IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.Nos. 7779 to 7781, 9207 to 9209, 12122 to 12126 of 2017

W.P.No. 7779 of 2017

R.V. Natarajan ... Petitioner

Vs.

1.Union of India,
Rep., by the Secretary,
Ministry of Finance,
Department of Financial Services,
Banking Division, Jeevan Deep Building,
Parliament Street,
New Delhi - 110 001.

2.Indian Banks Association,
Rep., by its Chairman,
World Trade Centre Complex,
Centre-1, 6th Floor, Cuffee Parade,
Mumbai - 400 005.

3.DBS Bank India Limited,
LVB House, 4, Sardar Patel Road,
Guindy, Chennai - 600 032.

4.Vice President, HRD Department,
DBS Bank India Limited,
Admn. Office, LVB House, 4, Sardar Patel Road,
Guindy, Chennai - 600 032. ... Respondents
[R3 & R4 cause title amended vide order dated 07.11.2022 and 14.03.2024]

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned letter bearing LVB/102-09.05/207/2016-17 dated 03.11.2016 issued by the fourth respondent and to quash the same and consequently direct respondents 3 and 4 to process the pension application of the petitioner dated 28.09.2016 and sanction pension to the applicant within a time frame.

For Petitioner : Mr. M. Ramesh

For Respondents : Mr. G. Anandakrishnan, for R3 & R4

COMMON ORDER

Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents 3 and 4.

2. The case of the petitioners is that they worked in the Lakshmi Vilas Bank Ltd. They opted for Voluntarily Retirement Scheme pursuant to Voluntary Retirement Scheme notified by the Bank. After the pension settlement dated 29.10.1993, the Government of India issued a notification and thereafter, the second respondent published Pension Regulations for the Bank employees, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government, which is known as The Lakshmi Vilas Bank Ltd., (Employees') Pension Regulations, 1995. Pursuant to the said settlement, the third respondent Bank, issued a circular dated 18.02.2011 extending another option to join the

pension scheme under The Lakshmi Vilas Bank Ltd., (Employees') Pension Regulations, 1995. The third respondent did not notify to the employees like the petitioners who had retired voluntarily under the VRS Scheme to join the pension scheme by exercising second option. The petitioners submitted their willingness to join the pension scheme and offered to refund Employer's PF contribution with interest as per letter dated 28.09.2016. The fourth respondent informed the petitioners' vide impugned letters in these writ petitions wherein it is stated that the petitioners' applied for Bank VRS and they were relived under Bank VRS Scheme on 31.05.2009. Further, the petitioners PF Employer's contribution also have been settled as they were PF Optee and as such, it is informed that there is no provision for providing pension to the petitioners. Aggrieved by the said letters in these writ petitions, the present writ petitions have been filed.

3. The preliminary objection was raised by the learned counsel for the third respondent stating the the DBS Bank India Ltd., is a private Bank and it is not amenable to Writ Jurisdiction. The petitioners contended that the issue was considered by the Hon'ble Apex Court and Hon'ble High Courts and has held that it is amenable to Writ jurisdiction.

4. To substantiate his arguments, the learned counsel for the petitioner has relied on the following judgments: -

i) ***Deokinandan Prasad Vs. The State of Bihar and Others***

ii) ***S.K. Dua Vs. State of Haryana and another***

iii) ***Dr. Hira Lal Vs. State of Bihar and others***

iv) ***Kangra Central Cooperative Bank Pensioners Welfare Association Vs. State of Himachal Pradesh and others***

v) ***Bank of Baroda and another Vs. G. Palani and others***

5. The Hon'ble Apex Court in [1]***Deokinandan Prasad Vs. The State of Bihar and Others***, held that the petitioner fight to receive pension affects the fundamental rights of the petitioner under Article 19(1) (f) and 31 (1) of the Constitution and as such, the writ petition under Article 32 is maintainable. The relevant paragraphs are extracted herein under:-

> *"27. The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19(1) (f) and 31 (1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.*
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> *30. The question whether the pension granted to a public servant is property attracting Art. 31(1) came up for consideration*

1 1971 (2) SCC 330

before the Punjab High Court in Bhagwant Singh v. Union of India (1). It was held that such a right constitutes "property" and any interference will be a breach of Art. 3 1 (1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh (2)approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Art. 3 1 (1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K. R. Erry v. The State of Punjab (1). The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for *showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether (1) A. T. R. 1962 Punjab 503. (2) I. L. R. 1965 Punjab 1. (3) I. L. R. 1967 Punjab & Haryana 278 before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.*

33. Having due regard to the above decisions, we are of the opi- nion that the right of the petitioner to receive pension is property under Art. 3 1 (1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Art. 19(1)(f) and it is not saved by sub-article (5) of Art. 19. Therefore, it follows that the order dated June 12, 1968 denying the petitioner fight to receive pension affects the fundamental right of the petitioner under Arts. 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Art. 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

6. In [2]***S.K. Dua Vs. State of Haryana and another,*** the Hon'ble Apex Court held that the retiral benefits are not in the nature of "bounty" is well founded and needs no authority in support thereof. The relevant paragraph is extracted herein under:-

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in

2 (2008) 3 SCC 44

absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

7. In [3]***Dr. Hira Lal Vs. State of Bihar and others***, the Hon'ble Apex Court held that the right to receive pension of a public servant has been held to be covered under the "right to property" under Article 31(1) of the Constitution. The relevant paragraphs are extracted herein under:-

> *"22. It is well settled that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and un-blemished service.4 The right to receive pension of a public servant has been held to be covered under the "right to property" under Article 31(1) of the (2013) 12 SCC 210 Constitution by a Constitution bench of this Court in Deokinandan Prasad v. State of Bihar5, which ruled that:*
>
> > *" 30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India [AIR 1962 Punj 503] . It was held that such a right constitutes*

3 (2020) 4 SCC 346

"property" and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [ILR 1965 Punj 1] approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. State of Punjab [ILR 1967 Punj & Har 278] . The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show-cause in that regard must be given to the officer. This view regarding the giving of further (1971) 2 SCC 330 opportunity was expressed by *the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show-cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.*

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable."

24. The right to receive pension has been held to be a right to property protected under Article 300A of the Constitution even after the repeal of Article 31(1) by the Constitution (Forty-Fourth

Amendment) Act, 1978 w.e.f. 20.06.1979, as held in State of West Bengal v. Haresh C. Banerjee and Ors.9.

25. The Division Bench of the Patna High Court in the impugned judgment has relied solely on the earlier decision of a co-ordinate bench of the Patna High Court in Vijay Kumar Mishra v. State of Bihar10 to deny the (2006) 7 SCC 651 2017 (1) PLJR 575 reliefs sought by the Appellant. Pertinently, the judgment in Vijay Kumar Mishra was overruled by a Full Bench of the Patna High Court in Arvind Kumar Singh v. State of Bihar & Ors."

8. In [4]***Kangra Central Cooperative Bank Pensioners Welfare Association Vs. State of Himachal Pradesh and others,*** the Hon'ble Apex Court held that the Division Bench was in error in setting aside the view taken by the learned Single Judge with regard to maintainability in allowing the writ petition and in rejecting the review petition. The relevant paragraphs are extracted herein under:-

"5. It appears that in a different context, the issue concerning maintainability of a Writ Petition against Kangra Central Co-operative Bank Ltd. ('the Bank', for short) again came up before the Full bench of the High Court, which by its judgment dated 14.05.2013 observed as under:

"15. For the view taken by us on both facets of the referred questions, we proceed to answer the Reference as under:

(1) The question as to whether Kangra Bank is a State within the meaning of Article 12 of the Constitution of India, is no more res integra. It has been authoritatively answered by the Apex Court in S.S. Rana's case (supra.)

4 2022 SCC Online SC 1031

(2) Even in the case of H.P. State Cooperative Bank Ltd., the question has been answered by the Division Bench of our High Court in Chandra Kumar Malhotra's case (supra). There is no conflicting decision of coordinate Bench of this Court necessitating pronouncement on that question by the Full Bench.

(3) In the case of Jogindra Central Cooperative Bank, the decision in Mehar Chand's case (supra) is rendered by the learned Single Judge of this Court and no conflicting decision of the co-ordinate Bench much less of the Division Bench or Larger Bench of our High Court with regard to the stated Bank has been brought to our notice. In any case, the said question can be conveniently answered by the Division Bench in appropriate proceedings whether in the form of writ petition or Reference made by the learned Single Judge of this Court, as the case may be. As and when such occasion arises, the issue can be answered on the basis of settled legal principles and including keeping in mind the exposition of S.S. Rana's case (supra) of the Apex Court concerning another Cooperative Bank constituted under the Himachal Pradesh State Cooperative Act.

(4) As regards the second part of the question as to whether a writ would lie against the stated Cooperative Banks, we hold that it is not appropriate to give a definite answer to this question. For, it would depend on several attending factors.

Further, even if the said Banks were held to be not a State within the meaning of Article 12, the High Court in exercise of powers under Article 226 of the Constitution of India, can certainly issue a writ or order in the nature of writ even against any person or Authority, if the fact situation of the case so warrants. In other words, writ can lie even against a Corporative Society. Whether the same should be issued by the High Court would depend on the facts of each case.

6. In the Review Petition preferred against the decision of the Single Judge, the decision rendered by the Full Bench was relied upon and the Review Petition was rejected.

7. The matter however was carried in appeal before the Division Bench at the instance of the Bank.

8. Relying on its earlier decision in Sanjeev Kumar & Others v. State of Himachal Pradesh & Others, C.W.P. No.6709 of 2013 the Division Bench by its judgment and order which is presently under challenge, set aside the view taken by the Single Judge. The matter essentially turned on the issue of maintainability.

9. We have heard Mr. Kavin Gulati, learned Senior Advocate in support of the appeal, Mr. Abhinav Mukerji, learned Additional Advocate General for the State and Mr. Ritesh Khatri, learned Advocate for the Bank.

10. The issue concerning maintainability was considered by the Full bench and the observations made by the Full Bench summed up the law on the point quite succinctly. On the facts as found by the Single Judge, which were recorded in paragraph 19 of the judgment, without entering into any other question, in our view, the petition as filed was perfectly maintainable. The Division Bench was in error in setting aside the view taken by the Single Judge in allowing the writ petition and in rejecting the review petition."

9. In [5]***Bank of Baroda and another Vs. G. Palani and others,*** the Hon'ble Apex Court at Para No.23 held as extracted herein under: -

23. Pension is a right and is not a bounty, and cannot be dealt with arbitrarily. In the instant cases the existing provisions could not

5 (2022) 5 SCC 612

have been amended with retrospective effect, taking away accrued rights on the basis of joint note which had no statutory backing."

10. This Court carefully perused the case judgments relied by the learned counsel for the petitioner. In all these judgments, the issue relating to the payment of pension to the Government employees and nationalised Banks. In the present case, the third respondent-Bank is a private Bank and as such, the said judgments are not applicable to the facts and circumstances of the present case.

11. On the other hand, the learned counsel appearing for the respondents 3 and 4 contends that the writ petitions are not maintainable against the third respondent, as it is a private Bank. To substantiate his arguments, he has placed reliance on the following judgments: -

i) ***Federal Bank Ltd. v. Sagar Thomas***

ii) ***ICICI Bank Ltd., v. Lakshminarayanan***

iii) ***Chanda Deepak Kochhar v. ICICI Bank Ltd.***

iv) ***B. Anitha v. General Manager-HRD, Appellate Authority***

12. The Hon'ble Apex Court in [6]***Federal Bank Ltd. v. Sagar Thomas***, held that writ will not be issued if there is a plea of non compliance or violation of any

6. (2003) 10 SCC 733

statutory provisions by the private body. The relevant paragraph is extracted herein under:-

> *"33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."*

13. A Division Bench of Madras High Court in [7]***ICICI Bank Ltd., v. Lakshminarayanan,*** held that writ petition by employee seeking direction for payment of pension is not maintainable. The relevant paragraph is

7 2009 (1) CTC 22

extracted herein under:-

"17. In the present case also, as the appellant-Bank of Madura Ltd., is a Private Company, carrying on private banking business and not carrying on any statutory or public duty, no "Writ Petition" under Article 226 of the Constitution of India is maintainable against the appellant-Bank of Madura Ltd. Merely because the Bank has made provisions to grant "pension" on VRS, under the relevant Pension Scheme, the same cannot be a ground to hold that the Bank is performing a public duty or public function. Hence, the first question is answered in the negative against the respondent-Writ Petitioner and in favour of the appellant-Bank of Madura Ltd. (now ICICI Bank Ltd.)"

14. A Division Bench of Bombay High Court in [8]***Chanda Deepak Kochhar v. ICICI Bank Ltd.,*** held that ICICI Bank is a private body and not instrumentality of State and receives no public funding and as such, termination of petitioner are not governed by statute and accordingly, the petitioner has to approach appropriate forum and not writ jurisdiction, as writ petition is not maintainable. The relevant paragraphs are extracted herein under:-

"22. Several situations may have an indirect effect on the employer-employee relationship. Unless a statute is enacted with a specific purpose of regulating the service conditions, it cannot be considered to be as one. A private organization is subject to various statutory enactments, but that cannot make its every activity

8 (2020) 3 LLJ 533

amenable to the Writ Jurisdiction. Private contracts would not be subject to writ jurisdiction merely only because of the fact that they are structured by statutory provisions.

23. ICICI is a private body. It is not an instrumentality of the State. It receives no public funding. Service conditions of the petitioner are not governed by any statute. The dispute raised in this Petition arises from a contract of personal service. The termination of the petitioner is in the realm of contractual relationship. Since section 35-B(1)(b) does not regulate service conditions, approval for termination under it does not adjudicate the rights of the petitioner as an employee. Though section 35-B(1)(b) postulates that the termination would not come into effect if there is no prior approval of the Reserve Bank, the cause of action for the petitioner is the termination by ICICI. For the petitioner, the legal implications of the grant of approval, non-grant of approval or post-facto approval, as the case may be, would be grounds and arguments in the contractual dispute. Thus merely because the approval under Section 35-B(1)(b) is questioned, that cannot infuse a public law element in this dispute, which remains a contractual dispute. For the contractual remedies, the petitioner will have to approach the appropriate forum and not writ jurisdiction."

15. A Division Bench of Madras High Court in [9]***B. Anitha v. General Manager-HRD, Appellate Authority,*** while dealing with a case of Karur Vysya Bank, held that the respondent-Bank is a private Bank and is not amenable the jurisdiction of this Court under Article 226 of the Constitution of India. Therefore,

9 2020 (1) LLJ 334

the Writ Petition is not maintainable. The relevant paragraph is extracted herein under:-

> *"19. In view of the above submissions, it is clear that the appellant/writ petitioner is having an alternative remedy under Section 41 (2) of the Tamil Nadu Shops and Establishment Act. The respondents-Bank will not come within the fold of Article 12 of The Constitution of India to enable the appellant to maintain this writ petition before this Court. When the respondents-Bank cannot be equated or considered as instrumentalities of the Government, the writ petition as against the respondent-writ petitioner is not maintainable. The respondents-Bank is a private bank and it is not amenable the jurisdiction of this Court under Article 226 of The Constitution of India. Therefore, the Writ Petition is not maintainable. Hence, this Court confirms the impugned order of the learned Single Judge."*

16. Admittedly, the third respondent Bank is a private Bank, it cannot be treated as a scheduled Bank carrying on any statutory or public duty. In the present case, the issue involved is with regard to claiming pension to the petitioners who retired from service under Voluntarily Retirement Scheme, prior to formulation of the pension scheme. Now the question is whether the writ petitions are maintainable against a private Bank and writ can be issued against the private Bank which has no statutory or any public duty imposed by statute.

17. The same question arises for consideration before the Hon'ble Apex Court and this Court on several occasions. The finding of the Division Bench of this Court in ***ICICI Bank Ltd.,*** is very apt to the present cases, wherein, it is held that the appellant Bank of Madura Ltd., is a private Company, carrying on private banking business and not carrying on any statutory or public duty, no "Writ Petition" under Article 226 of the Constitution of India is maintainable against the appellant-Bank of Madura Ltd. Merely because the Bank has made provisions to grant "pension" on VRS, under the relevant Pension Scheme, the same cannot be a ground to hold that the Bank is performing a public duty or public function. The ratio laid down as stated above is squarely applicable to the present cases. As such, in our considered view, these Writ Petitions are not maintainable and this Court cannot issue any writ against the third respondent.

18. In view of the above, these Writ Petitions are dismissed on the ground of maintainability without going to the merits of the case. No costs.

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Index :Yes/No
Neutral Citation :Yes/No

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BATTU DEVANAND, J.

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W.P.Nos. 7779 to 7781, 9207 to 9209, 12122 to 12126 of 2017

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