



Writ Appeal Nos.2658, 2516 and 2624 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 18.10.2022

Judgment Delivered on : **20.10.2022**

CORAM :

**THE HON'BLE MR. JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.Nos.2658, 2516 and 2624 of 2021
&
C.M.P.Nos.17289, 16387 and 17127 of 2021

W.A.No.2658 of 2021:

M.Gobinath

... Appellant

Versus

1. S.Somasundaram

2. The State of Tamil Nadu

Rep. by Secretary to Government

Municipal Administration & Water Supply Department,

Fort St. George,

Secretariat,

Chennai – 600 009.

3. The Commissioner,

Erode Corporation,

Erode.

4. P.Anandan

... Respondents



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W.A.No.2516 of 2021:

P.Anandan

... Appellant

Versus

1. S.Somasundaram

2. The State of Tamil Nadu,
Rep. by Secretary to Government,
Municipal Administration
and Water Supply Department,
Fort St.George,
Secretariat, Chennai – 600 009.

3. The Commissioner,
Erode Corporation,
Erode.

4. M.Gobinath

... Respondents

W.A.No.2624 of 2021:

The Commissioner,
Erode Corporation, Erode.

... Appellant

Versus

1. S.Somasundaram

2. The State of Tamil Nadu
Rep. by Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George,
Secretariat, Chennai – 600 009.

3. The Commissioner,
Erode Corporation,
Erode.

4. P.Anandan

... Respondents



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Prayer in W.A.No.2658 of 2021: Writ Appeal has been filed under Clause 15 of Letters Patent, to allow the Writ Appeal by setting aside the order, dated 26.08.2021 made in Writ Petition No.16540 of 2017 on the file of the High Court of Madras and thereby dismiss the Writ Petition.

Prayer in W.A.No.2516 of 2021: Writ Appeal has been filed under Clause 15 of Letters Patent, to set aside the order of the High Court, Madras in W.P.No.16450 of 2017, dated 26.08.2021, by allowing this Writ Appeal.

Prayer in W.A.No.2624 of 2021: Writ Appeal has been filed under Clause 15 of Letters Patent, to set aside the impugned order passed by this Court in W.P.No.16450 of 2017, dated 26.08.2021 by allowing this appeal.

For Appearance in W.A.No.2658 of 2021:

For Appellant : Mr.V.P.Sengottuvel

For Respondents : Mrs.A.L.Gandhimathi (for R1)

: Mrs. E.Renganayaki, (for R2)
Additional Government Pleader.

: Mr. M.Raja Mathivanan (for R3)

: Mr.T.N.Rajagopalan
for Mr.S.Kaithaimalai Kumaran (for R4)

For Appearance in W.A.No.2516 of 2021:

For Appellant : Mr.T.N.Rajagopalan
for Mr.S.Kaithaimalai Kumaran



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For Respondents : Mrs.A.L.Gandhimathi (for R1)
: Mrs. E.Renganayaki, (for R2)
Additional Government Pleader.
: Mr. M.Raja Mathivanan (for R3)
: Mr.V.P.Sengottuvel

For Appearance in W.A.No.2624 of 2021:

For Appellant : Mr. M.Raja Mathivanan
For Respondents : Mrs.A.L.Gandhimathi (for R1)
: Mrs. E.Renganayaki, (for R2)
Additional Government Pleader.
: Mr.V.P.Sengottuvel (for R3)
: Mr.T.N.Rajagopalan
for Mr.S.Kaithaimalai Kumaran (for R4)

COMMON JUDGMENT

D.Bharatha Chakravarthy, J.,

Writ Petition in W.P.No.16450 of 2017 filed by one S.Somasundaram, the first respondent in these Writ Appeals, claiming promotion to the next higher post of Assistant Executive Engineer, was allowed by the learned Single Judge, by order dated 26.08.2021. Aggrieved by the same, the second respondent in the Writ petition, namely the Commissioner, Erode Corporation, Erode has filed the Writ Appeal in W.A.No.2624 of 2021. The



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third respondent in the Writ petition namely *Mr.Gobinath*, had filed the Writ Appeal in W.A.No.2658 of 2021. The fourth respondent/writ petitioner namely *P.Anandan*, has filed the Writ Appeal in W.A.No.2516 of 2021. As such all three appeals are taken up together for disposal by this common judgment.

2.For convenience, the parties are referred to as per their array in the writ petition.

3.The Writ Petitioner was originally appointed as Electrician in Grade II w.e.f 21.03.98 at Mettupalayam Municipality. Thereafter, he was promoted as Electrician Grade I, w.e.f 12.01.2000. Thereafter, he was transferred to Erode Municipality on 22.09.2005 as Electrical Superintendent Grade -II. Thereafter, on upgradation of Erode Municipal Corporation, on 16.12.2008, the petitioner was re-designated as Junior Engineer. Since the petitioner obtained degree in Engineering, by order dated 17.02.2009, he was re-designated as Assistant Engineer w.e.f 01.01.2009.

4.The third respondent in the Writ petition, namely, *M.Gobinath* was appointed as Work Inspector on 18.04.1995 in Namakkal Municipality.

Thereafter, he was transferred in the same capacity initially to Salem



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Municipality and thereafter, to Erode Municipality on 11.05.1987. He was promoted to the post of Draftsman, on 01.10.1990. He was further promoted as Junior Engineer with effect from 01.10.1995. Thereafter, he was transferred to Thiruppur Municipality and from Thiruppur Municipality to Sathyamangalam Municipality. At Sathyamangalam Municipality, upon acquiring B.E. Degree, he was re-designated as Assistant Engineer with effect from 29.05.2008 by proceedings dated 09.09.2008. Thereafter, he was transferred as Municipal Engineer in Kasipalayam Grade-III Municipality from 13.05.2010. With effect from 25.10.2011, Kasipalayam Municipality got merged with the Erode City Municipal Corporation, and the petitioner was absorbed as Assistant Engineer, in the Erode City Municipal Corporation.

5.The fourth respondent/ *P.Anandan*, was initially appointed as Overseer with Kumarapalayam Municipality, thereafter, he was transferred to Erode as Draftsman, w.e.f 12.04.2004. Thereafter, from 24.11.2004, he was promoted as Junior Engineer. Upon his acquiring degree qualification he was re-designated as Assistant Engineer, with effect from 01.07.2009. He was posted at Suryapalayam Town Panchayat with effect from 31.10.2009 on deputation upto 05.09.2011. While so, the Suryapalayam Town Panchayat also merged with Erode Municipal Corporation and vide G.O. dated 20.12.2012, he was



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absorbed in the Erode Municipal Corporation as Assistant Engineer.

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6.By The Tiruppur and Erode Municipal Corporations Act, 2007, Erode Municipality was upgraded as Municipal Corporation w.e.f 01.01.2008. As far as the services to Municipal Corporation is concerned, the Government of Tamil Nadu had vide G.O (Ms). No.237, dated 26.09.1996 decided that instead of framing separate service rules for for the various Municipal Corporation's, common rules can be framed and accordingly, Tamil Nadu Municipal Corporation Services Rules, 1996, including Tamilnadu Municipal Corporation Engineering and Water Supply Services Rules, 1997 were framed which are applicable to all the Municipal Corporations in the State, except to the Corporation of Chennai. Even in the said Government Order, it was observed in paragraph No.7 that while implementing the new Services Rules, it is possible that certain problems may arise in these Corporations and in such cases, proposals would be examined and further orders will be passed.

7.After the said Government Order came to be issued, representations were made from various Corporations that several posts were not included in the Rules and therefore, clarifications were sought in many aspects. In that regard, the Government issued G.O.Ms.No.140, dated 27.05.1997 and the relevant



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portion of the Government Order for the purpose of this case is extracted hereunder:-

APPENDIX

CLARIFICATIONS

Request of the Association or individuals of the Corporation. (1)	Clarification issued by the Government. (2)		
1.....			
2.....			
3.....			
4.....			
5.....			
6. The Superintendents (Water Works), (Drainage), (Sewage Farm), (Mechanical), and Junior Engineer (Mechinal) who have completed 20 years of service and who are now drawing pay of more than Rs.2200/- have represented that they may be promoted as Assistant Executive engineer/Executive Engineer of the Engineering and Water Supply Service of the Corporation.	These Superintendents and Junior Engineer (Mechanical) have not worked in the Corporations as regular Junior Engineers. Since all of them have completed more than 20 years of service, if their services are merged with the Engineering and Water Supply Service of the Corporations, they will become senior to all the existing Engineering personnel of the Corporations. They will then claim promotion to the post of Executive engineer/City Engineer in the Corporations. They cannot be considered for promotion to the post of regular Assistant Executive Engineer. Further, under the new Corporation Service Rules, provisions have not beenmade for these posts. Therefore, these posts will have to be kept separately for the present. Since they are in two different scales of pay, they will be redesignated as indicated below:- <table><tr><td>(a) Superintendent (Water Works) (Drainage Works), (Motor Mechanic)</td><td>Assistant Engineer (Special)</td></tr></table>	(a) Superintendent (Water Works) (Drainage Works), (Motor Mechanic)	Assistant Engineer (Special)
(a) Superintendent (Water Works) (Drainage Works), (Motor Mechanic)	Assistant Engineer (Special)		



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Request of the Association or individuals of the Corporation. (1)	Clarification issued by the Government. (2)
	(Sewage Farm) etc. those who have completed 20 years of service as on the date of issue of this order. Grade.I. (no change in pay scale) (b) Superintendent (Water Works) (Drainage) (Sewage) (Motor Mechanic) Junior Engineer (mechanic) etc. those who have completed 10 years of service as on the date of issue of this order. Assistant Engineer (Special) Grade.II. (no change in pay scale) (ii) They cannot claim any seniority in the Engineering and Water Supply Service in the Corporation. They will continue in the same posts till their dates of superannuation. They will be in the main office under the control of Executive Engineer/City Engineer of the Corporation and will attend to the works allotted to by the City Engineer/Commissioner of the Corporation in addition to their existing work which they are now attending.

8. Thereafter, by G.O.Ms.No.206, dated 22.10.2008, apart from the one existing post of Assistant Executive Engineer, three other posts were sanctioned and it is stated that the said post has to be filled up by way of

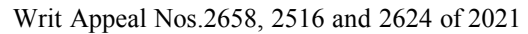


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promotion from among Assistant Planning Officer, Assistant Engineer, Junior Engineer, Town Planning Inspector, Superintendent of Drinking Water Works, and Electrical Superintendent. It is also further stated that if there are no eligible hands, the post can also be filled up by way of deputation.

9. On 07.08.2009, a tentative seniority list of Assistant /Junior Engineers was also published inviting the objections within fifteen days. In the said list, the petitioner, *S.Somasundaram* was shown at serial No.4, on 31.01.2009. A resolution was passed by Erode Municipal Corporation Council that newly created vacancies can be filled up from the eligible hands as per the G.O.206, dated 22.10.2018 and as per the Rules framed in G.O.Ms.No.237, dated 26.09.1996, in the ratio of 3:1 from the Assistant Engineer and Junior Engineer. Accordingly, the panel was approved. It can be seen that the petitioner's name was at Serial No.4 and one *V.T.Ashok Kumar* was in Serial No.5. Thereafter, on 18.09.2009, the persons in Serial Nos.2, 3 and 5 were actually promoted as Assistant Engineers while the writ petitioner was left out.

10. The petitioner thereafter made a representation dated 12/10/2009 requesting that he be promoted as Assistant Executive Engineer. Thereafter, on 19.08.2004, yet another seniority list of Assistant Engineers/Junior Engineers



11. Thereafter, the petitioner again made a representation that he may be promoted as Assistant Executive Engineer. The said representation was rejected by the respondent on the ground that the petitioner was not eligible for promotion. The respondent's order dated 31.05.2017, which is impugned in the writ petition.

12. In the meanwhile, the third respondent approached this Court by way of filing Writ Petition is W.P.No.26130 of 2017 claiming promotion to the post of Assistant Executive Engineer, and after considering the said Writ



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Petition, by order, dated 26.02.2021, a learned Single Judge of this Court had directed the second respondent herein to consider the claim of the petitioner for promotion to the post of Assistant Executive Engineer and to pass appropriate orders.

13.It is in these circumstances, the learned Single Judge considered the present Writ Petition in W.P.No.16450 of 2017 filed by the petitioner. The learned Single Judge found that the Tamil Nadu Municipal Engineering Service Rules, 1996, are applicable. As per the same, the post of Assistant Executive Engineer are to be filled up by way of promotion from among Assistant Engineers. The petitioner, *S.Somasundaram*, is working as Assistant Engineer, and therefore, the clarifications issued in G.O.Ms.No.140, dated 27.05.1997 is not applicable in the case of the petitioner. Therefore, the learned Single Judge quashed the impugned order dated 31.05.2017 and consequently, issued directions to the respondents to promote the petitioner as Assistant Executive Engineer in Erode Corporation with all service and monetary benefits from the date on which the petitioner's immediate junior was promoted to the post of Assistant Executive Engineer. Aggrieved by the same, the present Appeals are laid before this Court.



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14.Heard *Mr.Rajamathivanan*, learned Counsel appearing for the Erode Municipal Corporation; *Mr.V.P.Sengottuvel*, learned Counsel appearing for the third respondent/*Mr.M.Gopinath*; *Mr.T.N.Rajagopalan*, learned Counsel appearing for the fourth respondent/*P.Anandan*; *Ms.A.L.Ganthimathi*, learned Counsel appearing for the writ petitioner/*S.Somasundaram*; *Ms.E.Ranganayaki*, learned Additional Government Pleader appearing for the first respondent in the Writ Petition/the State of Tamil Nadu.

15.The learned Counsel on behalf of the Erode Municipal Corporation submitted that the petitioner was not in the cadre of the Corporation Engineering Services as on date when the Erode Municipality was upgraded as Municipal Corporation and therefore, when he claims promotion to the post of Assistant Executive Engineer which is part of engineering services, then the clarifications in G.O.Ms.No.140 is applicable and therefore, since the petitioner was only working as Electrical Superintendent, his case for promotion has rightly been rejected. He would submit that as a matter of fact, in the year 2014 itself, it was categorically mentioned that the petitioner will not be considered for the promotion. The petitioner did not even challenge the same at that point of time. Therefore, the learned Judge erred in allowing the Writ Petition.



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16.*Mr.V.P.Sengottuvel*, learned Counsel for the third respondent/*Gobinath* would submit that all along the name of *Gobinath* is in Serial No.1 in the *inter-se* seniority list. The third respondent's claim has already been directed to be considered by the learned Judge of this Court by order dated 26.02.2021 in W.P.No.26130 of 2021. In spite of the same, his case is not considered only on account of the present Writ Petition. He would submit that the third respondent/*Gobinath* is senior to *S.Somasundaram* in all aspects, and therefore, his case has to be considered first.

17.*Mr.T.N.Rajagoplan*, learned Counsel appearing for the fourth respondent/*P.Anandan* would submit that the fourth respondent was already functioning as a Junior Engineer in the Engineering Services, as of the year 2008, when the Municipality was upgraded as Corporation and therefore has the right to promotion to the post of Assistant Executive Engineer. He would submit that the learned Single Judge erroneously held that the Tamil Nadu Municipal Engineering Services Rules, 1997 are applicable, while the Rules applicable are the Rules which are framed in G.O.Ms.No.237, in respect of the Municipal Corporations. He would submit that the clarifications under G.O.Ms.No.140, are therefore, applicable in all force to the petitioner and hence, prayed that the appeals may be allowed.



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18.Opposing the said submissions made by all the three learned Counsels, *Mrs.A.L.Gandhimathi*, learned Counsel appearing for the first respondent in the Writ Petition would submit that this is a clear case where the petitioner was re-designated as Junior Engineer and thereafter as Assistant Engineer. When the petitioner is working as Assistant Engineer, there was no occasion for the Corporation to deny the promotion. As a matter of act, as early as in the year 2009, the petitioner's name was included in the seniority list/panel. Only subsequently, in the year 2014, it was mentioned that the petitioner will not be entitled for promotion. The said seniority list was quashed by this Court at the instance of one *Bhaskar*. It is thereafter, in the year 2017, the petitioner made a representation, which was rejected by the impugned order. Therefore, the Writ Petition is filed challenging the impugned order and the petitioner sought consequential direction for promotion from the year 2009 when the petitioner's immediate Junior i.e., *Mr.V.T.Ashok Kumar*, who was in Serial No.5, was given promotion.

19.She would submit that a perusal of Column No.6 in the said G.O.Ms.No.140, would clearly reveal that it does not cover the post of Electrical Superintendent and therefore, the said clarifications are not applicable



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to the petitioner and hence, she prays that these appeals be dismissed.

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20.We have considered the submissions made on either side and perused the material records of this case.

21.Presently, we are concerned with promotion to the post of Assistant Executive Engineers in the Erode Municipal Corporation. Recruitment Rules to the said post were framed by the Government of Tamil Nadu vide G.O.Ms. No.237, dated 26.09.1996. The relevant Rules are 'Tamil Nadu Municipal Corporations Engineering and Water Supply Services Rules, 1996. As per Rule 3 of the said Rules, the post of Assistant Executive Engineer is to be filled up by promotion from the holders of the post of Assistant Engineer/Junior Engineer. The Assistant Engineer/Junior Engineer, must have done work not lesser than one year in the Engineering Department of the Corporation Main Office and for a period of not lesser than three years in the Ward Offices. Therefore, we find that the finding of the learned Single Judge that the Tamil Nadu Municipal Engineering Services Rules, 1997 as applicable, is erroneous. The stipulation in G.O.Ms.No.206, dated 22.10.2008 that the post of Assistant Executive Engineer can be filled up by way of promotion from the various posts mentioned therein, is also incorrect, as the above Statutory Rules



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will prevail.

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22.While the Government of Tamil Nadu framed the Rules vide G.O.Ms.No.237, for the various services for the Municipal Corporation within Tamil Nadu, it is specifically observed in Paragraph No.7 that while implementing new Services Rules, problems may be faced by the Corporations, in which case the Government will examine the proposals received from the Commissioners of the Corporation and will issue necessary executive orders or clarifications in order to protect the service conditions of the existing employees of the Corporation to the maximum extent possible. Since the Rules i.e., General Services Rules, and Engineering and Water Supply Services Rules, etc, which were framed by the Government, did not cover certain posts in several Corporations, a clarification was sought in this regard.

23.Clarifications were issued vide G.O.Ms.No.140, dated 27.05.1997. The relevant Clarification in Paragraph No.6 was extracted supra. It may be seen that even though in the query, the post of Superintendent (Water works, Drainage and Sewage form), Mechanic and Junior Engineer (Mechanical) alone are mentioned, in the clarifications issued not only the said posts are mentioned, but, the phrase "*etc.*," has been included. Persons who have completed 20 years



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of services as on date of the order, shall be designated as Assistant Engineer (Special) Grade - I and those who have completed only 10 years of services will be designated as Assistant Engineer (Special) Grade II. It can be seen that the said clarifications were issued taking into consideration the incumbents who have not worked in the Corporation in the Engineering Services, if absorbed in Engineering or Water Supply Engineering Services in the Corporation will become senior to all existing Engineering personnel of the Corporation and they will then claim the promotion to the post of Executive Engineer / City Engineer and that they cannot be considered for promotion to the post of Assistant Executive Engineer. Since no provision has been made in respect of the said posts under the new Corporation Services Rules, they have to be kept separately.

24.From the facts narrated in Paragraphs Nos.1, 2, and 3, supra, it can be seen that the petitioner was not in the Engineering and Water Supply Services as on date when the Municipality was upgraded as Corporation. As such, the petitioner, who was only a Electrical Superintendent, ought to have been designated as Assistant Engineer (Special) Grade - II up to 21.03.2008, and thereafter, as Assistant Engineer (Special) Grade - I, upon completion of 20 years of service. The error committed by the Erode Muncipal Corporation in



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designating the petitioner as Junior Engineer and, thereafter, as Assistant Engineer, upon the upgradation of the Corporation. The said action is a mistake and the same has to be corrected and cannot be perpetrated. As early as in the year 2014, though not by properly designating, by mentioning that the petitioner will be kept separately without any promotion, the error was sought to be corrected. As a matter of fact, it was only tentative seniority list and the petitioner was entitled to submit his objections, thereby, an opportunity was also granted to the petitioner. However, the said seniority list was quashed by this Court. Subsequently also, in all proceedings, it is specifically mentioned that the writ petitioner will not be entitled for promotion. Aggrieved by the same, the petitioner had made a representation, which is now considered by the impugned order and rightly finding that the clarifications in G.O.Ms.No.140, are applicable to his case, the request for promotion was rejected.

25.The submissions of the learned Counsel appearing on behalf of the petitioner that the post of the petitioner is not specifically mentioned in the G.O.Ms.No.140, will not hold water, since after specifically mentioning some posts, the word "etc" was mentioned and reading of the clarifications would clearly demonstrate that the persons in these services, which were not part of the Engineering and Water Supply Services, cannot claim promotions to the post of



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Assistant Executive Engineering. To be more specific, as per the Rules, only the post of City Engineer, Electrical Engineer, Assistant Executive Engineer, Assistant Engineer are constituted as the Municipal Corporation Engineering and Water Supply Services. Therefore, on proper reading of the Rules, and the clarifications it would be clear that the clarifications under Paragraph No.6 of the G.O.Ms.No.140, would be squarely applicable to the petitioner and accordingly, the second respondent /Corporation was right in the order impunged in the writ petition, dated 31.05.2017, holding that the petitioner will not be entitled for promotion to the post of Assistant Executive Engineer. Therefore, we are of the considered opinion that the order of the learned Single Judge, is unsustainable and as such deserves to be set aside.

26.In the result:

- i) The Writ Appeals in W.A.Nos.2658, 2516 & 2624 of 2021 are allowed;
- ii) The Writ Petition in filed by the first respondent/Writ Petitioner in W.P.No.16450 of 2017 shall stand dismissed; and all the connected miscellaneous petitions are closed.
- iii) There shall be no order as to costs.



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(P.U., J.) (D.B.C., J.)
20.10.2022

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Index : Yes/No
Speaking/Non-Speaking order

klt

To

1. The Secretary to Government
Municipal Administration & Water Supply Department,
Fort St. George,
Secretariat,
Chennai – 600 009.
2. The Commissioner,
Erode Corporation,
Erode.



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**PARESH UPADHYAY, J.,
and
D.BHARATHA CHAKRAVARTHY, J.,**

klt

Pre-Delivery Judgment in

W.A.Nos.2658, 2516
and 2624 of 2021

&

C.M.P.Nos.17289, 16387
and 17127 of 2021

20.10.2022