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W.P.No.24516 of 2011 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2023

DELIVERED ON : 05.01.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.24516, 24517, 24518, 24519, 24543, 24544, 24585, 24586,
24587, 24653, 25147, 24848 of 2011
and 42842 of 2016

W.P.No.24516 of 2011:

Dr.P.Perumalsamy

.. Petitioner

vs.

- 1.The Government of Tamil Nadu,
rep. by its Chief Secretary,
Secretariat, Chennai-600 009.
- 2.The Government of Tamil Nadu,
rep. by the Secretary,
Personnel & Administrative Reforms Department,
Secretariat, Chennai-600 009.
- 3.The Vigilance Commissioner and
Commissioner for Administrative Reforms,
Secretariat, Chennai-600 009.



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4.The Director of Vigilance and Anti Corruption,
Chennai-600 006.

5.T.Udhayachandran, IAS,
Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 006.

.. Respondents

Prayer in W.P.No.24516 of 2011 : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records on the file of the second respondent relating to the order issued in G.O.Ms.No.98, Personnel and Administrative Reforms (M) Department, dated 09.08.2011 and quash the same and consequently forbear the respondents 1 to 4 from proceeding further based on the Search and Seizure conducted by the fourth respondent on 14.10.2011.

For the Petitioner : Mr.R.Sudhinder
in W.P.No.24516/2011 for Mr.K.Ashok Kumar

For the Respondents : Mr.S.Silambannan
in W.P.No.24516/2011 Addl. Advocate-General
assisted by Mr.K.M.D.Muhilan
Addl. Government Pleader
for Respondents 1 and 2

: Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.Sylvester John
for Respondents 3 and 4

: No appearance
for 5th respondent

and batch cases



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COMMON ORDER

The Hon'ble Chief Justice

These writ petitions are based on common set of facts and involve common questions of law. To avoid rigmarole, these writ petitions are decided by a common judgment.

2. The writ petitions filed in the year 2011 (except W.P.Nos. 25147 and 24848 of 2011) assail G.O.Ms.No.98, Personnel and Administrative Reforms (M) Department, dated 9.8.2011, by virtue of which, the Government brought the Chairman and Members of the Tamil Nadu Public Service Commission (TNPSC) under the purview of the State Vigilance Commission and the Director of Vigilance and Anti Corruption. W.P.Nos.25147 and 24848 of 2011 are filed seeking cancellation of various examinations conducted by the TNPSC. The writ petition of the year 2016 assails the amendment incorporated by virtue of Regulation 7-D in The Tamil Nadu Public Service Commission Regulations, 1954 (for short,



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"TNPSC Regulations 1954"), so also amending Regulation 7-A.

Under the said amendment, the Chairman and Members of the TNPSC are brought under the purview of the State Vigilance Commission and the Director of Vigilance and Anti Corruption with effect from 9.8.2011.

3. The petitioners herein are Chairman and Members of the TNPSC, respectively.

4. The contour of the submissions of learned advocates for the petitioners can be culled out as under:

- ♦ The TNPSC Regulations 1954 consciously excluded the Chairman and Members of the TNPSC from the purview of the State Vigilance Commission and the Director of Vigilance and Anti Corruption. By virtue of G.O.Ms.No.98, dated 9.8.2011, they could not be brought under the ambit of the State Vigilance Commission and the Director of Vigilance and Anti Corruption.



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The executive instructions cannot override the statutory regulations. To buttress their submissions, learned advocates for the petitioners placed reliance on the judgments of the Apex Court in the cases of *Vishnu Kant Jha and others v. State of Uttar Pradesh*, (2017) 5 SCC 665; and, *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

- ♦ If a statute provides for a particular thing to be done in a certain manner, it has to be done in that manner only. Reliance is placed on the judgments of the Apex Court in the cases of *Anuradha Bhasin and others v. Union of India*, 2020 1 Supreme 243; *Shiv Kumar Chandha v. Municipal Corporation of Delhi*, (1993) 3 SCC 161; *Ram Chandra Keshav Adke v. Govind Joyti*, (1975) 1 SCC 559; and, *Rajeev Suri v. Delhi Development Authority and others*, (2022) 11 SCC 1.



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- ◆ The impugned Government Order was promulgated without complying and/or in violation of Rule 96 of the Government of Tamil Nadu Business Rules and Secretariat Instructions promulgated under Article 166(2) and (3) of the Constitution of India. Adherence to the Business Rules is imperative. Reliance is placed on the judgment of the Apex Court in the case of *MRF Limited and others v. Manohar Parikkar and others*, (2010) 11 SCC 374.
- ◆ The terms and conditions of the service of the Chairman and Members of the TNPSC cannot be altered to the detriment. The same would be in violation of Article 318 of the Constitution of India read with proviso to Article 320(3). The Government, by resorting to the executive instructions under Article 162 of the Constitution of India, could not have supplanted the TNPSC Regulations 1954.



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- ◆ The amendment to the TNPSC Regulations 1954 is erroneous. It cannot take effect from a retrospective date. A vested right cannot be eroded by a subsequent legislation. The subsequent amendment to the TNPSC Regulations 1954 under notification dated 15.11.2006 would alter the service conditions to the detriment. The same is not permissible. The independence of the TNPSC would be eroded.
- ◆ The TNPSC is a statutory constitutional functionary. It is necessary to insulate and safeguard the autonomy and the independence of the TNPSC from the political pressure. The same was emphasized by the Apex Court in the case of *Hargovind Pant v. Dr. Raghukul Tilak and others*, (1979) 3 SCC 458.

5. Learned advocates for the petitioners contended that the TNPSC Regulations are framed in the year 1954 by the Governor in



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exercise of powers conferred under Article 318 of the Constitution of India. The State Vigilance Commission in Tamil Nadu was formed in the year 1965 pursuant to the report of *Sri K.Santhanam Committee*. As per G.O.(Ms)No.2133, Public (Services. B) Department, dated 8.11.1965 and the Vigilance Manual, the State Vigilance Commission has jurisdiction only over the matters to which the executive power extends. Under G.O.Ms.91, dated 30.7.2002, Regulation 7-A in Annexure-II through a notification by the Governor of Tamil Nadu was inserted. The said amendment also excludes the Chairman and Members of the TNPSC.

6. Learned advocates further contended that the TNPSC is an autonomous and independent institution. The Chairman and Members are not Government servants. Bringing the Chairman and Members of the TNPSC under the purview of the the State Vigilance Commission and the Director of Vigilance and Anti Corruption amounts to modifying the conditions of service. The same is not permissible, more particularly, with retrospective effect. The amendment can be given effect to only prospectively and it cannot



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have retrospective effect.

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7. Learned Additional Advocate-General appearing for the respondent State canvassed the following propositions:

- ◆ Under Article 166(2) and (3) of the Constitution of India, the Tamil Nadu Government Business Rules and Secretariat Instructions, 1978 was formulated.
- ◆ Instruction No.96 of the Secretariat Instructions provides that before orders are issued amending the Governor's Regulations issued under Article 318 of the Constitution of India or the rules regulating the procedure to be observed by the TNPSC and the relations of the Commission with the Government and subordinate authorities, the Chairman of the Commission shall, unless the amendment is in accordance with recommendations made by the Commission, be informed demi-officially of the orders proposed to



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be issued to enable him, if the Commission, thinks fit, to lay the Commission's views personally before the Chief Minister.

- ♦ By virtue of the instruction, recommendations of the Commission shall be sought only for the following instances:

(a) regulating the procedure to be observed by the TNPSC; and

(b) relation of the Commission with the Government and subordinate authorities.

8. It is submitted that in view of the above, for bringing the Chairman and Members of the TNPSC under the purview of the State Vigilance Commission and the Director of Vigilance and Anti Corruption, consultation with the Commission is not warranted. G.O.Ms.No.98, dated 9.8.2011 is issued bringing the Chairman and Members of the TNPSC under the purview of the State Vigilance Commission and the Director of Vigilance and Anti-Corruption. Consequent to the said G.O.Ms.No.98, further Government Order dated 15.11.2016 is issued and the TNPSC Regulations 1954 have



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been amended with retrospective effect by inserting Regulation 7-D and amending Regulation 7-A.

9. It is further submitted that the Chairman and Members of the TNPSC are included in the definition of '*public servant*' as enumerated in Section 2(c)(x) of the Prevention of Corruption Act, 1988 (for brevity, "*the PC Act, 1988*"). Hence, even if the executive orders/amendment had not been issued, the Chairman and Members of the TNPSC would be under the purview of the PC Act, 1988.

10. We have considered the submissions canvassed by learned advocates for the parties.

11. The petitioners herein are either Chairman and/or Members of the TNPSC at the relevant point of time.

12. In or about 1929, the TNPSC, formerly known as Madras Public Service Commission, was constituted. In the year 1954,



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TNPSC Regulations were framed by the Governor pursuant to the regulation making power under Article 318 and proviso to Article 320(3) of the Constitution of India.

13. Under G.O.Ms.No.2133, dated 8.11.1965, the Government of Tamil Nadu constituted the State Vigilance Commission. Under G.O.Ms.No.28, dated 13.2.2001, the Government decided to bring the staff of TNPSC, except the Chairman and Members, under the purview of the State Vigilance Commission and the Director of Vigilance and Anti Corruption. On or about 30.7.2002, Regulation 7-A was inserted in Annexure-II, which deals with the conditions of service. By virtue of the same, the staff of TNPSC, except the Chairman and Members, were brought under the purview of the State Vigilance Commission and Director of Vigilance and Anti Corruption.

14. It appears that the petitioners were appointed as Members of the TNPSC on 21.2.2011. On or about, 9.8.2011, G.O.Ms.No.98 was issued thereby bringing the Chairman and Members of the



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TNPSC under the purview of the State Vigilance Commission and Director of Vigilance and Anti Corruption.

15. The writ petitions, bearing W.P.Nos.24516 to 24519, 24543, 24544, 24585 to 24587 and 24653 of 2011, are filed challenging the impugned G.O.Ms.No.98, dated 9.8.2011. During the pendency of the said writ petitions, the Governor, exercising powers under Article 318 of the Constitution of India, amended the TNPSC Regulations 1954 by introducing Regulation 7-D and also amending Regulation 7-A by deleting the words "except Chairman and Members of the Commission". By virtue of the said amendment, the Chairman and Members of the TNPSC are brought under the purview of the State Vigilance Commission and Director of Vigilance and Anti Corruption. The said amendment is assailed in W.P.No.42842 of 2016.

16. It is beyond any cavil that the Chairman and Members of the Service Commission are within the realm of the definition '*public servant*'. The Chairman and Members of the TNPSC, as



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such, are public servants as enshrined in PC Act, 1988.

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17. Under Article 318 of the Constitution of India, the Governor is empowered to make regulations governing the service conditions of the Members of the State Commission. The regulation may provide for number of members of the Commission and their conditions of service and to make provision with respect to the number of members of the staff of the Commission and their conditions of service. Proviso to Article 318 further cautions that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

18. The impugned G.O.Ms.No.98, dated 9.8.2011 is issued by the Government. The Government, in exercise of its powers under Article 162 of the Constitution of India, is empowered to issue executive instructions. However, the executive instructions so issued shall not supplant the regulations. It can issue executive instructions in those cases where the field is not occupied by



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statutory rules or regulations and/or to supplement the existing rules and regulations, however, cannot supplant it. The State has power to frame policies resorting to Article 162 of the Constitution of India. The said powers have inherent limitation inasmuch as while exercising powers under Article 162 of the Constitution of India, the executive cannot supplant the statutory regulations. If the statute, rules or regulations are silent with regard to any matter, the same can be clarified and/or provided by executive instructions, but cannot override the existing regulations. The government cannot amend or supersede statutory regulations by administrative instructions.

19. It is trite that a Government Order being an executive order cannot override the statutory provision. Whenever rules or regulations provide something, it cannot be overridden by an executive order. An executive order can be issued and enforced only where the statutory provision is silent. Though executive orders can be issued to fill up the gaps in the rules if the rule is silent on the subject, the executive orders cannot be issued which



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are inconsistent with the statutory rules already framed. If there is a conflict between executive order and the rules, the rules/regulations would prevail. The impugned executive order, as such, could not override the regulation framed under Article 318 of the Constitution of India.

20. At the time when G.O.Ms.No.98, dated 9.8.2011 was issued, Regulation 7-A of the TNPSC Regulations 1954 exempted the Chairman and Members of the TNPSC from the purview of the State Vigilance Commission and the Director of Vigilance and Anti Corruption. The TNPSC Regulations 1954 are framed by the Governor exercising the power conferred under Article 318 of the Constitution of India. The Governor is empowered to frame the Regulations. Under Article 318 of the Constitution of India, the government is not empowered to frame regulations and/or issue executive instructions concerning the service of the Chairman and the Members of the Tamil Nadu Public Service Commission. Although G.O.Ms.No.98, dated 9.8.2011 is issued under executive power referable to Article 162 of the Constitution of India, it could



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not have superseded the TNPSC Regulations 1954. In view of the above, G.O.Ms.No.98, dated 9.8.2011 cannot be upheld. The same would be in the teeth of the TNPSC Regulations 1954 and, as such, would be illegal and would suffer from the vice of arbitrariness. As such, the same deserves to be set aside and it is hereby set aside.

21. This takes us to the challenge to the amendment to the TNPSC Regulations 1954 by virtue of notification dated 15.11.2016. The Governor of Tamil Nadu, by exercising his powers conferred by Article 318 of the Constitution of India, introduced Regulation 7-D and brought the Chairman and Members of the Commission under the purview of the State Vigilance Commission and the Director of Vigilance and Anti Corruption. At the same time, amended Regulation 7-A in Annexure-II by omitting the words "*except the Chairman and Members of the Commission*". The legality of the same is also assailed.

22. Section 2(c) of the PC Act, 1988 defines '*public servant*'. The said definition is exhaustive and inclusive. Section 2(c)(x) is



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relevant for consideration. The same reads thus:

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"2(c) *"public servant" means.-*

(i) to (ix) ...

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board."

23. In pursuance of the recommendations by *Sri K.Santhanam Committee* on Prevention of Corruption, the Central Government constituted an independent Vigilance Commission in 1964. Based on this, similar Vigilance Commissions on the Central model were subsequently set up in the State of Tamil Nadu, purportedly in the year 1964.

24. The Vigilance Commission has the jurisdiction and power to undertake an enquiry or cause an enquiry/investigation to be made on any information indicating that a public servant has exercised or refrained from exercising his powers, for improper or



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corrupt purposes. It also has powers to seek any information from any department or undertaking of the State Government or from any public servant on matters within its jurisdiction.

25. The Government of Tamil Nadu set up the Directorate of Vigilance and Anti Corruption. With regard to the matters of enquiry and investigation against public servants, the reports on the result of enquiries/investigations are sent to the Vigilance Commissioner for further action.

26. The functions of the Director of Vigilance and Anti-Corruption are:

- (a) to conduct enquiries into the allegations of corruption and allied misconducts referred to by the State Vigilance Commission/Government.
- (b) to furnish the State Vigilance Commission information and statistics gathered by the Directorate.
- (c) to institute enquiries on the complaints made by



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members of public regarding the alleged corrupt practices by public servants.

(d) to collect intelligence for detection of cases of bribery and corruption and to investigate offences falling within the purview of the Prevention of Corruption Act, 1988 and the Amended Act with effect from 26.7.2018.

(e) on specific complaints, traps are organised after complying with the formalities.

27. The main function of the Vigilance Department is to undertake preventive vigilance and anti-corruption measures, so also to investigate the complaints/allegations having vigilance angle.

28. The preamble of the PC Act, 1988 states that it is an Act to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith.



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29. As observed, the Chairman and Members of the TNPSC are under the ambit of the definition '*public servant*' and are covered by the provisions of the PC Act, 1988. The Chairman and Members of the TNPSC can be prosecuted for the offences punishable under the PC Act, 1988 before the Court and as per the procedure provided under the said Act. The State Vigilance Commission and the Director of Vigilance and Anti Corruption would only be making an investigation and enquiry into the allegations and complaints filed against them. By introducing Regulation 7-D and amending Regulation 7-A of the TNPSC Regulations 1954, the conditions of service are not altered. No new offence is included. It is only the investigating/enquiring agency which has been provided under the amended Regulation 7-D. The same cannot be said to be prejudicial, but it is the need of the hour. The Chairman and Members of the Public Service Commission do not have to fear about the investigating agency. The petitioners should not be concerned by which agency they are being investigated and/or enquired into. The only qualification would be that the person investigating and/or conducting the enquiry should not be an officer



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below the rank of the officer as enumerated in Section 17 of the PC Act, 1988. Save and except the said qualification, there would be no embargo on the State Vigilance Commission and the Director of Vigilance and Anti Corruption to investigate and enquire into the allegations and complaints filed against the Chairman and Members of the Public Service Commission. Providing a particular agency to investigate is only a procedural aspect and an amendment procedural in nature can have retrospective effect.

30. The rule that a regulation is not to be given retrospective effect applies only to such regulations which affect the vested rights. The same would not apply to the regulations which only alter the form of procedure. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending. A change of investigating agency is a matter of procedure and, as such, a retrospective amendment empowering a particular agency to investigate can be given effect to retrospectively.



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31. The amendment made by introduction of Regulation 7-D and also amending Regulation 7-A of the TNPSC Regulations 1954 is within the powers of the Governor. The Governor has the competence to make the amendment. The amendment also cannot be said to be arbitrary. The regulations can only be challenged on the ground that the same is beyond the competence and/or is arbitrary and violative of Article 14 of the Constitution of India. Proviso to Article 318 of the Constitution of India, no doubt, specifies that the conditions of service of the member of a Public Service Commission shall not be varied to his disadvantage after his appointment. Providing an investigating machinery would not, in any way, alter the service conditions, nor it can be said that the autonomy of the TNPSC is eroded.

32. The Public Service Commission is a constitutional body constituted by virtue of Article 315 of the Constitution of India and the appointment and term of office of members are specified under Article 316 of the Constitution of India. There may be certain



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privileges provided to the Chairman and Members of the Public Service Commission. However, consciously, they had been included in the definition of '*public servant*' within the meaning of Section 2(c)(x) of the PC Act, 1988 and/or made amenable to the provisions of the PC Act, 1988. They cannot claim immunity from prosecution pursuant to the provisions of the PC Act, 1988 for the misdeeds. The procedural amendment can have retrospective effect. By bringing the Chairman and Members of the TNPSC within the purview and ambit of the State Vigilance Commission and the Director of Vigilance and Anti Corruption, the rights of the petitioners are not invaded, nor they have been made liable to the offences punishable under the PC Act, 1988 for the first time under the amended regulations. The petitioners should be unconcerned with the machinery that is investigating the complaint and/or the offences alleged. The State Vigilance Commission/Director of Vigilance and Anti Corruption consists of experts. The introduction of the Director of Vigilance and Anti-Corruption is a proactive measure by the Government. The mandate of the State Vigilance Commission is to eradicate corruption in the State.



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33. It is also a matter of fact that the Vigilance Commission takes action on the complaint. The procedure prescribed is followed. In appropriate cases, the Vigilance Commission may entrust the complaint or information for preliminary enquiry. The checks and balances are provided under the Vigilance Manual. Enquiry by a particular agency will not make any difference to the conditions of service of a public servant. The impugned amendment to the regulation has been given retrospective effect i.e. from the date of issuance of G.O.Ms.No.98.

34. As discussed above, rights of the petitioners are not affected nor eroded and, moreover, the petitioners cannot claim immunity. Only because the investigating agency is provided for, it would not change the service condition nor it can be said that substantive rights of the petitioners are affected or impinged. All the other requirements of the statute for lodging the criminal case are still required to be complied with.



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35. In the light of the above, it cannot be said that the impugned amendments to the TNPSC Regulations 1954 are arbitrary. As this Court has upheld the power of the Governor to amend the TNPSC Regulations 1954, more particularly, Regulation 7-D and 7-A, and also held that the said amendment is procedural in nature, the same will be given retrospective effect. Accordingly, W.P.No.42842 of 2016 is dismissed.

36. Inasmuch as the power of the Governor to make procedural amendment with retrospective effect is upheld, the consideration of the challenge to the executive order passed by the the State Government in G.O.Ms.No.98, dated 9.8.2011, bringing the Chairman and Members of the TNPSC under the purview of the State Vigilance Commission and Director of Vigilance and Anti-Corruption pales into insignificance and is purely academic. Accordingly, W.P.Nos.24516 to 24519, 24543, 24544, 24585 to 24587 and 24653 of 2011 are disposed of.

37. Insofar as the direction sought for cancellation of the



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Group-II examination held on 30.7.2011 and to further cancel all the direct recruitment for various services to the Government of Tamil Nadu made by the Chairman and other members as alleged by the Director of Vigilance and Anti Corruption are concerned, the same would not be permissible at this stage. Hence, such prayers made in W.P.Nos.25147 and 24848 of 2011 are rejected. Accordingly, W.P.Nos.25147 and 24848 of 2011 are dismissed.

There shall be no order as to costs. Consequently, M.P.Nos.1 and 2 of 2011 in W.P.No.25147 of 2011 are closed.

(S.V.G., CJ.)

(D.B.C., J.)

05.01.2024

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To

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- 1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.
- 2.The Secretary,
Government of Tamil Nadu,
Personnel & Administrative Reforms Department,
Secretariat, Chennai-600 009.
- 3.The Vigilance Commissioner and
Commissioner for Administrative Reforms,
Secretariat, Chennai-600 009.
- 4.The Director of Vigilance and Anti Corruption,
Chennai-600 006.



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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

(bbr/sasi)

W.P.Nos.24516, 24517, 24518, 24519, 24543,
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