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W.P. No.7299 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	19.09.2024
<i>Pronounced on</i>	22.11.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No. 7299 of 2024
and W.M.P.No.8159 of 2024

The Executive Director,
Bharat Heavy Electricals Limited (BHEL)
Tiruchirappalli – 620 014.

... Petitioner

/vs/

1. K.Chandrasekaran
No.4, Sakthi Colony,
VOC Street, Cantonment,
Trichy – 620 001.
2. Appellate Authority under the Payment
of Gratuity Act and Deputy
Chief Labour Commissioner (Central),
Commissioner (Central)
No.26, A Wing, 5th Floor,
Shastri Bhavan, Haddows Road,
Nungambakkam,
Chennai – 600 006.

3. The Authority under the Payment of



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Gratuity Act and Assistant Labour Commissioner (Central)
Chennai,

No.4, Haddows Road,
Shastri Bhavan,
Chennai – 600 006.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records connected with the order dated 14.02.2024 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 i.e., the second respondent herein in Gratuity Appeal No.30/2023 and quash the same in so far as the direction to petitioner to pay 10% interest of the gratuity to the first respondent from the date of his superannuation till the date of actual payment is concerned.

For Petitioner : Mr.A.V.Arun

For Respondents : Mr.K.V.Karthik Subramanian
for R1

Mr.M.Jayanthi
Additional Government Pleader
for R2 and R3

ORDER

The petitioner has filed this writ petition challenging the orders of



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the second respondent appellate authority dated 14.02.2022 under the Payment of Gratuity Act, 1972 made in Gratuity Appeal No.30/2023.

2. The impugned order came to be passed on an appeal preferred by the petitioner challenging the orders of the Controlling Authority / Assistant Labour Commissioner, Puducherry dated 22.12.2022. In the order dated 22.12.2022 the Controlling Authority has passed an order on the application filed by the first respondent / employee for seeking interest on the gratuity amount paid to him. As prayed by the first respondent, the Controlling Authority allowed interest at the rate of 10% from the date of eligibility to get the gratuity till the date of the actual payment. The Appellate Authority also confirmed the above order and dismissed the appeal filed by the petitioner.

3. The first respondent has joined the petitioner's company on 15.06.1974 as a Junior Executive Trainee and thereafter he worked in various departments of Bharat Heavy Electricals Limited (in short 'BHEL'). In the year 2002 in pursuant to a criminal case registered



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against the first respondent, charge sheet has been filed by the CBI before the Principal Special Judge for CBI cases for Madurai. The petitioner has been charged for the offences under Section 109, 420, 468, 471 r/w. 468 IPC and 193 IPC. After the conclusion of trial the first respondent was found guilty and was imposed with the punishment of imprisonment. The first respondent and others have challenged the order of conviction by filing Criminal Appeals CrI.A.(MD) No.437, 445 and 469 of 2006 before the Madurai Bench of this Court. By virtue of an order dated 17.09.2010, the Madurai Bench of this Court dismissed the appeal by confirming the conviction and sentence imposed by the CBI Court.

4. Assailing the said order, the first respondent and others filed Criminal Appeals before the Hon'ble Supreme Court in CrI.A.Nos.2417/2010 and 16/2011. In the meanwhile, the first respondent had attained the age of superannuation on 24.12.2011. The petitioner company withheld the payment of gratuity to the first respondent in accordance with Rule 30-A of BHEL Conduct, Discipline and Appeal Rules, 1975 r/w. 9.3(b) of BHEL Gratuity Fund Rules which provides for withholding the gratuity during the pendency of the criminal proceedings.



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5. By the judgment dated 15.06.2023 the Hon'ble Supreme Court has set aside the order of this Court and acquitted the petitioner. Thereafter, the first respondent has filed a gratuity application before the Controlling Authority in PGA.No.3 of 2019 by seeking interest for the delayed payment and his application has been allowed and the appellate authority also confirmed the order of the Controlling Authority.

6. Mr.A.V.Arun, the learned counsel for the petitioner, submitted that according to Rule 30-A of the BHEL Conduct, Discipline and Appeal Rules r/w. 9.3(b) of BHEL Gratuity Fund Rules, the petitioner company can withhold the payment of gratuity during the pendency of the disciplinary and judicial proceedings; however, the Controlling Authority has invoked Section 7 (3-A) of the Payment of Gratuity Act and stated that the employee is liable to pay interest if the gratuity amount is not paid by him within a period of thirty days from the date it becomes payable; the first respondent claims that he is eligible to get interest on the gratuity amount paid to him as he attained the age of superannuation on 24.02.2011; as per Section 7(3) of Gratuity Act, the gratuity amount is



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payable to the first respondent within one month from the date of his attaining superannuation, by claiming that the gratuity is payable to the petitioner on or before 23.02.2011 and the petitioner claims interest @10%; the appropriate authority also upheld the same by holding that the petitioner's entitlement to get interest on the gratuity amount payable to him in accordance with Section 7(3-A) of the Payment of Gratuity Act; but according to the proviso to the said Section, interest is not payable if the delay was due to the default on the part of the employee and the employer has obtained permission in writing from the Controlling Authority for the delayed payment.

6.1 It is claimed by the petitioner that Rule 30-A of BHEL Conduct, Discipline and Appeal Rules r/w. 9.3(b) of BHEL Gratuity Fund Rules, would provide that the petitioner's company can withhold the payment of gratuity in case there is pendency of disciplinary or judicial proceedings at the time of superannuation of the employee; no doubt on 24.02.2021 when the first respondent retired from service, the Criminal Appeal filed by him was pending before the Supreme Court and hence the company had withheld the payment of gratuity amount in accordance with its own rules; in fact the petitioner was convicted for the charges



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framed against him by the Special Court for Principal Sessions Judge for CBI, Madurai on the charge sheet filed by CBI; even the appeal preferred by him before this Court also failed. Until the judgment passed by the Hon'ble Supreme Court by setting aside the order, the conviction against the petitioner continued to be pending.

7. Mr.K.V.Karthik Subramanian, the learned counsel for the first respondent, submitted that Rule 30A of BHEL Conduct, Discipline and Appeal Rules r/w. 9.3(b) of BHEL Gratuity Fund Rules are contradictory to Section 4(1), 4(6) and 7(3) of the Payment of Gratuity Act and hence the petitioner has no right to withhold the payment of gratuity; the petitioner cannot consider the date of judgment of the Supreme Court as the cut-off date for interest and the first respondent was entitled to get the gratuity from 30 days from his superannuation.

8. No doubt as per Section 4(1) of the Payment of Gratuity Act, the gratuity is payable to an employee on his termination of employment after he has rendered continuous service for not less than five years.



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9. Section 4(6) of the Payment of Gratuity Act would contemplate that irrespective of Section 4(1), if the services of an employee has been terminated for any act, wilful omission or negligence causing any damage or loss or destruction of property belonged to an employer, the gratuity shall be forfeited to the extent of the damage or loss so caused.

10. Section 4(6)(b) of the Payment of Gratuity Act would suggest that if the service of an employee is terminated due to the riotous or disorderly conduct of the employee or if the services of the employee is terminated for any act which constitutes an offence of Moral Turpitude, the gratuity payable to the employee can be wholly or partially forfeited, however, the offence committed by the employee ought to have been in the course of his employment. The allegation against the petitioner is that he has caused a loss to BHEL to an extent of Rs.2.32 Crores for awarding limited tender without considering the pre-qualification of the prospective of the tender in the matter of award of contract for construction of building and facilities for reverse osmosis, desalination plants at various places of Ramnad District of Tamil Nadu. So the alleged offences are said to have been committed by the petitioner during the course of



employment.

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11. After the charge sheet has been filed against the petitioner, he was tried before the Criminal Court and he was also convicted. As on the date of superannuation also the petitioner continued to have been convicted for the criminal charges proved against him. In this regard I feel it is appropriate to extract Section 4(6)(b) of the Payment of Gratuity Act which reads as under:

“Section 4(6)(b) the gratuity payable to an employee may be wholly or partially forfeited] -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

12. So far as Section 9.3(b) of BHEL Gratuity Fund Rules is concerned, it would state that during the pendency of any judicial proceedings on the date of separation of the employee from the service,



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the gratuity shall be deferred beyond the statutory limit of thirty days and in this regard application shall be submitted to the Controlling Authority seeking permission for the delay in paying gratuity. In fact the said rule is seen to have its origin from Section 4(6)(b) of the Payment of Gratuity Act. For the sake of clarity, Section 9.3(b) of BHEL Gratuity Fund Rules is extracted hereunder:

“ During the pendency of the disciplinary proceeding or the judicial proceeding on the date of separation of an employee, the disciplinary authority may defer payment of gratuity beyond the statutory limit of thirty days from it becoming due for payment, as the last pay particulars of the employee are uncertain looking to the punishment that may be imposed on the employee are uncertain looking to the punishment that may be imposed on the employee on conclusion of the disciplinary proceedings or as a result of prosecution proceedings.”

13. Rule 30-A of BHEL Conduct, Discipline and Appeal Rules would state that during the pendency of the disciplinary proceedings or judicial proceedings, the disciplinary authority may withhold the payment of gratuity. However, it concludes that the provisions of Section 7(3) & 7(3-A) of the Payment of Gratuity Act should be kept in view, in the



event of delayed payment and in case the employee is fully exonerated from the charges. For the sake of clarity Rule 30-A of BHEL Conduct, Discipline and Appeal Rules, is extracted hereunder:

“ 30 A (i) Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

(ii) During the pendency of the disciplinary proceeding or the judicial proceeding, the disciplinary authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the company if the employee is found in a disciplinary proceeding or judicial proceeding to have been guilty of offences / misconduct as mentioned in sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provision of Section 7(3) and 7(3A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in case the employee is fully exonerated.”

14. As the above provision is compatible to Section 4(6)(b) of the



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Payment of Gratuity Act, I do not find any inconsistency in order to invoke the overriding provision provided under Section 4. So the import of the above provisions as seen in the BHEL Conduct, Discipline and Appeal Rules and BHEL Gratuity Fund Rules are seen to be slanting on Section 4(6)(b) of the Payment of Gratuity Act. In nutshell, Section 4(6)(b) limits or forfeits the entitlement of gratuity for an employee if his services are terminated due to his own misconduct or having got convicted for an offence of moral turpitude in the course of employment.

15. Neither Rule 30-A of BHEL Conduct, Discipline and Appeal Rules nor Section 9 of the BHEL Gratuity Fund Rule, makes any reference about its entitlement of payment of interest. In fact Rule 30-A would add more emphasis that Section 7(3) and 7(3-A) would be applicable in case any delay is caused in settling the gratuity to an employee who is fully exonerated from the charges. Since the provisions in the alternate instruments are not aligned to the Payment of Gratuity Act, I do not find any necessity to invoke the overriding provision. On the contrary it is essential to read down both the provisions of the Gratuity Act in order to ensure that the essence of these provisions is not lost.



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16. Much emphasis was made by the learned counsel for the petitioner on Section 7(3-A) of the Payment of Gratuity Act which would ensure the payment of interest on the delayed payment of gratuity, if the gratuity becomes payable. Section 7(3-A) would read as under:

“ 7(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.”

17. Before invoking the above provision one essential element has to be made clear. It is about the entitlement of the gratuity to the employee. The contention of the learned counsel for the first respondent is that there is no delay on the part of the first respondent and it is the petitioner who had caused the delay even though the first respondent was



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eligible to get the payment of gratuity.

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18. Reliance was placed on the judgment of the Hon'ble Supreme Court in Y.K.Singla Vs. Punjab National Bank and others reported in (2013) 3 SCC 472, wherein the issue as to the benefit of interest of the employees who are governed under the alternative provision / instrument has been dealt with. The employees of the Punjab National Bank are governed under the Punjab National Bank Employees Pension Regulations, 1995 which does not have any provision for interest for the delayed payment. In the said case the Hon'ble Supreme Court has held that the provisions with regard to the payment of interest under the Payment of Gratuity are extendable to the employees covered under the alternative instrument like Punjab National Bank Employees Pension Regulations, 1995. The Court further observed that the above regulations are silent on the issue of payment of interest and the persons covered under the said Regulations would still be entitled to the benefit of Section 7(3-A) of the Payment of Gratuity Act. The relevant part of the said judgment is given as under:

“24. Furthermore, from the mandate of Section 14 of the



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Gratuity Act, it is imperative to further conclude, that the provisions of the Gratuity Act would have overriding effect, with reference to any inconsistency therewith in any other provision or instrument. Thus viewed, even if the provisions of the 1995, Regulations, had debarred payment of interest on account of delayed payment of gratuity, the same would have been inconsequential. The benefit of interest enuring to an employee, as has been contemplated under section 7(3A) of the Gratuity Act, cannot be denied to an employee, whose gratuity is regulated by some provision/instrument other than the Gratuity Act. This is so because, the terms of payment of gratuity under the alternative instrument has to ensure better terms, than the ones provided under the Gratuity Act. The effect would be the same, when the concerned provision is silent on the issue. This is so, because the instant situation is not worse than the one discussed above, where there is a provision expressly debarring payment of interest in the manner contemplated under Section 7(3A) of the Gratuity Act. Therefore, even though the 1995, Regulations, are silent on the issue of payment of interest, the appellant would still be entitled to the benefit of Section 7(3A) of the Gratuity Act. If such benefit is not extended to the appellant, the protection contemplated under section 4(5) of the Gratuity Act would stand defeated. Likewise, even the mandate contained in section 14 of the Gratuity Act, deliberated in detail herein above, would stand negated.

25. We, therefore, have no hesitation in concluding, that



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even though the provisions of the 1995, Regulations, are silent on the issue of payment of interest, the least that the appellant would be entitled to, are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest, on account of delayed payment of gratuity (as has already been concluded above). We therefore hold, that the appellant herein is entitled to interest on account of delayed payment, in consonance with sub-Section (3A) of Section 7 of the Gratuity Act.”

19. While the Hon’ble Supreme Court has upheld the entitlement of interest on the delayed payment of gratuity for the employees governed under the alternative instrument, it has invoked the overriding effect provided under Section 14 of the Payment of Gratuity Act for its conclusion. In view of the overriding effect of the Payment of Gratuity Act to any other Act or instrument, the employees governed under alternative provision or instrument would also get the benefit of Payment of Gratuity Act in the event of any inconsistency between the two provisions. In this regard it is worthwhile to extract the discussions made in paragraph 22 of the judgment for a better clarity:



“... 22. In order to determine which of the two provisions (the Gratuity Act, or the 1995, Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted hereunder:-

“14. Act to override other enactments, etc. – The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

A perusal of Section 14 leaves no room for any doubt, that a superior status has been vested in the provisions of the Gratuity Act, vis-à-vis, any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term “instrument” and the phrase “instrument or contract having the force of law” shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant.”

20. Even in the instant case the petitioner has claimed that the



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overriding effect of Section 14 of Payment of Gratuity Act would supersede Rule 30-A of the BHEL Conduct, Discipline and Appeal Rules r/w. 9.3(b) of BHEL Gratuity Fund Rules in order to uphold the supremacy of the Payment of Gratuity Act over the other provisions. As stated already, Section 4 (6)(b) of the Payment of the Gratuity Act and the alternate instruments of BHEL, in essence, would state that if an employee is found guilty of the offences of misconduct and have caused pecuniary loss to the company, the gratuity payable to him can be withheld.

21. The first respondent has been charged for the offences under Section 109, 420, 468, 471 r/w. 468 IPC and 193 IPC, even while he was in service on the allegation that he has committed those offences during the course of his employment. He attained the age of superannuation while facing the trial. The first respondent has been convicted in the trial Court on 08.09.2006. The appeal filed by the petitioner challenging the judgment of the conviction of the trial Court was also dismissed by the High Court on 17.09.2010. As the first respondent's age of superannuation was due on 24.12.2011, the petitioner establishment has



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made an internal note to keep the gratuity payable to the first respondent pending due to the criminal conviction. So the petitioner cannot claim that on the date of superannuation, he was not tainted and he was allowed to retire irrespective of his conviction. Until the petitioner got the judgment from the Supreme Court on 15.06.2023 by which the judgment of the High Court got reversed, the first respondent continued holding the criminal conviction against him.

22. It is submitted by the learned counsel for the first respondent that as per Section 4(6)(b) of the Payment of Gratuity Act the employee ought to have been terminated from service and in the instant service the employee was allowed to retire and hence he will not bear the brunt of Section 4(6)(b) of the Payment of Gratuity Act. However, the first respondent did not produce the order of superannuation to show whether he has been allowed to retire without any condition. Even in the absence of the same, the fact remains that the petitioner has been fighting the legal battle even when the first respondent had attained the age of superannuation and he was not free from the criminal charges proved against him. So the first respondent cannot be considered as a person who



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has been allowed to retire irrespective of the proved criminal charges against him.

23. The word “terminated” as adopted under Section 4(6)(b) of the Payment of Gratuity Act would only signifies the ending point of service from which the employee's gratuity might become payable depending upon the misconduct / offences charged against him. It is the separating point of the relationship of an employee with his employer by termination of his services either through dismissal / resignation / retirement. In the absence of any proof to show that the first respondent was allowed to retire irrespective of the pending charges against him, it is wrong on the part of the first appellate authority to allow the entitlement of interest under Section 7(3-A) of the Payment of Gratuity Act, from the expiry of one month from the date of his attaining the age of superannuation.

24. As the first respondent got acquitted only by virtue of the judgment of the Hon'ble Supreme Court held on 15.06.2023, the entitlement of the first respondent to get the gratuity itself would commence from 15.06.2023. The situation would have been different if



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the judgment of the High Court made on 17.09.2010 went in favour of the first respondent. Had it been the case, his termination of service as on 24.02.2011 would make him eligible to get the gratuity. By virtue of the judgment of the Hon'ble Supreme Court, the first respondent was very much a convict on the date he attained the age of superannuation i.e. on 24.02.2011 in view of the confirmation of the judgment of the conviction by the High Court.

25. Only if the petitioner got an order of acquittal from the High Court and thereafter his termination of services due to superannuation arises, the pending proceedings before the Hon'ble Supreme Court can be of no consequences on his entitlement of interest under Section 7(3-A) of the Payment of Gratuity Act. Here is a contradictory situation where the second respondent continued to be a convict in view of the judgment of the High Court and only because of that he has taken it on appeal before the Supreme Court. Had the Government taken it on appeal to the Supreme Court, in the event of the first respondent's acquittal before the High Court, then only, the situation contemplated in the order of the second respondent appellate authority would arise.



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26. Section 4(6)(b) of the Payment of Gratuity Act would contemplate not only the misconduct during the course of employment but also the commission of offence during the course of the employment for limiting or denying the benefit of the payment of gratuity. In the instant case the first respondent has been convicted on criminal offences alleged to have been committed during his employment and hence the case of the first respondent cannot be treated as though the appeal has been filed by the prosecution before the Hon'ble Supreme Court and the first respondent has already been given with clean chit by the High Court.

27. Since the second respondent / appellate authority has passed the order by completely misconstruing the situation that has arisen in this case and has not appreciated the nuances of various provisions of the Payment of Gratuity Act and the alternate instrument under which the first respondent is governed and the object of this instrument, the impugned order of the second respondent dated 14.02.2024 is liable to be



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quashed.

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28. Accordingly, this Writ Petition is allowed and the impugned order dated 14.02.2024 passed by the second respondent in Gratuity Appeal No.30/2023 is hereby quashed. No costs. Connected miscellaneous petition is closed.

22.11.2024

Note: Issue order copy by 25.11.2024

Index: Yes

Speaking order

Netural Citation Case : Yes

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To:

1. Appellate Authority under the Payment of Gratuity Act and Deputy Chief Labour Commissioner (Central), Commissioner (Central)
No.26, A Wing, 5th Floor,
Shastri Bhavan, Haddows Road,
Nungambakkam,
Chennai – 600 006.



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2. The Authority under the Payment of
Gratuity Act and Assistant Labour Commissioner (Central)
Chennai,
No.4, Haddows Road,
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R.N.MANJULA ,J.

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Pre-delivery order in
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