



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM:

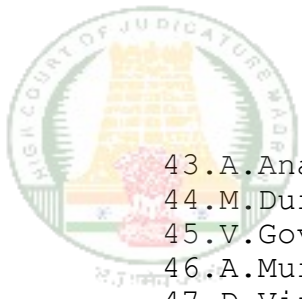
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THE HON'BLE Dr. JUSTICE ANITA SUMANTH

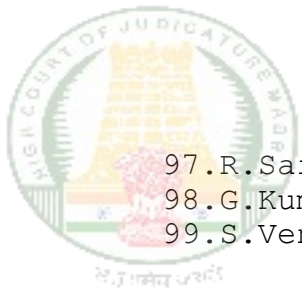
WP.Nos.11532, 11533, 11534 & 16016 of 2011
and M.P.Nos.2, 2 and 2 of 2011 and M.P.Nos.1, 1 and 1 of 2012

WP.No.11532 of 2011

- 1.R.Ponmudi
- 2.T.Kumaresan
- 3.V.Kaviarasu
- 4.M.Gajendran
- 5.R.Ananda Padmanaban
- 6.V.Ravi
- 7.A.Boopathy
- 8.K.Karunanithi
- 9.J.Rajmohan
- 10.P.Rajamani
- 11.G.Uthayakumar
- 12.K.Pandi
- 13.A.Sankaran
- 14.V.Shanmuga Sundaram
- 15.S.Gowri Shankar
- 16.V.Baskaran
- 17.S.Kannan
- 18.C.V.Elangovan
- 19.J.Rajapandiyan
- 20.G.Natarajan
- 21.S.Mannankatti
- 22.R.Rajendran
- 23.N.Govindasamy
- 24.K.Swarnalatha
- 25.K.Senthil
- 26.V.Gunasekaran
- 27.S.Muruganandam
- 28.A.Ganapathi
- 29.K.Selvam
- 30.S.Duraisami
- 31.A.Krishnamoorthy
- 32.K.Sekharraj
- 33.S.Sridharan
- 34.V.Rajan
- 35.D.Jayabalan
- 36.D.Balasubramanian
- 37.C.Selvaraj
- 38.T.S.Edisan Santhosam
- 39.M.S.Sivagamasundari
- 40.C.Selvam
- 41.P.Thangam
- 42.R.Kumar



- 43.A.Anandaraj
- 44.M.Durgaisamy
- 45.V.Govindaraj
- 46.A.Muruganantham
- 47.D.Vijayasankar
- 48.T.Karthikeyan
- 49.R.Ragavan
- 50.N.Premkumar
- 51.D.Arulalan
- 52.K.Sundaravaradan
- 53.T.G.Rajendran
- 54.E.Govindaraj
- 55.P.Vishnu
- 56.K.Dasarathan
- 57.N.Jayamoorthy
- 58.S.Sivakumar
- 59.J.Kannan
- 60.R.Eswaran
- 61.J.Balakumar
- 62.K.Krishnan
- 63.K.Ponnupandi
- 64.S.Natesan
- 65.M.M.Subramanian
- 66.S.Ramakrishnan
- 67.C.Rajasundar
- 68.N.Parthiban
- 69.S.Sivasankaran
- 70.P.Mani
- 71.K.Selvakumar
- 72.M.Yuvaraj
- 73.R.Raghuraman
- 74.M.Ravi
- 75.R.Natarajan
- 76.K.S.Kannan
- 77.M.Sumathi Samundeeswari
- 78.D.Vaithiyanathan
- 79.T.Kaliyaperumal
- 80.S.Radhakrishnan
- 81.N.Venkitasamy
- 82.M.S.Vijayakumaran
- 83.G.Sampathkumar
- 84.A.Ramesh
- 85.S.Ethiraj
- 86.J.Jayapriya
- 87.M.Rajasekar
- 88.K.Elangovan
- 89.A.Thiyagarajan
- 90.D.Ranganathan
- 91.R.Sekar
- 92.A.Sugumar
- 93.R.Srinivasan
- 94.S.Chandrasekaran
- 95.K.Namasivayam
- 96.S.Vellivikavalaperumal



97.R.Sarangan
98.G.Kumarasamy
99.S.Venkatesan

... Petitioners

vs.

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1. The Secretary to Government,
Transport Department,
St. Fort George,
Chennai-9.
2. The Managing Director,
Tamil Nadu State Transport Corpn.,
[Villupuram] Ltd.,
Vazhutha Reddy Post,
Villupuram & District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the Letter No.4170/D/2010-3 dated 23.09.2010 and Letter No.18912/D/2010-2 dated 12.04.2011 on the file of the 1st Respondent and Memo No.014/00014/E1/TNSTC (VPM)/2010 & Memo.No.7668/PB 4/TNSTC (VPM)/ KPM/2010 dated 15.04.2011 passed by the 2nd Respondent and to quash the same as illegal and consequently direct the Respondents to pay House Rent Allowance drawn by the Petitioners all along from 01.10.1984 as per G.O.[Ms.]No.10 Transport Department dated 02.01.1987.

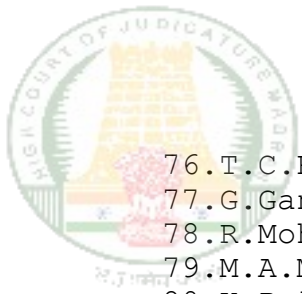
WP.No.11533 of 2011

- 1.S.K.Balasubramanian
- 2.M.Jeevanandam
- 3.M.Perumalsamy
- 4.N.Doraisamy
- 5.A.Rajendiran
- 6.R.M.Pounraja
- 7.V.Lawrance
- 8.B.Subramanian
- 9.R.Venkatachalam
- 10.S.Ravilakshmanan
- 11.V.Muralikrishnan
- 12.E.Devarajan
- 13.G,Thirumoorthi
- 14.K.Kanakasabapathi
- 15.R.Bakthavatsalam
- 16.R.Sayeeekrishnan
- 17.R.Veeramani
- 18.R.Devaraj
- 19.K.Senathipathy
- 20.S.Mayakrishnan



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- 22.V.Krishnasamy
- 23.K.R.Muthusamy
- 24.T.Pinto Stephen
- 25.M.Sundaramurthy
- 26.K.Mohanasundarashanmugam
- 27.G.Rajendran
- 28.H.Sureshkumar
- 29.K.Gandhi
- 30.J.Gilbert Rajan
- 31.K.Alagappan
- 32.R.Mylsamy
- 33.P.Duraisamy
- 34.K.Chandrasekaramanoharan
- 35.S.Abdul Basheer
- 36.K.S.Mahendrakumar
- 37.R.Thangavelu
- 38.G.Rajasekaran
- 39.N.Jeyachandran
- 40.K.Ramasamy
- 41.K.Balasubramanian
- 42.V.Baladhandapani
- 43.G.Janarthanan
- 44.R.Rathakrishnan
- 45.C.Kanagarajan
- 46.A.Thevathas
- 47.D.Thangavelu
- 48.K.Selvaraju
- 49.V.Govindasamy
- 50.M.Kanagaraju
- 51.K.Chenniappan
- 52.M.AL.Karuppien
- 53.G.Palanisamy
- 54.M.Udhayakumar
- 55.S.Venkatachalapathy
- 56.K.S.Shanmugavelayutham
- 57.B.Ganesan
- 58.Vivekanandham
- 59.M.Nattudurai
- 60.K.Gunasekaran
- 61.V.Chellappan
- 62.T.Veerukathan
- 63.A.Muthukrishnan
- 64.K.T.Govindarajan
- 65.R.Prabhu
- 66.S.Sundararajan
- 67.K.M.Subramaniam
- 68.S.P.Rajamanickam
- 69.M.Eganathan
- 70.V.Ravikumar
- 71.K.P.Chandrasekaran
- 72.R.Muthukrishnan
- 73.O.S.Kuppusamy
- 74.T.Vairavasundaram
- 75.R.Mahendran



76.T.C.Raman
77.G.Ganesan
78.R.Mohan
79.M.A.Murugesan
80.K.Palaniyandi
81.P.Shanmugam
82.R.Premkumar

... Petitioners

vs.

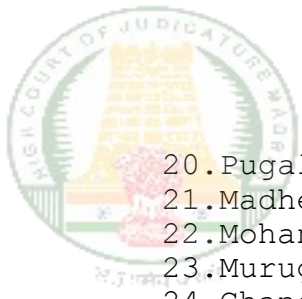
1. The Principal Secretary to Government,
Transport Department,
St. Fort George,
Chennai-9.
2. The Managing Director,
Tamil Nadu State Transport Corpn.,
[Coimbatore] Ltd.,
37 Mettupalayam Road,
Coimbatore - 641 043.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the Letter No.4170/D/2010-3 dated 23.09.2010 and Letter No.18912/D/2010-2 dated 12.04.2011 on the file of the 1st Respondent and Letter No.19367/P1/PBS/TNSTC (CBE)/2011 passed by the 2nd Respondent and to quash the same as illegal and consequently direct the Respondents to pay House Rent Allowance drawn by the Petitioners all along from 01.10.1984 as per G.O.[Ms.]No.10 Transport Department dated 02.01.1987.

WP.No.11534 of 2011

- 1.Somasundaram R
- 2.Panneerselvam V
- 3.Nataraj V
- 4.Chellamuthu K
- 5.Raju R
- 6.Balasubramanian S
- 7.Gunasekaran R
- 8.Nagarajan P
- 9.Vasudevan S
- 10.Rathnam K
- 11.Kumar D
- 12.Rangaraj C.R
- 13.Arumugham N
- 14.Venkatachalam B
- 15.Gopalsamy A
- 16.Laxman D
- 17.Jeevarathinam S
- 18.Chinnusamy S



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20. Pugalendhi K
21. Madheswaran K
22. Mohanraja A
23. Murugan K
24. Chandramohan P
25. Sivamani G.K
26. Loganathan M.S
27. Asokan R
28. Balasubramanian R
29. Ramasamy S
30. Arul Jothi A
31. Baskaran K
32. Kangeyan K
33. Veerappan S
34. Madhavan K
35. Gowrisankar V.K
36. Jaganathan P
37. Kangesan K
38. Rajendran N
39. Murugesan R
40. Alfred Thinakaran D
41. Panneerselvam M
42. Baskaran K
43. Bose M
44. Sudhindar D
45. Sampooram P
46. Tamizhselvan B
47. Murugesan P
48. Ravindran P
49. Arumugham A
50. Senguttuvan P
51. Ravichandran R
52. Ramesh N
53. Selvakumar P
54. Murugan M
55. Ragupathi V
56. Sekar R
57. Govindasamy M
58. Gunasekaran T
59. Rajendran D
60. Mahendran R
61. Sundram M.K
62. Jayakumar A
63. Mohankumar T
64. Aravindan M
65. Jayabalu V.K
66. Arulmozhi G

... Petitioners

vs.

1. The Secretary to Government,
Transport Department,
St. Fort George, Chennai-9.



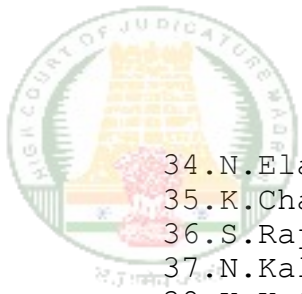
2. The Managing Director,
Tamil Nadu State Transport Corpn.,
[Salem] Ltd.,
12, Ramakrishna Road,
Salem District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the Letter No.4170/D/2010-3 dated 23.09.2010 and Letter No.18912/D/2010-2 dated 12.04.2011 on the file of the 1st Respondent and Lr. Memo No.E1/999/TNSTC (SLM)/2011 dated 20.04.2011 passed by the 2nd Respondent and to quash the same as illegal and consequently direct the Respondents to pay House Rent Allowance drawn by the Petitioners all along from 01.10.1984 as per G.O.[Ms.]No.10 Transport Department dated 02.01.1987.

WP.No.16016 of 2011

1.K.Palanivel
2.M.Subramanian
3.B.Kesavan
4.J.Sasikumar
5.N.Periyasamy
6.M.Kumaravel
7.G.Tamilarasan
8.S.Ravichandran
9.R.Ramesh
10.N.Parthiban
11.K.Sadasivam
12.M.Thirulogachandar
13.P.Ramakrishnan
14.S.Murugesan
15.V.Manoharan
16.V.Subramani
17.M.Kandasamy
18.D.Raja
19.K.Pandiyan
20.M.Abdul Muheem
21.D.Venkatesan
22.P.Palanivel
23.P.Asokan
24.S.Thamaraikannan
25.A.Karunakaran
26.P.D.Baskar
27.A.Thiagarajan
28.M.Loganathan
29.C.Marappan
30.K.Duraisamy
31.R.P.Ravichandhran
32.R.Thangaraju



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34.N.Elango
35.K.Chandrasekar
36.S.Raja
37.N.Kalaiivanan
38.K.Kathirvel
39.P.Mahendran
40.R.Shanmugam
41.P.Jayaprakash
42.M.Shajahan
43.A.R.Balraj
44.N.Hariprakash
45.V.Shanthi
46.S.Jayakumar
47.R.Murali
48.M.Ramesh Babu
49.M.Suresh Babu
50.M.Manjuladevi
51.N.Balasubramanian
52.S.M.Khadarmohideen
53.P.Shanmuganathsing,
54.N.Sumathy
55.K.Aruna
56.M.Shanmugavadivu
57.P.Senthil
58.P.Mohan
59.R.Chitra
60.S.Selvakumar
61.V.Sakthivelu
62.M.Pandiyan
63.A.Chezhiyan
64.S.Kulanthasami
65.S.Vivekanandan
66.M.Mahendiran
67.D.Murugesan
68.P.Kanthimathi
69.P.Soundappan
70.P.Subramanian
71.M.Raja
72.A.Prabhakaran

... Petitioners

vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
(Salem) Ltd.,
12, Ramakrishna Road, Salem-7,
Salem District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, to direct the Respondent to grant the revised rates of house rent allowance to all the Petitioners as applicable to Grade I



(b) cities and accordingly repay the amount already recovered and continue to pay the same in future.

For Petitioners : Mr.L.Chandrakumar
(in WP.Nos.11532 to 11534 of 2011)

No Appearance (in WP.No.16016 of 2011)

For Respondents : Mr.C.Selvaraj, Government Advocate
(for R1 in WP.Nos.11532 to 11534 of 2011)

Mr.T.Chandrasekaran
(for R2 in WP.Nos.11532 to 11534 of 2011)

Mr.S.Magesh Kumar
for Mr.D.Raghu
(for sole respondent in WP.16016 of 2011)

COMMON ORDER

Heard Mr.L.Chandrakumar, learned counsel for the petitioners in W.P.Nos.11532 to 11534 of 2011, Mr.C.Selvaraj, learned Government Advocate for R1 in WP.Nos.11532 to 11534 of 2011, Mr.T.Chandrasekaran, learned counsel for contesting respondent, i.e., R2/Transport Corporation in WP.Nos.11532 to 11534 of 2011 and Mr.S.Magesh Kumar, learned counsel appearing for Mr.D.Raghu, learned counsel for respondent in WP.No.16016 of 2011.

2.On 27.10.2021, I had passed the following order:

'Mr.L.Chandrakumar, learned counsel for the petitioner in W.P.Nos.11532 to 11534 of 2011 seeks a days' time to provide the details of how many petitioners in the aforesaid three Writ Petitions continue in service and how may have since retired from service.

2. As far as W.P.No.16016 of 2011 is concerned, since the erstwhile counsel on record had reported no instructions, the name of the petitioners as well as the counsel, if any, who has entered appearance was directed to be printed in the cause list. The cause list today reflects the name of the petitioner as P1-K.Palanivel, Assistant Engineer, Salem Muffisil Bus Stand, Tamil Nadu State Transport Corporation (Salem) Ltd., Salem and 71 others. However, there is no appearance by or on behalf of the petitioners today.

³ Since the facts in W.P.No.16016 of 2011 are identical to W.P.Nos.11532 to 11534 of 2011,
<https://hcservices.ecourts.gov.in/hcservices/>



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Mr.Magesh, learned counsel appearing for Mr.Raghu, learned counsel on record for the Transport Corporation in this Writ Petition is directed to provide the details of how many of the petitioners in this Writ Petition are in service as on date and how many have since retired.

4. For this limited purpose, list on 29.10.2021.'

3.Today memos have been filed in respect of the writ petitioners in WP.Nos.11532, 11533 and 11534 of 2011 to the following effect:-

'WP.No.11532 of 2011

MEMO - REGARDING PETITIONERS WHO ARE IN SERVICE

It is submitted that the above writ petition has been filed seeking quashing of the respondent's proceedings in regard to alleged excess payment of House Rent Allowance (HRA) having been disbursed w.e.f. 01.10.1984. This Memo is filed clarifying or rather bringing forth to the notice of this Hon'ble Court that most of the petitioners have already retired on reaching the age of superannuation, thereby their claim is liable to be considered on the basis of the law settled in White Washers' case reported in (2015) 4 SCC 334 - State of Punjab Vs. Rafiq Mashi. In view of the above the petitioners who have retired from service are entitled to the claim as per the directives and Guidelines issued there under. However in so far as the following petitioners whose Serial Number in the array of cause title is mentioned herein below are still working and continue to discharge duties:- They are Sl.Nos.1, 17, 24, 25, 26, 28, 29, 30, 31, 33, 37, 39, 42, 43, 44, 48, 58, 59, 60, 61, 63, 64, 69, 70, 71, 72, 73, 74, 75, 76, 77, 82, 85, 86, 87, 88, 89 & 93 (38 petitioners). Thus, recording the above suitable appropriate orders may be passed by this Hon'ble Court.

Hence in the interest of justice, it is prayed that this Hon'ble Court may be pleased to record the above memo and to pass such other further or other order as it deem fit and proper and thus render justice.'



WP.No.11533 of 2011

MEMO - REGARDING PETITIONERS WHO ARE IN SERVICE

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It is submitted that the above writ petition has been filed seeking quashing of the respondent's proceedings in regard to alleged excess payment of House Rent Allowance (HRA) having been disbursed w.e.f. 01.10.1984. This Memo is filed clarifying or rather bringing forth to the notice of this Hon'ble Court that most of the petitioners have already retired on reaching the age of superannuation, thereby their claim is liable to be considered on the basis of the law settled in White Washers' case reported in (2015) 4 SCC 334 - State of Punjab Vs. Rafiq Mashi. In view of the above the petitioners who have retired from service are entitled to the claim as per the directives and Guidelines issued there under. However in so far as the following petitioners whose Serial Number in the array of cause title is mentioned herein below are still working and continue to discharge duties:- They are Sl.Nos.10, 16, 27, 36, 60, 61, 63, 67, 74, 78 (10 petitioners). Thus, recording the above suitable appropriate orders may be passed by this Hon'ble Court.

Hence in the interest of justice, it is prayed that this Hon'ble Court may be pleased to record the above memo and to pass such other further or other order as it deem fit and proper and thus render justice.'

WP.No.11534 of 2011

MEMO - REGARDING PETITIONERS WHO ARE IN SERVICE

It is submitted that the above writ petition has been filed seeking quashing of the respondent's proceedings in regard to alleged excess payment of House Rent Allowance (HRA) having been disbursed w.e.f. 01.10.1984. This Memo is filed clarifying or rather bringing forth to the notice of this Hon'ble Court that most of the petitioners have already retired on reaching the age of superannuation, thereby their claim is liable to be considered on the basis of the law settled in White Washers' case reported in (2015) 4 SCC 334 - State of Punjab Vs. Rafiq Mashi. In view of the above the petitioners who have retired from service are entitled to the claim as



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per the directives and Guidelines issued there under. However in so far as the following petitioners whose Serial Number in the array of cause title is mentioned herein below are still working and continue to discharge duties:- They are Sl.Nos.38, 46, 51 & 63 (4 petitioners). Thus, recording the above suitable appropriate orders may be passed by this Hon'ble Court.

Hence in the interest of justice, it is prayed that this Hon'ble Court may be pleased to record the above memo and to pass such other further or other order as it deem fit and proper and thus render justice.'

4. The short point argued is that several of the petitioners before this Court, have retired as on date. However, despite there having been no order of interim stay granted by this Court, the Transport Corporation has not effected recovery as per the impugned orders. Thus, as on date, the petitioners who have retired should not be faced with recovery.

5. The judgment of the Hon'ble Supreme Court in the case of State of Punjab and Others Vs. Rafiq Masih (White Washer) etc. ((2015) 4 SCC 334), supports the above argument in full. At paragraph 12, the Hon'ble Supreme Court has laid down following guidelines for effecting recovery:

'.....

12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even



though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover'

6. In view of the categorical conclusion of the Hon'ble Supreme Court to the effect that recovery should not be proximate to, or post the date of superannuation of an employee and since, in this case, several of the petitioners are stated to have retired as on date, without going into the merits of the matter, the following order is passed:

i) No recovery shall be made in the case of those petitioners who have retired as on date.

ii) In case of petitioners who continue in service as on date, seeing as the impugned orders have been admittedly passed without compliance with the principles of the natural justice, the same stands set aside and the petitioners shall be heard and orders passed afresh within a period of four (4) weeks from date of receipt of a copy of this order.

7. Mr. Magesh, learned counsel appearing for Mr. D. Raghu would submit that recovery has been effected in the case of all the employees. In such case, there is nothing further to be done, except if the recovery was proximate to retirement or contrary to the specific observations/guidelines framed by the Hon'ble Supreme Court in the White Washers' case (supra). In such cases, it is open to those petitioners to seek refund of the amount from R2/Corporation by way of representation.

8. These writ petitions are disposed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

vs/kbs

To

1. The Secretary to Government,
Transport Department,
St. Fort George,
Chennai-9.



2. The Managing Director,
Tamil Nadu State Transport Corpn., [Villupuram] Ltd.,
Vazhutha Reddy Post,
Villupuram & District.

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3. The Principal Secretary to Government,
Transport Department,
St. Fort George,
Chennai-9.

4. The Managing Director,
Tamil Nadu State Transport Corpn., [Coimbatore] Ltd.,
37 Mettupalayam Road,
Coimbatore - 641 043.

5. The Managing Director,
Tamil Nadu State Transport Corpn., [Salem] Ltd.,
12, Ramakrishna Road,
Salem District.

+1cc to Mr.L.Chandrakumar, Advocate SR. No.56339

+1cc to Mr.T.Chandrasekaran, Advocate SR. No.56441

+1cc to Mr.D.Raghu, Advocate SR. No.56357

+1cc to the Government Pleader SR. No.56708

WP.Nos.11532, 11533, 11534 &
16016 of 2011 and
M.P.Nos.2, 2 and 2 of 2011 and
M.P.Nos.1, 1 and 1 of 2012

MG (CO)

PR (01/12/2021)