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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.12.2024

PRONOUNCED ON : 08.01.2025

CORAM:

**THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

W.A.No.2785 of 2022

T.Sivaraman

...

Appellant /
Petitioner

versus

1.The Chairman,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai -2.

2.The Chief Engineer (Personnel),
Tamilnadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai -2.

3.The Superintending Engineer,
Villupuram Electricity Distribution Circle,
Tamilnadu Generation and Distribution Corporation Ltd.,
Villupuram.

...

Respondents /
Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 19.09.2022 in W.P.No.25469 of 2016.



For Appellant : Mr.S.N.Ravichandran
For Respondents : Mr.Ananda Gopalan
Standing Counsel
for M/s.T.S.Gopalan & Co.

JUDGMENT

[*Judgment* of the Court was made by **G.ARUL MURUGAN, J.**]

This Writ Appeal is preferred as against the order dated 19.09.2022 made in W.P.No.25469 of 2016, wherein the claim of the petitioner/appellant to absorb him on par with one C.Thomas w.e.f. 29.04.1992 and also to count half of his service rendered from 1983 to 28.04.1992 came to be rejected.

2. The appellant claims to have been engaged as contract labourer from the year 1983 in the office of the Assistant Engineer (Construction) at Koteripattu Division of the Tamil Nadu Electricity Board. Pursuant to the Justice Khalid Committee Report, the Board initiated proceedings for absorption of the contract labourers in the sanctioned posts, bringing them under the time scale of pay.

3. It is the further claim of the appellant that the contract labourers including the appellant were called for an interview in the year 1991 and in the said call letter, he was placed at Serial No.8 and one



C.Thomas was placed at Serial No.20 and therefore, he is senior to him.

Even though C.Thomas was absorbed in the year 1992, however, citing some verification of details about the date of birth, the regularisation and absorption process of the appellant was delayed and ultimately, he was absorbed only in the year 1998 i.e., after a lapse of 6 years. As such, he claims that his service is to be regularised w.e.f. 1992 on par with C.Thomas.

4. Further, even though no details have been provided in respect of his service from 1983, a further relief is also claimed to count half of the service from 1983 to 28.04.1992 based on B.P.No.31 dated 08.09.2011. The learned single Judge by holding that, when the initial appointment as contract labourer was not made in accordance with the rules and their services mostly were engaged through private contractors, only pursuant to the report of Justice Khalid Commission, the respondents undertook a massive exercise of verifying the records for absorption. As such, the issue of senior or junior does not arise in the matter of consideration for absorption and ultimately, when the appellant was regularised on 17.02.1998, it cannot be found fault with and he cannot claim the benefits on par with the other persons and thereby dismissed the writ petition.



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5. Assailing the impugned order, the writ petitioner had preferred the above writ appeal.

6. Mr.S.N.Ravichandran, learned counsel for the appellant argued that when the appellant was issued with the call letter on 19.08.1991 for interview in respect of the absorption into regular service, he had appeared before the selection committee on 23.08.1991. Only citing some discrepancies noticed in the appellant's date of birth by letter dated 12.11.1991, the same was referred for verification and after a delay of nearly 6 years, ultimately the appellant was absorbed into regular service, by order dated 17.02.1998, based on which, he joined on 28.02.1998.

7. It is his further contention that when the call letter for interview in respect of regularisation was issued, the same was only on the basis of seniority and the appellant stood senior to one C.Thomas whose services came to be absorbed in 1992 itself. As such, when once the certificate of the appellant after verification was found to be correct, he is entitled to be absorbed into service on par with his junior C.Thomas w.e.f. 1992 onwards.

8. He further contented that the appellant had put in 7 years and 9 months of regular service and falls short of 10 years of qualifying service for pension, only due to the delay of respondents in verifying the certificates



and absorbing the appellant. As such the delay cannot be put against him

and therefore he is entitled to be absorbed from 1992, whereby he will be qualified for grant of pension.

9. The learned counsel also submitted that the appellant was engaged in contract work by the department directly and his wages were paid through petty cash book from the year 1983 to 1990 and not through the contractors. Therefore, as per Rule 14 of the Tamil Nadu Pension Rules, 1978 which is also adopted by the respondent Board, 50% of the contractual service has to be counted for considering the qualifying service and if 50% of the service from 1983 to 1990 is considered, then the shortfall of 2 years and 3 months of service in getting qualified for the pension will be met, whereby the appellant will be entitled to the pensionary benefits.

10. To be noted that even when the learned counsel for the appellant was provided with ample opportunities to produce documents to establish that the appellant was directly engaged by the respondent Board as contract labourer and wages were paid to him directly, no documents were produced in this regard.

11. In support of his contentions, the learned counsel for the appellant relied on the following decisions:-



- i. *Punjab State Electricity Board & another v. Narata Singh & another* [(2010) 4 SCC 317]
- ii. *Union of India & others v. Rakesh Kumar & others* [(2017) 13 SCC 388]
- iii. *Prem Singh v. State of Uttar Pradesh* [(2019) 10 SCC 516]
- iv. *State of Gujarat & others v. Talsibhai Dhanjibhai Patel* [2022 Live Law (SC) 187]
- v. *State of Himachal Pradesh & another v. Sheela Devi* [2023 Live Law (SC) 662]
- vi. *Government of Tamil Nadu v. R.Kaliamoorthy* [2019 (6) CTC 705 (FB)]
- vii. *J.Kasithangam & another v. The Tamil Nadu Electricity Generation and Distribution Corporation Ltd. & others* [W.P.No.23101 of 2012 dated 09.09.2014]

12. Mr.Ananda Gopalan, learned Standing Counsel for the respondents argued that the claim made by the appellant by citing the call letter issued in the year 1991 and claiming parity with C.Thomas is without any basis. The said C.Thomas was originally inducted as contract labourer in the year 1980, based on the same, his services were absorbed on 24.04.1992, whereas the appellant was engaged as contract labourer in the year 1986 and his services came to be absorbed on 17.02.1998.

13. It is his further contention that since there was a discrepancy in the date of birth furnished by the appellant and one adduced by the Union, the same was verified after which his services were absorbed, but that does not have anything to do with the date of absorption and it is misconceived to compare with that of C.Thomas whose original induction into service was in the year 1980.



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14. The learned Standing Counsel further contended that, when the service regulations of the Board were amended and the issue was taken up by the Hon'ble Supreme Court by challenging the amendments, based on the orders passed, Justice Khalid Commission was appointed for going into the disputes between the workmen and the Board. The Commission had recommended for absorption of 18,006 contract labourers in the year 1991 and the Hon'ble Supreme Court in the case of ***T.N. Electricity Employees and Contract Labour Union v. T.N. Electricity Board & others*** reported in ***1995 Supp (3) SCC 164*** had extended time to absorb the contract labourers till 31.03.1998 and prior to which, the appellant was absorbed into service on 17.02.1998.

15. It is his further contention that the appellant accepted the absorption but only after he got superannuated on 30.11.2005 and when his claim for pension was rejected on 17.03.2007 in view of not fulfilling the qualifying service, he had challenged the same that too after 8 years in the year 2015 and therefore, the same is hit by laches.

16. He further contended that the appellant was not engaged as contract labourer directly by the Board but he was under the private employment through a third party contractor and when he is entitled to the



provident fund and gratuity in respect of the private employment, parallelly the appellant cannot also seek for pension from the Board in respect of that period. Further, for none of the employees who were absorbed based on the Justice Khalid Commission report, the services rendered in contract employment had been included for pension benefits. Also by relying on the decision of the Division Bench of this Court in Writ Appeal(MD)No.785 of 2015 dated 28.10.2015 [Superintending Engineer v. Pondurai], had submitted that G.O.(Ms.)No.408, Finance (Pension) Department dated 25.08.2009 and the Board Proceedings in B.P.No.31 dated 08.09.2011 could not be extended to contract labourers.

17. Only since the appellant had not completed the qualifying service of 10 years, his claim for pension was rejected, which was rightly taken note of by the learned single Judge and dismissed the writ petition which needs no interference and sought for dismissal of the appeal.

18. Heard the submissions of the respective counsel and also considered the entire materials available on record.

19. The appellant claims to have been initially engaged as contract labourer in the office of Assistant Engineer (Construction) at Koteripattu Division of the Tamil Nadu Electricity Board from the year 1983. However,



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according to the respondents, the appellant was engaged as contract labourer only from the year 1986. In this regard, the appellant has not produced any materials to show that he has been engaged from the year 1983 and therefore it can only be concluded that the appellant was engaged from the year 1986 onwards.

20. In the year 1986-87, when the post of Mazdoor was abolished and amendments were made to the service regularisations prescribing minimum educational qualification, the amendments came to be challenged before this Court and went upto the Hon'ble Supreme Court and considering the dispute between workers and the Board, Justice Khalid Commission was appointed to consider the disputes that had been raised. Pursuant to the massive exercise undertaken by the Committee, 18,006 contract labourers were recommended to be absorbed.

21. In para 100 of the report of the Justice Khalid Commission, the number of workers in each of the Union, according to the number of years put in by them, were listed out and based on which the absorption process was to be undertaken. For easy reference, it is extracted hereunder:-



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“100. I am giving below the number of workers in each of the petitioners' Union, according to the number of years put in by them. They will be referred as Group I to Group XI.

Group	Number of years of service	Petitioners			Total
		1 st	2 nd	3 rd	
I	10 years & above	921	866	1232	3019
II	Bet. 9 yrs & 10 yrs	251	320	517	1088
III	Bet. 8 yrs & 9 yrs	289	344	513	1146
IV	Bet. 7 yrs & 8 yrs	247	320	695	1262
V	Bet. 6 yrs & 7 yrs	339	432	653	1424
VI	Bet. 5 yrs & 6 yrs	362	626	1445	2433
VII	Bet. 4 yrs & 5 yrs	288	646	1135	2069
VIII	Bet. 3 yrs & 4 yrs	337	434	1843	2614
IX	Bet. 2 yrs & 3 yrs	150	331	1159	1640
X	Bet. 1 yr & 2 yrs	38	295	543	876
XI	Workers whose service details not readily available	435	-	-	435
	Total	3657	4614	9735	18006

**Inclusive of 100 workers who have filed W.P.10701/87 in the High Court and whose particulars of service not available (S)No.1301 to 1400 in the list.”*

22. In para 104 clause 5, the time schedule for selection of the first

7,000 workers contained in Group-I to V in para 100 has been listed out,

which is as follows:-

5. Time schedule for selection of first 7,000 workers is as follows:-

Groups	No. of workers	Target time
I	3019	31.8.1991
II	1088	
III	1146	



<i>Groups</i>	<i>No. of workers</i>	<i>Target time</i>
<i>IV</i>	1262	31.12.1991
<i>V</i>	485 (<i>vide para 108</i>)	

23. As per the details in the chart, the abovesaid groups have been classified in descending order in respect of the number of years of service they have put in and those employees who had put in service of 10 years and above were placed in Group-I and in that category there were a total number of 3,019 employees.

24. As per the time schedule in para 104.5, these 3,019 persons in Group-I have to be absorbed, for which a target time was fixed as 31.08.1991. In respect of the employees numbering 1,088 in Group-II between 9 & 10 years of service, 1,146 in Group-III between 8 & 9 years of service, 1,262 in Group-IV between 7 & 8 years of service, and 485 in Group-V, they have to be absorbed as per the time schedule, before 31.12.1991. Therefore, all the 7,000 employees placed in Group I-V who had put in 6 years and above have to be absorbed prior to 31.12.1991.

25. Insofar as the appellant is concerned, he has been engaged as contract labourer from the year 1986 and in the year 1991, he had put in only between 5 & 6 years and was placed in Group-VI. Therefore, he cannot



claim any parity in respect of absorption of the employees who had been placed either under Group-I or Group-II to V.

26. When C.Thomas had been initially engaged as contract labourer in the year 1980, he had completed 10 years of service in 1990 itself and was placed in Group-I among 3,019 employees and his time schedule to be absorbed was fixed on 31.08.1991. Based on which, the services of C.Thomas came to be absorbed in the year 1992.

27. The learned counsel for the appellant though disputed the appointment of C.Thomas in the year 1980 but even after sufficient opportunity was given to him to produce any records to substantiate his claim disputing the date of appointment of C.Thomas, no records are forthcoming in this regard. Therefore, it is evident that C.Thomas, who was appointed in the year 1980 had completed 10 years of service in the year 1990 and was placed under Group-I in the Justice Khalid Commission report and his services were absorbed in the year 1992.

28. Insofar as the employees placed in the other groups with 6-11 years of service, who were also recommended to be absorbed, the Hon'ble Supreme Court in the case of ***T.N. Electricity Employees and Contract Labour Union v. T.N. Electricity Board & others*** reported in ***1995 Supp***



(3) **SCC 164** had extended the time to absorb the balance contract labourers as per the report till 31.03.1998. The relevant portion is extracted as under:-

“7. Coming to the extension of time as prayed for, we are prepared to extend time till 30-9-1995 to absorb/employ 436 workers and time till 31-3-1997 to absorb/employ 5500 more belonging to groups other than Groups I to V. All the rest, whose number would be 5506, shall have to be employed/absorbed on or before 31-3-1998. In doing so, the number of Group V workers would not be confined to 485 as mentioned in para 104(5) of the report, as their number really is 1424, as given in para 100, to which our attention has been invited by Shri Vaidyanathan, appearing for one of the Unions. We make it absolutely clear that no further extension shall be given in this regard and the failure of the respondents to absorb all the remaining workers on or before 31-3-1998 shall be taken to be an act of wilful disobedience and they would suffer the consequences accordingly.”

29. When the Hon'ble Supreme Court had extended the time allowing the respondent Board to absorb the workmen contained in the Groups between 6 & 11 years of service or before 31.03.1998, the respondents, by order dated 17.02.1998, had absorbed the appellant in the services of the Board as helper. Even though the call letters were issued in the year 1991 in respect of all the employees who are found placed in the report recommended for absorption, they were placed under different groups based on their years of service and their dates to be absorbed had also been made in the recommendation itself.

30. During that process, since there was a discrepancy in the date of birth furnished by the appellant and the Union, the same was sent for



verification and had also been completed. The appellant is only contending that for the verification, the respondent Board had taken a long period of 6 years and had the verification been completed earlier, he would have been absorbed in an earlier point of time, which is factually misconceived.

31. As indicated earlier, the appellant cannot claim any parity with C.Thomas as he had been initially engaged in the year 1980 and having completed 10 years of service, he had been placed in Group-I and was absorbed in service in the year 1992. The verification of the certificate was not the reason for delay in absorption but since the appellant was initially engaged as contract labourer only in the year 1986, he had completed only 5 to 6 years of service in the year 1991. As such he was placed only in Group-VI in the Committee recommendation report and therefore, his services came to be absorbed on 17.02.1998 along with the other persons with whom he was placed in Group-VI, which is also prior to the extension of time granted by the Hon'ble Supreme Court for the respondent Board to absorb the workmen as recommended by the Commission.

32. In such view of the matter, there is no error or infirmity in the order of the respondent Board in absorbing the services of the appellant



from 17.02.1998 and the appellant is not entitled to claim any parity with C.Thomas as he has been placed in a completely different group altogether.

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33. Coming to the other submissions made by the learned counsel for the appellant, insofar as counting 50% of the services rendered by the appellant as contract labourer, it is the stand of the appellant that the appellant was not engaged directly by the Board and he was only engaged by a private contractor. As referred earlier, even though the appellant had claimed that he had been engaged directly by the Board and wages were also paid to him directly, in spite of opportunities, no document has been filed to establish that he was in direct engagement as contract labourer by the Board and wages were paid to him directly. In the absence of any such materials, it can only be concluded that the appellant was engaged as contract labourer through the private contractors.

34. The appellant had relied on the Board Proceedings in B.P.No.31 dated 08.09.2011 to contend that the Board had implemented G.O.(Ms.)No.408, Finance (Pension) Department dated 25.08.2009 wherein the Government had ordered that half of the service rendered by the Government servants in temporary services viz. non-provincialised service, consolidated pay, honorarium and daily wages on or after 01.01.1961 and



absorbed in regular service before 01.04.2003 shall be counted for pensionary benefits along with regular service.

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35. The appellant had relied on the decision of *Punjab State Electricity Board's* case [cited supra] wherein it is held that the claim to include the period worked in work charged service by the employee for grant of pension cannot be rejected. Further, the decision of *Rakesh Kumar's* case [cited supra] is also relied on to contend that the period of services of the casual labourer / daily wages employee who were later regularised, ought to be counted for qualifying service for pensionary benefits. Further, the decision of *Prem Singh's* case [cited supra] was relied wherein the Hon'ble Supreme Court, after relying on the earlier referred decisions held that the work charged employment on temporary basis be counted for qualifying services of pension.

36. The learned Standing Counsel for the respondents made submissions and distinguished the present facts from the above cited decisions, as in all those decisions the temporary / daily wages and work charged capacity were directly through the Board of the respective state wherein materials were placed to establish that direct payments had been made to the employees by the Board. Whereas in the instant case, the



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appellant had been in contract employment through a private contractor and he had never been directly engaged and directly paid by the respondent Board. In such circumstances, the above decisions will not apply to the facts of the present case and the claim of the appellant to count 50% of the service rendered in contract employment cannot be sustained.

37. The learned counsel for the appellant had also relied on the decision of the Full Bench of this Court in the case of ***Government of Tamil Nadu v. R.Kaliamoorthy*** reported in **2019 (6) CTC 705 (FB)** and submitted that 50% of the services rendered in non-provincialised service, consolidated pay, honorarium or daily wage basis shall be counted for pension, if the services are regularised prior to 01.04.2003.

38. In this regard, it is appropriate to refer the decision relied on by the learned Standing Counsel for the respondents in the case of **Superintending Engineer v. Pondurai** wherein the Division Bench of this Court by order dated 28.10.2015, after considering G.O.(Ms.)No.408, Finance (Pension) Department dated 25.08.2009 and B.P.No.31 dated 08.09.2011 had held that G.O.(Ms.)No.408 and B.P.No.31 cannot be extended to contract labourers, unless, the Government or Board specifically takes a conscious decision to extend the benefits to the members



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of the society who had put in long years of service as contract labourers and were subsequently absorbed. The relevant paragraphs are extracted hereunder:-

“6. At best, the respondent was one among many members of the Society, working on contract basis with the appellants Board, which was abolished by G.O.Ms.No.950, Labour and Employment Department, dated 08.08.1990. Therefore, the Government Order makes it clear that there is demarcation consequent to G.O.Ms.No.950, Labour and Employment Department, dated 08.08.1990. Prior to that, the respondent and all other members of INDCOSERVE were Contract Labourers and not appointed either substantively or in an officiating or temporary capacity of the appellants Board in a qualifying service. On issuance of the said Government Order pursuant to absorption on 01.05.1999, the respondent became an employee of the appellants Board. If that fact is clear and undisputed, the commencement of qualifying service would be reckoned from 01.05.1999 and not before that. Service as a member of the Society (INDCOSERVE), a contract which came to be abolished, can never be a qualifying service. In such view of the matter, as per Rule 11 of the Tamil Nadu Pension Rules, 1978, the respondent is ineligible for pension unless and until he puts in the qualifying years of service as required under Rule 43(2) of the Tamil Nadu Pension Rules, 1978. G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 or the Board's Proceedings, as has been prescribed earlier would be applicable only in respect of services viz., Nominal Muster Roll or Temporary Casual Labourer in the service of the Board and not for the members of a Society.

7. We find no reason to accept G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 or the Board's Proceedings could be extended to Contract Labourers, unless the Government or the Board specifically takes a conscious decision to extend the benefit to the members of the Society, who had put in long years of service as Contract Labourers and were subsequently absorbed. We would, however, like to express our concern that the Government and the Board should consider and issue appropriate Government Orders similar to that of G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, to consider the plight of large number of employees, who had put in long years of service for the benefit of the Board even as Contract Labourers through the Society or otherwise.



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8. *Insofar as the present case is concerned, we find that neither G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 nor the Board's Proceedings No.31, dated 08.09.2011, would come to the benefit of the respondent/writ petitioner and in terms of Rule 11 of the Tamil Nadu Pension Rules, 1978, which clearly provides that the commencement of qualifying service of a Government servant will be the date on which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case on hand, appointment has not been made in respect of the present respondent/writ petitioner till 01.05.1999. He is not entitled to seek inclusion of the period of service as member of society for the purpose of pensionary benefits in the absence of rule or otherwise."*

39. In view of the above decision of the Division Bench where, after considering G.O.(Ms.)No.408, Finance (Pension) Department dated 25.08.2009 and B.P.No.31 dated 08.09.2011, it has been concluded that the benefits could not be extended to the contract labourers. Admittedly when the appellant had discharged his service as contract labourer from 1986, the benefits of B.P.No.31 cannot be extended to him.

40. It is also brought to the notice by the learned Standing Counsel for the respondents that, in fact, for none of those employees, whose services had been absorbed based on the Justice Khalid Commission report or several thousand employees absorbed subsequently, the contract employment period was included for counting the pensionary benefits.

41. Further, as rightly contended by the learned Standing Counsel for the respondents that when all the contract labourers like the appellant, who had been engaged through the private contractors, have claimed



provident fund and gratuity for those periods based on the private employment, they cannot also parallelly claim for pension for the same period from the Board. In the instant case, it is not made clear as to whether the appellant had claimed provident fund and gratuity from the private contractor and even otherwise it is always open to him to make such a claim when he is entitled to, if he had been employed as contract labourer.

42. The appellant having been absorbed in service on 17.02.1998 and retired from service on 30.11.2005, he had only put in 7 years and 9 months of regular service and is short of 2 years and 3 months for the qualifying service of 10 years for being considered for pensionary benefits. Therefore, the claim of the appellant had been rightly rejected by the respondent Board. Even though the argument of the respondent Board that the claim of the appellant cannot be sustained due to laches is liable to be rejected for the reason that when in the earlier round of litigation, the learned single Judge had considered the issue of laches and had remanded the issue before the Board for a fresh decision, still that does not alter the position in view of the above deliberations we have made in the earlier part of the order.



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43. In view of the same, we see no error or infirmity in the order passed by the learned single Judge which needs interference. Accordingly, this Writ Appeal stands ***dismissed***. There shall be no order as to costs.

[A.S.M.J.] [G.A.M.J.]
08.01.2025

Speaking order

Index : Yes

Neutral Citation : Yes

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To

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Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai -2.

2.The Chief Engineer (Personnel),
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3.The Superintending Engineer,
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W.A.No.2785 of 2022



Dr. ANITA SUMANTH, J.
AND
G.ARUL MURUGAN, J.

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Pre-Delivery Judgment made in
W.A.No.2785 of 2022

08.01.2025