

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 501/2017 (S.B.)

- 1) Smt.Kaushalya Wd/o Ramkrisha More,
Aged about 56 years,
Occu : Housewife.
- 2) Amol S/o Ramkrishna More,
Aged about 32 years, Occu : Nil,
- 3) Vishal S/o Ramkrishna More,
Aged about 30 years,
Applicant No.1 to 3 R/o Bhadravati,
Chandrapur.

Applicant.

Versus

- 1) Government of Maharashtra,
Ministry of Home affairs through
Secretary, Mantralaya,
Maharashtra, Mumbai.
- 2) Superintendent of Police,
Chandrapur, S.P.Office,
Chandrapur.
- 3) Deputy Superintendent of Police,
Chandrapur, S.P.Office,
Chandrapur.

Respondents

O.A.No.805/2019 (S.B.)

- 1) Smt.Kaushalya Wd/o Ramkrisha More,
Aged about 56 years,
Occu : Housewife.
- 2) Amol S/o Ramkrishna More,
Aged about 32 years, Occu : Nil,

- 3) Vishal S/o Ramkrishna More,
Aged about 30 years,
Applicant No.1 to 3 R/o Bhadravati,
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Chandrapur.
- 3) Deputy Superintendent of Police,
Chandrapur, S.P.Office,
Chandrapur.

Respondents

Shri S.R.Charpe, Ld. counsel for the applicants.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 18th October, 2022.

JUDGMENT

Judgment is reserved on 07th October, 2022.

Judgment is pronounced on 18th October, 2022.

Heard Shri S.R.Charpe, learned counsel for the applicants and
Shri V.A.Kulkarni, learned P.O. for the Respondents.

2. Since these O.As. are inter connected they were heard together and
are being decided by this common judgment.

3. The applicants are wife and sons of deceased Ramkrishna More.
4. Reliefs claimed in O.A.No.501/2017 are founded on Section 47 of the Persons with Disabilities (***Equal Opportunities, Protection of Rights and Full Participation***) Act, 1995,
5. In O.A. No.805/2019 direction is sought to the respondents to consider claim of either of the sons of the deceased for giving an appointment on compassionate ground.
6. In O.A.No.805/2019 following relief was also claimed-

a. Declare that the stipulation in the Government Resolution dated 22/8/2005 to the extent it differentiates between the employees who are rendered unfit for discharging their duties on account of various situations such as cancer, accident etc. while in service and are retired on medical grounds and other set of the employees, who are rendered disabled, while in service, for grant of benefit of scheme of compassionate ground appointment, as illegal arbitrary and violative of article 14 of the Constitution of India and may further be pleased to strike down the same to the aforesaid extent.

This grievance stood redressed during the pendency of these O.As. by virtue of the following declaration granted by the Principal Bench of this Tribunal in O.A.No.1006/2015 by judgment dated 07.08.2017-

(b) The text quoted in para 7 of the order viz. as contained in G.R. dated 22.08.2005 (Exhibit 'N' page 52 of O.A.) is quashed and set aside and the claimant will be eligible to apply for compassionate appointment in furtherance to the policy of the Government in vogue before issuance of G.R. with modification made through G.R. dated 22.8.2005 except the portion which is quashed.

7. Facts of O.A.No.501/2017-

The deceased was working as Assistant Sub-Inspector. On 07.10.2010 he met with an accident and sustained severe injuries. He could not regain fitness to resume duties. On 25.03.2013 he was examined by the Medical Board. The Medical Board issued a certificate (Annexure A-1) that he was unfit to discharge duties. On 1.7.2013 respondent no.2 passed the following order (Annexure A-2)-

आदेश

सफौ/१४८४ रामकृष्ण सिताराम मोरे, नेमणुक पोलीस स्टेशन, रामनगर
जिल्हा चंद्रपूर यांना दिनांक १०/०७/२०१० रोजी गंभीर अपघात झाल्याने ते आजारी
रजेवर होते. त्यांनी वैद्यकीय तपासणी करून सेवानिवृत्ती मिळणेबाबत अर्ज सादर
केल्याने त्यांना अध्यक्ष, वैद्यकीय मंडळ, इंदिरा गांधी वैद्यकीय महाविद्यालय, नागपूर

यांचेकडे वैद्यकीय तपासणी कामी पाठविण्यात आले होते. वैद्यकीय मंडळाने सफौ/१४८४ रामकृष्ण सिताराम मोरे, यांना रुग्णता सेवानिवृत्त करणेस लेखी शिफारस केल्याने त्यांना महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम १९८२ मधील नियम क्रमांक ८० नुसार सफौ/१४८४ रामकृष्ण सिताराम मोरे, यांना दिनांक ०२/०७/२०१३ चे मा. पुर्वी पासून रुग्णता सेवानिवृत्तीवर सेवानिवृत्त करण्यात येत आहे.

On 16.12.2013 respondent no.2 passed the following order
(Annexure A-5)-

: आदेश :

या कार्यालयाचे आदेश क्रमांक : तिन/एसबी-५/सफौ-१४८४/२०१३, दि. १७/०८/१३ अन्वये सफौ/१४८४ रामकृष्ण मोरे नेमणुक पो.स्टे.रामनगर यांची दिनांक ११/०७/२०१० ते १/०७/२०१३ पर्यंत मंजूर करण्यात आलेली रजा या आदेशाद्वारे रद्द करून सुधारीत आदेश खालीलप्रमाणे निर्गमित करण्यात येत आहेत.

(२)

सफौ/१४८४ रामकृष्ण मोरे नेमणुक पो.स्टे.रामनगर यांना महाराष्ट्र नागरी सेवा (रजा) नियम १९८१ मधील नियम ७९ पोट नियम ३(१) अन्वये दिनांक ११/०७/२०१० ते ११/०४/२०११ पर्यंत २७५ दिवस परीवर्तीत रजा २) दिनांक १२/०४/२०११ ते ०५/०२/२०१२ पर्यंत ३०० दिवस अर्जित रजा ३) नियम क्रमांक ७९ मधली पोट नियम क्रमांक ३ (३) अन्वये दिनांक ६/२/२०१२ ते ४/२/२०१३ पर्यंत ३६५ दिवस पक्षघात रजा आणि ४) दि.५/२/२०१३ ते १/७/२०१३ पर्यंत १४७ दिवस असाधारण रजा वैद्यकीय प्रमाणपत्राचे आधारे मंजूर करण्यात येत आहे.

तसेच सदर रुग्णता सेवा निवृत्त सफौ यांचे रजा खात्यात अर्जित रजा शिल्लक नसल्याने त्यांना रजा रोखीकरणाचा लाभ अनुज्ञेय नाही.

But for the order dated 1.7.2013 the deceased would have retired on superannuation.

Grievances of the applicants in this O.A. are-

- (1) *After the accident of the deceased Ramkrishna More, on and from 11.07.2010 till the date of medical retirement i.e. on 02/07/2014, the deceased Ramkrishna More was on a medical leave and therefore for the period from 11.7.2010 up to 02/07/2013, the deceased Ramkrishna More was entitled to draw the entire salary as per rules.*
- (2) *After issuance of order of medical retirement of the applicant the respondent issued an order dated 16.12.2013 thereby adjusting the period of absence of deceased Ramkrishna More from duty on account of accident and unfitness to join duty thereafter against various leaves available to the credit of deceased Ramkrishna More including the earned leaves in the manner stated in the aforesaid order.*
- (3) *As per law the deceased Ramkrishna Sitaram More ought to have been paid the entire salary for the period from 11.07.2010 i.e. day on which the deceased Ramkrishna More was on medical leave till the actual date of superannuation i.e. 01/07/2014. Similarly the deceased Ramkrishna More being under medical treatment and having been treated to be under*

medical leave on and from 11.7.2010 till the date of medical retirement i.e. 02/07/2013, said period of absence could not be adjusted against the earned leaves and thus the deceased Ramkrishna More was entitled for encashment of 300 earned leaves lying to his credit. However, the respondents in the manner pointed out above illegally adjusted earned leaves against the absence from duty on account of accident i.e. a period during which the deceased Ramkrishna More was admittedly availing medical leave.

- (4) *The deceased was initially found to be entitled for an amount of Rs.2,07,400/- towards gratuity from the respondents however the respondents illegally proceeded to deduct the amount of salary lawfully paid to the deceased Ramkrishna More to the tune of Rs.1,93,838/- and thereby releasing only an amount of Rs.13563/- towards gratuity. The respondent no.2 communicated the same to the applicant vide communication dated 16.12.2013.*

By communication dated 26.08.2015 (Annexure A-6) respondent no.2 informed the deceased as under-

उपरोक्त संदर्भीय पत्रास अनुसरुन कळविण्यात येते की, महालेखाकार-२, लेखा व हकदारी, नागपूर यांचेकडील पत्र क्र. पीआर-७/चंद्रपूर/२१३१३९०६६१/३/पी/१४/१०/६०११५४७२, दिनांक ०८.०१.२०१४ व जीपीओ क्र.१२१४०१०१०६९४५ अन्वये सेवा उपदानाची (ग्रॅज्युएटीची) रक्कम रु.२०७४००/- मंजूर झालेली असून सदर मंजूर

सेवा उपदान (ग्रॅज्युएटीची) रक्कमेमधून दि.०५.०२.२०१३ ते ०१.०७.२०१३ पर्यंत १४७ दिवस असाधारण रजेची वसुली रक्कम रु.१५५३८३/- तसेच सुधारीत वेतन निश्चितीमुळे वेतन व भत्त्याची अतिप्रदान रक्कमेची वसुली रक्कम रु.३८४५५/- अशी एकुण रक्कम रु.१९३८३८/- वसूल करून रक्कम रु.१३५६३/- धनादेश क्र.४२६१८७, दिनांक २४.०३.२०१४ द्वारे अदा करण्यात आलेली आहे.

Ramkrishana More died on 10.10.2015 (Annexure A-7).

In this O.A. the applicants have claimed following reliefs-

- a) *Quash and set aside the communication/order dated 16.12.2013 (Annexure-A-5) so also Communication/order dated 26/08/2015 (Annexure A-6) issued by the Respondents no.2 & 3 respectively. So also quash and set aside the order dated 1/7/2013 (Annexure A-2 issued by the respondent)*
- b) *Direct the respondents to effect the encashment of leaves in respect of 300 earned leaves lying to the credit of the deceased Ramkrishna More at the time of retirement and to pay the same to the Applicants.*
- c) *Direct the respondents to pay to the applicants an amount of Rs.1,93,838/- illegally deducted from the amount of gratuity which was payable to deceased Ramkrishna More.*
- d) *Direct the respondents to pay interest @ 11% p.a. on the amounts claimed as per prayer clause aa, b*

& c from the date of retirement i.e. 02/07/2013 till the date of complete realisation.

e) Grant any other relief as may be considered fit and proper in the facts and circumstances of the case.

8. In his reply at pp.25 to 28 respondent no.2 has raised following contentions-

- (1) *As a matter of fact Shri.Ramkrishna More while taking the treatment on account of accident, had several times orally requested to retire him from the service on medical ground. He submitted such application to the Superintendent of Police Chandrapur on 28.08.2012 and to the Director General of Police, Mumbai on 01.09.2012. Accordingly he was referred to the Medical Board on 17.09.2012. After due examination, Shri.Ramkrishna More was declared completely and permanently incapacitated for further service of any kind by the Medical Board, and recommended for invalid pension. Shri More again requested for retirement on medical ground vide letter dated 21.06.2013.*
- (2) *On the retirement of the applicant on the medical ground, it was necessary to decide the period of absence as per MCS (Leave) Rules. Therefore, by virtue of order dated 17.08.2013 the S.P. Chandrapur decided the leave period and as per said order after adjusting the leave to the account of Shri. More the leave from 06.02.2012 to 01.07.2013 i.e. 512 days was declared as Extra Ordinary Leave.*

- (3) *The aforesaid order was reviewed sympathetically and modified order was passed on 16.12.2013 and from 06.02.2012 to 04.02.2013 the leave of 365 days was adjusted from extra ordinary leave to special leave and only 147 days are declared as extra ordinary leave. Thus the respondents have decided the leave as per law and there is no illegality in it. The amount of Group Insurance and gratuity was paid to Shri. More on 08.01.2014. The Regular Pension is commenced from 02.07.2013. As Shri. More was satisfied with all the formalities, the action of retirement on medical ground was initiated on his request. As such he has not challenged the same during his lifetime. At the cost of repetition it is stated that Shri. More expired on 10.10.2015 i.e. at least 2 years from the commencement of pension.*
- (4) *Shri. More was absent from duty from 11.07.2010 to 01.07.2013 i.e. for 1087 days. Out of that leave of 275 days is granted as per Rule 61(1)(B), the earned leave of 300 days is granted as per Rule 50(1) (2) and special leave for disabilities (Pakshaghat) of 365 days is granted as per Rule 79(3)(3) of the MCSR (Leave) Rules. After adjusting all kinds of leaves the remaining absence of 147 days was declared as Extra Ordinary leave and the same is deducted from his DCRG. The A.G. Office raised objection of excess payment and accordingly amount of Rs.38,455/-*

towards excess payment and amount of Rs.1,55,38/- towards leave without pay is recovered.

- (5) *He himself requested for retiring him on medical ground and therefore there is no force in this contention.*

In support of aforesaid contentions the respondents have placed Annexures R-1 to R-4 on record.

To assail the orders dated 01.07.2013 (Annexure A-2) 16.12.2013 (Annexure A-5) and 26.08.2015 (Annexure A-6) the applicants have relied on Section 47 of the Persons with Disabilities *(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.*

It reads as under-

“47.Non-discrimination in Government employments.-(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability, is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable

post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

To support this submissions reliance is placed on ***Uttarakhand State Co-operative Federation Ltd. Vs. Shiv Kumar Sharma and another*** (Judgment of Uttarakhand High Court delivered on 27.09.2018 in Special Appeal No.672/2018.) In this case it is held-

13. In view of the language used in Section 47 of the Act, no employer, who falls within the definition of 'establishment' can dispense with services of an employee, who acquires disability during employment, notwithstanding any provision to the contrary contained in the Service Rules. Service Rules are in the nature of subordinate legislation, which cannot override provisions of Parliamentary Legislation. Moreover, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 is a beneficial legislation which requires a liberal interpretation to give effect to the legislative intent as held by Hon'ble Supreme Court in the case of Kunal Singh Vs. Union of India reported in (2003) 4 SCC 526.

In reply, it was submitted by the learned P.O., Shri V.A.Kulkarni that it was the deceased himself who had applied for retirement, he accepted the impugned orders without demur and hence an inference of waiver will have to be drawn which would non-suit the applicants. To counter this submission learned Advocate for the applicants submitted that the deceased was left with no alternative because of his physical condition and under such circumstances it would not be permissible to draw an inference of waiver. To support this submission reliance is placed on the following observations in paras 9 and 10 of Shiv Kumar Sharma (Supra)-

9. Section 47 of the aforesaid Act is in the nature of guarantee to an employee, who acquires physical disability while in service. Since respondent no.1 acquired disability during service, therefore, he is protected by Section 47 of the Act. Merely, because he gave option for voluntary retirement pursuant to the circular issued by Managing Director, it cannot be said that he waived his rights available under Section 47 (i) of the Act. For a waiver of legally enforceable right earned by employee, same should be clear and unequivocal, conscious and with full knowledge

of consequences, as held by Hon'ble Supreme Court in the case of Shashikala Devi Vs. Central Bank of India reported in (2014) 16 SCC 260.

10. From Annexure-9 to the Writ Petition, it is apparent that respondent no.1 was not able to perform his duties. He had given option for voluntary retirement due to his physical disability. Thus, he was not aware of the rights available to him under law, therefore, the condition necessary for waiver of right is not present in the instant case. Since the option given by the respondent no.1 was not unqualified, therefore, it was never accepted. In such view of the matter, the submission made on behalf of the appellant that respondent no.1 was not entitled to protection of Section 47 of the Act, cannot be sustained in the eyes of law.

The applicants have further relied on "C.Edwin JoshuaVs.The State Transport Corporation (Madurai) Ltd."(Judgment dated 11.01.2018 delivered by Madurai Bench of Madras High Court in Writ Petition No.8248 of 2014 with W.M.P. (MD) No.15747 of 2017.) In this case it is held-

3. The stand of the respondent cannot be appreciated. There is no question or waiver or estoppel in these cases. When Section 47 (1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, gives a statutory protection to the disabled employee, the same will have to be adhered to in letter and

spirit. The impugned order is violative of the said statutory provision.

Reliance may also be placed on **“Kunal Singh Vs. Union of India and Another 2003 SCC (L & S) 482”**. Wherein it is held-

Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits ; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of the other provisions of Section 47 of the Act.

Undisputed facts have been narrated above. By applying Section 47 of the Act to these facts it can be concluded that none of the impugned orders can be sustained and declaration deserves to be granted that the

deceased would deem to have retired on superannuation and therefore entitled to all benefits flowing therefrom.

8. Additional facts of O.A.No.805/2019-

On 20.03.2015 applicant no.3 submitted an application for appointment on compassionate ground. This application was turned down by communication dated 4.4.2015 (Annexure A-9) which reads as under-

विषय :- आपल्या विभागात अथवा कोणत्याही शासकिय/निमशासकिय विभागात नौकरी मिळण्याबाबत.

श्री. विशाल रामकृष्ण मोरे, रा.शिवाजीनगर, भद्रावती.

संदर्भ :- आपला दिनांक २०/३/२०१५ चा अर्ज.

उपरोक्त संदर्भिय विषयांकित अर्जान्वये आपणास कळविण्यात येते की, आपण दिनांक २०/३/२०१५ चे अर्जान्वये पोलीस विभागात अथवा कोणत्याही शासकीय /निमशासकिय विभागात नौकरी मिळण्याबाबत अर्ज सादर केलेला आहे.

सदर अर्ज प्रकरणी आपणास कळविण्यात येते की, महाराष्ट्र शासन, सामान्य प्रशासन विभाग, शासन निर्णय क्रमांक अकंपा/१००४/प्र.क्र.५१/२००४/आठ, दिनांक २२/८/२००५ अन्वये गट क व ड मधील कर्मचारी कर्करोग, पक्षाघात किंवा अपघात यामुळे सेवेसाठी कायमचा असमर्थ ठरून रुग्णता निवृत्त झाल्यास त्याच्या कुटुंबियांना गट क व ड मधील पदावर नियुक्ती देण्याची सवलत रद्द करण्यात आली आहे. त्यामुळे आपण पोलीस विभागात अथवा कोणत्याही शासकिय /निमशासकिय विभागात नौकरी मिळण्याबाबत केलेली विनंती अमान्य करण्यात येत आहे.

मा. पोलीस अधीक्षक यांचे मान्यतेने.

Relevant portion of G.R. dated 22.08.2005 (Annexure A-10) is as under -

२. याशिवाय अनुकंपा योजनेच्या सध्याच्या प्रचलित तरतुदीत खालीलप्रमाणे सुधारणा सदर आदेश निर्गमित झाल्याच्या दिनांकापासून करण्यात येत आहेत :-

(१) गट 'क' व 'ड' मधील कर्मचारी कर्करोग, पक्षाघात किंवा अपघात यामुळे सेवेसाठी कायमचा असमर्थ ठरून रुग्णता निवृत्त झाल्यास त्याच्या कुटुंबियांना गट 'क' व 'ड' मधील पदांवर नियुक्ती देण्याची सवलत रद्द करण्यात येत आहे. यापुढे केवळ सेवेत असतांना दिवंगत झालेल्या गट 'क' व 'ड' च्या कर्मचा-यांच्या पात्र कुटुंबियांनाच अनुकंपा नियुक्ती अनुज्ञेय राहिल.

This ground of rejection of application for appointment on compassionate ground no longer survives in view of the judgment dated 07.08.2017 passed by the Principal Bench of this Tribunal in O.A.No.1006/2015. I have already quoted operative part of the judgment whereby aforequoted Clause of G.R. dated 22.08.2005 has been quashed and set aside. Consequently, communication dated 04.04.2015 (Annexure A-9) cannot be sustained.

9. The upshot of the foregoing discussion is this.

All three impugned orders in O.A.No.501/2017 are required to be quashed and set aside and declaratory relief that the deceased would deem to have retired on superannuation will have to be granted with all consequential benefits. So far as O.A.No.805/2019 is concerned, the surviving reliefs in prayer Clauses aa and b deserve to be granted since the impediment posed by the relevant Clause of G.R. 22.8.2005 no longer

remains in view of the determination made by the Principal Bench in O.A.No.1006/2015. Prayer Clauses aa and b in this O.A. read as under.

aa) quash and set aside, the order dated 04/04/2015 (Annexure A-9) issued by the respondent.

b) Direct the respondents to consider the claim of the applicant no.2 & 3 for appointment of either of them, on compassionate ground, on an appropriate suitable, post with them in accordance with their eligibility and suitability as per educational and other qualifications in accordance with law.

It was argued by Advocate Shri S.R.Charpe for the applicants that the applicants would be entitled to the reliefs claimed in both the O.As. In support of this submission reliance is placed on the judgment dated 17.03.2022 in Writ Petition No.432 of 2021 of the Hon'ble Bombay High Court (Nagpur Bench). In this case it is held, by relying on Kunal Singh (Supra)-

In other words, it has been held that the protection of pay, rank and other such status under Section 47 of the aforesaid Act is available, notwithstanding any other benefit that a person may be entitled to who has suffered disability during the course of his service.

It was submitted that in light of relevant facts the applicants would be entitled to the reliefs claimed in both the O.As. viz. those based on

Section 47 of the Act and that of an appointment on compassionate ground. This submission cannot be accepted.

Simultaneous grant of reliefs claimed in both the O.As. would obviously lead to an incongruity. Once it is held that the deceased would deem to have retired on superannuation with all the attendant benefits, question of granting relief of appointment on compassionate ground to his dependant would not arise.

In such a situation the Principal Bench, in O.A.No.1006 of 2015 gave a choice to elect only one set of such reliefs. Same course will have to be adopted in these cases too. Hence, the order.

ORDER

The impugned orders in O.A.No.501/2017 dated 1.7.2013, 16.12.2013 and 26.8.2015 (Annexures A-2, A-5 & A-6, respectively) are quashed and set aside and it is declared that deceased Ramkrishana More would deem to have retired on superannuation and entitled to all consequential benefits.

Order dated 04.04.2015 (Annexure A-9) in O.A.No.805/2019 is quashed and set aside and the O.A. is allowed in terms of prayer Clauses aa and b.

The applicants will have to elect any one set of reliefs granted as above in these O.As., and not both.

On receipt of representation from the applicants communicating the option which they desire to exercise, the respondents shall act upon the same and take it to its logical conclusion within three months therefrom.

The O.As. are allowed in the aforesaid terms with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated - 18/10/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 18/10/2022.
and pronounced on
Uploaded on : 18/10/2022.