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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
13.12.2022	12.01.2023

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1692 of 2022
and
C.M.P.No.11739 of 2022

1. Tamil Nadu State Transport
   Corporation (Coimbatore) Ltd.,
   Rep. by its Managing Director
   37, Mettupalayam Road,
   Coimbatore.

2. The Assistant Manager
   Tamil Nadu State Transport
   Corporation (Coimbatore) Ltd.,
   Chennimalai Road, Erode. ... Appellants / Respondents

-vs-

B.Rajeswari
W/o.S.S.Suresh Kumar
(P.R.No.C-24896)
Assistant Engineer,
19-B, Gandhi Nagar, 2nd Street,
Koundanpalayam,
Coimbatore-641 030. ... Respondent / Petitioner

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Prayer: Writ appeal is filed under Clause 15 of the Letter Patent praying to set aside the order dated 31.01.2022 made in W.P.No.1754 of 2018 and allow this Writ Appeal.

For Appellants : Mr.T.Chandrasekaran
For Respondent : Mr.P.Paramasivadoss

*****

J U D G M E N T

(Judgment of the Court was made by S.VAIDYANATHAN,J.,)

This Writ Appeal has been filed, challenging the order of the learned Single Judge dated 31.01.2022 made in W.P.No.1754 of 2018, in and by which, there was a direction issued to the respondents / Appellants herein to treat the Writ Petitioner's maternity leave period from 19.03.2014 to 19.07.2014 and 20.07.2014 to 14.09.2014 as duty period for all purposes.

2. For the sake of brevity, the parties would be referred to as 'Appellant Transport Corporation' and 'Writ Petitioner'.

Brief Facts:

3. The Writ Petitioner, on completion of B.E.(Automobile Engineering) in the year 2009-2010, was sponsored through Employment Exchange to the

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post of Assistant Engineer against the existing vacancy and after undergoing various levels of selection, she was appointed as Assistant Engineer in the Tamil Nadu State Transport Corporation, Coimbatore by order of the 2nd respondent dated 09.09.2013 on temporary basis and she join the service on 16.09.2013;

3.1. It was submitted by the Writ Petitioner that she was on regular probation period from the date of her joining till 29.10.2013 and on successful completion of training, she was asked to report for work as Assistant Engineer with effect from 31.10.2013. She got married on 12.06.2013, i.e., prior to her appointment in the Appellant Transport Corporation and pursuant to her advanced stage of pregnancy, she continued her training till 18.03.2014;

3.2. It was further submitted that the Writ Petitioner forwarded an application, seeking maternity leave from 19.03.2014 to 19.07.2014 and from 20.07.2014 to 14.09.2014, totalling 180 days. After delivering a male baby, she had undergone the balance period of training period from 14.09.2014 to

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13.03.2015 and during the training period, she was paid a consolidated pay of Rs.7,500/- only. She was thereafter posted at Corporate Office, TNSTC, Coimbatore from 31.10.2016 and that she had completed the two years of probationary period in November, 2017;

3.3. It was also submitted that as per G.O.(Ms) No.279, the maternity leave admissible to a married woman Government servant was enhanced to 90 days by the State Government with an option of spread over from the pre-confinement rest to post-confinement recuperation. Subsequently, the Government of Tamil Nadu, vide yet another G.O.(Ms) No.51 dated 16.05.2011, the maternity leave was further enhanced from 90 days to 180 days with the same spread over principle. Though she made a request for the grant of statutory leave with full pay and benefits, she was granted leave on loss of pay from 19.03.2014 to 19.07.2014 and 20.07.2017 to 14.09.2014 totalling 180 days by proceedings dated 08.08.2014;

3.4. It was pleaded by the Writ Petitioner that her various representations dated 27.08.2015, 04.11.2015, 30.11.2015, 25.11.2015 and

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24.11.2017 made to the 1st Appellant herein to treat her maternity leave of 180 days as maternity leave with salary and also to refix her seniority on and from 01.10.2014 instead of 01.04.2015 did not yield any positive results and aggrieved by the order of the 2nd Appellant and the endorsement of the 1st Appellant dated 24.11.2017, the Writ Petitioner filed a Writ Petition in W.P.No.1754 of 2017 on the following grounds:

a) that the wages and benefits for the period of maternity leave cannot be taken away except in accordane with law and in the light of the Maternity Benefits Act, 1961 (in short 'the Act, 1961'), no woman shall be deprived of maternity benefits, if she has actually worked in an establishment of the employer for a period of less than eighty days in the twelve months immediately preceding the date of her expected delivery;

b) that as per Rules enacted by the Tamil Nadu Government, namely, Tamilnadu Maternity Benefits Rules, 1967 in consonance with Section 28 of the Act, 1961, there was no discrimination in respect of women based on their status or their nature of employment;

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c) that Article 42 of the Constitution of India stipulated the provisions of the maternity relief in an egalitarian manner by the States and Article 39(d) Part IV speaks about the disparity among men and women and Article 51A(g) again renounces for disparity and derogatory treatment of women.

3.5. The learned Single Judge, while accepting the plea made by the Writ Petitioner, has passed the following order:

> "3.In the result, the impugned order dated 08.08.2014 passed by the second respondent is quashed. Consequently, there shall be a direction to the respondents to treat the petitioner's maternity leave period from 19.03.2014 to 19.07.2014 and 20.07.2014 to 14.09.2014 as duty period for all purposes and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order. The respondents shall also extend all the service and monetary benefits during the aforesaid period of maternity leave in their order."

3.6. Being aggrieved by the order of the learned Single Judge, the Appellant Transport Corporation has filed the present Writ Appeal, stating that the Writ Petitioner was appointed as Assistant Engineer on 16.09.2013

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only on temporary basis and as such, she is not entitled to any maternity leave with service benefits. As per Rules, a woman employee with regular scale of pay, upon completion of one year of service alone can claim the maternity benefits on production of medical certificate;

3.7. It was further stated by the Appellant Transport Corporation that as per G.O.Ms.No.163, Transport (C1) Department dated 21.05.1999, there is no provision for grant of eligible maternity leave during the training period. Non permanent women employee, who have actually worked in the Corporation for a period of not less than 160 days in twelve months would be eligible to demand the maternity leave and since the Writ Petitioner had worked only for 145 days, she is not eligible to get the maternity leave under the relevant provisions of Rules.

4. While reiterating the grounds raised in this Appeal, learned Standing Counsel for the Appellant Transport Corporation has vehemently submitted that it is true that the Act, 1961 is a welfare legislation, but at the same time, it does not mean that the benefits flowing therefrom must be extended to a

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person, who does not array in the classification provided in the provisions, especially when the Letter No.(Ms) 13965 FR 3/2015 dated 20.04.2015 issued by the Personnel and Administrative Reforms (FR III) Department was silent with regard to the grant of maternity leave to non permanent married women, who had put in less than one year of continuous service. It was further submitted that in the absence of fulfilment of such condition, the Writ Petitioner, as a matter of right cannot demand full wages and refixation of her seniority. Learned Standing Counsel has referred to the following judgments in support of advancement of his argument.

i) ***Management of Kallayar Estate, Jay Shree Tea and Industries Limited vs. Chief Inspector of Plantations and another [W.P.No.128 of 1990] decided on 31.06.1998:***

The facts involved in the said case are entirely on different footing and not applicable to the present one on hand, as it dealt with the issue of grant of leave for miscarriage.

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ii) ***L.Kannaki vs. The Secretary to Government, Animal Husbandry and Fisheries Department, Chennai and others [W.P.No.3603 of 2007] decided on 20.12.2011:***

On a perusal of the order, it is seen that the petitioner therein, who worked as a Casual Labourer was denied regularization as Animal Husbandary Assistant in the Cattle Breeding Farm in terms of G.O.Ms.No.116, Animal Husbandary and Fisheries Department dated 07.05.1995, on the ground that the petitioner therein stayed away from work without any intimation. It was argued on the side of the petitioner therein that since the petitioner was pregnant, she could not attend duty and therefore, accepting the stand taken by the petitioner therein, this Court came to the aid of the petitioner therein, which is not the case insofar the Writ Petitioner herein is concerned, rather the order relied on by the Appellants herein strengthens the case of the Writ Petitioner herein.

iii) ***M.Asiya Begum vs. The Union of India, Rep. by its Secretary to Government, Ministry of Home Affairs, New Delhi-110 001 [W.P.No.20797 of 2018] decided on 18.06.2019:***

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The issue involved in the aforesaid case was whether the petitioner therein having given birth to twin children in the first maternity leave, was entitled to apply for second maternity leave and the learned Single Judge of this Court held that when the legislation is progressive, the interpretation of law cannot be retrogressive and granted the relief to the petitioner therein. That is not the case herein.

5. Per contra, learned counsel for the Writ Petitioner has contended that the denial of maternity leave provided by Statute to the Writ Petitioner by the Appellant Transport Corporation is not appreciated and contrary to the dictum laid down by the Supreme Court. Maternity benefit is an ease bestowed on woman employees and they need to be granted full wages during leave period along with other benefits, so as to facilitate the woman employees in taking care of the child. The Hon'ble Rajasthan High Court in the case of ***Mamta vs. Employee State Insurance Corporation*** was pleased to hold that giving birth to and taking care of the child is covered under the fundamental right of the child and the woman and hence the employer shall be held liable to pay maternity benefits. He has further contended that even if a

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woman employee is working on contract basis, she should be given the benefit of maternity leave. In support of his contention, he relied on a judgment of the Supreme Court in the case of ***Municipal Corporation of Delhi vs. Female Workers (Muster-roll) and another***, reported in ***2000 (2) LLN 390 (SC)***, in which it was held as follows:

> "24. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that It is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis of on muster roll on daily wage basis.
>
> 26. It consequently issued a direction to the management of the Municipal Corporation, Delhi to extend the benefits of Maternity Benefit Act, 1961 to such muster roll female employees who were in continuous service of the management for three years or more and who fulfilled the conditions set out in section 5 of the Act.
>
> 27. We appreciate the efforts of the Industrial Tribunal in issuing the above directions so as to-provide the benefit of the Act to the muster roll women employees of the Corporation. This direction is fully in consonance with the reference made to

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the Industrial Tribunal. The question referred for adjudication has already been reproduced in the earlier part of the judgment. It falls in two parts as under:

> (i) Whether the female workers working on muster roll should be given any maternity benefit ?
>
> (ii) If so, what directions are necessary in this regard."

5.1. Learned counsel for the Writ Petitioner has also contended that when the Statute guarntees under the Act, 1961 for certain benefits to a woman employee from the employer during pregnancy, it should be extended to her and it is incumbent on the employer to pay the maternity benefits at the rate of her average daily wage. The audacity of depriving wages for the maternity period merely on a discriminatory treatment of permanent / temporary employment by the employer herein can be termed as an atrocious act and the beneficial legislation cannot be permitted to be interpreted in an irrational manner, so as to escape from their liability in extension of maternity benefits to the Writ Petitioner. Hence, it was prayed that the order of the learned Single Judge is a well considered / reasoned order and it does not warrant any interference by this Court.

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6. Heard the learned counsel on either side and perused the material documents available on record.

7. The Writ Petitioner was selected and appointed as Assistant Engineer through Employment Exchange in the Appellant Transport Corporation and was subjected to undergo the mandate training period. Since the Writ Petitioner was married even prior to the date of appointment and was carrying a foetus in the womb, she was unable to continue her training session, which resulted in a break-up and the Writ Petitioner applied for the maternity leave from 19.03.2014 to 19.07.2014 and 20.07.2014 to 14.09.2014. Though the Appellant Transport Corporation had granted leave to the Writ Petitioner, they refused to treat the leave with full pay and benefits, but on loss of pay vide proceedings dated 08.08.2014. When the decision of the Appellant Transport Corporation was questioned, learned Single Judge not only directed the employer to treat the leave period as duty period, but also extended all the service and monetary benefits applicable for the said period. Challenging the order of the learned Single Judge as contrary

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to law, the Appellant Transport Corporation is before this Court.

8. A circumspection glance at Paragraph No.4 of the undated counter affidavit filed by the Managing Director, TNSTC, Coimbatore unearths the fact that the Writ Petitioner was working as Training Assistant Engineer and it was duly admitted that the Writ Petitioner had the total leave of 180 days in her credit, on the basis of which, she was granted leave as per Corporation Leave Rules and Government Order. Even going by Rule 5 (iv) of Annexure-II Leave Rules, the temporary employee should have completed only 160 days to claim maternity benefits. For the sake of convenience, the said Rule 5 (iv) is extracted hereunder:

> "(iv) A non-permanent woman employee should have actually worked in the Corporation for a period of not less than 160 days in the twelve months immediately preceding the date of her expected delivery to become entitled to Maternity leave under this Rule."

9. The narrow interpretation given by the employer that the employee must have actually worked for 160 days for a period of 12 months cannot be accepted, as it would suffice, if the employee completed 160 days even in a

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period of less than 12 months, which means that it is not necessary that the employee should be on the roll for actual 12 months and completed 160 days in that 12 months. In the present case on hand, it is very clear as per the averment in Paragraph No.4 of the counter itself that the Writ Petitioner had rendered 180 days of service from 16.09.2013, of course with break and the holidays intervened in the interregnum shall be reckoned as days 'worked'. The Supreme Court in the case of ***Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation***, reported in ***1985 II LLJ 539*** held as under:

> "6.... The question there was not how the 240 days were to be reckoned ; the question was not whether Sundays and paid holidays were to be included in reckoning the number of days on which the workmen actually worked ; but the question was whether a workman could be said to have been actually employed for 240 days by the mere fact that he was in service for the whole year whether or not he actually worked for 240 days. On the language employed in Section 2(c) of the Payment of Gratuity Act, the court came to the conclusion that the expression 'actually employed' occurring in Explanation I meant the same thing as the expression 'actually worked' occurring in Explanation II and that as the workmen concerned had not actually worked for 240 days or more in the year they were not entitled to payment of gratuity for that year. They further question as to what was meant by the expression 'actually

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worked' was not considered as apparently it did not arise for consideration. Therefore, the question whether Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workmen could be said to have actually worked was not considered in that case. The other cases cited before us do not appear to have any bearing on the question at issue before us."

Though the aforementioned decision was rendered under the context of the Payment of Gratuity Act, 1972, the principle laid down therein is that the employee should have completed the required number of days within the time stipulated and that the Writ Petitioner herein has completed the same.

10. An interpretation of law has to be placed in its correct perspective so as not to dilute the real legislative intent. Of course, there is no bar in having different interpretations on laws, and Courts must be cautious that the non-compliance will not have the effect of nullifying the benefit and Courts should not be a party to such acts. The core theory of interpretation rests on its harmonious and balanced reading, as otherwise it will undermine / defeat the purpose of the Statute itself. It is to be remembered that birth of a baby is rebirth of a mother and if a woman is not properly taken care during the

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period of pregnancy and after delivery, it will certainly affect two lives, namely, mother and new borns. Though both Central and State Governments have been liberally implementing various schemes for the welfare and upliftment of women, the Authorities concerned shall stand in its way from reaching the hands of women for some extraneous consideration.

11. In the process of development of foetus, there would be several changes in the body of a woman, such as harmone change, increase in the total blood volume, weight gain, etc and the full gestation period is 39-40 weeks and a woman has to sacrifice several things during fecundation. The labor pain is measured by a mechanism / unit called 'dol' and the woman experiences 57 of dol, which is similar to 20 bones simultaneously getting fractured, which a normal human being, including a man cannot bear. The mental agony and pain undergone by a woman during pergnancy period would no longer be seen on the face of a woman after giving birth to a baby.

12. Let us have a glance at the *modus operandi* adopted by our neighbouring / other countries in respect of grant of maternity benefits to their citizens, which reads as follows:

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Sl.No.	*Name of the country*	*Maternity Benefits*
1.	China	Pregnant women in Shanghai are granted 98 days of leave, of which they may buse up to 15 days before giving birth and in case of problem during delivery, additional 15 days of leave may be granted. Apart from the above, one hour of break time during work hours is an extra benefit of postpartum

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Sl.No.	*Name of the country*	*Maternity Benefits*
2.	Pakistan	1) Female employees are entitled to take fully paid maternity leave up to 180 days for the birth of the first child, 120 days for the second, and 90 days for the third. For additional children, unpaid leave could be granted. 2) Male employees are entitled to take up to 30 days of fully paid paternity leave for the first three separate births. For additional children, unpaid leave could be granted. 3) Employers, who do not comply, have to face up to six months of imprisonment and / or a fine of PKR100,000.
3.	Singapore	A working mother will be entitled to either 16 weeks of Government-Paid Maternity Leave or 12 weeks of maternity leave, depending on whether the child is a Singapore citizen and other criteria.
4.	Australia	A pregnant woman can take upto 18 paid weeks off to take care of herself and her unborn child. As

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Sl.No.	*Name of the country*	*Maternity Benefits*
		per the law of the land, the mother has the option of transferring her remaining leave to someone else, who is caring for her child, and the father's and partner's leave may also be used for the same infant.
5.	Cuba	1) Pregnant women are entitled to 18 weeks fully-paid leave (six weeks before birth and 12 after), plus an additional 40 weeks at 60% pay and assured of returning to their same job. 2) Paternity leave is also granted to fathers, who are entitled to 90 days of paternity leave at 60% of pay. 3) In addition to the above, Cuba is the first Latin American Country to offer the benefits to grandparents also.

13. Dr.A.P.J.Abdul Kalam, Former President of India, who dreamt of a developed India, once said that the future of our Country is in the hands of children and wanted to make children grow in a hale and healthy manner and make the education reachable and flexible to them. If they are not protected in

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the womb in a healthy atmosphere by way of proper care to the mother, the dream of our Former President will only be a mirage.

14. Learned Standing Counsel for the Transport Corporation drew our attention to the Letter No.38307/Finance(BPE)/2022-1 dated 18.08.2022 to distinguish the employees working in the Government company and Civil Servants. It was stated in the letter that welfare measures extended to certain sect of Government employees will not entail other employees, especially to those working under State Public Sector Undertakings / Statutory Board to claim equality on par with other employees of the Government. It is pertinent to mention here that this Letter cannot be taken as an encyclopaedia to deny maternity benefits and cannot be uniformally applied to all welfare schemes. The Apex Court in the case of ***Municipal Corporation of Delhi vs. Female Workers (Muster-roll) and another*** (supra) clearly held that female workers even working on casual basis or on muster roll on daily-wage basis should be given maternity benefit and a woman employee cannot be compelled to undertake hard labour at the time of advanced pregnancy.

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15. Coming to the present case on hand, the Writ Petitioner had admittedly rendered sufficient days of service and even assuming that there is a shortage of working days in the twelve calendar months, welfare legislation and the benefits cannot be deprived on mere interpretation and technicalities, as interpretation of law should be liberal to ensure marching towards enforcement and it should not defeat the very purpose of welfare scheme. A woman is not a pendulam and cannot be forced to swing between motherhood and employment, as the maternity benefit relates to the dignity of a woman. In Hindu mythology, women, who respect elders and sacrifice their life for the welfare of the husband's family, are portrayed as equal or even greater than men and are regarded as equalent to God. The act of the employer / Appellant Transport Corporation in depriving the maternity leave and other benefits to the Writ Petitioner is *ex facie* bad in law and the order dated 08.08.2014, passed by the 1st Appellant Transport Corporation, **trans'literation'** (not a trans'lation') of which is enclosed in the typeset, has no legs to stand and should vanish.

16. For all the reasons stated above, we are not inclined to interfere

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with the order of of the learned Single and the order dated 31.01.2022 is hereby upheld. Accordingly, ***the Writ Appeal is dismissed***. Since the time granted by the Single Judge has already expired, there shall be a direction to the Appellant Transport Corporation to comply with the order of the Single Judge (more particularly Paragraph No.3 of the order) within a period of four months from the date of receipt of a copy of this judgment in letter and spirit, failing which, the Appellant Transport Corporation shall first pay a cost of Rs.50,000/- and recover the same from the Officers concerned, who are responsible to disburse the amount, in the light of the decision of the Apex Court reported in ***1993 (3) SCC 214 = AIR 1994 SC 23 (Central Co-operative Consumers' Store Ltd. Vs. Labour Court, H.P. at Shimla and another)***, wherein, the Apex Court held as follows:

> "5.Public money has been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before the one or the other authority. They have literally persecuted her. Despite unequal strength the opposite party has managed to survive. We are informed that the opposite party has been reinstated. This was put forward as bonafide conduct of petitioner to

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persuade us to modify the order in respect of back wages. Facts speak otherwise. Working life of opposite party has been lost in this tortuous and painful litigation of more than twenty years. For such thoughtless acts of its officers the petitioner-society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. But considering the agony and suffering of the opposite party that amount cannot be a proper recompense. We, therefore, dismiss this petition as devoid of any merit and direct the petitioner to comply with the directions of the High Court within the time granted by it. We however leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite patty. We may clarify that the permission given, shall have nothing to do with the direction to pay the respondent her back wages. Step if any to recover the amount shall be taken only after payment is made to the opposite party as directed by the High Court.... "

No costs. Consequently, the connected Miscellaneous Petition is closed.

(S.V.N., J.) (M.S.Q., J.)

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Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
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S.VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.
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PRE-DELIVERY JUDGMENT IN
W.A.No.1692 of 2022

12.01.2023

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