



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 06.02.2024

ORDER PRONOUNCED ON : 15.04.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.Nos.36045 of 2023, 32055, 31867, 32056, 31797, 31798, 31834, 31839, 31848, 31849, 31852, 31853, 31855, 31856, 31857, 31859, 31861, 31868, 31869, 32041, 32045, 32049, 31800, 32052, 32057, 32053, 31801, 32035 and 32038 of 2022

W.P.No.31797 of 2022

B.Ananthavelu

... Petitioner

/Vs./

1.The Chairman,
Tamil Nadu Electricity Generation &
Distribution Corporation,
Annasalai,
Chennai - 2.

2.The Chief Engineer (Personnel),
Tamil Nadu Electricity Generation &
Distribution Corporation,
Annasalai,
Chennai – 2.

3.The Superintending Engineer,
Tamil Nadu Electricity Generation &
Distribution Corporation,



... Respondents

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to give permanent posting/employment in the cadre of Helper/Field Assistant in TANGEDCO pursuant to the order of absorption passed by this Court in Contempt Petition Nos.1223 to 1303 of 2011 dated 28.02.2020 to the petitioner forthwith with all consequential and monetary benefits from 16.02.1999.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.G.Anandgopalan for
M/s.T.S.Gopalan and Co.

* * * * *

COMMON ORDER

W.P.No.31797 of 2022 is filed directing the respondents to give permanent posting/employment in the cadre of Helper/Field Assistant in TANGEDCO pursuant to the order of absorption passed by this Court in Contempt Petition Nos.1223 to 1303 of 2011 dated 28.02.2020 to the petitioner forthwith with all consequential and monetary benefits from 16.02.1999.

2.The present batch of cases have serpentine history with the respondents



having successfully stalled the implementation of the order passed by the Inspector of Labour, Cuddalore, between 2005 – 2007, directing the respondents to give permanent employment and to grant permanent status to the petitioners from the date they completed 480 days in 24 calendar months.

3.The petitioner in W.P.No.31797 of 2022 worked as daily worker in TANGEDCO from 10.12.1991 at Cuddalore Electricity Distribution Circle, Cuddalore at the office of A.E., O & M, Nellikuppam. While so, the petitioner filed applications before the Inspector of Labour seeking permanent status from the date they completed 480 days in 24 calendar months under Tamil Nadu Industrial Establishment and Conferment of permanent status to Workmen Act, 1981. The Inspector of Labour passed orders in favour of the workers. As the respondents did not comply with the orders of the Inspector of Labour, the petitioners approached this Court in a batch of writ petitions for a writ of Mandamus, directing the respondents to implement the order of the Inspector of Labour, Cuddalore and thereby absorb the petitioners in the first respondent Corporation as permanent employees.



4.The batch of writ petitions pertaining to the writ petitioners came up for hearing on 07.02.2011 before Hon'ble Mr.Justice M.Sathyarayanan. The learned Judge on consideration of the entire facts allowed the writ petitions directing the respondents therein to comply with the order of the Inspector of Labour, Cuddalore within a period of 12 weeks from the date of receipt of the copy of the order. The above said order dated 07.02.2011 became final as there was no appeal filed by the respondents herein. Therefore, the respondents were bound to comply the same. After the orders were passed in the writ petitions, the respondent Corporation instead of challenging the Mandamus issued by the learned Judge in the aforesaid proceedings filed a batch of writ petitions challenging the orders passed by the Inspector of Labour. The learned Mr.Justice K.Chandru, vide order dated 27.03.2012 dismissed the writ petitions on the ground that a writ in the nature of Mandamus was issued to the Board to comply with the order and as it became final there was no scope for the Board to challenge the order, for which directions were already issued for compliance. The learned Judge observed that not only did the board not challenge the order passed by the Inspector of Labour, but also allowed the directions in the writ petitions to become final. The learned Judge therefore dismissed the writ petitions. The aforesaid orders were taken up by way of appeal



before the Division Bench. The aforesaid orders were challenged in two sets of Writ Appeal Nos.1340 and 1341 of 2012 and the Writ Appeals were dismissed by the Honble First Bench of this Court on 10.07.2012.

5. Another batch of Writ Appeals challenging the order dated 27.03.2012 in W.A.Nos.1390 of 2012 batch also came to be dismissed by the Hon'ble First Bench of this Court on 11.07.2012. Thereafter the third respondent filed a Special Leave Petition before the Hon'ble Supreme Court in SLP (Civil) No.24740 – 24741 of 2012 challenging the order in W.A.No.1340 of 2012 and the same was dismissed by the Hon'ble Supreme Court on 08.04.2013 with liberty to the third respondent to file review application in respect of the awards passed by the Inspector of Labour. Thereafter, the third respondent filed a clarification petition before the Hon'ble Supreme Court in I.A.No.1-2 of 2013 in SLP (Civil) 24740-24741 of 2012. The said clarification petition was dismissed on 26.08.2013. Meanwhile, the petitioners preferred contempt petitions in Cont.P.Nos.1223 of 2011 batch, and sub applications in Sub Application No.698 of 2013 were filed wherein an order



dated 22.11.2013 was passed directing the respondents to keep 69 helper posts

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vacant till the disposal of the review application. In the meantime, the third respondent filed review application in R.A.Nos.89, 103 to 192 of 2015 seeking to review the order dated 10.07.2012 in Writ Appeal No.1340 of 2012. The review applications were heard by the Hon'ble Division Bench of this Court and dismissed on 16.10.2015. The order in the review applications were challenged by the third respondent before the Hon'ble Supreme Court in SLP (Civil) Nos.7222-7312 of 2016 and the same were also dismissed on 21.08.2018. Considering the pendency of the proceedings before the Hon'ble Supreme Court, contempt petitions filed were kept in abeyance. After several adjournments in the Contempt Petitions elaborate orders were passed on 28.02.2020, directing the third respondent to pass appropriate orders for absorption of the petitioners after verifying all the documents categorized in the order. The aforesaid order in Contempt Petition was challenged by the respondent in Cont. Appeal Nos.11 to 79 of 2020 and the Hon'ble Division Bench of this Court on 30.07.2021 dismissed all the Contempt appeals stating that the appeals were not maintainable.

6.The Special Leave Petitions in SLP (Civil) 14523-14660 of 2021 were



filed before the Hon'ble Supreme Court, challenging the order passed by the Hon'ble Single Judge dated 28.02.2020 in the Contempt Petitions and as also the order of the Hon'ble Division Bench dated 30.07.2021 in Contempt Appeals. The Hon'ble Supreme Court vide order dated 03.12.2021 dismissed all the special leave petitions. Meanwhile, this Court in the said contempt petitions vide order dated 21.03.2022, directed the respondent to comply with the orders by absorbing the petitioners in the Electricity Board with all monetary benefits payable to them. Thereafter on 25.04.2022, the third respondent passed the orders of absorption of the petitioners into the services of TANGEDCO, Cuddalore, but however, the third respondent did not issue the order of posting/employment. Thereafter the Contempt Petitions were posted several times for reporting compliance. On 26.04.2022, this Court suggested to the parties to explore the possibility of settlement. The learned counsels submitted that they would get instructions and so the matter was adjourned. Thereafter, the matter was again adjourned and on 12.08.2012, the learned counsel for the petitioner submitted a memo dated 09.08.2022, in which it was stated that the Contempt petitioners were willing to receive a sum of Rs.8,50,000/- each as compensation from the respondents. But as the respondents did not agree to the same, this Court directed the respondent



Corporation to pay a sum of Rs.8,00,000/- as compensation to the employees and

further directed the respondents to file an affidavit on 25.08.2022. On 25.08.2022

the petitioners were directed to appear before the Superintendent Engineer on

26.08.2022 for verification and signing of proper documents with further direction

to the respondents to produce the cheque for a sum of Rs.8,00,000/- to each of the

70 employees on 29.08.2022. On 29.08.2022, a settlement was arrived between

the petitioners and the respondents under Section 18(1) of the Industrial Disputes

Act with regard to the settlement of lumpsum payment of Rs.8,00,000/- to the

petitioners by reserving the right in the petitioners for permanent posting and with

liberty to the respondent to defend the same in accordance with law. On

30.08.2022, the contempt Petitions were finally closed, taking into consideration

the memorandum of settlement dated 29.08.2022 arrived at between the parties. In

the aforesaid backdrop the petitioners made a representation to the respondents on

21.09.2022, to pass orders and to give permanent posting to them in the post of

helpers or Field Assistant in the TANGEDCO. The said representations were

received by the respondents on the same day, but as no action was taken by the

respondents, the petitioners filed the above writ petition, for the aforesaid relief.



7. The respondents filed counter tracing the entire history of the Electricity Board right from the engagement of persons on nominal muster roll (NMR/TCL), its abolition since 1978, Engagement of Contract Labour between 1978-1990, the Khalid Commission and the Hon'ble Supreme Court's injunction till 1999 directing the absorption of all the 18006 persons who were engaged as contract labour, the settlement made under Section 12(3) of the Industrial Dispute Act on 10.08.2007, the challenge to the said settlement before this Court, the Judgment dated 24.10.2008 of the Hon'ble Division Bench of this Court upholding the settlement, the absorption of the left over contract labourers and finally the absorption of the contract labourers in Cuddalore Circle.

8. With reference to the Cuddalore Circle to which the petitioners belong it was stated that in Cuddalore circle 28 orders were passed by the Inspector of Labour, Cuddalore, between 2005 and 2007 granting permanency to 1219 persons the respondent suspected foul play as most of the orders were passed by one George Eddington, Inspector of Labour, who retired on 31.07.2007. After much thought and investigation the respondent filed a complaint with the Cuddalore Police, with regard to 22 awards. The complaint was that in most of the awards,



the signature of the authority was forged. The complaint was closed, the protest petition of the respondent was rejected and the appeal against the same was also dismissed. In terms of settlement dated 10.08.2007 in Cuddalore Circle around 952 persons were absorbed. Thereafter in 2008 when an identification of left over contract labourers were made, it was found that 333 persons were engaged as contract labourers. Though the 333 persons were identified in May 2008, only 182 persons reported for work between 01.04.2010 and 31.03.2011 and they alone were paid ex-gratia.

9. According to the respondents, the petitioners names were not found when the contract labourers were sought to be absorbed in terms of the settlement. It was also stated that the petitioners names were not found in the list of 333 persons and therefore, the respondent concluded that the petitioners were not engaged after 2008. A total of 80 persons moved the Court and filed writ petition before this Court. Out of 80 persons who approached this Court by way of writ petition, 11 persons who continued to work on daily wages from 2008 were paid ex-gratia in 2010-2011 and absorbed into the services of the Board. It was stated that the petitioners voluntarily did not offer to work with the Board prior to 2008 and it



was wrong to state that the intention of the Board was to deny them absorption merely because they were litigating for permanent status. It was further stated that the petitioners were neither terminated by the respondent, nor appointment orders were issued to them because the Board was litigating their claim for permanent status. According to the respondent as no appointment orders were issued to the petitioners, there was no need to send them written communications to report for duty. Thereafter the respondent traced the history of the litigations as narrated in the petitioner's affidavit. It was further contended by the respondents that as the petitioners did not offer services after 2008, they lost the right to seek any benefits after 2008. In this regard, the respondent relied on the Judgment of the Hon'ble Division Bench of this Court in the case of *The Superintending Engineer, Erode Vs. The Inspector of Labour, erode and other* reported in *2022 SCC Online Mad 1003, A.Ravi vs. TANGEDCO and others in W.A.No.2252 of 2021* and *Palani Vs. TANGEDCO and others in W.A.No.1544 of 2022*. The respondent further raised objections on the maintainability of the writ petition on the ground of disputed facts and alternative remedy.

10.The undisputed facts are that the petitioners approached the Inspector of



Labour for Conferment of Permanent Status on completion of 480 days in 24

calendar months. The petitions for conferment of permanent status were allowed by the Inspector of Labour under various orders.

11.As the orders of the Inspector of Labour were not complied with by the respondent, the petitioners filed a batch of writ petitions and this Court vide order dated 07.02.2011 allowed the writ petitions for mandamus directing the respondent to comply with the orders of the Inspector of Labour. As the order dated 07.02.2011 was not complied with, the petitioners filed Contempt Petition in Cont. Petition Nos.1295 of 2011. It was only after the issuance of the statutory notice the third respondent filed a batch of writ petitions in W.P.Nos.7638 of 2012 batch challenging the order of the Inspector of Labour, directing the respondent to confer permanent status to the petitioners. The said writ petitions were dismissed on 27.03.2012 and thereafter Writ Appeals were filed in W.A.Nos.1340, 1341 and 1390 of 2012 and the same were dismissed by this Court on 10.07.2012 and 11.07.2012 respectively. The third respondent preferred a Special Leave Petitions in SLP (Civil) Nos.24740 - 24741 of 2012 against the order passed in W.A.No.1340 of 2012 and the same was dismissed by the Hon'ble Supreme Court



vide order dated 08.04.2013 by giving liberty to the third respondent to file review in respect of the awards passed by the Inspector of Labour. The third respondent thereafter filed a clarification petition before the Hon'ble Supreme Court in I.A.1-2 of 2013 in SLP (Civil) 24740-24741 of 2012 and the same was also dismissed on 26.08.2013. Meanwhile, the third respondent in pursuance of the liberty granted by the Hon'ble Supreme Court filed Review Petition in R.A.Nos.89,103 to 192 of 2015 against the order dated 10.07.2012 in W.A.No.1340 of 2012 and the same was also dismissed by the Hon'ble Division Bench on 16.10.2015. Thereafter the order of the Division Bench dated 16.10.2015 in the Review Application was also challenged by the third respondent before the Hon'ble Supreme Court in SLP (Civil) Nos.7222-7312 of 2016 and the same was also dismissed on 21.08.2015. From the brief narration of facts, it is clear that the respondent has failed in its challenge to the awards passed by the Inspector of Labour granting permanent status to the petitioners.

12. Therefore it is seen that the Mandamus issued by this Court on 07.02.2011 in favour of the petitioners attained finality and the respondent was bound to comply with the same. Though the contempt petitions were filed as early



as in 2011 itself by the petitioner's the same were kept pending till 2020, because of the pendency of the aforesaid proceedings. On 28.02.2020, a comprehensive order was passed in Contempt petitions. From the order passed in Contempt Petition on 28.02.2020, it is clear that the objections, including the voluntary refusal by the petitioners to report for work prior to 2008 by the respondents in the present counter affidavit were taken in the contempt petitions also. The counter affidavit filed in the present writ petition is a replica of the stand taken in the contempt petition. The said contentions were considered by the learned Judge and were rejected stating that the respondents were taking contradictory stand to suit their convenience.

13. Before proceeding further a few developments in the Contempt Petition have to be noted. During the pendency of the Contempt Petition in Cont.P.No.1223 of 2011 batch in Sub Application No.698 of 2013, this Court vide order dated 22.11.2013 directed the respondent to keep 69 helper posts vacant till the disposal of the Contempt Application. The comprehensive order dated 28.02.2020 in Contempt Nos.1223 & 1303 of 2011 were taken upto the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 03.12.2021



dismissed the Special Leave Petitions filed by the respondent. Hence the order dated 28.02.2000 directing absorption of the petitioners became final and only implementation of the same remained. Meanwhile, by order dated 21.03.2022 this Court directed the respondent to comply with the orders passed on 28.02.2000 by absorbing the petitioners in the respondent Board and also to pay monetary benefits. On 25.04.2022, the 3rd respondent passed orders granting absorption of the services of the petitioners in the Cuddalore Circle as Field Assistants. But however, the respondents took a defiant stand that compliance of the order passed in the writ petition or in the Contempt Petition did not require the respondent to issue orders of posting. Meanwhile, on the suggestion of this Court the third respondent offered to pay the monetary compensation of Rs.8,00,000/- to the petitioner for closing the Contempt Petitions. The petitioners accepted the offer reserving their right to pursue their legal remedies for the purpose of getting permanent posting which is reflected in the memo dated 09.08.2022. This Court on 12.08.2022 directed the respondents to pay the petitioners Rs.8,00,000/- each taking into consideration the memo dated 09.08.2022. The said amount of Rs.8,00,000/- was paid to the petitioners by the third respondent on 29.08.2022 and the 18(1) Settlement was entered into. According to the petitioners, the 18(1)



Settlement was entered only for the purpose of giving quietus to the long drawn litigation and therefore they are well within their rights in claiming permanent posting in pursuance of the absorption order. The contention of the respondents on the other hand is that the settlement of Rs.8,00,000/- was a one time settlement and the petitioners having received the said amount cannot seek permanent posting. Therefore, the question is whether the receipt of Rs.8,00,000/- by the petitioner would amount to one time settlement of all claims of the petitioners or the relief claimed in the writ petition survives.

14.The relevant Clauses of the Memo and the Settlement read as follows:

“IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Contempt Jurisdiction)

S.Balamurugan & Others ... petitioners

Vs

The Chairman,
Tamilnadu Generation and Distribution
Corporation Ltd.,
144, Anna Salai,
Chennai – 2.

... Respondents



WEB COME **MEMO FILED BY THE CONTEMPT PETITIONERS**

It is humbly submitted that this Hon'ble Court has passed following orders in the writ petition as well as in the contempt petition:

Details of orders:

1) 07.02.2011 Order passed by this Hon'ble Court in writ petition directing implementation of the order of Inspector of Labour. (8 orders) –

His Lordship Mr.Justice Sathyanarayanan

2) 07.03.2011 Order passed by this Hon'ble Court in writ petition directing implementation of the order of Inspector of Labour – His Lordship Mr.Justice K.Chandru.

3) 27.03.2012 Order passed in batch of writ petitions dismissing the challenge to the Inspector of Labour order, which was confirmed upto the Hon'ble Supreme Court in the batch of SLPs (Civil) No.24740-24741 of 2012.

4) 22.11.2013 Order passed in Sub Application Nos.698 of 2013 in Contempt Petition No.1223 of 2011 directing to keep 69 posts of Helpers vacant.

5) 16.10.2015 Order in R.A.No.89, 103 to 192 of 2015 dismissing



the Review Petition by a Judgment of the Hon'ble Division
Bench which was confirmed upto the Hon'ble Supreme
Court in SLP (Civil) Nos.7222-7312 of 2013 dated 21.08.2018.

- 6) 02.12.2019 Order of permanent status issued by 3rd respondent to the petitioners
- 7) 05.12.2019 Affidavit filed by the then Superintending Engineer, Cuddalore, treating the petitioners as permanent Employees from 16.2.1999.
- 8) 28.02.2020 Order passed in Contempt Petition No.1223 to 1303 of 2011 directing absorption of all the petitioners which was confirmed upto the Hon'ble Supreme Court in SLP (Civil) Nos.14523-14660 of 2021 dated 3.12.2021.
- 9) 21.03.2022 Order passed in the Contempt Petitions Nos.1223 to 1303 of His Lordship Mr.Justice M.S. Ramesh
- 10) 25.04.2022 Order of absorption of appointing the petitioners as Field Assistants issued by Superintending Engineer, Cuddalore (Subject to the challenge for not giving any posting)

The petitioners submit that they are entitled to the benefit of orders of this Hon'ble Court as also the proceedings issued pursuant to the orders issued by this Hon'ble Court stated supra. The petitioners submit that the accrued benefit in the orders stated supra 1 to 10 cannot be waived or forgone by the petitioners. The petitioners are willing to receive the amounts as ordered by the Hon'ble Court viz.,



Rs.8.5 lakhs (Rupees Eight Lakhs and Fifty Thousand only) for each of the 70 petitioners, excepting the 11 petitioners who were already absorbed long earlier in 2014, pending the contempt proceedings hence totaling 81 petitioners. The petitioners submit that subject to the above the contempt petitioners are willign to receive the amount.

Dated at Chennai on this the 9th day of August, 2022.\

Signature of petitioners:”

The relevant portion of the Memorandum of settlement between B.Anandavelu and the respondent Corporation dated 29.08.2022 is extracted as follows:

“2.Thiru B.Anandavelu agrees to receive the lumpsum payment of Rs.8,00,000/- (Rupees Eight Lakhs) offered by TANGEDCO Management as Full and Final Settlement for the purpose of closing the Contempt Petition No.1295 of 2011 and the order of the High Court dated 12.08.2022 in the Contempt Petition. However, he reserves his right to pursue other legal remedies that may be permissible.



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3.The above amount agreed to be received by Thiru B.Anandavelu towards the amount ordered by the Hon'ble Madras High Court and the same is received in full and final as ordered by the Court. By receiving the above payment, the worker shall not be estopped to pursue his legal remedies for the purpose of posting pursuant to the absorption order dated 28.02.2020 and the Management shall also have all the rights to defend the same in accordance with the law.”

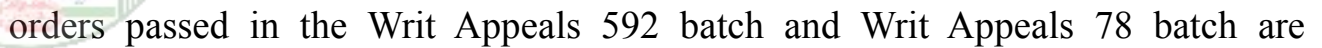
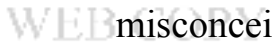
15.A reading of the Memo dated 09.08.2022 and the settlement dated 29.08.2022 clearly shows that the petitioner's reserved their right to claim permanent posts and the respondents also reserved their right to defend the same. Hence the contention of the respondent that the 18(1) Settlement was a one time settlement cannot be accepted.

16.The next contention of the respondents counsel is that the petitioners should be driven to the Labour Court for claiming permanent posting. It is seen from the narration of the facts that the respondents failed in their challenge to the



order conferring permanency and also to the comprehensive order dated 28.02.2000 passed in Contempt Proceedings. I have found that the receipt of Rs.8,00,000/- under the 18(1) Settlement does not preclude the petitioner from claiming permanent posting. The respondents having failed in all their attempts to deprive the benefit of the orders passed in favour of the petitioners as a last resort contend that the petitioner should be relegated to the Labour Court. The stand of the respondents is most unjust and unfair and very unbecoming of a model employer. It is pertinent to note here that in the counter to the writ petition, the respondents have not raised any new grounds but have replicated the contentions raised in the contempt proceedings and the same were rejected by this Court sternly. It is pertinent to refer here to the order of the Hon'ble learned Judge of this Court in W.P.No.7638 batch dated 27.03.2012, wherein as early as in 2012, the learned Judge observed that “the writ petitions are clear manifestation of an abuse of process of the Court indulged by a Subordinate Officer of the Tamil Nadu Generation and Distribution Corporation Limited”. I therefore find that the said contention is only a ruse to further procrastinate the inevitable and therefore the said contention is rejected.

17.The reliance placed by the learned counsel for the respondents on the



“25.Already by the Judgment dated 27.03.2012 in W.P.No.7638 of 2012 the Learned Single Judge has held that so long as the order directing the implementation of the award is in force, subsequently, the very award cannot be challenged by way of another Writ Petition. The said view has been affirmed



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by the Division Bench and the SLP's filed by TANGEDCO have already been dismissed. Therefore, in the present case, there is no question of referring to the other Judgments and views taken in other matters, when the rights of parties having stood already determined in respect of the self same awards. The Judgment inter-parties in respect of the self same awards have to be followed. There cannot be one Judgment directing the award to be implemented and dismissing the challenge to the award and another Judgment holding that the workmen should approach the Industrial Tribunal / Labour Court.”

In my view, the aforesaid Judgment of the Hon'ble First Bench squarely applies to the facts of the case, which are narrated supra.

18. Accordingly, the writ petitions are allowed. However, there shall be no order as to costs.

15.04.2024



Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order

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To

- 1.The Chairman,
Tamil Nadu Electricity Generation &
Distribution Corporation,
Annasalai,
Chennai - 2.
- 2.The Chief Engineer (Personnel),
Tamil Nadu Electricity Generation &
Distribution Corporation,
Annasalai,
Chennai – 2.
- 3.The Superintending Engineer,
Tamil Nadu Electricity Generation &
Distribution Corporation,
Cuddalore.



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N.MALA, J.

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**PRE-DELIVERY ORDER IN
W.P.Nos.36045 of 2023 batch**



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15.04.2024