



W.P.No.31674 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
07.06.2024	08.07.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.31674 of 2019

1. R.Iyyappan
2. P.Arumugam
3. R.Shanmuga Ravi @ R.Ravi
4. V.Rajesh Kumar
5. S.Suyambu
6. Ravithurai @ P.Ravi
7. S.M.Neela Raman

... Petitioners

-VS-

1. Union of India,
Rep. by its Secretary to Government,
Dept. of Space, New Delhi.
2. Indian Space Research Organization,
Rep. by its Chairman,
Antariksh Bhavan, New BEL Road,
Bangalore-560 23.
3. Liquid Propulsion Systems Centre, Mahendragiri,
Rep. by its Controller,
Valiamala P.O., Thiruvananthapuram-695 547.
4. The Central Administrative Tribunal,
at Chennai, Rep. by its Registrar,
High Court Campus, Chennai-104.
5. R.Muthukumar
6. S.Velu

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records from the 4th respondent relating to the impugned order passed by the 4th respondent dated 20.12.2018 passed in O.A.No.326 of 2015 upholding the validity of the scheme, titled as “Gang Labourers (Employment for Sporadic Types of Work) Scheme” of Department of Space, Government of India, 2012” dated 03.09.2012 impugned in the O.A.No.326 of 2015 and quash the said order of the Hon'ble Tribunal as well as the said scheme and consequently to direct the first respondent to create adequate no. of posts retrospectively from the date of the initial appointments of the petitioners with time scale of pay on par with Group-D post, now upgraded to Group-C posts, and to regularize the services of the petitioners by appointing them retrospectively in the said posts from the date of their initial employment with all consequential monetary and service benefits, including arrears and pensionary benefits therefor and further to award appropriate compensation for exploiting the petitioners all these years.

For Petitioners : Mr.N.Subramaniyan
For R1 to R3 : Mr.AR.L.Sundaresan,
Additional Solicitor General
For Mr.N.Ramesh, CGSC
For R4 : Tribunal
For R5 & R6 : No Appearance

ORDER

D.KRISHNAKUMAR, J.

This Writ Petition has been filed, challenging the order of the Central Administrative Tribunal (in short 'Tribunal') dated 20.12.2018 passed in O.A.No.326 of 2015, in and by which the prayer of the petitioners to quash the Scheme titled as “Gang Labourers (Employment for Sporadic Types of Work) Scheme” was negatived, holding that the applicants/petitioners herein are not entitled to get permanency/retrospective regularization or monetary benefits and that they are entitled to get benefits as per the



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Brief Facts in nutshell as put forth by the petitioners:

2. The Petitioners were employed under the 3rd respondent on daily wage basis continuously for more than 14 to 26 years basis and they worked without any blemish and also to the satisfaction of the respondents 1 to 3. According to the petitioners, the respondents 1 to 3, taking advantage of the poor economic condition of the petitioners and the unemployment situation, utilized their services and continued to treat them as daily waged persons, thereby denying benefits available to them and their service particulars as confirmed by the 3rd respondents are as follows:

S.No.	Name and Date of Birth	Educational Qualification	Date from which working
1.	R.Iyyappan	VII Std Fail	09/08/1995
2.	P.Arumugam	IX Std Fail	13/08/1991
3.	R.Shanmuga Ravi @ R.Ravi	VIII Std Pass	06/05/1991
4.	V.Rajesh Kumar	IX Std Fail	15/08/1995
5.	S.Suyambu	XII Std Fail	28/07/1997
6.	P.Ravithurai @ P.Ravi	X Std Pass	28/07/1997
7.	S.M.Neela Raman	VIII Std Pass	20/07/1991
8.	R.Muthukumar	IX Std Fail	17/02/1999
9.	S.Velu	V Std	23/05/1994

2.1. The petitioners were forced to work even on Sundays and holidays and the respondents 1 to 3 did not fill up the sanctioned strength by framing appropriate rules,



instead as per the policy of the 1st respondent, the petitioners were put to hard labour.

The petitioners, on coming to know that the 1st respondent had framed a scheme for regularization of casual laborers with effect from 01.09.1993 in the year 2007, represented the 1st respondent to consider framing of such scheme in respect of them also. Since there was no response, they along with other similarly placed persons filed O.A.No.455 of 2009, seeking regularization with all attendant and consequential benefits.

2.2. The respondents had filed their counter affidavit, wherein it was stated that the 3rd respondent is an independent body having its own recruitment policy; there is no employer-employee relationship in existence; they were engaged through token system and their nature of works was sporadic in nature, such as loading, unloading, stacking of materials, etc.

2.3. The Tribunal, after perusing the counter affidavit of the respondents, directed the respondents for formation of a scheme and to consider the appointment of petitioners on preferential basis so as to put an end to their miseries. It was further directed to complete the whole exercise within six months. The said order of the Tribunal was challenged by the respondents before this Court in W.P.No.19634 of 2010, in which, this Court upheld the order of the Tribunal, observing that the nature of works being carried



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out by the petitioners are permanent in nature and they were to be absorbed in the posts retrospectively with all benefits flowing therefrom. The appeal preferred before the Supreme Court was also dismissed and thus, the order of the Tribunal got merged with the order of this Court and attained finality.

2.4. Subsequent thereto, the petitioners filed a contempt application in C.A.No.101 of 2011 before the Tribunal, pursuant to which, the respondents filed a scheme without furnishing a copy of the same to the petitioners and taking note of the framing of the scheme, the Tribunal closed the contempt application on 10.10.2012 by observing as follows:

“since the respondents have already complied with the directions of the Tribunal, we are not inclined to proceed with the contempt application. CA is closed. Notices are discharged.”

2.5. It was contended by the petitioners that the contempt application was closed by the Tribunal without properly ascertaining the fact as to whether the scheme is in consonance with the order passed by the Tribunal in O.A.No.455 of 2009 and therefore, the closure of the contempt application cannot be construed as a decision rendered as to the validity of the scheme in terms of the judgment. Thereafter, the 3rd respondent furnish a copy of the scheme with an instruction to the petitioners to give their option of acceptance on or before 30.10.2012, which was extended for one month till 30.11.2012.



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The petitioners gave their option on 26.11.2012 under protest. According to the petitioners, the scheme was framed only after filing of the contempt application without affording any opportunity of hearing to the petitioners so as to enable them to point out the illegality of the scheme and its contradictions to the order of the Tribunal dated 10.10.2012.

2.6. The grievance of the petitioners is that though both the Tribunal and this Court directed the respondent to absorb the petitioners under regular employment by creating posts with retrospective effect with all attendant benefits, the scheme framed stipulation about giving one month's notice, which is utterly contradictory to the order of the Tribunal and this Court. Moreover, the scheme is against the policy of the State, as per which, necessary posts are to be created for jobs of permanent in nature and the intention of framing of scheme was nothing, but to exploit poor persons like the petitioners.

2.7. According to the petitioners, the impugned scheme dated 03.09.2012 is hit by Article 14 and 23 of the Constitution of India and since there is no appeal provision against the order passed in the contempt application, in order to protect the rights of the petitioners, the subsequent O.A. was filed, which cannot be said to be barred by *res*



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judicata. As none of the arguments and judgments relied upon was taken note of by the Tribunal, a Review Application was filed to review the order and the said Review Application was also dismissed on 03.05.2019. Aggrieved by the order passed in O.A.No.326 of 2015, the instant appeal has been filed by the petitioners before this Court.

3. The respondents have filed a common counter affidavit, wherein it has been stated as follows:

3.1. Indian Space Research Organization (ISRO) functioning under the Department of Space, which is a highly advanced Scientific and Technical Research & Development Research, is entrusted with major and prestigious scientific projects of National importance and ISRO Propulsion Complex (IPRC) is one of the lead Centres of ISRO. The entire area is declared as a prohibited place under the Official Secrets Act and is guarded by the Central Industrial Security Force (CISF). In order to carry out seasonal/sporadic nature of works, Gang Labourers are engaged on a day-to-day basis as per the actual requirement.

3.2. The petitioners were deployed as Gang Labourers in IPRC, Mahendragiri for the purpose of loading / unloading, shifting of materials, stacking of materials / equipment, etc., for which, they were paid daily wages on actual basis and the nature of



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work performed by them was dissimilar to that of the regular employees, as their entry and exit was through only Token-based Entry System and there was no identity cards issued to them. They were also not entitled to any other benefits, such as canteen, transport, medical facilities, etc.

3.3. The Gang Labourers requested for absorption and conferment under Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993 and earlier Applications filed by their counterparts in LPSC, Valiamala and VSSC, Thiruvananthapuram seeking regularization was dismissed by the Tribunal, Ernakulam Bench and the appeal preferred before the Kerala High Court was also dismissed. The application filed by the petitioners in O.A.No.455 of 2009 before the Tribunal was disposed of on 09.03.2010 with a direction to the respondents to frame a Scheme or issue Adhoc Rules for providing employment to the petitioners on permanent basis within six months.

3.4. Considering the repercussions in implementation of the order of the Tribunal, the respondents filed W.P.No.19634 of 2010 before this Court, which was dismissed by this Court on 14.03.2011 and the appeal filed before the Supreme Court also came to be dismissed on 29.07.2011. Though a Review Petition was filed before the Supreme Court, pending the same, the petitioners moved contempt application before the



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Tribunal, pursuant to which, the Scheme was prepared to avoid contempt of Court, by adopting salient features of the Scheme of Government of India, 1993 and in the meanwhile, the Review Petition was dismissed by the Supreme Court.

3.5. The petitioners, having not satisfied with the contents of the Scheme, had approached the Tribunal by filing O.A.No.326 of 2015 questioning the validity of the Scheme, which was dismissed by the Tribunal on 14.07.2016 and against the said order of the Tribunal, a W.P.No.8163 of 2017 was filed by the petitioners, in which, this Court directed the Tribunal to reconsider the case of the petitioners as per the averments raised in O.A.No.326 of 2015, which was duly considered by the Tribunal and the application was dismissed on 20.12.2018. Questioning the said dismissal order dated 20.12.2018, the instant Writ Appeal has been filed, which is ex-facie not maintainable.

4. The learned counsel for the petitioners submitted that the order of the Tribunal is against the principles of natural justice and in arbitrary exercise of powers. The Tribunal had not given any reason as to how the Scheme framed is in consonance with the direction of the Tribunal and the Scheme simply permits the respondents to terminate these labourers by giving one month notice, but, however, the direction issued was to formulate a scheme for absorption of the petitioners on regular basis. He further



submitted that the Tribunal had not taken into account the blatant violation of their own policy of the respondents and the respondents, having exploited the petitioners for quite a long time, found out ways and means to disengage them from works and the Scheme has been framed in such a way that the respondents can oust the petitioners from service by way of issuance of notice to them, which was not the ultimate order passed by the Tribunal and this Court. In fact, this Court strongly reiterated that the petitioners should be brought under regular employment retrospectively with all consequential service and monetary benefits. He also submitted that in spite of the strict direction issued by this Court, the respondents framed a Scheme, by treating the petitioners as temporary employees with liberty to terminate their service on one month's notice, which was in violation of Articles 14, 15, 16, 21 and 23 of the Constitution of India. The learned counsel for the petitioners, in support of his contentions, has relied upon the following judgments:

(i) Nihal Singh and others vs. State of Punjab and others, reported in ***(2013) 14 SCC 65***;

(ii) Narendra Kumar Tiwari and others vs. State of Jharkhand and others, reported in ***(2018) 8 SCC 238***;

(iii) Union of India and another vs. Kuntesh, reported in ***2019 SCC Online Del 10254***;



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5. Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the respondents 1 to 3 strenuously contended that the Tribunal directed the respondents to formulate a Scheme or issue Adhoc rules by creating required number of posts to employ the petitioners on permanent basis for the sporadic types of works and not both. The Tribunal, on finding that the relief sought in the contempt application was outside the purview of contempt, had permitted the respondents to proceed with the scheme. He further contended that the Scheme was implemented after forwarding a copy of it to the petitioners, vide letter dated 18.10.2022 and the plea raised by the petitioners that the respondents misled the Tribunal has no legs to stand and absolutely, the Scheme was framed in consonance with the order of the Tribunal without any deviation. It is further contended that initially, a draft Scheme was prepared with a real intent to absorb Gang Labourers like that of the petitioners on permanent basis and after obtaining approval from the Government, namely, Department of Legal Affairs, the Scheme under challenge has been issued, which came into force with effect from 03.09.2012. The learned Additional Solicitor General brought to the attention of this Court the order dated 22.07.2015 passed by the Tribunal in the similar O.A.No.1734 of 2023, duly upholding the validity of the Scheme on due observance that it is impermissible for the applicant therein to question the validity of the clauses in the Scheme after availing benefits under the very same Scheme. It was vehemently contended that even for consideration of the petitioners for Group-D posts, most of the petitioners are overage



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and under-qualified as per extant Recruitment Rules of the respondent organization.

Though the Supreme Court heavily condemned the regularization of employees, who entered through back-door, in obedience to the order dated 09.03.2010 of the Tribunal, the Scheme was framed so as to bring the petitioners under the Scheme. Therefore, the Scheme framed by the respondents is perfectly in consonance with the order of the Tribunal in O.A.No.455 of 2009, which does not warrant any interference by this Court and the Writ Petition is liable to be dismissed as devoid of merits.

6. This Court has considered the rival submissions and also perused the materials available on record.

7. The fact remains that "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993 has been devised by the Department of Personnel and Training and it came into force with effect from 01.09.1993. The petitioners who are employed on various dates between the years 1991 to 1997, submitted a representation to the first respondent to consider framing of such a scheme for regularizing them. Since there was no response, they filed O.A.No.455 of 2009 before the Tribunal, seeking regularization of their services with all attendant and consequential benefits, which was disposed of by the Tribunal on 09.03.2010 with a



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direction to the respondents to frame a Scheme or issue Adhoc Rules for engaging the petitioners/applicants on permanent basis within a period of six months and till such time, the petitioners were permitted to be continued to be engaged depending upon the requirements. Since the order of the Tribunal was silent on the request of the petitioners to regularize them from a retrospective date or to give any consequential benefits, the petitioners filed W.P.No.19634 of 2010, which was dismissed by this Court on 14.03.2011 and the same was also confirmed by the Hon'ble Apex Court in SLP. No.19200 of 2011 dated 29.07.2011 and review application filed thereafter was also dismissed.

8. Since the order of the Tribunal in O.A.No.455/2009, which has attained finality as per the orders of the Hon'ble Apex Court, was not complied with, the petitioners filed Contempt Application No.101 of 2011. Pending the contempt petition, the first respondent has framed a Scheme called "Gang Labourers (Employment for Sporadic Types of Work) Scheme" 2012, which shall come into force with effect from 03.09.2012 and recording the same, the contempt petition was closed by the Tribunal, vide order dated 10.10.2012. According to the petitioners, the Scheme framed by the Department is not in consonance with the earlier order of the Tribunal, and therefore, they



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challenged the Scheme by filing O.A.Nos.436/2013 and 326/2015, which came to be dismissed by the Tribunal, vide order dated 14.07.2016. Challenging the same, W.P.No.8163 of 2017 was filed and this Court remitted the matter to the Tribunal for fresh consideration, vide order dated 25.04.2017. The Tribunal, once again heard the original applications and vide order dated 20.12.2018, dismissed the original application, against which the present writ petition is filed.

9. There is no fundamental right to be absorbed in service. In *State of Karnataka and Others v. Umadevi's [(2006) 4 SCC 1]* the Apex Court refused to accept the argument that the right to life protected by Article 21 of the Constitution of India would include right to employment. At present, right to employment itself is not a fundamental right. The absorption certainly would not be a fundamental right.

9.1. The Hon'ble Supreme Court in the case of *State of Rajasthan v. Dayal Lal and Others [AIR 2011 SC 1193]* held as follows:

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issued directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of



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compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the Court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.”

9.2. The dictum laid down in *Daya lal's case* was reiterated by the Hon'ble Supreme Court in the case of *Secretary to Government, School Education Department, Chennai v. R.Govindaswamy and others [(2014) 4 SCC 769]*. Reiterating the principles laid down in *Govindswamy's case*, Supreme Court of India emphatically held that the



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High Courts, in exercising power under Article 226 of the Constitution of India will not issue directions for regularization, absorption or permanent continuance. Unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process against sanctioned vacant posts, the equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularization of services of an employee which would be violative of the Constitutional scheme.

9.3. The Hon'ble Supreme Court in the decision in ***Union of India v. Ilmo Devi and another [2021 SCC Online 899]***, has followed its earlier decision in ***Daya Lal's case***, which was subsequently reiterated in ***Gowindaswamy's case***, has held as follows:

28. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

29. Applying the law laid down by this court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order, more particularly, directions in paragraphs 22 and 23 are unsustainable and beyond the power of the judicial review of the



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High Court in exercise of the power under Article 226 of the Constitution.

Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularization policy dated 30.06.2014, which is absolutely in consonance with the law laid down by this Court in the case of Umadevi (supra), which does not apply to the part-time workers who do not work on the sanctioned post. As per the settled preposition of law, the regularization can be only as per the regularization policy declared by the State/Government and nobody can claim the regularization as a matter of right dehors the regularization policy. Therefore, in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularization under the regularization policy dated 30.06.2014." (emphasis supplied)

10. Length of adhoc, temporary or casual employment is no ground to regularize and absorb in permanent service. Such irregular appointments are violations to the concept of equality enshrined in our Constitution. Such appointees do not acquire any right enforceable by Court of Law. Court will not be justified in issuing directions to absorb or make such employees permanent and to issue interim directions on the claim of such persons which run counter to the Constitutional mandates and will perpetuate the illegality. Such directions will facilitate the bypassing of the constitutional and statutory mandates.



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11. In the case on hand, admittedly the petitioners were initially appointed as Daily Wage employees between the years 1991 to 1997 and no appointment order was issued to them. They were not engaged through Employment Exchange or as per the recruitment norms/rules of the respondent organization and hence, their engagement was not in accordance with the procedure known to law or recognized under the Recruitment Rules. Their claim for regularization based on the Scheme framed in the year 2012, as per the order of the Tribunal in O.A.No.455 of 2009, which attained finality as per the orders of the Hon'ble Apex Court. The challenge made by the petitioners questioning the validity of the Scheme by filing O.A.No.326 of 2015 was dismissed initially and it was reconsidered as per the directions of this Court in W.P.No.8163 of 2017 and the Tribunal dismissed the original application on 20.12.2018.

12. The respondents had already extended their maximum support to the petitioners and formulated a Scheme which guarantees continuous/permanent employment of the petitioners till they attain the age of 60 years and also preferential treatment against the future Group 'D' posts as ordered by the Tribunal. Further, as per the Scheme for Employment of Gang Labourers dated 03.09.2012, the petitioners are entitled for various benefits like annual increments, transport allowance, earned leave entitlement, paternity leave, departmental canteen facilities at subsidized rates, festival advance, adhoc bonus, Provident Fund after 3 years from the date of implementing the



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13. While the initial appointment of the petitioners was made without following any recruitment process and by way of backdoor entry, considering the long service rendered by the petitioners, the respondents have already considered their claim for regularization favourably by formation of a Scheme in the year 2012 as per the directions of the Hon'ble Supreme court and therefore, the present claim of the petitioners to quash the Scheme is only to get regularization from the date of their initial appointment, which is legally unsustainable. Moreover, the validity of the Scheme formulated by the second respondent was already upheld in a challenge made by similarly placed persons in O.A.No.1734 of 2013 dated 22.07.2015. In such view of the matter, this Court is of the view that the claim of the writ petitioners is legally unsustainable and finds no merit in this writ petition.

14. In the light of the aforesaid discussions and the decisions cited supra, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions, if any, stands dismissed.

[D.K.K., J.,]

[K.B., J]

08.07.2024

Index: Yes / No



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Internet: Yes / No

Speaking Order/Non Speaking Order

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To

1. The Secretary to Government,
Union of India,
Department of Space, New Delhi.
2. The Chairman,
Indian Space Research Organization,
Antariksh Bhavan, New BEL Road,
Bangalore-560 23.



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D.KRISHNAKUMAR,J.,
AND
K.KUMARESH BABU,J.,

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ORDER IN
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