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WA.No.1465 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.10.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and

THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

WA.No.1465 of 2022
and CMP No.9556 of 2022

The Pondicherry University
Rep by Deputy Registrar,
Pondicherry 605014.

... Appellant

Vs

1.Dr.Sheela Das

2.The University Grants Commission
Bhadursha Zagar Marg
New Delhi – 110002.

3.The Secretary to Government of India
Ministry of Health & Family Welfare
(Department of Health) C/II/138,
Chanakiyapuri
New Delhi

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed in W.P.No.1964 of 2007 dated 31.08.2021 as devoid of merits and unsustainable in law.



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For Appellants : M/s.A.V.Bharathi
For Respondents : M/s.Anna Mathew (for R1)
M/s.V.Sudha (For R2)
Central Government Counsel
Mr.R.Sanjay (for R3)
For M/s.R.Rajesh Vivekananthan
Deputy Solicitor General of India

JUDGMENT

(Judgment of the Court was delivered by Dr.ANITA SUMANTH,J.)

The Writ Petitioner, Dr.Sheela Das (in short ‘Writ Petitioner’/’petitioner’) is a medical doctor and had joined the Pondicherry University (in short ‘appellant’/’University’) as a medical officer on 23.03.1992. There was no avenue available within the University itself for promotion or advancement in career at that relevant point in time. Hence, a scheme of Assured Career Progression Scheme (ACPS) had been floated providing for two escalations in designation with commensurate service benefits, one each after 12 years of service. As this was still found to be inadequate to address the issue of stagnation of employees in a particular post, recommendations had been made by the Vth Central Pay Commission for a better and more effective scheme.

2. Based on the recommendations, a Dynamic Assured Career Progression (DACP) Scheme had been formulated for officers of the Central Health Services



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(CHS). The recommendations were accepted, and vide communication dated 05.04.2002, CHS promotion to various cadres was stipulated in details. The operative portion as relevant to this order is as below:

*No.21/14/97-PC(H)/CHS-V
Government of India
Ministry of Health & Family Welfare
(Department of Health)*

*Nirman Bhawan, New Delhi
Dated the 5th April, 2002.*

To

*All Participating Units
Of the Central Health Service*

*Subject: Recommendation of 5th Central Pay Commission regarding
Dynamic Assured Career Progression (DACP) Scheme for officers
of the Central Health Service Implementation thereof.*

.....

2.(i) In the General Duty Medical Officer (GDMO) sub cadre, Medical Officer (Rs. 8000-13500) will be promoted to Senior Medical Officer (Rs. 10000-15200) on completion of 4 (four) years of regular service. Senior Medical Officer with 5 (five) years of regular service as Senior Medical Officer will be promoted to the post of Chief Medical Officer (Rs. 12000-16500) and after completion of 4 (four) years in Chief Medical Officer grade, officer will be promoted to the post of Chief Medical Officer (Non Functional Selection Grade) (Rs. 14300-18300). Thus on completion of 13 years of regular service in the GDMO sub cadre of CHS, Officer of GDMO sub cadre will be promoted to Chief Medical Officer (Non Functional Selection Grade) (Rs. 14300-18300).

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3. The scheme was implemented and by communication dated 30.07.2004, the University promoted the petitioner to the post of Senior Medical Officer, with effect from 11.03.1996 when she has completed four years regular service as a Medical Officer. The promotion was subject to ratification by the Executive Council of the University and approval by the University Grants Commission ((UGC)/R2 in the Writ Petition). The commensurate service benefits were also intimated under the same communication.

4. There was some doubt that lingered in the minds of the University in the manner of implementation of the DACP Scheme, particularly in regard to the stipulation that it was prospective as clause (4) thereof, stipulated that '*the scheme of Dynamic Assured Career Progression shall take effect prospectively from the date of issue of orders*'.

5. On a specific query raised by the University, UGC had replied, vide communication bearing No.F30-9/99(CU) dated 20.01.2003 merely reiterating the Scheme itself. Under communication dated Nil March 2005, UGC clarified that the DACP Scheme for Medical Officers can be implemented with effect from 05.04.2002 as it came into force from that date only.



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6. Based on these clarifications, the promotion granted to the petitioner vide communication dated 30.07.2004 was modified by way of order dated 19.08.2005, where the University confirmed that the promotion of the petitioner was with effect from 05.04.2002 only and not 11.03.1996 as conveyed earlier.

7. The said modification came to be challenged by the Writ Petitioner who believed that such modification had an impact on the entirety of her service between 1992 till date of promotion. According to the petitioner, she ought to have been granted the promotion as set out under the DACP Scheme at the relevant points in time when she would have been entitled to the same, had the University taking into account the stipulations under the Scheme.

8. The counter filed by UGC, aligns with the modified order dated 20.01.2003. For its part, the University would maintain vociferously that as UGC was its funding agency, it is entirely bound by the understanding of the DACP Scheme by UGC and would abide by all stipulations set forth by them in that regard.

9. The Writ Petition came to be disposed on 31.08.2021. The learned Judge has accepted the contention of the petitioner that her services prior to the date of



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Scheme should not be ignored and must be taken note of. The sequence of events per the petitioner in giving effect to the DACP Scheme is as follows:

- (i) The appointment of the petitioner as Medical Officer – 11.03.1992
- (ii) Promotion to the post of Senior Medical Officer under DACP Scheme with effect from 11.03.1996
- (iii) Promotion to the post of Chief Medical Officer – 11.03.2001
- (iv) Promotion to the post of Chief Medical Officer (Non-functional selection grade) – 11.03.2005

10. While accepting in principle, the submissions of the petitioner that the Scheme must be implemented fixing the milestones as per the trajectory of the Writ Petitioner's actual career, the writ Court concludes that the Writ Petitioner is eligible for promotion to the post of Chief Medical Officer only on 05.04.2002 when the DACP Scheme came into force.

11. We find some incongruity to the above extent, in the order of the Writ Court, as, having accepted that the period of actual service from 1992 must be reckoned and taken into account for implementation of the Scheme, there is no justification in having fixed the date of promotion as Chief Medical Officer on 05.04.2002 and not 11.03.2001. No reason has been assigned for this conclusion



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and neither has an appeal been filed by the Writ Petitioner challenging this conclusion. However, we believe that this will not stand in the way of this Court understanding and applying the Scheme in its entirety.

12. While deciding on the proper implementation of the Scheme wholistically, we are duty bound to correct errors, if any, that have arisen thus far in the proceedings and thus the fact that the petitioner has not challenged the order of the Writ Court would hardly matter in the larger scheme of things.

13. Both learned counsel for the appellant and the University would express complete alignment with the stand of the UGC, to the effect that the DACP Scheme shall only be prospective, from the date of the Scheme. They argue that the question of taking into account prior periods for implementation of the Scheme does not arise.

14. Learned counsel also point out that in light of the fact that the University is bound by the decision taken by the UGC, it was incumbent on the petitioner to have challenged the interpretation of the UGC of the Scheme under communications dated 20.01.2003 and Nil, March, 2005. However, these communications have not been challenged and hence the Writ Petition which merely challenges the order of the University is not even maintainable.



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15. In this connection, one may have record the subsequent proceedings of the UGC bearing No.F 4-4/2009(jCRC) dated 19.06.2011, also on the subject of Dynamic Assured Career Progression for Medical Officers of Central Universities and UGC Deemed Universities. In that, our attention is drawn to the fact that while stipulating the career progression, it has been specifically stated that the services already rendered by the candidate is to be so included. The relevant portion of that communication reads as follows:

No.F.4-4/2009(jCRC)

19 JUN2011

The Registrar,

All Central Universities and

UGC maintained Deemed Universities

Sub: Extending Dynamic Assured Career Progression (DACP) and other facilities for the Medical Officers of Central Universities and UGC maintained Deemed to be Universities.

Sir,

The University Grants Commission in its meeting held on 16th January, 2010 considered the extension of Dynamic Assured Career Progression (DACP) and other facilities as recommended by the 6th Central Pay Commission for the Medical Officers working in Medical Colleges & Health Centres of Central Universities and UGC maintained Deemed to be Universities and it was decided that the promotion avenues available to all Medical/Dental Doctors in the Central Government / CHS, whether belonging to Organized Service or holding isolated post, may also be extended to the



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**Medical Officers of Central Universities and UGC maintained
Deemed to be Universities as under:-**

A. GDMO Sub-Cadre:

<i>Promotions under DACP</i>		<i>No. of years of regular service required for promotion</i>
<i>From</i>	<i>To</i>	
<i>Medical Officer (Grade Pay Rs.5400 in PB-3)</i>	<i>SMO – (Grade Pay Rs.6600 in PB-3)</i>	<i>4 Years in Grade Pay of Rs.5400 in PB-3 including service rendered in the pre-revised scale of Rs.8000-13500.</i>
<i>SMO – (Grade Pay Rs.6600 in PB-3)</i>	<i>CMO – (Grade Pay Rs.7600 in PB-3)</i>	<i>5 Years in Grade Pay of Rs.6600 in PB-3 including service rendered in the pre-revised scale of Rs.10000-15200.</i>
<i>CMO – (Grade Pay Rs.7600 in PB-3)</i>	<i>CMO (NFSG) (Grade Pay Rs.8700 in PB-4)</i>	<i>4 Years in Grade Pay of Rs.7600 in PB-3 including service rendered in the pre-revised scale of Rs.12000-16500.</i>
<i>CMO (NFSG) (Grade Pay Rs.8700 in PB-4)</i>	<i>SAG Grade (Grade Pay Rs.10000 in PB-4)</i>	<i>7 Years in Grade Pay of Rs.8700 in PB-4 including service rendered in the pre-revised scale of Rs.14300-18300 or 20 years of regular service.</i>

B. Specialist Doctors appointed directly in Grade Pay of Rs.6600 in Pay Band-3

<i>Promotions under DACP</i>		<i>No. of years of regular service required for promotion</i>
<i>From</i>	<i>To</i>	
<i>Specialist Grade-II (Junior Scale) (Grade Pay Rs.6600 in PB-3)</i>	<i>Specialist Grade-II (Sr. Scale) Grade Pay Rs.7600 in PB-3</i>	<i>7 Years in Grade Pay of Rs.6600 in PB-3 including service rendered in the pre-revised scale of Rs.10000-15200.</i>
<i>Specialist Grade-II (Sr. Scale) Grade Pay Rs.7600 in PB-3</i>	<i>Specialist Grade-I Grade Pay Rs.8700 in PB-4</i>	<i>4 Years in Grade Pay of Rs.7600 in PB-3 including service rendered in the pre-</i>



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		<i>revised scale of Rs.12000-16500.</i>
<i>Specialist Grade-I Grade Pay Rs.8700 in PB-4</i>	<i>Consultant/SAG (Grade Pay Rs.10000 in PB 4)</i>	<i>7 Years in Grade Pay of Rs.8700 in PB-4 including service rendered in the pre-revised scale of Rs.14300-18300.</i>

16. Relying on the above communication that relates to similarly placed Officers, the writ petitioner argues that the understanding as revealed under communication dated 19.06.2011 is what must be taken into account. During the pendency of the Writ Petition, a specific clarification was sought by the Court on the understanding/applicability of the DACP Scheme and on 26.07.2013, the UGC has clarified that *'DACP Scheme was introduced and came into effect from 5th April, 2002 only. It has no retrospective effect.'*

17. The Writ Petitioner would also rely on the following judgments in specific response to a query from this Court as to how one is to marry the intention and purport of the Scheme along with the stipulation at Clause (4) thereof, to the effect that it has prospective application only.

* *Management of the Northern Railways Co-operative Credit Society Ltd., Jodhpur V. Ind. Tribunal, Rajasthan*¹

* *Jamshed Hormusji Wadia V. Board of Trustees, Port of Mumbai & Anr*²

¹ 1967 (2) LLJ 46

² 2004 (3) SCC 214



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*Delhi Financial Corporation & Anr V. Rajiv Anand & Ors*³

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18. We have heard Ms.A.V.Bharathi, learned counsel for the University, Ms.Anna Mathew, learned counsel for the Writ Petitioner, Ms.V.Sudha, learned Central Government Standing Counsel for UGC and Mr.R.Sanjay, learned counsel on behalf of Mr.R.Rajesh Vivekanandan, learned Deputy Solicitor General of India for Ministry of Health and Family Welfare.

19. In deciding a matter of this nature, it is necessary that one bear in mind the object of the DACP Scheme. The Scheme owes its existence to a feeling of frustration by several employees manning posts sans any avenue for progression, or isolated posts that did not provide for promotion or career advancement. As the Supreme Court has stated in *Council of Scientific and Industrial Research V. K.G.S.Bhatt*⁴, ‘a person is recruited by an organisation not just for a job, but for a whole career’. At paragraph 9 of that judgment the Court sums up the need for an organisation to have inbuilt mechanisms for proper promotional avenues and that paragraph is extracted below:

“9. It is often said and indeed, adroitly, an organisation public or private does not “hire a hand” but engages or employs a whole man.

³ 2004 (11) SCC 625

⁴ (1989) 4 SCC 635



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The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well (Principles of Personnel Management, Flipo Edwin B., 4th Edn., p.) Every management must provide realistic opportunities for promising employees to move upward. “The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors.”(Personnel Management, Dr. Udai Pareek, p.) There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions(Management of Personnel in Indian Enterprises, Prof. N.N. Chatterjee, Ch.).”

20. The Writ Petitioner had put in service of 10 years in the University at the time when the DACP Scheme, fortunately for her, was conceptualised. The scheme envisages a step-by-step progression for career advancement, such that, a General Duty Medical Officer, an entry level officer, will be promoted to a Senior Medical Officer on completion of 4 years. On completion of 5 years as a Senior Medical Officer, the candidate would be promoted to the post of Chief Medical Officer and upon completion of 4 years as Chief Medical Officer, he would be further promoted to the post of Chief Medical Officer (non functional selection



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grade). There are further avenues for provided promotion, with which we will not burden this order, as they are not part of the lis before us.

21. Vide communication dated 30.07.2004, the University has, and rightly, in our considered view, applied the DACP Scheme in an appropriate manner granting the petitioner promotion on her completing 4 years as General Duty Medical Officer. Her entry being in 1992, she was promoted with effect from 11.03.1996. Taking this forward in accordance with the Scheme, the petitioner ought to have been promoted to the post of Chief Medical Officer after completion of 5 years, i.e., on 11.03.2001.

22. We do not agree with the writ Court that her date of promotion as Chief Medical Officer would be the date of the Scheme or 05.04.2002. There is no rationale explaining this conclusion. In fact, the learned Judge has rightly concluded that the service of the petitioner between 1992 and date of Notification must be taken into account for the purposes of the Scheme and having held so, ought to have been carried forward that thinking to the next stage as well. To this extent, there is an error liable for correction. In our view, the date of promotion of the petitioner as Chief Medical Officer would be 11.03.2001.



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23. One question that lingers is how one would understand the stipulation of prospective application of the DACP Scheme. This is explained by the Writ Petitioner herself in the counter to the Writ Appeal. At paragraph 10, she states as follows:

10. I submit that the stand of the appellant that the DACP Scheme can be implemented only with effect from 5.4.2002, cannot be interpreted to mean that my service from 1992 to 2002 should be wiped out and that period need not be considered as per the DACP Scheme. When the Scheme states that it will take effect prospectively, it means the actual benefits will be disbursed from that date, but the previous service will be taken into consideration for notional fixation and grant of relief. The Scheme is retroactive and takes into consideration past events. The Scheme is prospective in terms of the benefits being given only in future.

24. We are in agreement with the Writ Petitioner on this account. At first blush there appears to be some incongruity between the stipulation of an effective date set against the avowed intent and purpose of the Scheme. However, the dichotomy may be resolved if the Scheme is understood such that the fixation of each milestone is notional with real time benefits extended only in respect of promotions that occur after the effective date of the Scheme.

25. Thus, the actual benefits would be received by the petitioner only post the date of the Scheme, whereas in crystallizing such benefits, past events are also duly taken note of. If this were not to be so, past services would become irrelevant



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and such an interpretation is clearly contrary to the intention, purport and object of the Scheme itself. Suffice it to state that when a beneficial scheme such as the DACP Scheme is promulgated, the full benefits available under the Scheme must be extended to the employees.

26. Our understanding as aforesaid is duly fortified by the discussion in the following judgments of the Hon'ble Supreme Court.

** Hukum Chand Gupta V. Director General, Indian Council of Agricultural Research and others.*⁵

**T.S.Thiruvengadam V. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and ors.*⁶

**R.L.Marwaha V. Union of India and ors.*⁷

27. In *R.L.Marwaha*⁸, the employee had sought the benefit of an OM that had been issued on 20.08.1984 which granted benefits thereunder only to those who retired on or after the date of issuance of OM. The Supreme Court held that such stipulation was discriminatory and that, while fixing a date for grant of benefit, such fixation must have a nexus with the object sought to be achieved.

⁵ (2012) 12 SCC 666

⁶ (1993) 2 SCC 174

⁷ (1987) 4 SCC 31

⁸ Foot Note Supra (7)



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28. The employee in that case had superannuated in 1980 itself and at paragraph 9 of the judgment, the Court finds that while the OM was prospective in operation, in the sense that the extra benefit could be claimed only after the date of the OM, *‘it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the government order. By doing so the government order will not become order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on August 29, 1984 under the government order but with effect from August 29, 1984.’*

29. In *Hukum Chand Gupta*⁹, the question decided touched on the Assured Career Progression Scheme. The background of the Scheme was set out in paragraph 16 as follows:

‘16. The Assured Career Progression Scheme for the civilian employees was introduced on the recommendations of the Fifth Central Pay Commission. It was introduced with a view to provide a ‘Safety Net’ to deal with problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional av-

⁹ Foot Note Supra (5)



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enues. Under this scheme, it was decided to grant two financial upgradations on completion of 12 years and 24 years of regular service respectively. It was further provided that isolated posts in Group A, B, C and D categories which have no promotional avenues shall also qualify for similar benefits. Grant of financial upgradations under the ACP Scheme was, however, made subject to the conditions mentioned in Annexure-I of the Office Memorandum No.35034/1/97- Estt(D) dated 9th August, 1999. The conditions in Annexure-I indicate that the ACP Scheme envisages only a placement in the higher pay scale/grant of financial benefits (through financial upgradation). This is given to the Government servant concerned on personal basis only. It neither amounts to functional/regular promotion nor requires creation of new posts for the purpose. The aforesaid clarification makes it abundantly clear that the financial upgradation was granted to Shri Madan strictly in conformity with the aforesaid scheme. Therefore, the objections raised by the appellant were without any basis and wholly misconceived.'

30. In *T.S.Thiruvengadam*¹⁰, a memorandum had been issued on 10.11.1960 revising the pensionary benefits granted to the permanently absorbed employees of public undertakings. The benefits under the memorandum were made available only to those who were absorbed in the public undertakings after 16.06.1967, which date, the Supreme Court held was arbitrary.

31. The object with which the memorandum had been introduced was to protect the pensionary benefits which the Central Government servants had earned prior to their absorption into the public undertakings. Hence, restricting the applicability of the revised memorandum only to those who were absorbed after

¹⁰ Foot Note Supra (6)



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the date of memorandum was, the Court held, discriminatory, arbitrary and defeating the very object and purpose of the memorandum. They also state that it militated against fair play and justice. We extract below paragraphs 9 and 10 of the judgment for clarity.

9 . There is no dispute that Neyveli Lignite Corporation Ltd. is a body which is sponsored, financed and controlled by the Central Government. More and more government functions are being brought under the government undertakings and autonomous bodies. There is considerable mobility from Central Government Departments to the public undertakings. The object of bringing into existence the revised terms and conditions in the Memorandum dated June 16, 1967 was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public undertakings. Restricting the applicability of the revised Memorandum only to those who are absorbed after the coming into force of the said Memorandum, would be defeating the very object and purpose of the revised Memorandum. It is not disputed that the appellant along with other Central Government employees was sent on foreign service to the public undertaking in the year 1961. He was absorbed in the year 1964. All those, who joined on foreign service along with the appellant but were absorbed after June 16, 1967, have been given the benefits under the revised Memorandum. Denying the same to the appellant would be contrary to fairplay and justice. Assuming that the revised Memorandum is an incentive to attract Central Government employees to public undertakings, the persons who are so attracted do not become a different class. They join the same class to which the persons like the appellant belong. Therefore, all those Central Government employees who were absorbed in public undertakings either before June 16, 1967 or thereafter and were serving the public undertakings, are entitled to the benefits provided under the Memorandum dated June 16, 1967.

10. We do not, also, find substance in the contention that the revised benefits being new it could only be prospective in operation and cannot



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be extended to employees who were absorbed earlier. It is no doubt correct that the Memorandum dated June 16, 1967 is prospective which only means that the benefits therein can be claimed only after June 16, 1967. The Memorandum, however, takes into consideration the past event that is the period of service under the Central Government for the purposes of giving pro-rata pension. Whoever has rendered pensionable service prior to coming into force of the Memorandum would be entitled to claim the benefits under the said Memorandum. Restricting the benefits only to those who were absorbed in public undertakings after June 16, 1967 would be arbitrary and hit by Articles 14 and 16 of the Constitution.

32. In light of the discussion as aforesaid, we are of the categorical view that this Writ Appeal has no merit. Going a step further we also find that the conclusion of the Writ Court to the effect that the petitioner's promotion as Chief Medical Officer would only be from 05.04.2002 is bereft of any reasoning and that she must be entitled to the full play of DACP Scheme, meaning that, her promotion as Chief Medical Officer would be, per clause 2(i) of the DACP dated 05.04.2002, with effect from 11.03.2001.

33. This Writ Appeal and the connected Miscellaneous Petition are dismissed. All consequences be given to this order within a period of four (4) weeks from date of receipt of a copy of this order. No costs.

(A.S.M.,J) (G.A.M.,J)
01.10.2024



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Index: Yes

Neutral Citation : Yes

Speaking Order : Yes

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AND
G.ARUL MURUGAN,J.

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Bhadursha Zagar Marg
New Delhi – 110002.

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