



W.P.No.6415 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.07.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.6415 of 2016
and
W.M.P.No.5713 of 2016

K.Narayanan

.. Petitioner

Vs.

1. The District Collector, Thanjavur.
2. The Director of Town Panchayat,
Kuralagam, Chennai-600 108.
3. The Principal Secretary to Government,
Municipal Administration and
Water Supply (EP4) Department,
Fort St.George, Chennai-600 009.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in connection with the impugned order passed by him in Na.Ka.No.2970/03/PR.1, dated 01.02.2012, confirmed by the second respondent in Na.Ka.No.1865/2009/A5, dated 22.06.2012 and further confirmed by the third respondent in G.O.D.No.29, Municipal Administration and Water Supply (PR.4) Department, dated 20.01.2016 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.



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For petitioner : Mr.K.Venkataramani, Senior Counsel for M/s.M.Muthappan

For respondents: Mr.T.K.Saravanan, Govt. Advocate

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ORDER

The Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus seeking interference with the order of the first respondent/District Collector, Thanjavur, dated 01.02.2012 in Na.Ka.No.2970/03/PR1, which was confirmed by the second respondent/Director of Town Panchayat, Chennai, by order dated 22.06.2012 in Na.Ka.No.1865/2009/A5 and further confirmed by the third respondent/Principal Secretary to Government, Municipal Administration and Water Supply (PR.4) Department, Chennai in G.O.(D).No.29, dated 20.01.2016 and to consequently direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

2. The petitioner had been appointed as Jeep Driver in the office of the Assistant Director of Town Panchayat, Thanjavur Zone, Thanjavur on 23.07.1995. After approaching the Tamil Nadu Administrative Tribunal for necessary relief, his services were finally regularised by order passed in G.O.(2D).No.105, Municipal Administration and Water Supply Department, dated 27.10.2009 by relaxing the service Rules.

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3. The petitioner claims that he had passed Xth Standard examination and therefore, he is eligible for appointment as Jeep Driver, quite apart from the fundamental requirement of holding driving licence. To drive the jeep or any other vehicle of his Department, the minimum qualification was 8th Standard pass.

4. In the midst of this, in the year 2010, more particularly, an anonymous petition had been submitted to the respondents herein, which prevailed on the first respondent to issue a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in Na.Ka.No.2970/03/TW1, dated 17.03.2010.

5. The crux of the charge was that the petitioner had submitted false school certificate indicating his educational qualification, and thereby, obtaining employment on the basis of such school certificate, which vitiated his initial appointment itself. It is further contended that, consequent to such submission of the school certificate, he had violated Rule 20(1) of the Government Servants Conduct Rules, which necessitated initiation of proceedings and framing of a charge, which would incur major penalty to be imposed.

6. The petitioner had submitted his explanation on 29.04.2010 and he had also submitted his response to the questionnaire. The copy of the said response

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has been enclosed as a document to the Writ Petition and on a perusal of the same, it would indicate that the petitioner had very categorically expressed his willingness to submit oral and documentary evidence and also to cross-examine any witness produced on behalf of the respondents and more particularly, to put to test any document produced by the respondents.

7. The only witness who had been named in the charge memo was the Additional Assistant Elementary Educational Officer, Thiruvaiyaru and letter dated 18.11.2009 issued by the said official, was the only document presented. This was the only witness. He should have been produced by the respondents during the enquiry. That letter was the only document which had to be tested in the manner known to law during the course of enquiry.

8. Thereafter, there had been series of enquiry officers who have been appointed. It is seen from the records that originally and Assistant Director and P.A. to the District Collector (Development and Training), Thanjavur, was appointed as the enquiry officer. This order was cancelled, since the said official expressed inability to conduct the enquiry due to pre-occupation. Thereafter, the P.A. to the District Collector (Development) at Thanjavur was appointed as new enquiry officer by order dated 05.04.2010 and he proceeded to issue notice of enquiry to the petitioner, but could not conduct the enquiry owing to

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administrative reasons. Thereafter, he went on leave and this frustrated the progress of the enquiry. A third official was then appointed as enquiry officer, namely P.A. to the District Collector (Small Savings) at Thanjavur. He issued the proceedings and conducted enquiry on three days, namely on 30.09.2010, 14.10.2010 and 02.03.2011. He then submitted his enquiry report in Na.Ka.No.1131/2010/SS/2, dated 31.03.2011. He expressed an opinion that all the three charges framed against the petitioner stood proved.

9. The charges which had been framed against the petitioner are:

(i) The petitioner had produced false educational certificate and had thereby obtained appointment.

(ii) Consequent to production of such false certificate, he had prevented another person to be appointed as a driver.

(iii) Consequent to the aforementioned two charges, he had violated the Government Servants Conduct Rules, particularly, Rule 20(1), which invited major punishment to be imposed, if the charges were proved.

10. All the three charges were held to be proved by the enquiry officer on conclusion of the enquiry. Thereafter, the enquiry report was served on the petitioner on 16.06.2011. It is claimed that the petitioner did not give any explanation and it is further stated in the counter affidavit that since the

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petitioner has not submitted any explanation to the enquiry report, he was informed that orders would be passed on the basis of the available records. The petitioner then submitted a further explanation on 12.07.2011 stating that the educational certificate which was the basis for obtaining employment, had been obtained by his father when he, the petitioner, was a minor and that the father was dead. The petitioner sought reinstatement into service.

11. It has been further stated that though a further enquiry was conducted in the school and it was again found that the certificate produced was not a true one, the petitioner was imposed with punishment of dismissal from service, by order dated 01.02.2012.

12. Thereafter, the petitioner was granted an opportunity of personal hearing on 12.06.2012 by the second respondent. He attended the personal hearing. The second respondent confirmed the order of dismissal from service. The petitioner then filed a Writ Petition before this Court in W.P.No.20350 of 2012 questioning the said confirmation of the order of dismissal. A learned Single Judge of this Court, by order dated 31.07.2016, had granted permission to the petitioner to file a Review before the Government and the petitioner accordingly filed a Review petition before the Government, which was disposed of by order dated 17.02.2015. Finally, the third respondent has issued

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G.O(D).No.29, dated 20.01.2016, confirming the dismissal of the petitioner from service. The petitioner had then filed the present Writ Petition questioning such order of dismissal, confirmation of the order of dismissal, rejection of his Review Petition and passing of the aforementioned G.O., confirming the dismissal.

13. Mr.K.Venkataramani, learned Senior Counsel appearing for the petitioner took the Court through the proceedings, particularly the enquiry report submitted. In the enquiry report, after the charges had been stated, the documents which were relied on by the respondents to substantiate the charges, had been listed out. The first document is the School certificate, which had been produced by the petitioner at the time of his employment. The second document is a letter given by the Additional Assistant Educational Officer, Thiruvaiyaru, dated 18.11.2009 in Na.Ka.No.1445/A2. These two documents were produced during the course of enquiry. It was then observed in the Enquiry Report that the petitioner had raised objections claiming that the signature of the Headmaster in the records should be verified in proper manner and the Headmaster may be summoned as a witness to subject him to cross-examination.

14. But that objection of the petitioner was brushed aside by the enquiry officer, who placed reliance on the letter of the Additional Assistant Educational

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Officer, dated 18.11.2009. The said officer was not examined as a witness. The said officer, in his letter has stated a fact and had stated an opinion about another issue. The fact which he had stated is that the Admission No.2719 as stated in the certificate produced by the petitioner, did not relate to the petitioner. The opinion which he had given is that the signature of the Headmaster is forged.

15. The learned Senior Counsel pointed out these two aspects in the enquiry report and was very critical of the manner in which the enquiry was conducted. The said letter was taken into consideration and whatever was stated in the letter was taken as gospel truth without putting the letter to test. The learned Senior Counsel asserted that the enquiry officer should have called the Headmaster as a witness and the petitioner should have been permitted to cross-examine the Headmaster, since a very serious allegation had been made that the signature of the Headmaster had been forged.

16. The learned Senior Counsel pointed out that the only one person who was competent to lead primary evidence on that particular aspect is the Headmaster. There is no record to show that he was not available or that summons were issued to him and that he did not appear or whether any steps were taken to produce him. Steps had not been taken, though the petitioner

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had stated that he should be cross-examined.

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17. The learned Senior Counsel further pointed out that the letter of the Additional Assistant Elementary Educational Officer was taken at its face value. The signature could have been easily verified to determine whether it was forged or not. Experts are there to verify the signatures. The enquiry being conducted by the Government, the Department could have forwarded the signature to the Forensic Department to be compared with the admitted signatures of the Headmaster of the proximate time period and the signature as found in the certificate and both of them could have been compared and an expert opinion could have been obtained. It was all the more necessary since a very serious allegation has been levelled against the petitioner and this should be taken in conjunction with the statement that he was a minor, when the certificate was produced. He had very specifically stated that his father had produced the certificate and therefore, there cannot be an allegation as against the petitioner for having committed such forgery. The certificate given by his father was forwarded by him when he joined service. If this particular certificate is to be assailed by the respondents, then due opportunity must have been given to the petitioner to test the basis on which such conclusion was reached by the respondents.

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18. In the instant case, a conclusion had been reached on the basis of the letter issued by the Additional Assistant Educational Officer, Thiruvaiyaru. I hold that this Additional Assistant Educational Officer must have been summoned as a witness to state as to the basis for his opinion that the signature found was verified and how he determined it was forged. He is not an expert in determining whether a signature is forged or not. Whether he has that expertise or whether he was trained is not known. He was not even summoned to verify whether he had actually written the letter. He was not called upon to state what records would indicate that the name of the student in Admission No.2719 was different from that of the petitioner. These are facts which could have been very easily verified. The school records could have been summoned and the name of the individual whose Roll number 2719 could have been verified.

19. I hold that these facts have not been properly enquired by the enquiry officer. The enquiry officer should realise that a solemn duty had been cast upon him particularly, when he was examining the fate of the service of a staff of the Department. Any adverse finding detriment to the delinquent would cause economic death to the family of the delinquent. A fair opportunity must have been granted. Efforts must have been taken by the respondents to ensure that witnesses are summoned and documents are produced and witnesses who are summoned, are cross-examined by the delinquent and the documents which

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are produced, pass the tests of admissibility, relevancy and proof and genuinity.

When a document is not tested in the aforesaid manner, it cannot be taken on its face value, particularly in an enquiry which is adversial in nature.

20. I hold that concept of a departmental enquiry is to provide equal opportunity to the delinquent to put forth his case and give him an equal platform to cross examine the witnesses produced on behalf of the respondents. The charges may be proved by preponderance of probabilities, but the evidence must be trustworthy. If the evidence is not trustworthy, no conclusion could be reached on the basis of such evidence. Appreciation of evidence could be a matter of subjective satisfaction, but whatever the evidence which is appreciated, care should be taken that such evidence had been questioned by the delinquent and tested in manner known to law. Witnesses should be cross-examined. The concept of evidence includes not only evidence in chief, but also evidence which is adduced during cross-examination. Both should be evaluated and then, a conclusion should be reached. A document should not be taken at its face value. It must be tested on admissibility and proved in the manner known to law and must be relevant to the issues which are the subject matter of the enquiry. The document should also be genuine in nature. If a document fails in any of these tests, such document should not be the basis of any conclusion reached by the enquiry officer.

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21. Unfortunately, an equal platform had not been provided to the petitioner.

22. Even before the enquiry commenced, the enquiry officer should have examined the answers given by the delinquent to the questionnaire, which was forwarded along with the charges. If the delinquent had placed a specific request that oral evidence is required, then the enquiry officer should take steps to grant opportunity to adduce oral evidence and summon such witness and permit such witness be cross-examined. This procedure to be followed by every enquiry officer.

23. The learned Senior Counsel appearing for the petitioner took the Court through the enquiry report and pointed out that witnesses were not examined and the only document which was marked was the letter of the Additional Assistant Educational Officer, Thiruvaiyaru, who himself was not summoned to establish that he had actually written that letter and whether he had written such letter after examination of records. In the absence of these facts, the learned Senior Counsel stated that this Court should not give any credence to the enquiry report which was the basis for the final order passed against the petitioner herein.



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24. On the side of the respondents, learned Government Advocate pointed out the counter affidavit which had been filed. It had been stated in the counter that the name of the petitioner was not found in Admission No.2719. It was insisted that this fact had been clearly stated in the letter.

25. I hold that even if it is to be presumed that the name of the petitioner does not correlate with the name as found in A.No.2719, still the enquiry officer had a duty to personally satisfy himself on this particular fact. He should have called for the records from the School. He should have examined the name of the student whose roll number is 2719. He should have then come to a conclusion that the petitioner's Roll number was different and that the student whose Roll number 2719 was different. The enquiry officer should have taken steps to verify the genuineness of the signature of the Headmaster. He cannot simply state that merely because the Additional Assistant Educational Officer had given an opinion that the signature of the Headmaster was forged, he had come to a conclusion that the signature was forged. If this is the manner in which an enquiry is conducted, then the enquiry need not have been conducted at all. It was only a farce. In this case opportunity was denied to the petitioner. In the explanation of the petitioner he had alleged that the entire issue was pre-judged by the respondents. If that be the case, the concept of holding departmental enquiry itself had been put to waste by the respondents.

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26. The learned Government Advocate pointed out that there had been a further enquiry after the enquiry report was been furnished to the petitioner. He was called upon to give an explanation. It is stated that he initially did not give any explanation. He was then informed that a consequential order would be passed. He had then given an explanation. After he had given the explanation, the authority once again should examine the entire issue. It was pointed out by the learned Government Advocate and stated in the counter affidavit that records were verified. It was stated that the Additional Assistant Educational Officer had made a spot inspection and found that Admission No.2719 related to one S.Chandrasekaran, son of M.Sankaran and the date of birth of the said S.Chandrasekaran was 10.04.1975. He had been admitted in the school and left the school on 20.09.1989 after VIII Std. It was stated that the name of the petitioner was not found in the records of the school. His name was not found in the admission register.

27. These are all additional facts stated. I hold that if they are to be relied on by the respondents, then they should have been put such facts to the petitioner and the enquiry should have been reopened for further examination. Opportunity should have been given to him to cross-examine the witnesses on these facts. The registers should have been produced. The individual who made

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the spot inspection should have spoken about these facts and tendered oral evidence and must have subjected himself for cross-examination.

28. It is not known as to why the fact that the student with Admission No.2719 was one S.Chandrasekaran was not mentioned in the enquiry report. It is a subsequent development. I hold the conclusion reached by the enquiry officer has to be interfered with by this Court, particularly, because, opportunity was not granted to the petitioner and more particularly because the procedure as stated by law and as had not been followed by the enquiry officer. He should have summoned as witness the Additional Assistant Educational Officer and summoned the document and should have permitted the petitioner herein to cross-examine the witnesses and should have permitted the document to be subjected to tests of admissibility. The document should have been proved in manner known to law. The assertion that the signature of the Headmaster was forged, should have been further verified by the enquiry officer. The Headmaster should have been summoned, if he was available. There was no proof that the Headmaster was issued with summons and that he had failed to appear before the enquiry officer. There are no records to show that atleast Additional Assistant Educational Officer was issued with summons and that he did not appear and therefore, reliance was placed on the letter issued by him.

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29. In the absence of these steps taken, I hold there has been failure to provide natural justice, which is the fulcrum of any quasi-judicial enquiry.

30. The learned Senior Counsel placed reliance on the judgment of the Supreme Court reported in *2008 (8) SCC 236 (State of Uttaranchal and others Vs. Kharak Singh)*. In the said case, a departmental enquiry had been initiated on the delinquent therein on the charge that he was involved in illicit felling of trees. The charges were held to be proved. The delinquent was dismissed from service. Finally, the matter reached the Supreme Court.

31. In paragraph 15, the Supreme Court has deduced in four requirements which an enquiry report should contain and the procedures which the enquiry officer should follow during the course of departmental enquiry. They are as follows:

"15. From the above decisions, the following principles would emerge:

(i) the enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry



officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

32. The learned Senior Counsel placed specific emphasis on the third principle above, which indicated that the workman/delinquent who is charged, should be provided with an opportunity to cross-examine the witness of the employer.

33. In the instant case, the issue is still worse. The witness was never



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summoned at all. When once the witness was not summoned, there was no obligation on the part of the delinquent to prove the negative that the certificate produced by him is not forged. The charge was specific. It was that he had produced a false certificate. If that be so, the burden was entirely on the respondents to prove and establish that particular charge on the basis of credible evidence. Credible evidence was not at all adduced. Therefore, I hold there could not have been any conclusion reached on that particular charge. The conclusion that the charge had been proved, will necessarily have to be interfered with by this Court and is set aside.

34. It was pointed by the learned Government Advocate appearing for the respondents that the charge in that particular case before the Supreme Court related to illicit felling of trees, whereas the charge in this particular case goes to the root of the employment itself of the petitioner herein. It was stated that therefore, the onus was on the petitioner to establish that the certificate which he produced, was a true certificate.

35. It is to be noted that the entire charge had been framed on the basis of an anonymous complaint. Thereafter, the respondents had initiated proceedings to enquire such anonymous complaint. When that is the basis for the enquiry, then the burden shifts entirely on the respondents. It is like a

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source information received. The respondents had proceeded on the basis that the certificate produced by the petitioner was a bogus one.

36. The learned Senior Counsel appearing for the petitioner also placed reliance on a judgment of this Court, *dated 07.04.2022 in W.P.No.32466 of 2014 (R.Arasu Vs. The District Collector, Kancheepuram District and two others)*. The learned Judge therein had once again reiterated the principles enunciated above by the Supreme Court and stated that when a serious charge is levelled against a delinquent, the primary responsibility of the delinquent was to defend himself to get out of the charges and prove that he was not guilty. It had been stated that such burden would follow the discharge of the official burden by the management.

37. Thus the initial burden was on the respondents and only thereafter the onus would shift the petitioner. Here, that burden was not discharged by the respondents. There was no issue of calling upon the petitioner to prove that the certificate was a genuine certificate, when the respondents themselves have not initially established that the certificate was a bogus one.

38. It was argued by the learned Government Advocate that in the counter affidavit, it had been stated that the Roll number mentioned by the

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petitioner belonged to another student S.Chandrasekaran.

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39. It is trite in law to point out that a counter affidavit cannot go beyond the enquiry report.

40. In a Constitutional Bench Judgment in *Mohinder Singh Gill and another Vs Chief Election Commissioner, reported in 1978 (2) SCR 272*, it has been very clearly held by the Supreme Court that a counter affidavit cannot substantiate the reasons which have not been stated in the impugned order.

41. Primarily, the order impugned is the report of the enquiry officer. The subsequent orders are only confirmation of the same. After a threat was made an order would be passed consequent to the enquiry report, and explanation received, the first respondent had made a further enquiry and examined the records. It was again done behind the back of the petitioner. That would not come to the rescue of the respondents. To hold that the principles of natural justice had been complied with, there must be transparency in any enquiry and opportunity must be granted to the delinquent at each and every stage. This has been denied to the petitioner herein. As a matter of fact, the respondents ought not to have with-held the crucial document from the purview of the petitioner herein and I am not able to comprehend as to why they have taken that decision. That decision stare in their face.

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42. Though I would give credit to the representations made on the respondents to raise the objection and that the matter should be remanded back for further enquiry, I hold that since the petitioner has now retired on superannuation, it would only mean flogging a dead horse. I am not prepared to grant that particular privilege to the respondents herein or give a further opportunity to conduct a further enquiry. That can be done if the respondents had produced the witnesses and the petitioner herein had not conducted cross-examination. On the request of the delinquent, an enquiry could be reopened for further cross-examination or for producing documents on behalf of the delinquent. But here is a case where the respondents have not produced documents and did not produce witnesses. Therefore, there is no point in once again granting them that particular opportunity. That would only be filling the lacuna by producing the witness who had written the letter. This would not be fair-play. Every enquiry has to provide an equal platform to both the petitioner and the respondents herein, to establish the charges. When the respondents themselves have not taken that opportunity in the first instance and no explanation has been given as to why they did not summon the said Additional Assistant Educational Officer who was very much available, and there is no evidence to show that he was not available, then, granting opportunity would be extremely prejudicial to the interest of the petitioner herein. Therefore, the said

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argument put forth by the respondents, does not find favour with me.

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43. In view of all the above reasons, the Writ Petition deserves to be allowed.

44. Accordingly, the Writ Petition is allowed. The petitioner is entitled for all the benefits which would have accrued to him on the date of his superannuation. The respondents are under obligation to work out the benefits to the petitioner and pay the same to him within a period of 16 weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, W.M.P. is closed.

04.07.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

CS

To

1. The District Collector, Thanjavur.
2. The Director of Town Panchayat,
Kuralagam, Chennai-600 108.

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3. The Principal Secretary to Government,
Municipal Administration and
Water Supply (EP4) Department,
Fort St.George, Chennai-600 009.

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C.V.KARTHIKEYAN, J

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