



W.P(MD).No.3505 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 15.11.2024

ORDER PRONOUNCED ON : 04.12.2024

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.3505 of 2024
and WMP(MD).Nos.3468, 3469, 13999 & 17225 of 2024**

K.Kannan

....Petitioner

Vs

1.The Managing Director
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Byepass Road, Madurai – 16

2.The General Manager
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region
Madurai -16

3.Tamil Nadu Arasu Pokuvarathu Kazlaha
Thesia Thgozlilalar Sangam (INTUCO Regr.No.Mdu/257)
Represented by its Treasurer, C.Mahalingam, 3/4A
Pattukottai Kalyanasundaram Street, Arul Nagar
Opp.P.R.C.H.O Bye Pass Road, Madurai -16

4.Tamil Nadu Arasu Pokuvarathu Kazlaha
Thgozlilalar Pathukappu Peravai (Regr.No.774/Mdu)
Represented by its General Manager, A.Irullappan
105/1, Mullai Residence, Pasumpon Street
Thirumangalam, Madurai District



W.P(MD).No.3505 of 2024

5.Arasu Pokkuvarathu Madurai Thozhilar Sangam
(Reg.No.157/MDU)

Rep.by its General Secretary, A.Kanagasundar
Having Office at V.P.Chinthan Memorial Hall
13, VOC 2nd Street, Arul Nagar, Madurai -16

6.The Labour Progressive Union (Lpf)

Reg.No.253/MDU

Rep.by its General Secretary, V.Alphonse
S/o.Vedamuthu, Pattukottai, Kalyanasundaram Veethi,
Bye Pass Road, Madurai 16

7.S.Selvaraj

S/o.M.Sangan

Conductor, Staff No.CR06222

Tamil Nadu State Transport Corporations(Madurai) Ltd.,

By pass Road Mofussil Branch

Residing at No.45/3, Mullai Nagar 3rd Street

Irullandi Thevar Colony, Virattipatthu

Madurai 16

8.The Secretary to Government

Transport Department

Secretariat, Chennai -9

....Respondents

(R3 to R7 impleaded vide Court order dated 19.08.2024)

(R8 is impleaded vide Court order dated 28.08.2024)

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to promote the petitioner as Checking Inspector under 25% quota earmarked for Graduate Conductors as the Service Rules Sl.No.4(a) 'Part C' of Appendix II Applicable to all Transport Corporation and to extend the benefit of similarly placed Graduate Conductors considering the seniority and qualification of the petitioner.



W.P(MD).No.3505 of 2024

For Petitioner : Mr.S.Govindan
For Respondents : Mr.S.Raja for R1 & R2
: Mr.M.Pounraj for R3 & R4
: Mr.V.Ajoy Khose
for Mr. A.Rahul for R5 to R7
: Mr.D.Sasikumar
Additional Government Pleader for R8

ORDER

The instant writ petition has been filed by a Special Grade Conductor working in the respondent Transport Corporation seeking a mandamus to promote him as Checking Inspector under 25 % quota earmarked for graduate Conductors as per Common Service Rules applicable to all the Transport Corporations and to extend the said benefit to similarly placed graduate Conductors considering their seniority and qualifications.

(A)Facts leading to the filing of the present writ petition are as follows:

2.The petitioner was originally appointed as a Conductor in the respondent Transport Corporation in the year 1994 and later, he was promoted as Selection Grade Conductor and now he is working as Special Grade Conductor. According to him, he is a B.A.Graduate and his next avenue of promotion is Checking Inspector.



W.P(MD).No.3505 of 2024

3.It is the further contention of the petitioner that by way of G.O.Ms.No.1373 Transport Department dated 12.12.1985, a Common Service Rule (CSR) for all the State Transport undertakings were approved by the Government and orders were issued.

4.According to the learned counsel for the petitioner, as per Appendix-II part 'C', the post of Checking Inspector is referred to Appendix II (C) Serial No.4 of Common Service Rules. Relying upon the said CSR, it is contended that, for the post of Junior Checking Inspector /Time Keeper, 25% of the promotion should be made from among the second level Senior Conductors who possess a degree. The balance 75% promotion should be made from among the selection grade Conductors of third level. In view of the said Service Rules, the petitioner being a graduate, senior Conductor, he should be accommodated in 25% reserved for promotion to the post of Junior Checking Inspector.

5.It is the grievance of the writ petitioner that without filling up 25% of posts reserved for Checking Inspector from graduate Conductor, the authorities are attempting to fill up 75% of posts from the non-graduate conductors. The petitioner has also cited various promotion orders issued by the various Transport Corporations invoking 25% of quota for graduate Conductor in the post of Junior Checking Inspector. He had further contended that now the authorities are attempting to fill up the post of Junior Checking



W.P(MD).No.3505 of 2024

Inspector by following seniority in the cadre of Conductor ignoring the reservation of 25% in favour of the graduate Conductor. Hence, the present writ petition.

6.Initially the writ petition was filed only as against the officials of the Transport Corporation. Thereafter, impleading applications have been filed by various trade unions and some individuals in the writ petition. Considering the nature of prayer and larger number of employees who are about to be affected by the prayer, this Court was inclined to allow the impleading applications.

7.Some of the respondents who had opposed the prayer have made elaborate submissions to the effect that CSR was superseded subsequently by various settlements reached between the trade unions and the transport corporation under Section 12(3) of the Industrial Disputes Act and therefore, only the settlement would prevail and not the CSR introduced in the year 1985. Therefore, the discussion for resolving the dispute mainly revolves around the fact whether Common Service Rules introduced in 1985 are still holding the field or whether they have been superseded by various settlements reached between the trade unions and the management under Section 12(3) of the Industrial Disputes Act.

8.It is not in dispute that under various 12(3) settlements, the distinction between graduate and non graduate Conductors have been given a



W.P(MD).No.3505 of 2024

go by and trade unions as well as transport corporations have agreed to follow the seniority among the Conductors to fill up the post of Junior Checking Inspector. This is the dispute has led to the filing of the present writ petition.

(B)Contentions of the learned counsel appearing on either side are as follows:

9.Learned counsel for the writ petitioner herein who represents a graduate Conductor contends that, as per Common Service Rules, 25% of the posts in the cadre of Junior Checking Inspector are reserved for graduate Conductors. The said rule is holding the field even as on today. He had relied upon the communication of State Express Transport Corporation, Chennai dated 23.01.2006 wherein two separate seniority lists have been published for the Conductors representing graduates and non-graduates.

10.The learned counsel for the petitioner had also relied upon an order of this Court in WP(MD).No.9839 of 2009 wherein a writ petition was filed by graduate Conductors seeking a mandamus to promote them under 25% quota. Pending writ petition, the transport corporation expressed their willingness to consider the name of three petitioners therein for promotion and therefore, the writ petition was dismissed as withdrawn. Hence, according to him, the transport corporation has agreed to implement the Common Service Rules before this Court.



W.P(MD).No.3505 of 2024

11.The learned counsel for the petitioner had also relied upon the proceedings of the State Transport Corporation, Tirunelveli dated 22.06.2011 and 03.05.2012 wherein promotion orders have been issued for graduate Conductors under 25% quota. The learned counsel had also relied upon the counter filed by a transport corporation, Madurai Region in WP(MD).No. 7412 of 2012 wherein in Paragraph No.4, it is admitted by the transport corporation that the applicability of Common Service Rules is unanimously been accepted by all the trade unions. According to him, in the said counter affidavit, the transport corporation had further agreed that 25% quota is available for graduate Conductors for being promoted to the post of Junior Checking Inspector. He had further relied upon the counter affidavit filed by Tamil Nadu State Transport Corporation, Madurai Region in WP(MD).No. 14444 of 2012 wherein the transport corporation has admitted about the applicability of Common Service Rules and availability of 25% reservation to the graduate conductors.

12.The learned counsel for the writ petitioner had further relied upon the order passed by this Court in WP(MD).No.14444 of 2012 dated 26.08.2014 wherein a writ petition filed by Tamil Nadu Arasu Pokkuvarathu Thozhilalar Sangam as against TNSTC, Madurai was dismissed by this Court. He had further relied upon the order of the Hon'ble Division Bench dated 30.09.2019 made in WA(MD).No.1138 of 2014 wherein the unsuccessful



W.P(MD).No.3505 of 2024

petitioner in WP(MD).No.14444 of 2012 have chosen to withdraw the writ appeal. Therefore, according to him, when an attempt was made earlier by the non-graduate Conductors to seek promotion on the basis of seniority, the writ petition was dismissed and the writ appeal was withdrawn by them.

13.The learned counsel for the writ petitioner had further contended that when the writ petition is filed only as against the official respondents to implement the Common Service Rules, the impleading petition filed by some of the trade unions seeking to implead themselves in the writ petition is not maintainable and the impleaded respondents should not be heard since they do not have locustandi to oppose the prayer in the writ petition.

14.If some of the trade unions rely upon the settlement reached under Section 12(3) of Industrial Disputes Act, they have to approach only the Labour Court for implementing the said settlement and they cannot oppose the prayer sought for in the present writ petition. He had further contended that all the transport corporations as on today are strictly following the Common Service Rules which was published through a Government Order by the Transport Department. Therefore, in such circumstances, the Transport Corporation Madurai Region alone cannot take a different stand and grant promotion to the post of Junior Checking Inspector based upon the seniority of the Conductor, ignoring 25% reservation to the graduate Conductors. In such circumstances, he contended that the Common Service Rules would



W.P(MD).No.3505 of 2024

prevail over 12(3) Settlement and he prayed for allowing the writ petition and sought a direction to promote the petitioner and other similarly placed persons under 25% graduate Conductor quota to the post of Junior Checking Inspector.

15.Per contra, the learned counsel appearing for the respondents 5 to 7 had contended that under Common Service Rules published in the year 1985, the Checking Inspectors were placed under working group/miscellaneous group. However, in 12(3) settlement dated 22.01.2011, it was decided to fix the pay scales of Checking Inspector separately. Under 12(3) settlement dated 13.04.2015 in Clause 26, it was decided that the Checking Inspector would be appointed on the basis of seniority and they were also moved from miscellaneous group to supervisory group. He had further relied upon Clause -5 of the said settlement and contended that it was decided to issue a separate Government Order to move the checking inspector from miscellaneous group to supervisory group. He had further relied upon Clause-5 of the 12(3) settlement dated 13.04.2015 in which the checking inspector were placed under supervisory group and separate grade pay was fixed.

16.The learned counsel had further relied upon Clause 26 of the said settlement and contended that it was agreed by all the trade unions that the post of Checking Inspector would be filled up through seniority. The learned



W.P(MD).No.3505 of 2024

counsel for the respondents had further relied upon the pay scale effected under 13th Wage Settlement and 14th Wage Settlement to point out that the level of 6th pay scale of Conductor and Level-I pay scale of Checking Inspector are one and the same, except increase in grade pay from Rs.4200/- to Rs.4300/-. He had further pointed out that the pay scale of Checking Inspector were placed only under supervisory cadre and not under working/miscellaneous group as contemplated under Common Service Rules.

17.The learned counsel for the respondents had further pointed out that as per Common Service Rules, the pay scale applicable to Junior Checking Inspector is Rs.620-50-875/-. If Common Service Rules are deemed to be prevailing even as on today, the pay scale would remain the same. However in each one of the 12(3) settlements, the pay scale of the Checking Inspectors have been enhanced quite in variation of the Common Service Rules. Therefore, according to him, the Common Service Rules have been modified/varied with the consent of the trade unions as well as by managements on several occasion under settlement reached in Section 12(3) of Industrial Disputes Act.

18.The learned counsel for the respondents had further contended that on 01.02.2024, a seniority list has been published by Madurai Region which is a composite list consisting of graduate and non-graduate Conductors based upon their seniority. This seniority list is based upon 12(3) settlement arrived



W.P(MD).No.3505 of 2024

at between the parties wherein they have agreed that the post of Checking Inspector would be filled up on the basis of seniority among the Conductors irrespective of the fact whether they are graduates or non-graduates. The petitioner, having not challenged the said seniority list, cannot now seek a direction to promote them under 25% quota contemplated under Common Service Rules.

19.The learned counsel for the respondents herein had further contended that an industrial disputes was raised in I.D.No.18 of 1991 before the Industrial Tribunal Tamil Nadu by Workman represented by the Secretary of Tamil Nadu Transport Corporation Administration Staff and Union Federation to formulate an integrated policy for filling up of vacancies in the posts of supervisory cadre and above.

20.The learned Presiding Officer of the Industrial Tribunal arrived at a finding that there cannot be distinction between the graduate and non graduate when all of them are in supervisory cadre and proceeded to hold that as per various settlements and guidelines for promotion to the supervisory and higher post will be on the basis of merit-cum-seniority and not on any other basis. This award was not challenged by the trade union or by any individual employee. This award was put to challenge only by the transport corporation in WP.Nos.19482 to 19485 of 2000. This Court by an order dated dated 26.02.2010 arrived at a finding that when the trade



W.P(MD).No.3505 of 2024

union/workmen have not challenged the award, the management cannot have any grievance and proceed to dismiss the writ petition. Therefore, the award of the Industrial Tribunal dated 13.05.1997 has reached finality. Hence, there cannot be any further contention on the side of the employees that still distinction of graduate and non-graduate among the Conductor has to be followed and 25% reservation has to be granted to the graduate Conductors.

21.The learned counsel for the respondents herein relying upon Section 18(3)(d) of Industrial Disputes Act, had contended that when an award is passed by the Tribunal is not only binding upon the persons who were employed at the relevant point of time, but also as against all other employees subsequently who got employed in the said establishment.

22.The learned counsel for the respondents herein had further contended that the Common Service Rules were published by the Transport Department under G.O.Ms.No.1373 Transport Department dated 12.12.1985 by Secretary to Government, Transport Department. He further pointed out that in all 12(3) settlements, distinction between graduate and non-graduate Conductor was given up, and seniority was introduced, the Transport Secretary is also a party to all 12(3) settlement. In such circumstances, when Transport Secretary himself has been a party to all 12(3) settlement, it cannot now be contended that the CSR would prevail over 12(3) settlement in view of the fact that it was approved by the Transport Secretary. The learned



W.P(MD).No.3505 of 2024

counsel for the respondents herein had further contended that under 12(3) settlement, it has been agreed that only seniority would be the criteria for being promoted from Conductor to Checking Inspector. If that has to be modified, unless a notice prescribed in the relevant provisions are issued, the condition of service prescribed under the settlement cannot be altered. Till a new settlement is arrived at, the provisions of the old settlement would continue to have effect.

23.The learned counsel for the respondents herein had further contended that the Common Service Rules published by the Transport Corporation had already been superseded in all respects by way of 12(3) with the consent of all trade union, the management and the transport department. Therefore, in such circumstances, the petitioner cannot stick on to the Common Service Rules, especially in the light of the order of the Industrial Tribunal in I.D.No.18 of 1991 which has been confirmed by the High Court. Hence, he prayed for dismissal of the writ petition.

24.The learned counsel appearing the third respondent herein who is supporting the case of the writ petitioner had contended that under wage settlement, the post of Checking Inspector was not the subject matter. He had further contended that Clause-26 of the said settlement only spoke about the promotion from the post of Checking Inspector to Higher post and it does not speak about the promotion to the post of Checking Inspector. Therefore,



W.P(MD).No.3505 of 2024

according to him, CSR would prevail, the petitioner and other similarly graduate Conductors shall be eligible to get promotion to the post of Checking Inspector under 25% quota.

25.I have considered the submissions made on either side and perused the material records.

(C)Discussion:

26.The dispute between the parties revolve around the fact whether the Common Service Rules published by the Transport Department in G.O.Ms.No.1373 dated 12.12.1985 would prevail or the settlement reached between the trade union and the management under Section 12(3) of Industrial Disputes Act would prevail for promotion from the post of Conductor to the post of Checking Inspector.

27.Before considering various clauses in the Common Service Rules, let us consider the scope and applicability of the Common Service Rules as stated in the Government Order dated 12.12.1985.

28.A perusal of the said Government Order reveals that the employee of the transport department were absorbed into the State Transport Corporation with effect from 15.09.1975. Since there are no definite Service Rules to govern the service conditions of the employees of various transport undertakings, on ad-hoc basis the transport corporations are being run causing inconvenience to management as well as the employees.



W.P(MD).No.3505 of 2024

29.A perusal of Clause-3 of the said Government Order reveals that all the State Transport undertakings were directed to adopt the said rules. The State Transport undertakings were also granted liberty to modify any of the rules with the approval of the Board of Directors. It further pointed out that the Common Service Rules will be applicable to all those employees except those who are governed by the standing orders and the standing orders will prevail over the service rules to ensure that the workers are no way put in a disadvantageous position.

30.A perusal of the Government Order further reveals that CSR have been framed by the transport department after discussing with all the Managing Directors and Corporations were directed to adopt the said rules. It further gives liberty to the concerned transport undertaking to modify the rules with the approval of the Board of Directors. Therefore, it is clear that CSR could very well be modified, by passing a resolution in the Board meeting by the concerned transport Corporations.

31.When 12(3) settlement were entered in the presence of the Special Deputy Commissioner of Labour, Chennai on various occasions, the Managing Director of all the Transport Corporations were parties to the same. All the trade unions were also parties. In the 12th Wage Settlement dated 13.04.2015, the Additional Chief Secretary to the Government who is the Chairman of the Transport Department and Additional Secretary to the



W.P(MD).No.3505 of 2024

Government (Finance) are also parties. In all the subsequent 12(3) settlements, the Additional Chief Secretary and the Transport Secretary are parties. It is brought to the notice of the Court that the Managing Directors have participated in the negotiation agreed for settlement after being authorised by their respective Board. It is clear that before the Special Deputy Commissioner of Labour, the Additional Chief Secretary to Government, Additional Secretary (Finance), the Managing Directors of the respective Transport Corporation and representative of various trade union have arrived at a settlement as contemplated under Section 12(3) of Industrial Disputes Act. In such an event, it could be safely concluded that the Common Service Rules published under G.O.Ms.No.1373 Transport Department, dated 12.12.1985 has been modified by the authorities who are competent to do so, by way of various settlements reached under Section 12(3) of Industrial Disputes Act.

32.A perusal of CSR further reveals that the pay scale of various employees has been fixed, including that of Conductors and Junior Checking Inspectors. It is not disputed by the learned counsel for the petitioner that the pay scale mentioned in the Common Service Rules have been enhanced by several counts in the subsequent 12(3) settlements. The post of Checking Inspector as well as the post of Conductor were under working group/miscellaneous group in the Common Service Rule. It is not in dispute



W.P(MD).No.3505 of 2024

that the post of Checking Inspector has been deleted from the working group and it has been included in the supervisory cadre under 12(3) settlement. In such circumstances, it is clear that on various occasions, the Common Service Rules have been modified/varied by all the authorities concerned under 12(3) settlement which is permissible under G.O.Ms.No.1373 Transport Department dated 12.12.1985.

33.Merely because some of the transport corporations have prepared a separate panel for graduate and non-graduate conductors, that would not mean that CSR is still being followed. As pointed out by the learned counsel for the respondents, after the post of checking inspector was placed under the supervisory group and a separate pay scale was introduced, all transport corporations have stopped publishing separate panel of graduate and non graduate conductors. Therefore, such a contention raised by the learned counsel for the petitioner is legally unsustainable.

34.With regard to the same dispute of segregating of graduate and non-graduate conductor, an industrial dispute was raised in I.D.No.18 of 1991 before the Industrial Tribunal, Chennai. After relying upon the judgment of the Hon'ble Supreme Court, the Tribunal was pleased to hold that such a distinction is contrary and proceeded to observe that seniority has to be followed by way of an order dated 13.05.1997. This order was not challenged by any of the trade unions or individual employee. The Transport



W.P(MD).No.3505 of 2024

Corporations have challenged the said award in WP.Nos.19482 to 19485 of 2000 which was dismissed by the Court on 26.02.2010. Thereafter, the graduate conductor cannot be permitted to raise the said issue again to contend that the graduate/non graduate distinction should still be maintained as contemplated under CSR. In fact, the order of the Industrial Tribunal and the order of the High Court were passed only after the CSR came into force in the year 1985.

35.The learned counsel for the transport corporation, without taking sides, has fairly submitted that they would abide by the orders of this Court.

36.The Common Service Rules though it was introduced in the year 1985, has not been amended so far. For the past 39 years, the employees and the management of the transport corporations have been following only the clauses under 12(3) settlement for granting various service benefits to the employees. The petitioner herein who has accepted the wage revision and placing the checking inspector in the supervisory group (contrary to CSR Rules), is attempting to stick on to, one of the clauses in the Common Service Rules, namely 25 % quota for graduate conductors. It clearly shows the double standards followed by the writ petitioner.

37.In order to clarify the position, this Court has suo moto impleaded the Secretary to Government, Transport Department as 8th respondent in the writ petition. A counter affidavit has been filed to the effect that for



W.P(MD).No.3505 of 2024

promotion to the post of Checking Inspector, a panel has to be prepared by including the eligible candidates among the employees as mentioned in Appendix II (C)(4) or CSR thereby indicating the fact that as if the Common Service Rules will prevail. It is not known how such a counter affidavit was filed by a Special Secretary to Government after being signatory to various 12(3) settlements wherein the CSR have been modified to a larger extent with the consent of the trade unions and the managements. The said counter has not taken into consideration, the order of the Industrial Tribunal in I.D.No.18 of 1991 or the order of this Court in WP(MD).Nos.19482 to 19485 of 2000. Therefore, this Court is constrained to reject the said counter affidavit.

38.A perusal of Clause 26 of 12(3) settlement dated 13.04.2015 reveals that the post of Checking Inspector has been brought under the supervisory cadre. A perusal of Clause 26 of 13th Wage Settlement dated 04.01.2018 reveals that as and when the vacancies arise, a panel would be prepared based upon the seniority, and promotion would be granted to the post of Checking Inspector. There is no reference about any distinction between the graduate and non-graduate or any reference about 25% reservation to the graduate conductors. This 13th Wage Settlement has been signed by the Additional Chief Secretary (Transport Department) and Secretary to Government (Finance) Department and by the Managing Directors of all the Transport Corporations apart from the representatives of various trade unions, in the



W.P(MD).No.3505 of 2024

presence of Special Deputy Commissioner of Labour. This settlement was not objected to when it was enforced. Thereafter, 14th Wage Settlement has been reached between the same parties on 24.08.2022 wherein Clause-20 of the 14th Wage Settlement is para materia to Clause 26 of the 13th Wage Settlement. Therefore, it is clear that all the parties concerned have agreed to supersede the Common Service Rules not only in respect of Wage revision, but also in respect of the fact that the Checking Inspectors were brought within the supervisory cadre from the working group.

39. When G.O.Ms.No.1373 Transport Department dated 12.12.1985 permits the Board of Directors of various Transport Corporations to vary or amend the Common Service Rules, the present 12(3) settlement could only be considered to be the exercise of such powers granted to the Board of Directors under G.O.Ms.No.1373 dated 12.12.1985. In such circumstances, the contentions of the petitioner that they will go back and resurrect the distinction between the graduate and non-graduate and seek 25% exclusive reservation for them, ignoring seniority, would certainly affect the settled position prevailing for so many years.

40. As rightly pointed out by the learned counsel appearing for the respondents 5 to 7, Madurai Region (to which the petitioner belongs) has published a seniority list on 01.02.2024 which is based on the seniority of Conductors, Special Grade Conductors as on 01.02.2024 without any



W.P(MD).No.3505 of 2024

distinction of graduate and non-graduate conductors. In the said seniority list, the Transport Corporation has strictly followed the consolidated seniority, without segregating them as graduate and non-graduate conductors. This seniority list has not been challenged by the writ petitioner knowing fully well that it is in consonance with the 14th Wage Settlement dated 24.08.2022. In such circumstances, the present writ petition seeking a mandamus to provide 25% quota to the graduate conductors to the post Checking Inspector is not maintainable.

41. In view of the above said deliberations, there are no merits in the writ petition and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

04.12.2024.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To

The Secretary to Government
Transport Department
Secretariat, Chennai -9



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W.P(MD).No.3505 of 2024

R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.3505 of 2024
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13999 & 17225 of 2024

04.12.2024