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W.P.Nos.12345 of 2019, etc. (batch)

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2024

CORAM :

The Hon'ble MR.JUSTICE D.BHARATHA CHAKRAVARTHY

**W.P.Nos.12345, 12358, 12361, 12349, 12352, 12355 of 2019, 20274, 20428, 20552, 20554, 21474, 21479, 21536 of 2022, 3926, 3931, 3934, 3939 and 3929 of 2024
and W.M.P.Nos.12647, 12659, 12665, 12648, 12651, 12652, 12654, 12656, 12661, 12643, 12663 of 2019; 19493, 19491, 19602, 19601, 19664, 19665, 20482, 20483, 20487, 20485, 20555 of 2022; 4245, 4243, 4244, 4241 and 4240 of 2024**

W.P.No.12345 of 2019

The Management
Tamil Nadu State Transport Corporation
Coimbatore Limited, Coimbatore-43.

.. Petitioner

-VS-

Nethaji Pokkuvarathu Thozhilalar
Pathukappu Sangam, Rep by its District
General Secretary, M.Anburaj, on behalf of
its member R.Sathyaseelan,
94, Karupparayan Kovil Street,
Puliyakulam, Coimbatore-641 043.

.. Respondent

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the Order dated 24.01.2019 passed by the Labour Court, Coimbatore in I.D.Nos.20, 184, 29, 111 & 151 of 2017 and 2 of 2018; Order dated 26.02.2021 passed by the Principal Labour Court, Coimbatore in I.D.Nos.93, 92, 94, 96 and 95 of 2019; Order dated 31.03.2021 passed by Principal Labour Court, Coimbatore in I.D.Nos.38, 39 of 2020; and Order dated 05.09.2023 passed by the

Page 1 of 18



W.P.Nos.12345 of 2019, etc. (batch)

Additional Labour Court, Coimbatore, in I.D.Nos.40, 48 & 49 of 2021, 67 of 2020, 19 of 2022 and quash the same.

For Petitioner
in W.P.Nos.12345, 12358,
12361, 12349, 12352,
12355/2019, 20274,
20428, 20552, 20554,
21474, 21479, 21536/2022 : Mr.A.Sundaravadhanan

in W.P.Nos.3926, 3931,
3934, 3939, 3929/2024 : Mr.T.Chandrasekaran

For Respondent in all
the Writ Petitions : Mr.A.Deivasigamani
for Mr.S.Saravanan

* * * * *

COMMON ORDER

All these writ petitions are inter-connected with each other as the same issue is involved and as such, are taken up and disposed of by way of this common order.

2. Heard Mr A.Sundaravadhanan and Mr.T.Chandrasekaran, learned counsel for the petitioner/Corporation and Mr.A.Deivasigamani, learned counsel for the respondent in all the writ petitions.

3. In all these cases, the issue involved is that as per the Common Service Rules applicable to all the Transport Corporations,
Page 2 of 18



W.P.Nos.12345 of 2019, etc. (batch)

under Rule 61, each of the employees form part of the working groups/miscellaneous groups will be entitled to a review benefit upon completing the prescribed length of service. In the said length of service, certain periods have to be excluded, which is also contained in Rule 61. Rule 61(e) also states that the review benefit shall be based on the performance of the individual with reference to the norms and shall not be automatic. Periodically, the length of service and the number of benefits therein was prescribed from time to time by way of settlements under Section 12(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as '12(3) settlement'), between the various Trade Unions and the Management of the Transport Corporations.

4. As per the latest settlement dated 04.01.2018, the first review benefit will be granted upon completion of 6 years of service, the second benefit after a further 7 years, and the third benefit after a further 7 years. All these three benefits carry a 5% increase in the pay. The fourth benefit will be conferred upon further service of another 7 years and the final and fifth benefit will be conferred upon a further period of 5 years. The fourth and fifth benefits will carry a 3% increase in their pay. These review benefits are granted to the group of employees who are notified and they are normally drivers and conductors etc., who do not have any promotional avenues.

Page 3 of 18



W.P.Nos.12345 of 2019, etc. (batch)

WEB COPY

5. While so, in respect of all these workmen involved in these writ petitions, while calculating the benefits, the benefit is not granted on the exact date on which they complete 6 years and 7 years, as the case may be, in respect of service, but it has been postponed. The benefits have been postponed to different dates in respect of different employees. For instance, with respect of a driver by the name Chellamuthu, the Management has implemented the first review as follows, which is in the form of a tabular column and the same is extracted hereunder (found at page 84 in W.P.No.12345 of 2019)

	வருடம்
பணியில் சேர்ந்த நாள்	27.06.2007
முதல் கட்ட ஆய்வுக்காலம் (6) ஆண்டுகள்	6
தகுதியில்லா பணிநாட்கள் (29)	27.06.2013
தகுதிபெறும் காலாண்டு	26.07.2013
ஒழுங்கு நடவடிக்கை காரணமாக தள்ளிவைக்கப்பட்ட காலம்	00.00.0001
எனவே முதல் கட்ட ஆய்வுக்கு தகுதி பெறும் காலம்	26.07.2014
முதல் கட்ட ஆய்வலன் வழங்கப்பட்ட நாள்	01.08.2014

A similar tabular column has been given concerning every workman.

6. The workmen contend that periods of currency of punishments, etc., should not be taken into account as the review benefit is being paid as per the 12(3) settlement, and Rule 61 of the



W.P.Nos.12345 of 2019, etc. (batch)

Common Service Rules should not be applied. But for Rule 61, there is no provision for the second respondent Management to exclude that period. The second contention of the workmen is that if the said exercise of exclusion of service is undertaken, then it visits the workmen with civil consequences of postponing the monetary benefits and can be done only after giving an opportunity of hearing to the workmen. The management has not issued any show-cause notice. The Labour Court upheld both the said contentions of the workmen. Aggrieved, the Management is before this Court.

7. Mr Sundaravadhanan and Mr T. Chandrasekaran appearing on behalf of the Transport Corporations would submit that the contention of the workmen as if the benefit flows only from the 12(3) settlement is erroneous. The 12(3) settlement only prescribes of the period and the quantum of benefits which is payable to the workmen. The actual grant of review benefit is contained only in the Common Service Rules under Rule 61. If Rule 61 is pleaded to be inapplicable, then the very grant of review benefit itself would become questionable. Therefore, they would submit that the benefits have to be granted only as per Rule 61. It is akin to *in situ* promotion. The Rule itself mentions that it is not automatic, but is based on the performance. Sub Rules (1) and (2) of Rule 61 exclude certain periods from the length of service. The

Page 5 of 18



W.P.Nos.12345 of 2019, etc. (batch)

period where they were in currency of punishment, etc., are expressly excluded by the Rule. Only those periods which are specifically mentioned in the Rule have been excluded. The Labour Court erred in interfering with the dates of grant of review benefit.

8. They contend that a review benefit is like a grant of promotion, and when the Review Committee appraises the performance of each of the individuals as per the Rule and finds that the person has completed the service and grants the review benefit, merely because it is performing the exercise of calculating the period, there cannot be a requirement of issuance of show cause notice at the time of performance appraisal, and therefore, the finding of the Labour Court in this regard also is erroneous.

9. Per contra, Mr Saravanan, learned counsel appearing on behalf of the workmen, would submit that these workmen are governed only by the standing orders of the Transport Corporation. The Common Service Rules do not apply to them. In the standing orders, there is no express provision regarding the exclusion of these periods. The same is also not provided in the various 12(3) settlements entered into between the Trade Unions and the Management. In the absence of the same, the Management cannot

Page 6 of 18



W.P.Nos.12345 of 2019, etc. (batch)

press Rule 61 into service and therefore, the Labour Court is right in interfering in the matter. He would further reiterate that when the entire exercise visits the workmen with the civil consequence of postponing the review benefit, then the same cannot be done unless the workmen are heard and therefore, the finding of the Labour Court is in order about violation of principles of natural justice also and therefore, there is no ground for this Court to interfere.

10. I have considered the rival submissions made on either side and perused the material records of the case.

11. As far as the first contention which is made on behalf of the learned counsel for the workmen is concerned, though I agree with the learned counsel that they are governed by the Standing Orders regarding their service conditions, it can be seen that there is no provision in the Standing Orders regarding the grant of review benefits. Therefore, the source of granting review benefit is only under Rule 61 of the Common Service Rules. When only Rule 61 of the Common Service Rules provides for a grant of review benefit, then it is said provision that has to be relied upon for the grant of review benefits. The entire Rule 61 is extracted hereunder for ready reference:

Page 7 of 18



WEB COPY



W.P.Nos.12345 of 2019, etc. (batch)

" 61. Review for advancement from one scale/level to another scale/level for employment in Working groups and Miscellaneous groups

(a) After completing the prescribed "Length of Service" as given in Col.(6) against each scale/level of pay in Co.(4) and (5) in respect of each category in a Working Group/Miscellaneous Group, in Part C of Appendix-I to those rules, an employee in a working group of a Miscellaneous Group shall be entitled to a review of the performance of the employee by a competent authority and for advancement to the next higher scale/level of pay in that group on the basis of such review.

(b) "Length of Service" referred to in sub-rule (a) above shall mean periods of service which counted or counts for increment in time scale of pay but does not include service which was not counted or which does not count for increment in a time scale under any rule or order, applicable to the category of post held by an employee at the time of such review.

Note-1: In order to clear any doubt, it is further clarified that

i) Service on daily rate of wages, except to the extent provided for in sub-rule (i) below;

ii) Service on a purely temporary or contract basis or casual basis which does not count for increment;

iii) Periods of suspension where "suspension" was ordered to be treated as a specific punishment;

iv) Periods of any kind of leave which does not count for increment under any rule or order applicable to the post(s) held;

v) periods by which increment was withheld cumulative effect;

vi) periods by which increment was withheld out cumulative effect, where such withheld of increment in operative at the time of and;

vii) Periods by which the P.F. of non-employee reduced to a lower stage in the time scale which the employee is drawing payment the review for any specified period which such reduction in operative at the time of review or where on restoration such period of reduction operate to postpone payments; shall not count as service qualifying for review advancement from one scale to another in a working group or in a Miscellaneous group.

It is not the intention, however, that the review will automatically get postponed in all case where increment was withheld cumulative effect and where such withholding is yet to be given effect to at the time of review. In such cases, the total qualifying service will get reduced by the period for which increment was withheld without cumulative effect and if an



WEB COPY



W.P.Nos.12345 of 2019, etc. (batch)

employee has still completed six (6) years or eight (8) years or ten (10) years of "qualifying service" at the first level or the second level or the third level, as the case may be, then the individual would be entitled to review in the normal course. That is to any -

(i) National date of review shall not change in cases where increment was (1) withheld without cumulative effect'

(ii) The reductions in "qualifying service" shall be made for the period of postponement of increment(s) without cumulative effect when postponement is in operation and, to the extent there is short-fall in 6 years/8 year/10 years the same shall be treated as temporary short fall in qualifying service.

(iii) In cases where the temporary short-fall mentioned in Clause (ii) above is less than three (3) months, the benefit of review shall be allowed from the national date of review, but monetary benefit shall be postponed to the extent there is short-fall.

(iv) In cases where the short-fall is more than three months, however, since the review is done only on the first day of each quarter (as per Rule 62) the national date itself shall get postponed to the first day of the next quarter and the benefit of review shall be further regulated under clause (iii) above.

Note-II: *The review of performance of an employee shall be based on the parameters as may be specified for each category in each Department and suitable rating system giving weightage for positive performance and achievement of each individual that may be evolved by the Management from time to time.*

Note-III: *The review shall be done by appropriate "Committee" of Officers, of the Corporation that may be constituted for the purpose by the Managing Director from time to time, under Rule 62(a)*

Note-IV: *For the purpose of review under this rule, the period of service rendered under Govt./Fleet Operators shall also be Reckoned as per the provision of Rule 7 count for the purpose of review in a Group*

(C) (i) Service rendered in posts not equal in grade shall not count for the purpose of review in a Group.

(ii) Service rendered prior to 1.5.75 in a Category of post (other than Service posts specifically excluded under orders of competent Authority) which, on 1.5.75, was included in a Working Group or in a Miscellaneous Group under the Traffic Department or Technical Department or Administration Department, shall count as service, qualifying for review in that Working Group or in that Miscellaneous Group, as the case may be, under the respective Department.

(d) For a Category in a Working Group or a Miscellaneous Group having two levels/Scales, their shall be a review in the first



WEB COPY



W.P.Nos.12345 of 2019, etc. (batch)

level/Scale after six (6) years of qualifying service at the Second level//Scale in that particular Working Group/Miscellaneous Group and for a category in a Working Group or a Miscellaneous Group having four levels/Scales, there will be yet another review after further ten (10) years of qualifying service at the Third level/Scale in that particular Working Group/Miscellaneous Group.

Provided that such of the employees in the Administration Department who were in service in a particular category of post on 30.04.1975 will be allowed further review in the Miscellaneous Group/Working Group in which that particular category of post is included, at the end of the prescribed length of service, as indicated in Appendix-II.

Provided further that the review in the case of an employee holding a, post in the category of Clerk (SSLC) included in Miscellaneous Group II under the Administrative Department who acquires a Degree qualification, if he was in Service on 30.04.75 and is entitled to an additional review under the first proviso to this sub-rule, may be advanced to an earlier date on high completing six years of qualifying service an a graduate in the second level scale of pay allowed for that category of post.

(e) The advancement to a higher scale within a Working Group/Miscellaneous Group on completion of the prescribed length of qualifying service shall be on the basis of performance of the individual with reference to norms and shall not be automatic.

(f) Service in any of the posts included in a Working Group or in a Miscellaneous Group under the Traffic Department/ Technical Department/Administration Department shall count as service qualifying for review only in that particular Working Group or Miscellaneous Group, as the case may be, under the Transport Department.

(g) (i) In the case of a holder of the post of Driver (HTV) who was appointed to the post by promotion before 1.5.75 or by transfer on or after 1.5.75 from a post included in the Working Group under the Technical Department, the service rendered by such employee in any category of post in the Technical Branch which carried a scale of pay of Rs.140-3-155-4-175-5-210 (the then scale) of a higher scale of pay prior to 1.5.75 and/or the service rendered by him in any category of post included in the Working Group under the Technical Department after 1.5.75, shall be reckoned as service counting for review in the category of Driver (HTV) included in the Working Group under the Traffic Department.

(ii) Without prejudice to the provisions of sub-rule (f) above, in the case of an employee holding a category of post in a Working Group/Miscellaneous Group, the service rendered by the employee prior to 1.5.75 in any category of post other than one held by



WEB COPY



W.P.Nos.12345 of 2019, etc. (batch)

him as on 30.4.75 shall also be reckoned as service counting for review in one Working Group/Miscellaneous Group in which the post hold by him on 30.4.75 was included, if he satisfied both the following conditions, namely:-

(1) The service rendered earlier which is proposed to be counted for review in a Working Group/ Miscellaneous Group must have been in a category of post or categories of posts which carried a scale of pay identical to the scale of pay post held by the employee as on 30.4.75 and

(2) The qualifications prescribed for recruitment to the post (s) hold earlier, the service in relation to which post (s) in proposed to be counted for review, and the qualifications prescribed for recruitment to the category of post hold on 30.4.75 must have been equal.

(h) A person holding the post of a Watchman the Miscellaneous Group-v under the Administrative Department, shall, if he is appointed by transfer as a Security Guard in the Miscellaneous Group-VI under the same Department, be entitled to the review for advancement to the second level in the later Miscellaneous Group at the end of six (6) years of qualifying service at the first level scale as Security Guard or at the end of fourteen (14) years of total qualifying service including service rendered earlier in the category of Watchman which ever is earlier.

(1) Notwithstanding anything contained in sub-rule (b) above, the service rendered, if any, on daily rate of wages (excluding service rendered as a casual worker) as a for review in the respective Daily Wage Earner or as Trainee under Rule 59(f) shall also be reckoned as service qualifying for review in the respective category in the Working Group an. In the Miscellaneous Group under the Traffic Department/Technical Department/Administration Department for advancement from first level to the Second level at the end of six (6) years of qualifying service, subject to the condition that the individual was fully qualified to hold the post from the date from which such service is proposed to be reckoned as service qualifying for review.

Note-1: Period of training undergone as an "Apprentice" under the Apprentices Act 1961 shall not be reckoned as service qualifying for review even if such apprenticeship was undergone in the Corporation.

Note-2: In the case of a Daily Wage Earner whose absorption into monthly cadre e. appointment on time scale of pay) is postponed, as such postponement of absorption is not a punishment under the Discipline and Appeal Rules, the extended period of service as Daily Wage Earner may also be reckoned as



WEB COPY



W.P.Nos.12345 of 2019, etc. (batch)

service qualifying for review under this sub-rule.

Note-3: *In the case of a Daily Wage Earner, the number of days on which he actually performed duty alone shall be taken into account for reckoning the length of service.*

(j) The prescribed length of qualifying service put in by an individual in the category of Checking Inspector and Time Keeper in the Traffic Department alone shall count for review and advancement from one level/scale to the next higher level/scale within the Miscellaneous Group-2 under the Traffic Department:

Provided that -

(i) In the case of a Conductor at the Second level in the Working Group, when he is appointed as a Junior Checking Inspector/Time Keeper (first level) in the Miscellaneous Group, he will be entitled to the benefit of review and advancement to the second level (as Checking Inspector/Time Keeper) in the Miscellaneous Group on his completing six (6) years of qualifying service as Junior Checking Inspector/Time Keeper, or total fourteen (14) years of qualifying service both as Conductor and as Junior Checking Inspector/Time Keeper, whichever is earlier.

(2) In the case of Conductor at the third level in the Working Group, who is appointed by transfer as a Checking Inspector/Time Keeper/(Second level) in the Miscellaneous Group, he will be entitled to review and advancement to the third level (as Senior Checking Inspector/Time Keeper) in the Miscellaneous Group only after completing eight (8) years of qualifying service in the category of Checking Inspector/Time Keeper, or total twenty-four (24) years of qualifying service both as Conductor and as C.T./T.K. whichever is earlier."

12. Thus, a perusal of Rule 61 shows that the review benefit is conferred by Rule 61 (a) upon completion of the prescribed length of service. The length of service referred to in sub-rule (a) is explained in sub-rule (b) which clearly states that certain periods have to be excluded. Punishments such as stoppage of increment with or without cumulative effect, period of suspension etc., are all enumerated in clauses (i) to (vi) of Rule 61(b). Therefore, the Management has to go only by way of Rule 61 while calculating the entitlement of review

Page 12 of 18



W.P.Nos.12345 of 2019, etc. (batch)

benefit. The relevant clause in the 12(3) settlement is extracted hereunder:

"3. ஆய்வு பலன் (Review Benefit)

முந்தைய ஒப்பந்தத்தின்படி நடைமுறையில் உள்ள 6+7+7+7+5 வருடங்கள் இடைவெளிக்கு ஒரு ஆய்வு பலன் என்பது தொடர்ந்து வழங்கப்படும். இதில் முதல் மூன்று ஆய்வுகளுக்கு 5^{ம்} ஊதிய உயர்வும், அடுத்த இரண்டு ஆய்வுகளுக்கு 3^{ம்} ஊதிய உயர்வும் வழங்கி வருவதில் எந்த விதமான மாற்றமும் இல்லை."

13. The earlier settlements also have a similar clause of varying periods or the quantum alone. The 12(3) settlement does not form the source of the grant of review benefit. A perusal of the standing orders of the Transport Corporation shows that there is no provision whatsoever concerning the grant of review benefit. In that view of the matter, I am of the view that the power of grant of review benefit, as well as the entitlement of review benefit, can be traced out only to Rule 61. Rule 61 only makes the workmen entitled to the review benefit, and it also prescribes that the same will be granted only upon completion of the length of service. Length of service is defined and explained, and the periods which have to be excluded from the same are also mentioned in Rule 61 itself. The rule also categorically mentions that the grant of benefit is not automatic but will be based



W.P.Nos.12345 of 2019, etc. (batch)

on performance. Therefore, it can be concluded that it is in the nature of the grant of *in situ* promotion by appraisal of the performance of the individual.

14. Therefore, I hold that the Management is entitled to calculate the length of service as prescribed under Rule 61 and I do not find any error whatsoever in postponing the relevant period in respect of each of the workmen. The learned counsel for the workmen is not in a position to demonstrate that the period of postponement is not in accordance with Rule 61.

15. Now, coming to the second contention with reference to the violation of principles of natural justice, I am of the view that since it is in the nature of *in situ* promotion as envisaged by Rule 61, because it clearly states that the advancement of the higher pay shall be on the basis of the performance of the individual with reference to the norms and shall not be automatic, to apply the Rule in its totality and to appraise the performance with reference to the norms, no further opportunity of hearing can be read into. The right of the workmen is only a right to be considered for grant of review benefit as per the Rules and not the grant of review benefit itself. So long as all the workmen are being considered as per the Rules, no further show cause

Page 14 of 18



W.P.Nos.12345 of 2019, etc. (batch)

notice need be issued by the Review Committee or the Management in undertaking the exercise of determining the date from which the review benefit is to be granted. Of course, if any review benefit is wrongfully postponed and it is not in accordance with Rule 61, then the workmen would be entitled to challenge the same or raise a dispute with reference to the same. In all these cases, I find from the counter-affidavit that the dates have been postponed only in accordance with the exclusion clause as contained in the length of service in Rule 61 and therefore, does not call for any interference. Accordingly, the Labour Court ought not to have interfered with the matter.

16. It is useful to refer to the Judgment of the Hon'ble Supreme Court of India in ***Union of India v. K.V. Jankiraman(1991) 4 SCC 109***, and para 29 reads thus:

“29. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is



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W.P.Nos.12345 of 2019, etc. (batch)

that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second subparagraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.”

(emphasis supplied)

17. Thus, finding merits in the writ petitions, all these writ petitions are allowed and consequently, the award dated 24.01.2019 passed by the Labour Court, Coimbatore in I.D.Nos.20, 184, 29, 111 & 151 of 2017 and 2 of 2018; the award dated 26.02.2021 passed by the Principal Labour Court, Coimbatore in I.D.Nos.93, 92, 94, 96 and 95 of 2019; the award dated 31.03.2021 passed by Principal Labour Court, Coimbatore in I.D.Nos.38, 39 of 2020; and the award dated 05.09.2023 passed by the Additional Labour Court, Coimbatore, in I.D.Nos.40, 48 & 49 of 2021, 67 of 2020, 19 of 2022 shall stand set

Page 16 of 18



W.P.Nos.12345 of 2019, etc. (batch)

aside. No costs. Consequently, connected miscellaneous petitions are closed.

29.11.2024

Neutral Citation : Yes

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To

1. The Principal Labour Court,
Coimbatore.
2. The Additional Labour Court,
Coimbatore.



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W.P.Nos.12345 of 2019, etc. (batch)

D.Bharatha Chakravarthy, J.

(sra)

W.P.No.12345 of 2019, etc. (batch)

29.11.2024