

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2012

CORAM:

THE HONOURABLE MR.JUSTICE VINOD K.SHARMA

W.P.Nos.49501 of 2006 (O.A.No.1947 of 2001)
49502 of 2006 (O.A.No.7356 of 2000)

R.Ramani

... Petitioner in both writ
petitions.

- vs -

1. The Secretary to Government,
State of Tamilnadu,
Commercial Taxes (H2) and Registration
Department, Fort St.George,
Chennai-9.
2. The Inspector General of Registration
Chennai-28. ... Respondents in both writ
petitions.
3. The Additional Inspector General of Registration,
Chennai
4. Mr.S.Kannan ... Respondents 3 & 4 in
W.P.No.49502/2006

Prayer in 49501/2006: Writ petition is filed under Article 226 of Constitution of India for the issuance of a Writ of Mandamus, to direct the respondents to consider the petitioner for promotion as District Registrar by including his name in the panel which is being drawn for the year 2000-2001 based on his seniority position. Prayer in 49502/2006: Writ petition is filed under Article 226 of Constitution of India for the issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the 2nd respondent in his proceedings No.52917/A4/93 dt 5.8.1997 and the consequential order passed by the 1st respondent in his letter No.19330/H2/99-5 dt 29.3.2000 which confirms the said earlier order passed by the 2nd respondent and quash the same.

For Petitioner : Mr.V.Chandrasekaran

For Respondents : Mr.R.Ravichandran,
Addl. Govt. Pleader

O R D E R

The petitioner, while working as Joint Sub-Registrar at Redhills, was served with charge memo dated 08.10.1993, on the allegations that the petitioner permitted improper levy of stamp duty and registration charges, which resulted in loss to the tune of Rs.2,16,589.60 (Rupees Two Lakhs Sixteen Thousand Five Hundred Eighty Nine and Paisa Sixty only) to the Government.

2. The petitioner submits that charges are baseless and actuated by malafide. The 4th respondent was appointed as enquiry officer to conduct enquiry and the petitioner was examined by the enquiry officer, wherein the petitioner proved that there was no loss to the Government.

3. The submission of the petitioner is, that the enquiry officer did not dispute any of the contention raised by the petitioner, but however held that the petitioner liable to deposit of Rs.11,301.10 (Rupees Eleven Thousand Three Hundred and One and Paisa Ten only) out of total liability of Rs.2,16,589.60 (Rupees Two Lakhs Sixteen Thousand Five Hundred Eighty Nine and Paisa Sixty only).

4. The petitioner submits that there was no actual deficit of Rs.11,301.10 (Rupees Eleven Thousand Three Hundred and One and Paisa Ten only), by pointing out that proceedings under Section 47-A(3) of the Indian Stamps Act, were pending. It is pleaded by the petitioner that as per instructions of the Government dated 30.12.1993, if any irregularities were pointed out in the Audit report, then the Assistant Inspector General of Registration, Chennai, is required to pass a final order with regard to the alleged deficit, pointed out in the Audit report, either by confirming it or turning it down. This was required to be done within one month. In case, it was so confirmed, then the matter was required to be referred to the concerned Deputy Collector, Stamps for taking steps under Section 47-A(3) of the Indian Stamps Act.

5. The case of the petitioner is that respondent no.4, who was the Inspector of Registration Officers, failed to pass any order on the Audit report. That 4th respondent Officer, being Officer responsible for passing final orders, in absence of exercise of his duty, could not hold the petitioner liable, as the Deputy Collector could take action on the specific orders, which were to be passed by respondent no.4. That as respondent no.4 is the superior Officer, therefore, he could not blame him in the enquiry proceedings.

6. The case of the petitioner further is, that in order to avoid confrontation with his superiors, he sent notices to the parties, and collected money and even agreed to pay from his own salary. The petitioner filed objection to the enquiry report, raising all the points pleaded in this petition, but the competent authority

passed the order of punishment of censure on 05.08.1997. The order is said to have been passed in mechanical manner without application of mind.

7. In the order, it is mentioned that the deficit was collected belatedly by the petitioner. This fact is said to be totally arbitrary, as no final decision on petition under Stamps Act has been taken to records the findings.

8. The pleaded case of the petitioner is, that it was not the charge against the petitioner, that he delayed recovery, but only that the petitioner was responsible for the loss, which was subsequently held to be only of Rs.12,851/- (Rupees Twelve Thousand and Eight Hundred Fifty one only), which stands paid by the petitioner.

9. The petitioner further submits that there is no prima facie case made out against the petitioner for framing the charges itself, as it was the responsibility of IRO to pass final order on the Audit report, and if any deficit was found, to refer it for decision by the Deputy Collector under the Stamps Act, as the Audit report is not final.

10. The charge, therefore, is based only on Audit report, on which respondent no.4 failed to take action in performance of his duty, and referring the matter for adjudication under Sections 47-A (1) to 47-A(3) of the Indian Stamps Act.

11. It is also case of the petitioner that the least no.2 junior officers to the petitioner, who have huge amount of arrears in the firm of deficit stamp duty to be recovered till date, but have been promoted to the higher posts.

12. The petitioner, being aggrieved by the order of punishment, preferred appeal to the Government against the order of punishment of censure, wherein, it was pointed out that the Audit report was wrong. Furthermore, that the loss stood already recovered. It was also pointed out by the petitioner that on account of pending charge memo, he was not promoted.

13. The appeal was rejected, therefore, the petitioner paid a sum of Rs.3,536/- (Rupees Three Thousand Five Hundred and Thirty Six only) towards deficit in order to compensate the deficit. The case of the petitioner is that the finding of guilt recorded against him was beyond the scope of charges levelled against him.

14. The petitioner, being aggrieved by the order of appellate authority, filed review petitioner, which was also dismissed.

15. It is the case of the petitioner that according to the rules, review petition was also required to be disposed of after consultation with the Tamil Nadu Public Service Commission, which was mandatory. The other ground is that the plea raised by the petitioner was not considered.

16. The case of the petitioner is that he should have been promoted in the year 1996 as Sub Registrar, Grade-I, but his name was overlooked and 256 juniors to him were promoted. The petitioner, therefore, claims that his name in any case is required to be included in the subsequent panel in 1998 - 1999. The petitioner was however promoted as Sub-Registrar Grade-I after filing of O.A.No.5098 of 2000, but his seniority position was pushed down by 256 persons, as juniors to the petitioner were promoted earlier, therefore, prays to quash the impugned order, to restore back to his original seniority position as Sub Registrar Grade-I.

17. The case of the petitioner is that all the juniors to the petitioner were promoted on 01.01.2000 as District Registrar, but the petitioner got promotion as Sub Registrar Grade-I only on 20.03.2000. It is also the case of the petitioner that Thiru Jayaraman was working along with him at Virugambakkam, who had confronted with the petitioner on many occasions, while working as Sub Registrar. He was very influential person, therefore, charge sheet was issued at his instance, inspite of the fact that the petitioner had complained against him.

18. It is pertinent to mention that these allegations cannot be looked into, as the petitioner has not chosen to implead Thiru Jayaraman as party to this writ petition against whom allegations of malafide have been made.

19. The prayer in W.P.No.49501 of 2006 is to direct the respondents to consider the petitioner for promotion as District Registrar by including his name in the panel which is being drawn for the year 2000-2001 based on his seniority position.

20. In this writ petition again, it is submitted that while the petitioner was working at Virugambakkam Sub Registrar Office, Chennai, he was not allowed to discharge his duties in proper way by one Thiru Jayaraman, who was working with the petitioner, as Senior Sub Registrar and had control over the petitioner. He is claimed to be influential person, therefore, expecting unnecessary trouble, the petitioner represented to the Inspector General of Registration on 13.08.1993, but no action was taken thereon.

21. However, for the reason best known, the petitioner has not impleaded Thiru Jayaraman as party.

22. The petitioner was issued charge memo under Section 17(b) of D.A.Rules for the alleged loss pointed out in local audit for the year 1991-1992 and 1993. The other averments in the writ petition are identical to the one filed by the petitioner to challenge the order of punishment.

23. The petitioner in this writ petition has prayed that his name should be considered to the panel 2000 - 2001, as he is fully eligible for consideration, even if the order of censure is confirmed.

24. Though no counter has been filed to W.P.No.49502 of 2006, but a counter has been filed to W.P.No.49501. The stand of the respondents is that due to loss caused to the Government by registering the document, which was under-valued, the charge sheet was framed against the petitioner under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, wherein punishment of censure was awarded on 05.08.1997.

25. The name of the petitioner, therefore, was not included for the year 1996-1997 and for the year 1997-1998 due to pendency of charges under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

26. Similarly, name of the petitioner was not included for the panel of Sub Registrar Grade-I for the year 1998-1999, since the punishment of censure was in force on the crucial date.

27. The name of the petitioner was included for the year 1999 - 2000, at Sl.No.2 in the order dated 22.03.2000. The pleaded case of the respondents is that the petitioner was aware that he will not be promoted, because of his seniority as framed as District Registrar for the year 2000-2001, he filed this petition for inclusion of his name in the District Registrar panel.

28. It is pleaded that enquiry report was given on 17.03.1995. In the enquiry report, it was held that a sum of Rs.18,831.50 (Rupees Eighteen Thousand Eight Hundred and Thirty One and Paise Fifty only) had been collected from the parties. Another sum of Rs.1,86,457/- (Rupees One Lakh Eighty Six Thousand Four Hundred and Fifty Seven only) has been settled by way of disposing the property in pursuance to the Audit paras.

29. For the remaining amount, the enquiry officer held that petitioner was liable for loss. However, on examining the enquiry report and relevant records, loss was assessed as Rs.12,851/- (Rupees Twelve Thousand Eight Hundred and Fifty One only). The petitioner was given opportunity to file objections to enquiry report.

30. Out of this loss, Rs.9,935/- (Rupees Nine Thousand Nine Hundred and Thirty Five only) stands collected from the parties and the balance of Rs.3,536/- (Rupees Three Thousand Five Hundred and Thirty Six only) was made good by the petitioner. Keeping in view the recovery of amount, the petitioner was awarded punishment of censure.

31. The appeal was rejected after consultation with the Tamil Nadu Public Service Commission. Revision was again rejected.

32. The petitioner challenged the impugned order, wherein interim stay was granted, which was allowed to continue during the pendency of the petition.

33. The stand of respondents is, that name of the petitioner was not included for panel of Sub Registrar Grade-I for the year 1996-1997 and 1997-1998, because of the pendency of charge sheet under Section 17(b) on crucial date and for the year 1998-1999, since punishment of censure was awarded.

34. Subsequently, his name was included and promoted.

35. It is the stand of respondents that that petitioner's name for further promotion will be considered in case he reaches the seniority.

36. Learned counsel for the petitioner, in support of both writ petitions, has placed reliance on the judgment of this Court in W.P.No.19012 of 2007 (S.Muthuramu vs. State of Tamil Nadu and another) decided on 26.02.2008, to contend, that fixation of stamp value was done in exercise of quasi judicial authority, therefore, it was not open to the respondents to treat it as misconduct, under the service rules.

37. This Court in this case referred to above was pleased to lay down as under:

"6. From the perusal of the charge memo it could be seen that the allegation against the petitioner is that he has fixed the market value at Rs.22/- per sq.ft. in Document No.70 of 1998 whereas the adjacent lands were acquired by the Government on negotiation at the rate of Rs.58/- per sq.ft. in the year 1999. No motive or ill-will is alleged in the said imputation of charge. Admittedly petitioner is exercising quasi-judicial function under section 47-A(1) of the Indian Stamp Act. If the Department is not satisfied with the valuation, nothing prevented the Department from filing appeal before the Inspector General of Registration challenging the order passed by the petitioner, fixing the market rate of Rs.22/- per sq.ft. In the absence of any motive or bad intention, no charge could be framed against the Quasi-Judicial Authority and the same is well settled.

7. (a) In the decision reported in (1999) 7 SCC 409 (Zunjarrao Bhikaji Nagarkar v. Union of India), the Supreme Court considered similar issue and held that negligence in exercising quasi-judicial power by mere carelessness or inadvertence or omission is not sufficient to initiate proceedings under misconduct. Unless there is a culpable negligence or ill-motive, no charge could be framed. In paragraphs 43 and 44, the Supreme Court held as follows:

43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

44. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. The charge of misconduct against him was not proper. It has to be quashed."

(b) Whether the disciplinary proceeding can be initiated against a judicial officer, who granted bail exercising discretion while discharging the Judicial function, was considered by the Supreme Court in the decision reported in (2007) 2 SCC (Criminal) 266 (Ramesh Chander Singh v. High Court of Allahabad). In paragraph 12, the Supreme Court held as follows:

"12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, the High Court must take extra care and caution."

(c) In the decision reported in 2007 (3) LLN 106 = (2007) 4 SCC 566 ([Inspector Prem Chand v. Government of N.C.J. of Delhi](#)) following the earlier decisions, the Supreme Court held that the acts of negligence, error of judgment or innocent mistake, do not constitute misconduct. In the above case, the appellant/Police Officer failed to seize the tainted money on receipt of complaint of alleged demand of bribe by an Inspector (Malairiya). Department initiated disciplinary proceeding on the charge that he had not seized the tainted money, which could be an important piece of evidence in criminal proceeding. The Supreme Court held that the Police Inspector could not be said to have committed any misconduct merely because in the opinion of the higher authorities he ought to have seized the tainted money. The Supreme Court in paragraphs 10 to 12 dealt with the term misconduct, which reads as follows:

"10. In [State of Punjab v. Ram Singh, Ex-Constable](#) (1999 (2) LLN 419) it was stated, in para.5, at page 422:

Misconduct has been defined in Blacks Law Dictionary , 6th Edn. at p.999, thus:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. Misconduct in office has been defined as:

Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

11. In [P.Ramanatha Aiyars Law Lexicon](#) , 3rd Edn., at p.3027, the term misconduct has been defined as under:

The term misconduct implies a wrongful intention, and not a mere error of judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. (See also [Bharat Petroleum Corpn. Ltd. v. T.K. Raju](#) (2006 (2) LLN 54))

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore,

necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In *Union of India v. J.Ahmed* ((1979) 2 SCC 286) whereupon Mr Sharan himself has placed reliance, this Court held so stating:

Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster* 17 Q.B.536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle* (Indicator Newspapers (1959(1) W.L.R.698))]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Supdt., Central Rly., Nagpur Division, Nagpur* (61 B.L.R. 1569) and *Satubha K. Vaghela v. Moosa Raza* (10 G.L.R. 23). The High Court has noted the definition of misconduct in *Strouds Judicial Dictionary* which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.

(emphasis supplied)

(d) A Division Bench of this Court in the decision reported in 1999 (2) LW 174 (*A.M.Sankaran v. The Registrar, High Court, Madras*), quashed an order of compulsory retirement passed against the judicial officer for destroying the seized spirit without examining or recording any evidence regarding the inflammable nature of the spirit. This court held that the said order having been passed during discharge of the function as judicial officer, framing such charge without any allegation or recklessness or abuse of power, cannot be sustained.

8. Applying the principles laid down in the above decisions to the facts of this case, particularly when there is no motive or recklessness attributed against the petitioner and no misconduct is committed by the petitioner, I hold, the charge as framed is not maintainable against the petitioner, who is a quasi-judicial authority. The impugned order is set aside and the writ petition is allowed. No costs. Connected miscellaneous petitions are closed."

38. Learned counsel for the petitioner also placed reliance on a judgment of the Hon'ble Division Bench of this Court in W.A.No.1497 of 2008 (State of Tamil Nadu and another vs. N.Vidhyasankar), decided on 18.03.2010, wherein, the Hon'ble Division Bench of this Court was pleased to lay down as under:

"13. There is no dispute that the proceedings ere quasi judicial in nature. The respondent has passed orders for transfer of patta and he has indicated reason for such transfer. The said order was the subject matter of appellate as well as revisional proceedings. Merely because the respondent has taken a particular vie in the matter and by exercising his quasi judicial powers, transferred the patta, it cannot be said that departmental proceedings should be taken against him solely on the ground that a different view was taken by another officer in the very same matter. It is true that in case orders are passed on extraneous reasons, the Government would be justified in initiating departmental proceedings. However, even according to the appellants there was no benefit accrued to the respondent. Similarly, no loss occasioned to the Government on account of the alleged act of misconduct. Therefore, the learned Judge was perfectly justified in coming to a conclusion that there was no basis in issuing the impugned charge sheet.

14. In *Zunjarrao Bhikaji Nagarkar v. Union of India*, (1999) 7 SCC 409, the Supreme Court observed that wrong application or interpretation of law is not a misconduct inasmuch as wrong decision is subject to judicial supervision in appeal. The observation reads thus:-

"43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

15. Neither in the impugned charge sheet nor in the counter affidavit, the appellants have contended that the orders passed by

the respondent was deliberate and it was actuated by malafides. When there were no such allegations against the respondent, there was no justification in initiating departmental proceedings and that too during the verge of retirement. These issues were considered by the learned Single Judge in extenso and we do not find any error or illegality in the finding warranting out interference in this appeal.

16. In the result, the writ appeal is dismissed. No costs."

39. The stand of the petitioner, therefore, is that he had acted in his quasi judicial authority in registering the document and furthermore that no allegations could be levelled in absence of confirmation of audit objection by respondent no.4, and in absence of subsequent proceedings under the Stamps Act.

40. On consideration, it is noticed that the allegations against the petitioner are only, that the petitioner, while acting as registering authority, under-valued the document. This was admittedly in performance of his quasi judicial authority, as there are no allegation of fraud or misrepresentation or ulterior motive against the petitioner, but of loss, which was also substantially reduced.

41. Therefore, in view of law laid down by this Court, referred to above, charge memo issued against the petitioner, itself was not maintainable, thus punishment awarded also cannot be sustained in law.

42. Consequently, both two writ petitions are ordered. Orders imposing punishment of censure against the petitioner, is ordered to be set aside.

43. The petitioner shall be entitled to consequential relief of consideration for promotion as Sub Registrar Grade-I and District Registrar from the date his immediate juniors so promoted, with all consequential benefits.

44. No costs.

सत्यमेव जयते
Sd/

Asst. Registrar

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Sub Asst.Registrar

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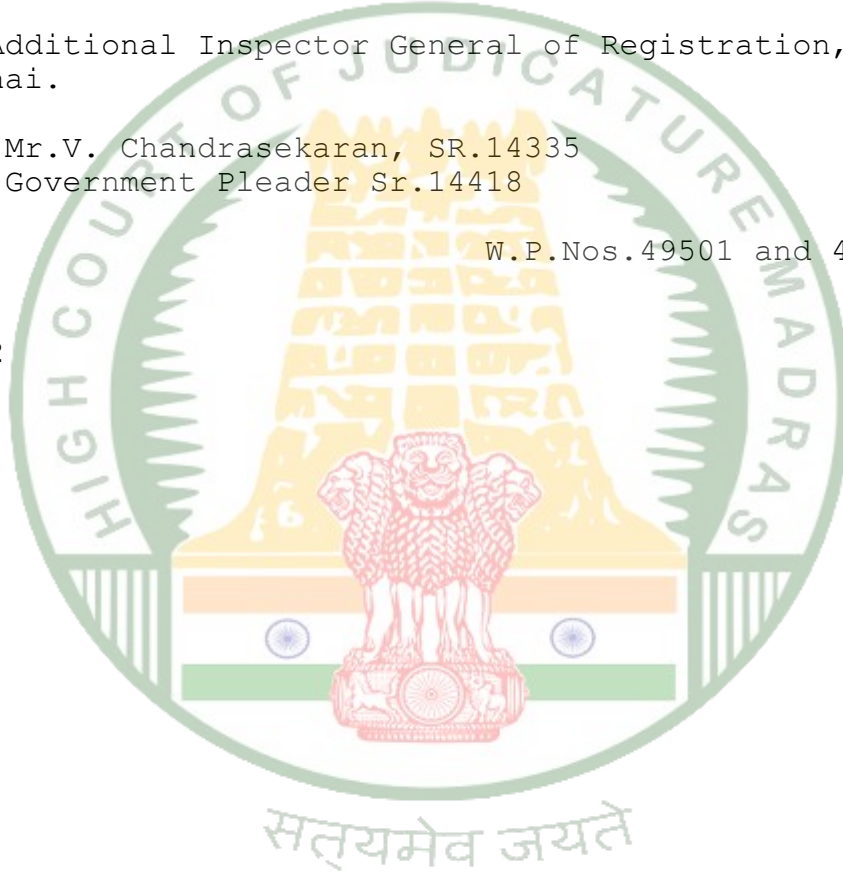
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To,

1. The Secretary to Government,
State of Tamilnadu,
Commercial Taxes (H2) and Registration
Department, Fort St.George,
Chennai-9.
 2. The Inspector General of Registration
Chennai-28.
 3. The Additional Inspector General of Registration,
Chennai.
- + 1 cc to Mr.V. Chandrasekaran, SR.14335
+ 1 cc to Government Pleader Sr.14418

W.P.Nos.49501 and 49502 of 2006

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