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W.A.(MD)No.1240 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.08.2025
DELIVERED ON : 25.08.2025
CORAM:

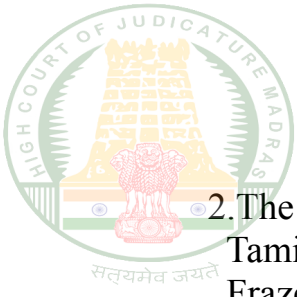
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.(MD)No.1240 of 2024
and
C.M.P.(MD) No.9548 of 2024

- 1.The Secretary to the Government,
Commercial Taxes and Registration Department,
Fort St.George, Secretariat,
Chennai -9.
- 2.The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai -28.
- 3.The District Registrar (Administration),
Madurai (South), Madurai. ... Appellants / Respondents 2 to 4

Vs.

- 1.Lakshmanan,
Son of Late K.Jayapal Naidu,
No.12, Angsaraba Illam,
Loordhu Nagar West 2nd Cross Street,
K.Pudur, Madurai - 625 007. ... 1st Respondent / Writ Petitioner



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2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai - 600 003.

3. The Commissioner,
Hindu Religious and Charitable,
Endowments Department,
Chennai -34.

... Respondents 2 and 3 / Respondents 1 and 5

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed in WP(MD)No.11544 of 2020, dated 28.02.2024.

For Appellants	:	MR.Veera Kathiravan Additional Advocate General Assisted by Mr.S.Shaji Bino Special Government Pleader
For R1	:	Mr.V.Manikandan
For R2	:	Mr.V.Panneerselvam
For R3	:	Mr.P.Subbaraj Special Government Pleader (HR & CE)

JUDGMENT

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

This intra Court appeal is directed against the order dated 28.02.2024 made in W.P.(MD)No.11544 of 2020, whereby the writ Court allowed the writ petition, directing the appellants to regularise the



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services of the writ petitioner as Junior Assistant in Registration Department with effect from 23.04.2009 and settle all the consequential benefits, but however restricting the actual monetary benefits with effect from 06.07.2017.

2. The short facts to be noted in the above appeal is as follows:

There was a en-mass strike of Government employees in the year 2003 and the Government resorted to employment of temporary employees to an extent of 500 persons in every district who are sponsored by the District Employment Exchange. Pursuant to the said decision, the first respondent / writ petitioner was appointed as Junior Assistant in the Registration Department on contractual basis, for a consolidated pay of Rs.4000/- per month in the year 2003. The Government later issued G.O.No.263 P & AR Department dated 21.06.2004 by terminating the services of temporary Junior Assistants but however later issued G.O.No. 290 P & AR Department dated 23.06.2004, cancelling the termination and allowing them to continue as Junior Assistant.

3. The Government later took a policy decision to select the Junior Assistant who were appointed temporarily for the Tamil Nadu Ministerial



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Services by conducting a special competitive examination in all the departments. In this regard G.O.No.155 Personal and Administrative Reforms(P) Department dated 19.09.2006 came to be passed. Accordingly Tamil Nadu Public Service Commission (hereinafter referred to as 'TNPSC') was requested to conducted the special qualifying examination. TNPSC conducted Group – IV special qualifying examination on 17.02.2008 for the temporary employees working as Junior Assistants.

4. In the special qualifying examination conducted, the first respondent/ writ petitioner was successful in clearing the examination and by order dated 23.04.2009, he was selected and allotted to the HR & CE Department. The writ petitioner and several other persons had a grievance that they have not been appointed in the Registration Department where they were originally appointed and working on consolidated pay. The writ petitioner had challenged the orders issued by the TNPSC dated 23.04.2009 and sought for consequential direction to regularize the service of the writ petitioner in the Registration Department. The writ petition came to be allowed on 05.11.2009. However, the orders of the writ Court was set aside in the Writ Appeal preferred by the TNPSC by



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order dated 27.07.2010 in W.A(MD)No.242 of 2010. The Division Bench had directed the concerned department to issue fresh orders based on the initial orders issued by TNPSC appointing the writ petitioner in the HR&CE Department within a period of 10 days from the date of receipt of a copy of the order and the 1st respondent was directed to join within 15 days and in the event of failure to join the concerned department, the TNPSC and the Government were given liberty to take appropriate steps to fill up those vacancies. A Review Petition came to be filed in Rev. Appl. (MD)No.121 of 2010 which came to be dismissed on 29.11.2010. Against which, the writ petitioner also filed SLP (Civil)No.8403 of 2011 before the Hon'ble Supreme Court and the SLP was also dismissed on 23.09.2013.

5. In the meantime, a mercy petition was submitted by the writ petitioner along with other persons seeking to accommodate him in the Registration Department. In the mercy petition submitted, certain recommendations were came to be made. In the mean time, the Writ Appeal filed by similar persons, came to be allowed on 03.11.2016 in WA(MD)Nos.480 and 481 of 2012 and others, considering the recommendations made regarding accommodating the persons in the



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Registration Department itself. TNPSC considered the request and by order dated 09.08.2017, directed the writ petitioner to join in the allotted HR & CE Department within a period of two weeks from receiving appropriate orders, failing which, they will recommend for removal of his name from the selection list to the Government.

6.The writ petitioner along with similarly placed persons had challenged this communication in WP(MD)No.16662 of 2017. The writ petitions came to be disposed of on 26.04.2019 with a positive direction to consider the proposal relating to the appointment of petitioner on regular basis and to approve the same and to forward to the Government for appropriate orders within the time frame. TNPSC preferred Writ Appeals and WA(MD)No.951 of 2021 came to be filed against the writ petitioner. The Division Bench by order dated 28.04.2021 allowed the Writ Appeals and set aside the positive direction issued. In the meantime, TNPSC had by communication dated 16.09.2019 has intimated that already all the 249 vacancies in the Registration Department in the 2007 recruitment have been filled up as per merits following the rule of reservation and all the selected candidates have joined the respective departments. The selection process of the Group – IV services have also



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been finalized by taking into account the number of vacancies that was arrived at after special competitive examination 2007 and therefore there was no vacancy. It is further stated that the claim of the writ petitioner in view of the orders passed in the writ petition could be decided at the level of the Government itself regarding the implementation of the said request.

7.The Inspector General of Registration, issued orders dated 29.08.2020 rejecting the claim of the writ petitioner to accommodate him in the Registration Department and advised him to join in the HR&CE Department as allotted by the TNPSC. This order dated 29.08.2020 was again put to challenge in W.P.(MD)No.11544 of 2020. The writ Court by order dated 28.02.2024 allowed the writ petition by directing the Government to regularize the services of the writ petitioner as Junior Assistant in Registration Department with effect from 23.04.2009 and allowed him to retire from services on 28.05.2024 with all consequential benefits, further directed that the writ petitioner will be entitled to notional pay with effect from 23.04.2009 but actual monetary benefits would be paid only with effect from 06.07.2017 and the arrears of salary shall be quantified and disbursed. Assailing the impugned order in the



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writ petition, the State has preferred the above appeal.

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8. Mr.Veera Kathiravan, learned Additional Advocate General, contended that the writ petitioner initially was temporarily appointed as Junior Assistant in the Registration Department on consolidated basis, in view of an exigency created due to strike, from which he was originally terminated. However, the Government by taking liberal consideration decided to conduct a special qualifying examination in which the writ petitioner participated and on being successful, he was selected and appointed to HR & CE Department. The writ petitioner did not join in the respective department but however had been simply agitating to accommodate him to his place of choice and had continued to work on consolidated pay in the Registration Department. Learned Additional Advocate General further contended that orders were passed by the Division Bench directing the writ petitioner to join in services within 15 days from the issuance of fresh orders and permitted the TNPSC and Government to fill up the post in the even of failure. Since the writ petitioner had not joined the service, all the vacancies had been duly filled up, in the respective departments. Even after the review petition and the SLPs, challenging the order of the Division Bench came to be

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dismissed, the writ petitioner did not care to join the allotted post. When orders were issued appointing the writ petitioner in HR &CE Department, he had wantonly not joined the post and when he has worked on consolidated salary on his own volition all along, the writ Court had allowed the writ petition, only on the ground that after a long lapse of time, the writ petitioner cannot be sent out empty handed. When the first respondent did not chose to join and the entire vacancy has been filled up, by the Group – IV examination conducted by the TNPSC following the Rule of reservation, the order of the writ Court is only on a misplaced sympathy which is without any legal basis and as such he sought for interference of this Court.

9. Contending contra, learned counsel for the first respondent argued that when the claim of the petitioner had always be recommended by the department to accommodate him in the Registration Department, he cannot be penalized. It is his contention that when several other persons have been accommodated in the parent department, nothing prevented the Government from accommodating the petitioner in the Registration Department. Only since at every point of time, there was a favourable order or recommendation made in favour of the first

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respondent, on bonafide belief that he would be accommodated in the registration department, he continued to work on consolidated payment and when he has successfully cleared the special qualifying examination, there was no impediment on the government in passing the order to that effect, which had been taken note of by the writ Court in granting relief which is justified and needs no interference in this appeal.

10. Heard the rival submissions and considered the materials available on record.

11. Due to the exigency created in the year 2003, in view of the strike by the Government employees, the Government had resorted to fill up 500 temporary posts on consolidated pay in each district. Pursuant to the orders issued by the Government, in G.O.No.85, P & AR Department, the first respondent / writ petitioner was appointed as temporary Junior Assistant on 04.07.2003 on consolidated pay of Rs.4000/- per month in Registration Department. Even though, earlier the Government decided to terminate all the services, but however later came out with the policy that a special qualifying examination could be conducted through which eligible candidates could be selected. In this regard, the Government

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issued G.O.No.155, P&AR dated 19.09.2006 to conduct the special qualifying examination. The first respondent appeared and came out successful in the special qualifying competitive examination conducted by the TNPSC. TNPSC issued order dated 23.04.2009 selecting and appointing the first respondent as Junior Assistant in the HR& CE department. Had the writ petitioner joined as Junior Assistant in the HR&CE department, pursuant to the orders issued by the TNPSC, the issue would have ended there.

12. The first respondent did not join in the HR&CE Department and had filed writ petition in W.P(MD)No.4461 of 2009 along with others challenging the selection list to the post included in Group-IV service special qualifying examination dated 23.04.2009 and sought for consequential relief to appoint them in the parent department ie., Registration department. The writ Court on considering that the 262 vacancies, that are available in the Registration Department were not finalized and included during the qualifying examination, by order dated 05.11.2009 allowed the writ petition and directed the TNPSC to post the writ petitioner in the Registration Department. However, in the Writ Appeal filed by the TNPSC, the Division Bench by finding that that the

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special qualifying examination was not to simply absorb the persons in the respective posts, but it was a fresh selection, as the vacancies that was available, was only 4103 but the candidates who have been selected as temporary employees were 11,356. As such, only if the candidates gets selected in the qualifying examination, they cannot be accommodated and the selection and appointment issued depend on several factors such as marks, vacancy position and by applying the Rule of reservation.

13.Holding so, the Division Bench by order dated 27.07.2010 allowed the Writ Appeal by directing the TNPSC to issue fresh orders within a period of 10 days from the receipt of the order and the first respondent was directed to join in the allotted post within 15 days failing which the TNPSC and the Government were at liberty to take appropriate steps to fill up the vacancies. The relevant portion of the order is extracted hereunder:

"As per this, in the order of merit, selected candidates have to be arranged by applying rule of reservation and as far as this rule of reservation is concerned, this has to be followed in each and every department while making an appointment. Unless candidates are allotted by the Service Commission to the concerned Department by applying rule of reservation, certainly, in making appointment, that is to say, while detailed

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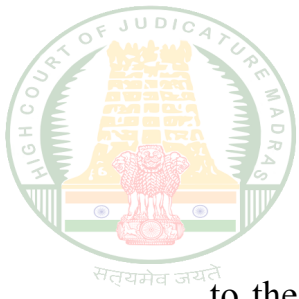
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below, to which the private respondents / writ petitioners were originally allotted, are directed to issue fresh orders passed on the initial orders passed in favour of the private respondents / writ petitioners, within a period of ten days from the date of receipt of a copy of this order and thereafter, within a period of 15 days, the private respondents / writ petitioners are at liberty to join the concerned department and in the event of their failure to join the concerned department, the Service Commission as well as the Government is at liberty to take appropriate steps to fill up those vacancies."

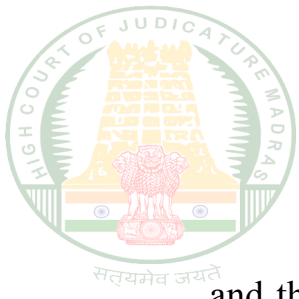
14. In view of the above orders passed by the Division Bench, the first respondent was directed to join in the post of Junior Assistant in the HR&CE Department within 15 days from the issuance of the order. The writ petitioner filed review in Rev.Aplc(MD)No.121 of 2010 which came to be dismissed on 29.11.2010. Further, the order of the Division Bench was challenged before the Hon'ble Supreme Court in SLP (Civil)8403 of 2011 and the SLP also came to be dismissed on 23.09.2013. In spite of exhausting all the remedies available, the first respondent did not chose to join in the allotted post in the HR&CE Department as directed by the Division Bench and confirmed by the Hon'ble Supreme Court.



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15. However, the first respondent decided to send a mercy petition to the Government to accommodate him in the Registration Department itself. Though the claim of the first respondent was rejected and reached finality, he decided to take advantage of the order passed by the Division Bench dated 03.11.2016 in W.A(MD)No.480 of 2012 and others, in respect of the similarly placed persons. In that Writ Appeal, since a proposal was sent by the Registration Department with a positive recommendation, the Division bench had directed the State Government to take a decision on merits based on the proposal. All the claims were considered based on the proposals pending and the TNPSC by order dated 09.08.2017, rejected his claim and directed the first respondent to join in the HR&CE Department within a period of two weeks, failing which TNPSC will recommend his name to be removed from the selection list. Consequently the Inspector of General, Registration Department, by order dated 29.08.2017 implemented the order of TNPSC and directed the first respondent to get himself relieved from the post of Junior Assistant and joined as Junior Assistant in the HR&CE Department on or before 31.08.2017.



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16. Even after his mercy petition came to be rejected and TNPSC

and the department has passed orders directing him to join in the HR & CE Department prior to the fixed date, the first respondent did not choose to join in the said post. But however had challenged the orders in W.P. (MD)No.16662 of 2017 before the writ Court. The writ Court in view of the earlier recommendations and proposals put forth, disposed of the writ petition along with other writ petitions on 26.04.2019, directing the TNPSC to consider the proposal on regular basis and approve the same. Since there was a positive direction, the TNPSC filed Writ Appeals in W.A(MD)No.242 of 2010 which came to be allowed and the positive directions issued by the Writ Court, were set aside. But however, as per the orders of the writ Court, the proposals were alone be considered on merits.

17. As already the entire selection have been made and the 249 vacancies have been filled up in the Registration Department in respect of the 2007 recruitment by following the Rule of reservation and there were no vacancies available, TNPSC vide its communication dated 16.09.2019 sent to the Government, had informed that the entire vacancies available after the Special competitive examination 2007 Recruitment were

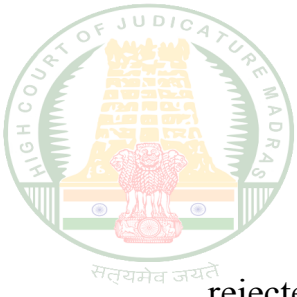
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considered and the posts have been filled up in the selection process. All the vacancies have been filled up and as such the TNPSC had informed the Government to take a decision at their level itself regarding implementation of the order of the writ Court. Upon the same, the second appellant Inspector General of Registration by proceedings dated 29.08.2020 had issued orders rejecting the claim of the first respondent and had directed him to forthwith join in the HR&CE Department in view of the fact that already TNPSC had communicated that the name will be deleted from the selection list on the failure to join in the respective post.

18. The first respondent had chosen to challenge this order also in WP(MD)No.11544 of 2020. The writ Court on considering this writ petition relying on the recommendations made earlier in respect of accommodating the first respondent in the Registration Department and also on concluding that the service of the first respondent was not a back door entry and he had cleared the special qualifying examination and since he has been in long years of service, had allowed the writ petition, directing the Government to regularize his services as Junior Assistant in the Registration Department with effect from 23.04.2009.



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19. It is to be noted that when the plea of the first respondent was rejected by the Division Bench and the first respondent was directed to join in the HR&CE Department within a period of 15 days from the date of issuance of fresh orders and further the Division Bench had given liberty to the State Government and the TNPSC to fill up the posts in the case of failure on the part of the first respondent to join in the appointed post, still the first respondent thought that those directions would not bind him and he has every say and choice to decide where he must work. The first respondent came up with a review petition and after the same was dismissed, decided to file an appeal before the Hon'ble Supreme Court. Even after the SLP came to be dismissed by the Hon'ble Supreme Court, the first respondent having exhausted all his remedies open and the orders had also reached finality, was stubborn and bold enough not to comply with any of the orders passed by the TNPSC, Government or this Court or the Hon'ble Apex Court.

20. The first respondent decided to wait for a decision to be taken in the directions issued in respect of the similarly placed persons and had come up with a mercy petition. Those petitions and claims were also considered and the TNPSC rejected the claim but however allowed the



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first respondent to join in the HR&CE Department within a period of two weeks, failing which TNPSC would recommend the removal of the first respondent's name in the selection list. The second appellant / Inspector General of Registration also had passed orders directing the first respondent to get relieved and join as Junior Assistant in the HR&CE Department on or before 31.08.2017. When even the name of the first respondent was to be struck off from the selection list and date was fixed to join in the appointed post, still the first respondent did not chose to join in the said post but merrily continued to work on consolidated pay in the Registration Department. The appointment or regularization of service in the selected post was not attractive or acceptable for the first respondent and the first respondent thought that he is entitled to work only in the Registration Department, as per his choice.

21. TNPSC, since a positive direction was issued by the Writ Court, but which was set aside in the Writ Appeal, had however made it clear in their communication to the Government that after completion of the Special qualifying examination, all the vacancies available in the year 2007, have been filled up through the Group-IV competitive examination conducted by following the Rule of reservation and the entire vacancies

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have been filed up in all the departments. As such there was no vacancy available in the Registration Department to accommodate the first respondent or other persons. TNPSC had made it clear that it is for the Government to take any further decision in this regard. In view of the factual scenario, the Government had also again in the year 2020 by order dated 29.08.2020 directed the first respondent to join in the HR&CE Department, by giving him another opportunity. The first respondent was not inclined to heed to the orders, knowing well that he will reach the age of superannuation on 28.05.2024 and he had been all along taking risk by continuing to work in the temporary position on consolidated pay.

22.In the challenge made to the order dated 28.09.2020, the writ Court had simply by observing that the first respondent was doing some liaisoning work attached to this Court and he was fully qualified to hold the post and had cleared the qualifying examination, had also put in long years of service had directed to regularize him as Junior Assistant in HR&CE Department. In the considered opinion of this Court, the order of the Writ Court was only on a misplaced sympathy, when no one had prevented the first respondent to join in the HR&CE Department. As referred earlier, even after exhausting all the remedies and the orders

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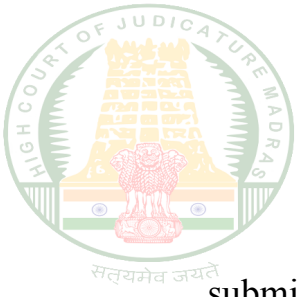


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reaching finality and even thereafter several opportunities have been granted by the TNPSC and also the Government, the first respondent willfully on his own volition, has not chosen to join in the selected post. The first respondent who had opted to appear in the special qualifying examination and he having been selected and appointed in the HR&CE Department in the year 2009, had not joined in the selected post.

23. When the first respondent is bound by the Rules and Regulations framed in respect of the service, he cannot dictate and select his choice of place and department to work. Having not opted to join in the selected post and voluntarily decided to work on a consolidated pay as temporary employee, now the first respondent cannot claim any sympathy particularly when the entire vacancies have been filled up. The Division Bench had in fact permitted the Government and TNPSC to fill up the vacancies if the first respondent did not join and in such event, the impugned direction issued by the writ Court by directing the Government to regularize the first respondent as Junior Assistant in Registration Department with effect from 23.04.2009, is without any legal basis and cannot be sustained. As such the decision of the writ Court warrants interference and is accordingly interfered with.

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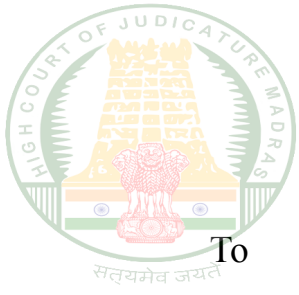
24. At this stage, the learned Additional Advocate General

submitted that pursuant to the writ petition, based on the interim orders in this appeal and the contempt petition filed, they have paid a sum of Rs.7 Lakhs which ought to be directed to be repaid by the first respondent, since he was not entitled to this amount as he has received the consolidated pay. Though we have come to the conclusion that the first respondent cannot be regularized as Junior Assistant, as the first respondent had never joined in the selected post till reaching the age of superannuation on 28.05.2024 but however considering the entire facts and circumstances of the case, we are not inclined to pass any orders in respect of recovering the amount already paid.

25. In view of the above deliberations, the impugned order of the writ Court dated 28.02.2024 is set aside and consequently the Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition stands closed.

[S.M.S., J.] [G.A.M., J.]
25.08.2025

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To

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Commercial Taxes and Registration Department,
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Chennai -9.
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No.100, Santhome High Road,
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S.M.SUBRAMANIAM, J.
and
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and
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