of orders;

(vi) Compulsory retirement;

(vii) Removal from the Civil Service of the State Government;

(viii) Dismissal from the Civil Service of the State Government; and

(ix) Suspension, where a person has been suspended under rule 17(e), to the extent considered necessary by the authority imposing the penalty.

Provided that in every case in which,

(i) the charge of possession of assets disproportionate to known sources of income; or

(ii) the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act; or

(iii) the charge of giving an undue advantage with an intention to induce a public servant to perform or not to perform a public duty or to reward the public servant for the performance or non-performance of a public duty; is proved, the penalty mentioned in clause (vii) or clause (viii) shall be imposed :

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed;

The penalties mentioned in items (i) to (iii), (v) and (ix) shall be deemed to be

minor penalties and those in items (iv) and (vi) to (viii) shall be deemed as major penalties."

17. Rule 17(a) and 17(b) deals with the procedure to be followed before imposing punishment under Rule 8. In the case in hand, the procedure contemplated under Rule 17(b) was followed, which would be normally followed only in respect of the charges which require a punishment of major penalty like Item Nos.(iv), (vi), (vii) and (viii) of Rule 8. However in the present case, even though the punishment of withholding of increments comes under Item No.(iii) of Rule 8 as extracted herein above, the Rule 17(b) procedure was adopted because of the 2nd proviso of Rule 17(a), which reads thus :

"17. (a) In every case where it is proposed to impose on a member of a service or a person holding a civil post under the State any of the penalties specified in items (i), (ii), (iii), (v) and (ix) in rule 8 or in rule 9, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed ;  
Provided that the requirements of this sub-rule shall not apply where it is proposed to impose on a member of a service any of the penalties aforesaid on the basis of facts which have led to his conviction by a court martial or where the officer concerned has absconded or where it is for other reason impracticable to communicate with him:

Provided further that, in every case where it is proposed, after considering the representation, if any, made by the Government servant, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay without cumulative effect for a period exceeding 3 years or to withhold increment of pay with cumulative effect for any period, the procedure laid down in sub-rule (b) shall

be followed before making any order imposing on the Government servant any such penalty."

18. The second proviso to Rule 17(a) as quoted above, makes that, if at all any punishment of withholding increment of pay with cumulative effect for any period is intended to be inflicted, the procedure laid down in sub-rule (b) shall be followed before making any order imposing on the Government servant any such penalty. Therefore the punishment given now against the writ petitioner withholding two increments of pay with cumulative effect can certainly be construed as one of the major penalty.

19. In this case, the writ petitioner has given the following defence in his representation, dated 04.12.2017 :

"The enquiry officer had lost sight of the evidence of the other delinquent that he had seen talking with some persons outside the xerox room when he went for tea. The work of xeroxing voluminous documents of the case was the collaborative work of both P.Thiagarajan and T.Sivakumar. As rightly deposed by the DW1 Sudharsan that, when I was doing the work xeroxing volume 19 containing the 313 questions in C.A.No.798 of 2016 the said T.Sivakumar sat idly. This corroborate the collaborative work of both P.Thiagarajan and T.Sivakumar. If I worked in the initial stage of xeroxing, it would be the turn of the T.Sivakumar to continue the work of Xeroxing. Even assuming that I had left to the establishment section to have a clarification on the submission of the vehicle insurance, which might not have been told to him, it would be inferred that he had to continue the work of xerox in my absence. When T.Sivakumar had left for tea, he had seen me talking with some person near General xerox room. The non information of his leaving for tea would fortify the contention that the missing pages of volume 19 was due to the laxity of him. When I went inside the xerox room, I found to my shock that the unxeroxed pages of volume 19, namely 176 pages commencing from

Page No.434 to 610, was not available. When I enquired about the missing pages, the other delinquent T.Sivakumar was doing some other work in nowhere connected with the press copy section work. Suddenly, he went in search of binder Pachaimuthu with whom he had given the missing pages. It was he (T.Sivakumar) who was responsible for the missing of the pages of documents in volume 19."

20. In this context, the discussion of the Enquiry Officer reads thus :

"There was no xerox machine in the Press copy section and that the original records, for the purpose of making typed-set, were being taken to the common xerox room for photocopying. In the general xerox room, one machine has been earmarked for the work relating to Press copy section and that the photocopying was being carried on by the delinquents. It is noted from the evidence of the above witnesses and even from the statements made by the delinquents that on 11.06.2014, as usual, the 1st delinquent was on the job of photocopying using the machine allotted to the Press copy section and that the 2nd delinquent was also present in the xerox room. After some time, the 1st delinquent, as the witnesses spoke and even according to his own version, left the xerox room for some personal work. The 1st delinquent claimed that while leaving so, he informed the 2nd delinquent and asked him to continue the work. This claim was, however, denied by the 2nd delinquent and according to him, when the 1st delinquent was going out he was doing some photocopying work on another machine in helping the xerox operators and that he also went out. It is also the evidence of DW-1 that he noticed the 1st delinquent in taking photocopies on the machine earmarked, that the 2nd delinquent was remaining idle and that the 1st delinquent was

leaving the xerox room after some time. The above evidence of the witnesses only goes to show that it was the 1st delinquent who was taking photocopying of the original records contained in Volume 19 on the machine earmarked for the Press copy section and that he left the room after some time and that the 2nd delinquent was not taking photocopying on the machine earmarked. No evidence was brought on record on behalf of the 1st delinquent to show that before his leaving the xerox room he had entrusted the original records to the 2nd delinquent for carrying out the remaining photocopying work. The evidence also further points out that it was in the absence of the 1st delinquent that the Binder - Patchaimuthu had taken the photocopied papers from the Xerox room to the Press copy section. When there was an "entrustment" of the original records with the 1st delinquent for the purpose of photocopying, then it is his responsibility to ensure the safety till they are returned to the Press copy section. The 1st delinquent, taken the entrustment of the original records, cannot delegate or pass on his responsibility of keeping them in safe to anyone else, even to the 2nd delinquent, who was, according to his own version, only assisting him in the matter of photocopying."

21. On considering these aspects, one can also say that, on the particular day, when the writ petitioner left the xerox room, the second delinquent was inside and though it was the claim of the writ petitioner that he had entrusted the matter to the second delinquent and though this statement of the writ petitioner was denied by the second delinquent, the fact remains that, at one point of time, the second delinquent alone was inside the photo copy room and at that time, the first delinquent the writ petitioner was not there.

22. This mere circumstance cannot in toto give a leverage for the writ petitioner to take a shelter, that he is not at all responsible for the missing papers and therefore he should be completely exonerated.

23. If at all the writ petitioner / first delinquent left the photo copy room, he must have ensured that, the papers which were entrusted to him had been kept safely and mere claim of asking the co-worker, i.e., the second delinquent would not give a clean chit to the writ petitioner to disown his responsibility.

24. On this aspect, we feel that, the delinquency on the part of the writ petitioner can very well said to be proved. But at the same time, we should also look into that, there had been other man also inside the very same copying room, who is none other than the second delinquent, against whom also, though charge were framed and enquiry was conducted, Enquiry Officer found that, the charge were not proved against him. Therefore taking into consideration, the totality of the circumstances, the writ petitioner / delinquent can, of course, be punished for the proven charge. But at the same time, the present punishment of imposing withholding of his two increments of pay with cumulative effect would have some major adverse impact in his service career as that would go for a long way to have an impact in his pensionary benefits also.

25. Therefore taking into account all these circumstances, we are of the considered view that, the punishment awarded against the writ petitioner as has been confirmed by the appellate authority, withholding of two increments of pay on the writ petitioner with cumulative effect can be modified into withholding of one increment of the pay of the writ petitioner with cumulative effect, that we deem it, would meet the ends of justice, we accordingly do so.

26. In the result, the writ petition is ordered with the aforesaid modification of the punishment imposed against the writ petitioner with no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

सत्यमेव जयते  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsvn

To

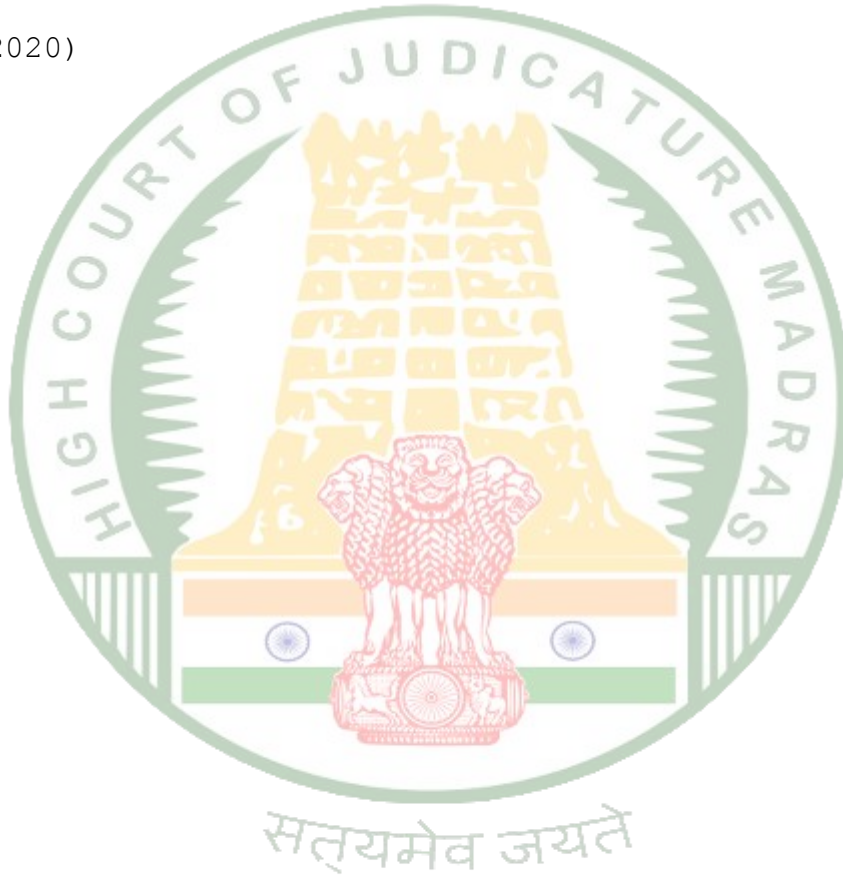
1. The Registrar General  
High Court,  
Madras - 600 104.

2. V.Jaishankar  
Enquiry Officer,  
Joint Registrar,  
High Court,  
Madras - 600 104.

+2 cc to Mr.K.Gunasekar, Advocate, S.R.No.24618

W.P.No.22949 of 2019

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