



W.P.No.12503 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.12503 of 2012
and M.P.Nos.1 & 2 of 2012

C.B.Hudayakumar

... Petitioner

Vs.

1.The Commissioner

Directorate of Technical Education,
Guindy,
Chennai – 600 025.

2.The Principal,

Government Women Polytechnic College,
Coimbatore.

3.The Principal,

Government Polytechnic College,
Coimbatore – 6041 014.

... Respondents

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings dated 23.11.2011 bearing No.Se.Ku.No.4031/D1/2011 of the third respondent and quash the same and consequently direct the third respondent to refund the amount of Rs.2,12,194/- with interest and such other amount deducted as penalty.



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WEB COPY For Petitioner : Mr.K.V.Sundararajan

For Respondents : Mr.D.Ravichandran,
Special Government Pleader

ORDER

The relief sought by the petitioner in this writ petition is to call for the records pertaining to the impugned proceedings dated 23.11.2011 bearing No.Se.Ku.No.4031/D1/2011 of the third respondent and quash the same and consequently direct the third respondent to refund the amount of Rs.2,12,194/- with interest and such other amount deducted as penalty.

2. The case of the petitioner is that the petitioner viz., C.B.Hudayakumar was originally joined as Lecturer on 19.10.1983 at Government Polytechnic College, Ooty. In July 2005, he was transferred to the second respondent college and then he was transferred to the third respondent college on 07.01 2008. In August 2006, the petitioner was allotted a Quarters in the second respondent Polytechnic Officers' Quarters and he was under the occupation of the said quarters from August 2006. Even after the transfer from second respondent college (Government Women



Polytechnic College, Coimbatore) to the third respondent college (Government Polytechnic College, Coimbatore), the petitioner still continuing to occupy the same, based on letter dated 31.05.2008 of the first respondent which is pursuant to the G.O.Ms.No.375/Housing and Urban Development vi.Va.3(1), dated 06.09.2000.

3. Further, as per the advice in the Director's letter No.CW/2008, dated 31.05.2008, the petitioner has sent a letter dated 09.06.2008 requesting the third respondent to provide him the quarters, which is eligible for the post, he is holding now. However, there was no reply for the said letter. Moreover, the petitioner was not even informed about his seniority for allotment of eligible quarters. Hence, by letter dated 24.06.2011, he requested the Principal of the third respondent college to provide him appropriate quarters within the third respondent college campus, which is eligible to his post. Only then, by letter dated 14.07.2011, he was informed that quarters was being allotted immediately. Though he is holding the post of Senior Lecturer, he was allotted the AL.7 Quarters, which is provided to the Associate Lecturers, which is a lower post. Hence, the petitioner informed that he was ready to shift to the Quarters if he was provided with the



appropriate eligible Quarters and till then, he should be permitted to continue in the present Quarters.

4. This being so, two Senior Grade Professors viz., Tvl (1) Pandian and (2) Kalidas had vacated their respective quarters, which had fallen vacant and the petitioner could have been allotted one of the same, but without considering the case of the petitioner, the said Quarters have been allotted to some other staff, who are juniors and holding lower post than the petitioner. It is necessary to point out that though the seniority list for allotment of quarters has been given by the Commissioner as early as 31.05.2008, the quarters were allotted to his juniors, who were holding lower post than him, due to which, there was no vacant quarters in the said Campus.

5. Subsequently, The third respondent issued a proceedings in Se.Ku.No.4031/D1/2011, dated 23.11.2011, wherein it is stated that though the petitioner was allotted quarters within the campus, his occupation in the earlier quarters is against the procedure and rules. Hence, the petitioner should pay three times of the rent as penalty and thus, a sum of Rs.2,12,194/- has to be levied as penalty for the period from 1.6.2008 to 30.9.2011.



Challenging the said order dated 23.11.2011, the petitioner has come forward with the present writ petition.

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6. Learned counsel for the petitioner would submit that the petitioner cannot be compelled to shift to the new quarters, if the new quarters is not the appropriate quarters for his post. Thus, the petitioner's occupation of earlier quarters is within the rules. Therefore, the petitioner is not liable to pay any penalty nor can be termed to occupy quarters illegally and without any right. The petitioner have repeatedly represented both in writing and in person to the the third respondent that he was ready to shift if he was allotted the quarters which is eligible for his post.

7. Learned counsel for the petitioner would further submit that it is necessary to point out here that for the first time i.e., on receipt of his representation dated 24.06.2011, the petitioner was issued with a letter dated 08.07.2011, directing him to shift his earlier quarters. Furthermore, the new quarters was allotted only on 14.07.2011. Even if it is construed that the



petitioner is occupying the earlier quarters without any right, the same can be taken only beyond 14.07.2011. However, the third respondent has ordered for recovery of the above said amount as penalty for his occupation in the earlier quarters for the period from 1.6.2008 to 30.9.2011 and this itself would prove that such an action is deliberate and with certain ill-motive. As stated above, if the third respondent has given any notice in earlier occasion, the petitioner would have given proper reply and would have taken that as an opportunity for asking for a suitable accommodation for which he is eligible.

8. Learned counsel for the petitioner would further submit that in fact, the petitioner has been asking for change of accommodation for better place namely SL. Regular Quarters, which is eligible for a Senior Lecturer as per the Government Order. Admittedly his juniors as well as the staffs holding lower post than the petitioner are occupying the said quarters, it would not be fair to direct him to occupy a quarters, which are allotted only to Associate Lecturers. Thus the levy of penalty is illegal and unknown to law and the procedures, rules and regulations. Therefore, the petitioner has made representation to the first respondent to cancel the penalty. In spite of the



same, the third respondent has deducted a sum of Rs.2,12,194/- from the petitioner's 6th Pay Commission Arrears and the said deduction is unlawful.

9. Learned counsel for the petitioner would further submit that as per G.O.Ms.No.375, Housing and Urban Development Vi.Va.3(1), dated 06.09.2000 and subsequent letter dated 31.05.2008 of the first respondent, the petitioner is eligible to be in the quarters. The third respondent has not followed seniority/eligibility criteria in allotment of quarters. The respondents 2 & 3 should not deduct any amount as penalty from the salary of the petitioner. Now, the respondents are deducting one and half times (Rs.4,776) the rent as penalty for occupying the present quarters. Hence, the learned counsel for the petitioner prays this Court to allow the writ petition.

10. The first respondent has filed a counter affidavit dated 17.09.2012.

For better appreciation, the relevant paragraph is extracted hereunder:

“4. It is submitted that the Government employees working in districts, when transferred to offices located 30kms from their Government residential quarters are permitted to continue to occupy the same quarters vide G.O. Ms. No. 375, Housing & Urban Development H3(1) Department, dated



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06.09.2000.

Based on the above G.O. many of the staff working in Coimbatore Polytechnics have not vacated their quarters at the previous place of working even after their transfers. The problem was brought to the notice of the Commissioner of Technical Education, stating that many of employees were in wait list in the institutions due non vacating of quarters by the transferred employees though accommodation was available at the new institution. The same was analysed and an order was issued by the Commissioner of Technical Education in the Lr. No.5994/CW4/2008, dated 31.05.2008, that when an employee is shifted to another college on promotion/transfer in Coimbatore itself he/she should apply for the quarters situated in the new place of posting and he/she can occupy the old quarters until he/she is allotted the new quarters when his/her turn comes up.

As per the Lr.No.291/2/2/2011, dated 24.02.2011 received from the Principal, Government Polytechnic College for Women, Coimbatore, Thiru. C.B.Hudayakumar, Senior Lecturer (Civil), Government Polytechnic College for Women, Coimbatore has been transferred to Government Polytechnic College, Coimbatore and he was relieved on 07.01.2008. Even after his joining the Government Polytechnic College, Coimbatore, he has not applied for quarters in the new place of posting. Inspite of several reminders sent by the Principal, he has neither sought permission from the CTE to continue to occupy the quarters nor vacated the quarters.

Thiru.C.B.Hudayakumar, Senior Lecturer/Civil in his application dated 24.06.2011 has requested for allotment of



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quarters in Government Polytechnic College, Coimbatore. Based on his application (Which is about three years from the date of his transfer) a quarters was allotted to him by the Principal, Government Polytechnic College, Coimbatore vide Lr.dt:14.7.2011 which the individual has declined to accept stating the reason that the type of quarters allotted was below his eligibility. Hence the particular quarters was re-allotted to another eligible employee.

Further in the letter dated 29.11.2011 the Principal Govt. Polytechnic College, Coimbatore has stated that an order has been issued to the individual in respect of the recovery of a sum of Rs.2,12,194/- for the period from 1.6.2008 to 30.9.2011, towards the penal rent at the rate of thrice the normal rent.

The individual in his letter dt: 12.11.2011 has requested the Commissioner of Technical Education that he may not be levied any penal rent stating that his stay in the quarters is as per the G.O.Ms.No.375, Housing & Urban Development H3(1) Department, dt:6.9.2000.

11. Even though the G.O.375, Housing & Urban Development dated:06.09.2000 permits a Government servant to reside in the same quarters, he should have obtained permission from the 1st respondent to continue to stay in the same quarters as he was transferred to an institution within 30kms and should have applied a quarter at the new place of posting as per CTE's Letter No.5994/CW4/2008, dated: 31.05.2008. Further as soon as the quarters was allotted to him at new place, he should have vacated the quarters at old station.

As he had not applied at all for the quarters at the new place of posting the question of seniority does not arise. The



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seniority for allotment of quarters is based on the date of application. As he had applied for quarters only on 24.6.2011, the earlier applicants in the seniority list were given allotment.”

11. Learned Special Government Pleader appearing for the respondents submitted that the petitioner has neither submitted any application for allotment of the Quarters in Government Polytechnic College, Coimbatore as stated by him nor taken any efforts to vacate the quarters inspite of the notice issued by the Principal, Government Polytechnic College for Women, Coimbatore. The petitioner has applied for quarters only on 24.06.2011 and he neither approached the Principal of Government Polytechnic College, Coimbatore nor the HOD i.e., the Commissioner of Technical Education for a period of three years of his first application dated 09.06.2008. From this, it is very clear that he has not applied on 09.06.2008. In fact, the plinth area of the quarters allotted to him was 895 sq.ft, whereas the plinth area of the quarters which he is occupying now is 879 sq.ft. Hence, his statement that he has been allotted a quarters of lower category is false.

12. According to the G.O.Ms.No.375, Housing & Urban Development dated 06.09.2000, though the petitioner can reside in the same quarters if it



lies within 30 Kms from his new place of posting, first he should have sought permission to reside in the same quarters and secondly, as per CTE's letter No.5994/CW4/08, dated 31.05.2008, this permission could be given only if he had applied for a quarters at the new place of posting and had been waiting for the allotment on seniority basis. As soon as the period of his stay which was allowed by this Court upto 31.05.2008 was over, the petitioner has been served with a notice to vacate the quarters on 05.06.2008. Hence, the statement that he was directed to vacate the quarters only on 08.07.2011 is not correct.

13. Learned Special Government Pleader appearing for the respondents would further submitted that the petitioner was already advised by the second respondent on 08.07.2011 itself that he has to remit three times of normal rent from 01.06.2008 till the date of his vacation as he was occupying the quarters without the permission of the first respondent. Further, he was also informed about the details of the recovery of penal rent by the third respondent on 23.11.2011. He was given sufficient notice before deducting penal rent.



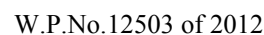
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14. Learned Special Government Pleader appearing for the respondents has drew the attention of this Court to the letter No.7840/CDPLU2/2011, dated 05.07.2011 written by the first respondent, requesting the Principal of the third respondent college to initiate action against the petitioner to vacate the quarters. For better appreciation and understanding, the relevant paragraph is extracted hereunder:

“இவர் 01.06.2008 முதல் இன்றைய நாள் வரை ஆணையர் அவர்களின் முன் அனுமதியின்றி குடியிருந்தமைக்காக அன்னாரிடம் அரசு ஆணை (நிலை) எண்.831, பொதுப்பணித்துறை, நாள் 19.05.1988-ன்படி மூன்று மடங்கு வாடகை வசூலிக்க நடவடிக்கை மேற்கொள்ளப்படும் என எச்சரித்து அன்னாரை கோவை, அரசினர் மகளிர் பாலிடெக்னிக் கல்லூரி குடியிருப்பை உடனே காலி செய்து ஒப்படைக்க தக்க நடவடிக்கை மேற்கொள்ளுமாறு கேட்டுக் கொள்ளப்படுகிறது. மேலும் இதில் கோரியுள்ள தனியாரின் விளக்கத்தினை இக்கடிதம் கிடைக்கப்பெற்ற ஒரு வார காலத்திற்குள் தனியாரிடமிருந்து பெற்று அனுப்பி வைக்குமாறு கேட்டுக் கொள்ளப்படுகிறது.”

15. Learned Special Government Pleader appearing for the respondents further drew the attention of this Court to the letter No.7840/CDPLU2/2011, dated 16.11.2011 written by the first respondent to the third respondent



college in regard to calculation of three times penal rent to the petitioner and the said letter is reads as follows:

Page



16. Learned Special Government Pleader appearing for the respondents

further drew the attention of this Court to the proceeding of the second respondent vide Se.Ku.No.4031/D1/2011, dated 23.11.2011 and the said proceeding is reads as follows:

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அரசினர் பாலிடெக்னிக் கல்லூரி
கோவை - 14

செ.க.என்.4031, 1/தாள். 23.11.2011

தொழில் துட்பக் கல்வித்துறை - அரசினர் பாலிடெக்னிக் கல்லூரி
கோவை - 14 - குடியிருப்பு - திரு.சி.பி.உதயகுமார் விரிவுரைப்பாளர்
(முதுநிலை) / அமைப்பியத்தறை - அரசினர் மகளிர் பாலிடெக்னிக்
கல்லூரி வளாக குடியிருப்பில் பணிமாறுதலுக்குப் பிறகும் உரிய
அனுமதியின்றி குடியிருந்து வருவது - மூன்று மடங்கு வீட்டு
வாடகை பிடித்தம் செலுத்தாமல்வது தொடர்பாக.

பரணை:

1. அரசாணை எண்.031/பெ.ப.த/தாள்:19.5.1988
2. தொழில் துட்பக் கல்வி ஆணையர் அவர்களது கடித எண்.7840/
சி.பி.என்.2/2011/தாள்:5.7.11,29.08.2011மற்றும்16.11.11

பார்வைபில் காணப்பெறும் அரசாணை மற்றும் தொழில் துட்பக் கல்வி
ஆணையர் அவர்களின் கடிதங்களில் அறிவுறுத்தியுள்ளவாறு, இப் பயிலை அமைப்பியப்
குடியிருப்பு விரிவுரைப்பாளராகப் (முதுநிலை) பணிபாற்றி வரும் திரு.சி.பி.உதயகுமார்
என்பவர், பணிமாறுதலுக்குப் பின்னரும் ஆணையர் அவர்களின் அனுமதியின்றி
அரசினர் மகளிர் பாலிடெக்னிக் கல்லூரி வளாக குடியிருப்பில் குடியிருந்து வருவதாக
1.6.2008 முதல் 30.9.2011 முடிய உள்ள காலகாலத்துக்கு மூன்று மடங்கு வீட்டு வாடகை
பிடித்தம் இலாபத்தில் கட்டியுள்ளவாறு கணக்கிடு செய்யப்பட்டு அதன் படி
ரூ.2,12,154/- ரூ.ரூபாய் இரண்டு இலட்சத்து பனியெண்டாயிரத்து நூற்று தொண்ணூற்று
நான்கு மட்டும்) உரிவரித் திருத்திய ஊதிய கிவிதங்களுக்கான திருப்பைத்
தகவல்களிலிருந்து (Pay commission Arrears) பிடித்தம் செய்யப்படும் என இதன் மூலம்
ஆணையிடப்படுகிறது.

மேலும்
திரு.சி.பி.உதயகுமார்
விரிவுரைப்பாளர்(முதுநிலை)/அமைப்பியப்
அரசினர் பாலிடெக்னிக் கல்லூரி, கோவை - 14.
(மறைத்தனைவர் வழிபாடு)

ஆணையர், தொழில் துட்பக் கல்வி இயக்ககம், சென்னை - 25
தகவலுக்காக பணித்தனுப்பப்படுகிறது
கோவை, அரசினர் மகளிர் பாலிடெக்னிக் கல்லூரி முதல்வர் அவர்களுக்கு
தகவலுக்காகவும் தக்க நடவடிக்கைக்காகவும் அனுப்பப்படுகிறது.
'அ2' எழுத்தர் (உரிய வீட்டு வாடகை பிடித்தம் செய்யும் பொருட்டு)
'அ1' தொகுப்புக்கோப்பு

முதல்வர்
அரசினர் பாலிடெக்னிக் கல்லூரி
கோவை-641014



17. Heard the learned counsel on either side and perused the materials available on record.

18. The petitioner was transferred to the third respondent Polytechnic College on 07.01.2008 and he was continue to stay in the quarters, which has already been allotted to him, while he was working as a Senior Lecturer (Civil) in the Government Women's Polytechnic College, Coimbatore. The petitioner sent a letter dated 09.06.2008 requesting the third respondent to provide him quarters, which is eligible for the post he was holding and there was no reply for the past four years. The petitioner vide his letter dated 24.06.2011 requested the Principal of the third respondent college to provide appropriate quarters within the third respondent college campus and by reply letter dated 14.07.2011, he was informed that quarters will be allotted to him immediately. Though, he was holding the post of Senior Lecturer, he was allotted the AL.7 quarters, which was allotted to the Associate Lecturers, lower than the post of petitioner.



19. On 24.06.2011, two Senior Grade Professors viz., Tvl (1) Pandian and (2) Kalidas had vacated their respective quarters, but the same was not allotted to him. The third respondent has allotted the said quarters to the juniors, who are holding the post lower than the petitioner. It is pertinent to note that though the seniority list for allotment of quarters will be given by the first respondent by his letter dated 31.05.2008, the quarters were allotted to the juniors without following the eligibility criteria. The Principal, Government Polytechnic College, Coimbatore, the third respondent by his proceedings in Se.Ku.No.4031/D1/2011 dated 23.11.2011 stated that though the petitioner was allotted quarters within the campus, his occupation in the earlier quarters (quarters in second respondent college) is against the procedure and rules. Hence, the petitioner should pay three times of the rent as penalty and thus, a sum of Rs.2,12,194/- has to be levied as penalty for the period from 1.6.2008 to 30.9.2011.

20. It is brought to the notice of the Court by the Special Government Pleader appearing for the respondents that in the petitioner has filed a writ petition in W.P.No.1741 of 2008, before this Court, challenging the order of



transfer dated 03.01.2008 from the second respondent college to third respondent college and this Court by its order dated 06.02.2008 permitted the petitioner to retain the existing quarters till the end of the academic year, since the children of the petitioner are studying in the nearby school from the existing quarters. Hence, the respondents were directed to permit him till the end of the academic year i.e., June 2008. Accordingly, he should have vacated the quarters on 01.06.2008 but the petitioner has not done so, since he was not allotted quarters for which he is eligible.

21. For the first time i.e., on receipt of his representation dated 24.06.2011, the petitioner was issued with a letter dated 08.07.2011, directing him to shift his earlier quarters. Furthermore, the new quarters was allotted only on 14.07.2011. Even if it is construed that the petitioner is occupying the earlier quarters without any right, the same can be taken only beyond 14.07.2011. Admittedly, the petitioner is staying in the quarters from 01.06.2008, but no action has been taken and he was not asked to vacate the quarters by the respondents and it is only on 8.07.2011, the petitioner was asked to vacate the earlier quarters and shift to the newly allotted quarters. Hence, it is clear and evident



that from 01.06.2008 to 08.07.2011 i.e., for three years no action has been taken by the respondents to evict the petitioner from the earlier quarters.

22. Learned Special Government Pleader appearing for the respondents drew the attention of this Court to the letters dated 05.07.2011, 16.11.2011 and 23.11.2011. **It is evident from the letter No.5994.CDPLU4/2008, dated 31.05.2008 issued by the first respondent to the respondents 2 & 3 that the persons who are transferred on promotion from one college to another college within 30 Kms in the same district, they can be permitted to continue in the existing quarters, till they are allotted new quarters in the college to which he or she is transferred. The petitioner has written a letter to the third respondent as early as on 09.06.2008 to provide him the quarters, which is eligible for his post but he was allotted the quarters only on 14.07.2011. Thus, for nearly four years, no action has been taken by the third respondent to allot a quarters to the petitioner.**

23. It is also pertinent to note that in G.O.Ms.No.375 Housing and Urban Development H3 Department, dated 06.09.2000 by which, a



person who has been transferred within 30 Kms from the same district, he may be permitted to continue the occupation of the quarters till the new quarters is allotted in the place where the concerned employee is transferred and in this case though the petitioner was transferred as early as on 07.01.2008, he was allotted quarters only on 14.07.2011 that too the quarters, which is meant for Associate Professors and subordinate staffs and in this case, the petitioner is holding the post of Senior Lecturer (Civil).

24. In the counter affidavit it has been stated that the petitioner has submitted his application only on 24.06.2011 and requested to allot the quarters in Government Polytechnic College, Coimbatore and based on this application, which was given after three years from the date of his transfer, the quarters was allotted to him by the third respondent on 14.07.2011. But, the same is not correct, the petitioner has already given an application dated 09.06.2008 for allotment of quarters and the same has been mentioned in the affidavit and the copy was also enclosed in the



typed set of papers filed by the petitioner along with this petition.

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25. It is pertinent to note from the above letters written by the first respondent to the third respondent for the first time, i.e., on 05.07.2011, the respondents have initiated action against the petitioner in regard to over stay in the quarters, calculating three times of monthly rent as penalty and evicting the petitioner from the second respondent college quarters where he was previously working. Further, this Court in W.P.No.1741 of 2008 dated 06.02.2008 has permitted the petitioner to stay in the second respondent college quarters, till the end of the academic year and the same got over or got lapsed on 31.05.2008 and the petitioner ought to have vacated on 01.06.2008. In that case, the action should have been taken by the respondents to evict him as per the rules, which they failed to do so and now passing the order of recovering a sum of Rs.2,12,194/- being the three times penal rent for the period from 01.06.2008 to 30.09.2011 is unsustainable in law. However, the petitioner is bound to pay the original monthly rent fixed by the respondents as per rules for occupying the quarters of the second respondent for the period



from 01.06.2008 to 30.09.2011. The petitioner cannot be blamed for staying in the quarters of the second respondent from 01.06.2008 to 01.07.2011, since the new quarters was allotted to him only on 14.07.2011, subsequent to his representation dated 24.06.2011. Hence, he is not liable to pay the three times penal rent as stated by the third respondent.

26. It is pertinent to note that the petitioner was transferred to the third respondent college on 07.01.2008 and immediate to his transfer, he has applied for quarters on 09.06.2008. However, the said application was not considered by the third respondent and no reply was given for nearly four years.

27. In view of the above factual matrix of the case, this Court is of the considered view that the order passed by the third respondent vide proceedings in Se.Ku.No.4031/D1/2011 dated 23.11.2011 is liable to be



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quashed and the same is hereby quashed.

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28. In the result, this writ petition is allowed and the respondents are directed to deduct the originally fixed monthly rent as per rules payable by the petitioner for his period of stay from 01.06.2008 to 30.09.2011 and the remaining amount has to be settled to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

15.02.2024

vm

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

vm

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To:

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- 1.The Commissioner
Directorate of Technical Education,
Guindy,
Chennai – 600 025.
- 2.The Principal,
Government Women Polytechnic College,
Coimbatore.
- 3.The Principal,
Government Polytechnic College,
Coimbatore – 6041 014.

W.P.No.12503 of 2012

15.02.2024