

IN THE HIGH COURT OF ANDHRA PRADESH

WRIT PETITION No.15346 of 2002

Between:

Ch.Harinath,

.... Petitioner

And

1. The Registrar (Vigilance),
High Court of A.P., Hyderabad.
2. The Registrar (Administration,
High Court of A.P., Hyderabad.
3. Government of Andhra Pradesh
rep.by its Secretary Home
(Courts), A.P., Secretariat,
Hyderabad.
4. Secretary to Government,
Legislative Affairs & Justice,
Secretariat, Hyderabad.
5. District & Sessions Judge,
Prakasam at Ongole.

.... Respondents

Date of Judgment pronounced on : 19.10.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be : Yes/No
marked to Law Reporters/Journals?
3. Whether The Lordship wishes to see the : Yes/No
fair copy of the Judgment?

JUSTICE RAVI NATH TILHARI

JUSTICE B.V.L.N.CHAKRAVARTHI

*** HON'BLE SRI JUSTICE RAVI NATH TILHARI**

AND

*** THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

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.... Respondents

! Counsel for the Petitioner: Ms.G.Padmavathi Srinivas

Counsel for the Respondents: Sri S.Nageswara Reddy

<Gist :

>Head Note:

? Cases referred:

1) 1996 (4) SCALE 577

2) 1996 (5) SCC 90

This Court made the following:

HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI
WRIT PETITION No.15346 of 2002

ORDER: (per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

This writ petition filed under Article 226 of the Indian constitution to issue a writ in the nature of mandamus declaring the action of the respondents in imposing punishment vide proceedings dated 28.07.2000 and 10.07.2001 as illegal, arbitrary and unjust and consequentially to set aside the said proceedings and to direct the respondents to fix the pay of the petitioner till the date of superannuation as if he was in service and pay terminal benefits and pension as per the Revised Pay Scales of 1993.

1. The contention of the petitioner is that he joined as District Munsif Magistrate in the State Judicial Services on 04.02.1980 and later he was promoted as Subordinate Judge; the petitioner was subsequently suspended from the service by the High Court vide proceedings issued by the 2nd respondent on 22.04.1991 and after due enquiry, the petitioner was removed from the service vide proceedings dated 07.01.1993 issued by the 2nd respondent; the petitioner filed writ petition in W.P.No.3992 of 1993; during the pendency of the adjudication, the petitioner attained the age of superannuation on 31.12.1994; the writ petition was disposed of by the High Court vide

orders dated 23.07.1996 holding that, in view of the judgment of the Hon'ble Apex Court in ***T.Lakshmi Narasimha Chari v. High Court of Andhra Pradesh and another***¹, the impugned order of the 1st respondent dated 07.01.1993 (2nd respondent herein) is set aside and held that it is for the High Court to consider and decide affect thereof in making any further recommendation to the Governor, and that in formulating its recommendation, the High Court has to keep in view the relevant rules and decisions relating to the aspect and further that all consequential actions also are to be considered and taken by the High Court in accordance with law.

2. Further contention of the petitioner is that, the 1st respondent addressed a letter dated 08.05.1998 to the 3rd respondent recommending action under Rule-9 with Rule-8 of A.P Revised Pension Rules 1980; the 3rd respondent issued memo dated 14.06.1999 calling for explanation of the petitioner; the petitioner submitted explanation on 22.07.1999; the 3rd respondent issued G.O.Rt.No.1425, dated 18.10.1999 imposing punishment of 20% cut in pension for the life under Rule-9 of the A.P. Revised Pension Rules 1980; the 2nd respondent, thereafter, addressed a letter to 5th respondent on 26.10.1999 to inform the petitioner to submit pension papers; accordingly, the petitioner submitted pension papers along with a letter dated 20.06.2000; while the matter stood thus, the 1st

¹ 1996 (4) SCALE 577

respondent issued proceedings dated 05.11.1999 stating that as per Rule 54-A(2) of the Fundamental Rules the High Court intends to regularise the period of absence of petitioner from duty w.e.f 28.02.1993 to 31.12.1994 i.e., from the date of removal, till the date of superannuation of the petitioner and asked the petitioner to show cause why the pay and allowance to be paid to him for the said period should not be disallowed beyond 50% of the usual pay and allowances as the petitioner was not exonerated of the charges on merits; the petitioner submitted a representation dated 24.11.1999; the 1st respondent later imposed further punishment vide proceedings dated 28.07.2000 stating that upon consideration of the matter and upon such consideration hereby orders limit the pay and allowances payable to the petitioner during the above period i.e., from the date of removal from service till attained the age of superannuation of 58 years to 75% only.

3. The petitioner further contended that the above order of the 1st respondent is illegal, arbitrary and unjust; the 5th respondent calculated the benefits by deducting 20% in pursuance of the order issued by the 3rd respondent and further by reducing 75% as per the orders issued by the 1st respondent and forwarded the pension papers to the High Court on 19.12.2000; the 1st respondent instead of forwarding the pension papers to the A.G. Office issued another proceedings dated 10.07.2001 imposing further punishment treating

suspension period 25.04.1991 to 31.12.1994 as not on duty for all purposes and to limit the pay and allowance and subsistence allowances already drawn and paid to him and thereafter pension papers were forwarded to the A.G. Office on 12.09.2001 and the A.G. Office issued a letter to the 2nd respondent raising certain objections; the 2nd respondent issued another proceedings dated 17.01.2002 by not fixing the pay in accordance with the revised pay scales 1993 and therefore, the action of the 2nd respondent issuing the said proceedings is against the proceedings issued by the 3rd respondent and also the judgment in W.P.No.3992 of 1993, and that the order of the 2nd respondent is arbitrary, illegal and unjust.

4. The petitioner further contended that the Principal Senior Civil Judge on 07.05.2002 fixed the pay and issued salary certificate where under 20% of pension was deducted, pay was reduced to 75% and pay was not fixed in accordance with the pay scale of 1993 and thereafter the District Judge (5th respondent) forwarded the pension papers vide letter dated 18.05.2002 indicating that the petitioner is having 78 days of earned leave to his credit, and it was at credit to the petitioner; therefore, the petitioner was made to run from pillar to post for the pension and the actions of the respondents are illegal arbitrary and unjust.

5. Per contra, respondents contending that, the High Court received a complaint dated 09.01.1991 and 02.03.1991 against the

petitioner and regular departmental enquiry was ordered vide proceedings dated 22.04.1991 and pending the enquiry, the petitioner was placed under suspension w.e.f 22.04.1991; three (3) charges were framed against the petitioner and after due enquiry charge number one was proved against the petitioner, and the High Court considering the report of the enquiry officer issued final show cause notice dated 08.09.1992 to the petitioner to show cause why he should not be removed from service and upon considering the explanation submitted by the petitioner imposed punishment of removal from service vide proceedings dated 07.01.1993.

6. The respondents would further contend that, the petitioner filed W.P.No.3992 of 1993 before the High Court and in view of the decision of the Hon'ble Apex Court in **T.L.N.Chari Vs. High Court of A.P. and others**², the High Court disposed of the writ petition vide judgment dated 23.07.1996 by setting aside the order dated 07.01.1993 and directed the High Court on administrative side to take further action in accordance with the findings of the Hon'ble Apex Court in the above said case, and the order of removal was faulted only on the ground of competency and not on the merits; the petitioner is deemed to have been continued under suspension till the date of superannuation i.e., 31.12.1994; considering the gravity of the charge proved against the petitioner and the petitioner had already attained the age of

² 1996 (5) SCC 90

superannuation, the High Court recommended to the Governor to take necessary action as per the Revised Pension Rules, 1980; the Government issued orders vide G.O.Rt.No.1425, dated 08.10.1999 imposing 20% cut in pension of the petitioner.

7. The respondents would further contend that the High Court vide orders dated 28.07.2000 after due notice to the petitioner, while regularizing the period between the date of removal order and the date of superannuation of the petitioner, limited the pay and allowances payable to the petitioner for the said period to 75% as the petitioner was not exonerated of the charges against him; as regards the period of suspension from 25.04.1991 till the date of superannuation, the High Court vide proceedings dated 10.07.2001 treating the said period as not on duty for all purposes and limited the pay and allowances to the subsistence allowance already drawn and paid to the petitioner; the contention of the petitioner that the High Court imposed further punishment, it is submitted that the orders of the High Court were issued under Rule 54-A(2) of A.P. Fundamental Rules, in continuation of G.O.Rt.No.1425, dated 08.10.1999 issued under Rule-9 of A.P. Pension Rules.

8. The further contention of the respondents is that, the High Court vide proceedings dated 22.10.2002 granted pension and service gratuity to the petitioner and accordingly the Accountant General had released them vide order dated 28.11.2002 and the leave encashment,

and entitlement is concerned, the High Court vide proceedings dated 22.04.2004 accorded sanction for encashment of 78 days of earned leave standing to the credit of the petitioner and authorised to the District Judge, Prakasam to draw and disburse the amount.

9. In the light of the above rival contention, the point for determination is as under:

Whether the proceedings dated 28.07.2000 and 10.07.2001 issued by the 1st respondent are illegal, arbitrary and liable to be set aside and the respondents be directed to fix the pay of the petitioner as prayed for, by issuing a writ of Mandamus under article 226 of the Constitution of India?

10. **P O I N T:**

The learned counsel for the petitioner would submit that, the proceedings dated 28.07.2000 and 10.07.2001 amounts to imposing further punishment even after the punishment imposed by the 3rd respondent on 08.10.1999 vide G.O.Rt.No.1425, imposing 20% cut in the pension for life time.

11. The learned counsel for the respondents would submit that, the proceedings issued by the High Court dated 28.07.2000 and 10.07.2001 were issued only to regularize the services of the petitioner from the date of his removal till the date of his superannuation, in view of the orders of the High Court in W.P.No.3992 of 1993 and

further they were issued to pay the subsistence allowance to the petitioner during the said period, treating it as deemed suspension till the date of attaining the superannuation as per the rule 54-A(2) of A.P. Fundamental Rules and therefore the petitioner cannot contend them as further punishment proceedings, though they are issued in order to regularize his service during the period of suspension to enable the drawing officer to fix his pension as per pension rules, subsequent to filing of this writ petition, issued proceedings dated 22.10.2002, granted pension and service gratuity to the petitioner and in pursuance of the same the Accountant General had released the pension and gratuity vide his order dated 28.11.2002 and so far as leave encashment also the High Court issued proceedings dated 22.04.2004 accorded sanction for encashment of 78 days of earned leave standing to the credit of the petitioner, and authorized the District Judge, Prakasam to draw and disburse the said amount, and in the said circumstances, nothing remains for determination in the writ petition.

12. The admitted facts of the case are that the petitioner joined in the State as District Munsif on 04.02.1980 and basing on a complaint dated 09.01.1991 and 02.03.1991 received against the petitioner, the High Court ordered and regular departmental enquiry vide proceedings dated 22.04.1991 and pending the said enquiry, the petitioner was placed under suspension w.e.f. 22.04.1991. It is also an admitted fact

that three charges were framed against the petitioner and the enquiry officer after conducting due enquiry found that the charge No.1 was proved and then the High Court considering the report dated 06.07.1992 submitted by the enquiry officer, issued final show cause notice 08.09.1992 to the petitioner and considering his explanation, issued proceedings dated 07.01.1993 removing the petitioner from service. It is also an admitted fact that the petitioner filed W.P.No.3992 of 1993 before the High Court and the High Court considering the judgment of the Hon'ble Apex Court **T.L.N.Chari** case (*supra*) disposed of the writ petition setting aside the proceedings dated 07.01.1993 issued by the High Court through the 2nd respondent herein, and instructed the High Court on administrative side to consider and decide the affect thereof in making any further recommendation to the Governor, and that in formulating its recommendation the High Court has to keep in view the relevant rules and decisions relating to this aspect. It was further held that all consequential action also are to be considered and taken by the High Court in accordance with law.

13. It is also an admitted fact that the High Court addressed a letter to the Government on 08.05.1998 to take necessary action against the petitioner as per the Pension Rules 1980. The Government of Andhra Pradesh vide G.O.Rt.No.1425, dated 08.10.1999 and consideration of the explanation submitted by the petitioner imposed 20% cut of pension for life under Rule-9 of A.P. Revised Pension Rules, 1980 on

the petitioner. It is also an admitted fact that the petitioner did not challenge the said Government Order.

14. Thereafter, during the pension fixation proceedings, the High Court issued proceedings dated 05.11.1999 as per the rule 54-A(2) of the fundamental rules to regularize the period of absence of the petitioner w.e.f 28.02.1983 i.e., from the date of removal to 31.12.1994 i.e., the date of superannuation of the petitioner and asked the petitioner to show cause as to why the pay and allowances to be paid to him for the above period should not be disallowed beyond 50% of the usual pay and allowances as he was not an exonerated of the charges on merits. It is an admitted fact that the petitioner made a submission dated 24.11.1999 and the High Court on considering his submissions issued the impugned proceedings dated 28.07.2000 limiting the pay and allowance payable to the petitioner during the period from 28.12.1993 i.e. from the date of removal from services and till 31.12.1994 i.e., the date of attaining the superannuation to 75%.

15. The High Court, subsequently, issued the another proceedings dated 10.07.2001 also as per the Rule 54(5) of Fundamental Rules stating that the petitioner was paid 50% of pay and allowance from 25.04.1991 to 24.07.1991 i.e., first three months period of suspension and 75% of pay and allowances 25.07.1991 to 31.12.1994 on the date which he attained the age of superannuation, and basing on the letter received from the Registrar (Administration) regarding how to treat the

period of suspension from 25.04.1991 to 28.02.1993 (date of removal) and till 31.12.1994 (date of superannuation) to process the pension papers of the petitioner, issued proceedings to treat the said period as not spent on duty for all purposes and limited the pay and allowances to the subsistence allowance already drawn and paid to him.

16. Therefore, the High Court vide proceedings dated 05.11.1999 sought for explanation of the petitioner as to why his pay and allowances should not be dissolved beyond 50% of usual pay for the period from 28.02.1993 (date of removal) till 31.12.1994 (date of superannuation) which is deemed to be a period of suspension, in view of the consequences arising from the order of the High Court in W.P.No.3992 of 1993 in setting aside the removal proceedings issued by the High Court, as attained superannuation and 31.12.1994 pending the writ petition proceedings.

17. The petitioner did not challenge the said show cause notice issued by the High Court. He submitted an explanation to the said show cause notice and the High Court considering the explanation issued by the petitioner passed orders under rule 54-A(2) of the A.P. Fundamental Rules granted subsistence allowance for the above period @ 75% instead of 50% as stated in the show cause notice. It is an admitted fact that, the petitioner was paid subsistence allowance initially @ 50% for three (3) months from the date of his suspension i.e., 24.01.1991, later at the rate of 75% till his date of removal

28.02.1993 and now the High Court vide proceedings dated 28.07.2000 regularized period of service of the petitioner from 28.02.1993 till the date of superannuation as period of suspension, and granted subsistence allowance @ 75% as per the Fundamental Rules 53, 54(5) and 54-A(2) A.P. Fundamental Rules, which read as follows:

Rule 53 of Fundamental Rules speaks that with the Government Servant is under suspension by an order of the appointing authority, he shall be entitled to subsistence allowance at an amount equal to half pay and in addition, dearness allowance, if admissible on the basis of such leave salary and further the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 percent of the subsistence allowance admissible during the period of first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant.

Sub-Rule 5 of Rule-54 would speak that case falling under sub-rule (4), the period of absence from duty including the period of suspension proceedings his dismissal, removal or compulsory retirement as the case may be, shall not be treated as a period spent on duty.

Rule 54-A (2) (i) speaks that where the dismissal, removal or compulsory retirement of a Government

servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, the pay and allowances payable to the Government servant for the period of dismissal, removal or compulsory retirement or suspension prior to such dismissal, removal or compulsory retirement, as the case may be, shall be limited to the subsistence allowance entitled/already paid under FR 53 for the entire period during which the Government servant was not on duty.

Further, 54-A (2) (ii) would speak that the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the Court shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 54.

18. The above Fundamental Rules i.e., Rule-53 would speak that the Government servant under suspension [or deemed to have been placed under suspension] by an order of the appointing authority shall be entitled to subsistence allowance @ half pay and in addition, dearness allowance, whether the period of suspension exceeds for the first three months may be increased by suitable amount, not exceeding 50 percent of the subsistence allowance admissible during the period of first three months. Therefore, the Government servant would be entitled to subsistence allowance @ 75 percent of the pay and in

addition, dearness allowance for the period of subsistence allowance exceeds in three months.

19. Rule-54-A (2) would speak that where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirement of clause (1) or clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, the pay and allowances payable to the Government servant for the period of dismissal, removal or compulsory retirement or suspension prior to such dismissal, removal or compulsory retirement, as the case may be, shall be limited to the subsistence allowance entitled / already paid under FR 53 for the entire period during which the Government servant was not on duty. It would further say that the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the Court shall be regularised in accordance with the provision contained in sub-rule (5) of Rule 54.

20. Sub-Rule 54 (5) would speak that in a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall not be treated as a period spent on duty.

21. It is also an admitted fact that the Registrar (Administration) addressed a letter (2nd respondent) to the Registrar (Vigilance) (1st respondent) vide letter dated 06.01.2001 to issue proceedings either to treat the period of suspension as on duty or not on duty for the purpose of fixation of pension, regards the period of suspension from 25.04.1991 and 31.12.1994 to process the pension papers of the officer. Thereupon, the High Court upon consideration of the matter treated the said period of suspension as period not spent on duty for all purposes and limited the pay and allowances to the subsistence allowance already drawn and paid to the petitioner as per the Rule 54-A(2) A.P. Fundamental Rules to enable the Registration (Administration) to process pension as per the A.P. Revised pension Rules 1980.

22. In the light of the above provisions and a factual matrix of the case, we are of the considered opinion that the proceedings dated 28.07.2000 issued by the Registrar General for the Registrar (Administration), High Court are issued as per the Rule 54-A (2) of the Fundamental Rules, where under the subsistence allowance entitled by the petitioner for the period between from the date of removal i.e., from 25.04.1991 to 31.12.1994 (date of removal) till 31.12.1994 (date of superannuation) during which he was not on duty to 75 percent as per Rule 53 of the Fundamental Rules regarding the payment of

quantum of subsistence allowance to be paid during the period of suspension if it exceeds three months.

23. The other proceedings dated 10.07.2001 issued by the 1st respondent relates to, how to treat the period of suspension of the petitioner for the period from 25.04.1991 to 31.12.1994. The first respondent issued the proceedings stating that the period of suspension of the petitioner from 35.04.1991 to 31.12.1994 as period not spent on duty for all purposes and limited the pay and allowances to the subsistence allowances already paid to him. We are of the considered opinion that, these proceedings are consistent with Rule 54 (5) as already stated above. Rule-54 (5) would speak that the period of absence from duty including the period of suspension proceedings his dismissal, removal or compulsory retirement as the case may be, shall not be treated as a period spent on duty.

24. The 1st respondent under the proceedings dated 28.07.2000 has already treated the period from the date of removal till date of superannuation of the petitioner as period of suspension.

25. Therefore, the entire period of suspension i.e., from 25.04.1991 to 31.12.1994 (date of removal) till 31.12.1994 (date of superannuation) be treated as a period not spent on duty.

26. In the said circumstances, the contention of the petitioner that the impugned proceedings would impose further punishment apart

from the punishment issued by the Government under G.O.Rt.No.1425, dated 18.10.1999 is not tenable in law. In fact, both proceedings are required to fix the pension of the petitioner.

27. Therefore, in the light of the above facts, we do not see any illegality in the proceedings dated 08.07.2000 or 10.07.2001 which were issued by the respondents, in furtherance of the proceedings issued by the Government vide G.O.Rt.No.1425, dated 08.10.1999, are issued by the High Court for the purpose of regularization of the period from the date of removal till the date of superannuation and for the purpose of fixation of pension only.

28. The counter affidavit filed for the High Court would show that subsequent to filing of this writ petition, the High Court issued proceedings dated 22.10.2002 granting pension and service gratuity to the petitioner, and later Accountant General also released the pension and gratuity to the petitioner vide order dated 28.11.2002. Further, the High Court also issued proceedings dated 22.04.2004 according sanction for encashment of 78 days earned leave standing to the credit of the petitioner and authorized the District Judge to draw and disburse the said amount. This not disputed by the petitioner.

29. In the light of the above facts and in view of our finding on the legality of the proceedings issued by the respondents 1 and 2 dated 28.07.2000 and 10.07.2001, we do not find any merit in the prayer

Nos.(a) and (b) for setting aside the proceedings dated 28.07.2000 and 10.07.2001.

30. However, we are of the considered view that the order of the removal of the petitioner having been set aside in W.P.No.3992 of 1993, vide order dated 23.07.1996, there would be no severance of the relationship between the employer and the employee. The writ petitioner shall be deemed to have continued in service till the date of his attaining the age of superannuation. Consequently the petitioner cannot be denied and deprived of the benefits of the revised pay scales of the year 1993 and that benefit would be available to the petitioner also. The punishment of 20% cut in pension for life is to be given effect to, determining the petitioners' pay in the revised pay scales under the pay revision in the year 1993, and from time to time till the petitioners' attaining the age of superannuation. Though the period w.e.f 28.12.1993 to 31.12.1994, has been treated as the period 'not on duty', but the necessary consequences would follow consequent upon setting aside the order of removal. For that period, the petitioner may not be entitled for full salary but for the subsistence allowance only, as per the order dated 28.07.2000 to the extent of 75%, but that percentage of the subsistence allowance has to be calculated, as per the fixation of the petitioners' salary, pursuant to the pay revision in the year 1993.

31. Similarly the petitioner would be entitled to receive the pension as per the pay so fixed, under the revised pay scale, and from that amount making the 20% cut in terms of the order G.O.Rt.No.1425, dated 08.10.1999. The petitioner would be entitled for the difference of the subsistence allowance, which ought to have been paid considering the revision of the pay scale in the year 1993 and the actual amount of subsistence allowance paid to the petitioner. He would be entitled for the arrears of the amount towards pension on such calculation and determination.

32. Accordingly, the writ petition deserves to be allowed for the prayer Nos.(c) and (d) in prayer clause in the writ petition.

33. We direct the respondents 1 and 2 to fix the pay of the petitioner by fixing his pay as per the revised pay scale, 1993, till the date of his attaining the age of superannuation i.e., on 31.12.1994 and accordingly, the difference of subsistence allowance be paid to him. His pension shall also be determined accordingly and after making cut of 20% for life pursuant to the order dated 08.10.2019, the arrears of the pension, as also the regular pension be paid accordingly.

34. Let the order be complied within a period of two months from the date of the copy of this order is received by the respondents.

35. In the result, the writ petition is allowed in part in the aforesaid terms. No order as to costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

JUSTICE RAVI NATH TILHARI

JUSTICE B.V.L.N. CHAKRAVARTHI

Date:19.10.2023

Note: L.R.Copy is to be marked.

B/o.

Dmr

HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

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WRIT PETITION No.15346 of 2002

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