

***HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

+WRIT PETITION Nos.19438/2022 & 21912/2022

WP No.19438/2022

Between:

#Dasari Nagaraju

...PETITIONER

AND

\$The State Of Andhra Pradesh and Others

...RESPONDENT(S)

JUDGMENT PRONOUNCED ON **28.03.2025**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments?
- Yes -
2. Whether the copies of judgment may be marked to Law
Reporters/Journals
- Yes -
3. Whether Their Ladyship/Lordship wish to see the fair
copy of the Judgment?
- Yes -

DR.JUSTICE K. MANMADHA RAO

*** THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

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% 28.03.2025

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...RESPONDENT(S)

! Counsel for the Petitioner : Smt. G. Kavitha

Sri C. RAghu

Smt V Sesha Kumari

! Counsel for Respondents: GP for Services-I

GP for Mines & Geology

<Gist :

>Head Note:

? Cases referred: 1. (2013) 12 Supreme Court Cases 210

APHC010325402022



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3310]

FRIDAY ,THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 19438/2022 & 21912/2022

WP No.19438/2022:

Between:

Dasari Nagaraju

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.KAVITHA GOTTIPATI

Counsel for the Respondent(S):

1.GP FOR HOME

2.GP FOR SERVICES I

3.GP FOR MINES AND GEOLOGY

The Court made the following:

COMMON ORDER:

As the issue involved in both the writ petitions is one and the same, they are being taken up for hearing as well as disposed of by way of this Common Order.

2. Since the facts in both the writ petitions are similar and identical, therefore WP No.19438 of 2022 is taken as lead case, and the facts therein hereinafter will be referred to for convenience.

3. Brief facts of the case are that, while the petitioner was working as Assistant Director of Mines & Geology for Srikakulam, he executed a lease deed acting on behalf of the Government dated 23.2.2004 in favour of M/s Trimex Industries Ltd. After long lapse of time, certain allegations were made by the 2nd respondent in his vigilance report No.17(C.No.888/V&E/NR/2014), dated 11.3.2016 stating that the petitioner has submitted an explanation that the District Collector, Srikakulam has granted revenue clearance for 10 Sq.KMs for prospecting license. The same area was granted for mining lease in favour of M/s Trimex Industries Ltd., and thus the same NOC holds good and also stated that precautionary measures taken during the execution of lease deed duly incorporating all the conditions stipulated in G.O.Ms.No.31 of Industries & Commerce, dated 6.2.2004, and therefore, there is no fault on the petitioner's side. But the said explanation was not accepted by merely stating that the same is not tenable. In the said report, it was also stated that Clause (e) contains findings. A close perusal of the same shows that at serial No.1 that an allegation has been made against the petitioner that he has executed the lease before obtaining the clearance from Revenue, Forest Department and Patta holders against the conditions of G.O.Ms.No.31, dated 6.2.2004 without furnishing any material particulars. At Clause No.5 it is stated that the official of Mines & Geology Department had allowed mining operations and

issued transmit permissions for transportation. Challenging the said report dated 11.3.2016 the petitioner filed WP No.44571 of 2018 before this Court and the same was disposed of and directed the respondents No.2 and 4 to reconsider the report dated 11.3.2016 in the light of the subsequent report of the District Collector, dated 17.11.2018, the District Collector had stated that Ac 387.72 cents of Vatsavalasa village of Gara Mandal, Srikaulam is not a revenue land and it belongs to Forest Department. Pursuant to the said directions of this Court, the 2nd respondent has submitted a fresh report dated 21.03.2019. Basing on the above report dated 21.03.2019 the 3rd respondent issued proceedings Lr.No.18314/E1/1984 dated 13.12.2019 vide letter addressed to the Accountant General, who is 4th respondent herein stating that the Government has sanctioned provisional pension 75% vide G.O.Rt.No.318 dated 26.11.2019 under Rule 52(1)(a)&(b) of A.P. Revised Pension Rules, 1980.

While the things stood thus, the 1st respondent without application of mind and without reference to the subsequent vigilance report dated 21.3.2019 where under the earlier vigilance report dated 11.3.2016 was modified to the effect that the decision to take necessary action against the officials has to be reviewed. Such a review exercise has not been undertaken prior to issuance of the impugned G.O.Rt.No.154, dated 28.6.2019 under which the petitioner was allowed to retire from service. the said G.O.Rt.No.154, dated 28.6.2019 only refers to the earlier vigilance report dated 11.3.2016 but not the subsequent vigilance report dated 21.3.2019

though it was available as on 28.6.2019. Later G.O.Rt No.318, dated 26.11.2019 has been issued post retirement of the petitioner on 30.06.2019. the petitioner mainly contended that as per the provisions contained in the A.P. Revised Pension Rules, 1980, he is entitled for full pension and the respondents do not have any right to withhold his pension in part of in hold. Though the petitioner has submitted a detailed representations dated 5.6.2018, 25.2.2019, 18.2.2022 and 22.6.2022 claiming full pension and objecting to withholding of part pension, no action has been taken by the respondents. Hence the present WP No.19438 of 2022 came to be filed.

4. This Court, vide order dated 07.07.2022, while issuing Notice before admission, directed the 1st respondent to deal with the representations dated 25.02.2019 and 29.6.2022 of the petitioner, in accordance with law, if the said representations are received by the 1st respondent and they are pending before him.

5. In pursuance of the directions of this Court, the 1st respondent has filed vacate stay petition vide I.A No.2 of 2022 before this Court. In the said petition, while denying all the allegations made in the petition, stated that in the light of the interim order of this Hon'ble High Court in WP No.19438 of 2022, the GA (V&E), in their report dt.11.3.2016 has informed that the Vigilance and Enforcement Dept., has conducted an enquiry on petition filed by Sri Mourya Sunkavalli, Hyderabad against M/s Trimex Industries Limited for the illegal mining of Beach Sand minerals like ilmenite, Garnet, Zircon, Rutile, Silliminite and Leucoxene etc., over an extent of 7.20 Sq. Kms(1777.74

Acres) in different survey numbers of Vastavalasa & Tonangi villages, Gara(M), Srikakulam district. Among other things, the GA (V&E) Report recommended to take necessary action against the petitioner who executed and issued work order including disputed area of 387.72 acres against the stipulated conditions in G.O.Ms.No.31, dt.06.02.2004. It was also requested to take necessary action for major penalty against the petitioner. In the meantime, based on the report of Vigilance and Enforcement report, dt: 11.03.2016 lease held by M/s Trimex Sands Pvt Ltd was terminated vide G.O.Ms.No.134, Industries & Commerce(M-III) Department, dt:28.11.2018. Aggrieved by the order, the lease holder filed W.P. No.44571 of 2018 before this Hon'ble High Court and this Court has granted interim order in I.A.No.2 of 2018 and directed the Vigilance Commissioner, APVC and the Director General (Vigilance & Enforcement) to reconsider the vigilance report, dt: 11.03.2016 in view of the subsequent report of the District Collector dated: 17.11.2018 and act in accordance with law, as expeditiously as possible.

In compliance of the above orders passed in I.A.No.2 of 2018 in W.P.No.44571/2018, the GA (V&E) Dept has furnished the revised Vigilance report No.17, dated 21.03.2019, wherein it was recommended to set aside the recommendations at Para D(1) of V&E Report (pertaining to Revenue Department) and review the earlier recommendations at Para D(2) (pertaining to Industries and Commerce Department) as deemed fit. Subsequently, the 3rd respondent was requested to examine and furnish his specific recommendations on the revised report of GA (V&E) Dept., vide

Memo.No.4149/Vig.A1/2016, dated.18.02.2020. The 3rd respondent vide letter, dated 07.07.2021 has requested to drop the action proposed by the V&E Dept., vide its report dated 11.03.2016 against the officials of Mines & Geology Dept. However, the Government after careful examination of the material available has decided to file criminal cases against retired officials including the petitioner as departmental action could not be initiated against retired officials for the irregularity committed as per Rule 9(2) (b) (ii) of A.P. Revised Pension Rules, 1980. The 3rd respondent has also been instructed to take action on the same lines vide Memo.No.4149/Vig.A1/2016, dt.13.07.2022.

It is further stated in the affidavit that, after careful examination, and taking the report submitted by the 3rd respondent into consideration, the representations of the petitioner dated 25.02.2019 and 29.06.2022 were disposed of, in compliance of the interim orders issued in this WP, vide Lr. No. IND/145/2019-VIG, dated 26.09.2022 stating that his request cannot be considered in view of the pendency of the disciplinary cases pending against him as per G.O.Rt.No.1097, Finance dt.22.06.2000 & Planning (FW-Pen.I) Department. Therefore, there are no grounds to allow the writ petition and devoid of merits and the may be dismissed.

6. Aggrieved by the Memo of the 3rd respondent vide Memo.No.4149/Vig.A1/2016, dt.13.07.2022, the petitioner and 3 others have filed another **WP No.21912 of 2022** before this Court.

7. This Court vide order dated 22.07.2022, in WP No.21912 of 2022, while issuing Notice before admission, has directed the respondents not to file criminal complaints against the petitioners pursuant to the Memo dated 13.07.2022 of the 1st respondent pending further orders. It was also held that the respondents are at liberty to proceed against the petitioners in accordance with law.

8. In pursuance of the interim order dated 22.07.2022 in WP No.21912 of 2022, the respondents No.1 and 4 have filed Vacate stay petition vide IA No.1 of 2024 in WP No.21912 of 2022 stating that the then District Collector, Srikakulam has issued revenue clearance in favour of M/s. Trimex Industries Limited for an extent of 1390.02 Acres against 1777.74 Acts in Vastavalasa and Tonangi Village, Gara Mandal Srikakulam vide Lr Dis No.1852/2002 H3, dated 24.10.2005 the then ADM&G i.e., the petitioner No.1 herein is bound to modify work order, execute, sketch and restrict the mining operations from 1777.74 Acres to 1390.02 acres of various survey numbers in Vastavalasa and Tonangi Village, Gara Mandal, Srikakulam district. However, he did not modify the order. Further, the petitioners No.2 to 4 herein have issued dispatch permits for transportation of beach sand minerals within the disputed area of 387.72 acres in violation of the conditions stipulated under G.O.Ms.No.31 I&C (M.III) Department, dated 6.2.2004 which resulted in illegal excavation/transportation of Beach sand minerals. In view of the above circumstances, the 3rd respondent was requested to examine and furnish his specific recommendations on the revised report of GA (V&E) Department vide

Memo No.4149/Vig.A1/2016 dated 18.02.2020 keeping view the orders of this Court and revised report of V&E Department. Subsequently, it was decided to initiate criminal action against the retired employees as per para (5) of G.O.Rt.No.1097daed 22.6.2000 wherein it is stated that “if any irregularity of a retired employee is noticed after his retirement and no departmental proceedings can be instituted under sub rule (2) (b) of rule 9 of A.P. Revised Pension Rules, 1980 the department can initiate criminal action against the retired officer or action under the A.P. Revenue Recovery Act, 1864 to recover the loss if any caused to the Government by him.” Hence, the 3rd respondent was instructed vide Govt. Memo. No.4149/Vig.A1/2016, dt:13.07.2022 to file criminal cases against retired officials viz., (1) Sri D. Naga Raju, the then ADM&G, Srikakulam (2) Sri V. Koteswara Raju, the then ADM&G, Srikakulam (3) Sri R. Golla, the then ADM&G, Srikakulam (4) Sri G.V.V.S.Chowdary, the then ADM&G, Srikakulam (5) Sri Hanumantha Rao, the then Asst. Geologist, O/o ADM&G, Srikakulam and (6) Sri S V Ramana Rao, the then ADM&G Srikakulam, since departmental action could not be initiated against them for the irregularity committed as per Rule 9 (2) (b) (ii) of A.P. Revised Pension Rules, 1980, and to initiate departmental action against two (2) in service officials viz., Sri K.L.V Prasad, the then ADM&G, Srikakulam and Sri R. Thammunaidu, the then Asst. Geologist, O/o ADM&G, Srikakulam for issuing transit permits to M/s East West Mineral Sands Private Limited (M/s Trimex Industries Ltd) for transportation of Beach sand minerals from the disputed area of 387.72 acres of Vatsavalasa village of Gara Mandal, Srikakulam

District. Therefore, there is no illegality or infirmity in issuing the Govt. Memo. No.4149/Vig.A1/2016 dated 13.07.2022 since impugned order was issued as per the G.O.Rt.No.1097 Finance & Planning (FW-Pen.I) Department, dated 22.06.2000 for the irregularities committed by the petitioners herein. hence prayed to dismiss the writ petition No.21912 of 2022.

9. Heard Smt. G. Kavitha; Sri C. Raghu, learned senior counsel representing Smt. V. Sesha Kumari, learned counsels appearing for the petitioners; learned Government Pleader for Services-I and learned Government Pleader for Mines & Geology appearing for the respondents.

10. On hearing, Smt G. Kavitha, learned counsel appearing for the petitioner in WP No.19438 of 2022, while reiterating the contents made in the petition, submit that, the petitioner was permitted to retire from service on 30.06.2019 i.e., after the report was submitted by the 2nd respondent dated 21.3.2019 vide G.O.Rt. No.154 dated 28.6.2019. Basing on the said G.O., the 3rd respondent has issued proceedings dated 13.12.2019 which is illegal and arbitrary. She further submits that the allegation that is made against the petitioner is in relation to the execution of a lease document dated 23.2.2004 but the petitioner worked at that place only upto 22.4.2006. It means the allegation relating to the event is 23.2.2004 and the work order that was issued on the same day. She further submits that Rule 9(2)(b) of A.P. Revised Pension Rules 1980 stipulates of limitation for withholding the pension. The period of limitation is 4 years from the date of event. In this case, the alleged event had occurred on the date of the execution of the

mining lease on 23.2.2004 and the work order on the same date. Even assign the date of event is still the date of transfer i.e., on 22.04.2006, the period of limitation shall expire by 22.2.2008 or at least by 21.4.2010. She further submits that the period of limitation is relevant only in cases where no disciplinary proceedings have been initiated prior to retirement. But, in this case, no proceedings have been initiated by the disciplinary authority prior to the retirement. Till now no charge memo has been issued. Therefore at no stretch of imagination it can be construed that the departmental proceedings have been initiated in the light of Rule 9(6)(a) of the Revised pension rules which specifically contemplates that the date of service of charge memo would be the reckoning date for institution of departmental proceedings. She further submits that the 1^a respondent without application of mind and without reference to the subsequent vigilance report dated 21.3.2019 where under the earlier vigilance report dated 11.3.2016 was modified to the affect that the decision to take necessary action against the officials has to be reviewed. Such a review exercise has not been undertaken prior to issuance of the impugned GO Rt.No.154, dated 28.6.2019 under which the petitioner was allowed to retire from service and that the GO Rt.No.318, dated 26.11.2019 has been issued post retirement of the petitioner i.e., on 30.6.2019. Therefore, learned counsel for the petitioner requests this Court to pass appropriate orders.

11. On the other hand, Sri C.Raghu, learned Senior counsel appearing for the petitioners in WP No.21912 of 2022 while reiterating the contents made

in the petition, argued that, pursuant to the order passed by this Hon'ble High Court in WP No.44571/2018, a fresh vigilance report No.17(c.No.888/V&E/NR/2014-1), dated 21.3.2019 was prepared by the 2nd respondent. A perusal of the report shows that the recommendations at Para No.D1 of the vigilance report dated 11.3.2016 had been set aside and in so far as the recommendations contained at Para No.D2 is concerned it was directed to be reviewed. He further submits that, a perusal of the initial vigilance report dated 11.3.2016 shows that the 2nd respondent had given recommendations at Para No.D1 & D2. At Para No.D2 (iv) it was stated that "Relates to taking necessary action against the officials of Mines and Geology who have executed, allowed mining operations and issued transit permits in relation to the disputed area of 387.72 acres." Learned Senior counsel mainly contended that 1st respondent has misconstrued the report dated 21.3.2019. when the 2nd respondent had opined that the earlier recommendation of taking necessary action against the officials of the department has to be reviewed in the light of the second report, it means that the proposed action must be dropped but the 1st respondent had taken a decision for more stringent action of filing criminal cases against the petitioners. Further, neither the first report dated 11.3.2016 nor the second report dated 21.3.2019 contain specific allegations vis-vis each of the petitioners in relation to any criminal intention and in fact the said report dated 21.3.2019 absolves the petitioners. He submits that without appreciating the vigilance report dated 21.3.2019 in a proper perspective the 1st respondent has issued the impugned Memo dated

13.7.2022, which is liable to be set aside for the reason that the same does not contain any reasons as to how and why a criminal action should be taken against the petitioners when neither of the reports dated 11.3.2016 and 21.3.2019 contemplates the same and that the impugned Memo does not disclose that the 1st respondent has taken into consideration any of the records by giving reasons. Therefore the impugned Memo dated 13.7.2022 is illegal and liable to be set aside.

12. Per contra, learned Government Pleader appearing for the respondents while denying the contents made by the petitioners, argued that, in connection with irregularities committed by the petitioner that came to light through GA V&E Report No.17, dated 11.3.2016 the Government has decided to initiate criminal action against the petitioner herein as per para (5) of G.O.Rt.No.1097, Finance & planning (FW-PEN1) Dept., dated 22.06.2000 and instructed the DMG to file criminal cases against petitioner along with (5) other retired officials, vide Govt. Memo.No.4149/Vig.A1/2016, dated 13.07.2022, since departmental action could not be initiated against retired officials for the irregularity committed as per Rule 9 (2) (b) (ii) of A.P. Revised Pension Rules, 1980. He submits that, aggrieved by the same, the petitioner filed W.P.No.21912 of 2022 before the Hon'ble High Court to suspend the Govt. Memo.No.4149/VIG.A1/2016, dated 13.07.2022 and this Hon'ble Court has passed interim order not to file criminal complaint against the petitioner, pending further orders. Thereupon, the Govt., filed counter to vacate the interim orders in IA No.1 of 2022 in W.P. No.21912 of 2022 and also dismiss

this W.P in the interest of justice. Therefore, learned Government Pleader, on instructions, submits that, in the light of the interim orders of this Court passed in I.A No.1 of 2022 in WP.No.21912 of 2022, no criminal action was initiated against the petitioner. Hence, learned Government Pleader opposed for allowing the writ petitions and prayed to dismiss the same

13. On a perusal of the G.O.Rt.No154, Industries and Commerce (Estt) Department dated 28.6.2019, wherein it was mentioned that *the petitioner herein shall retire from service on attaining the age of 60 years and the officer is permitted to retire from service on 30.06.2019 AN on attaining the age of 60 years without prejudice to the criminal cases/ disciplinary cases/ Enquires pending against him and also subject to pending finalization of disciplinary action in the Vigilance report No.17 (C..No.888/V&E/NR/2014 dated 11.3.2016) against the petitioner.*

14. It is observed that, basing on the above G.O., the 3rd respondent has issued proceedings vide letter dated 13.12.2019, which is impugned in WP No.19438 of 2022 addressed to the Accountant General stating that the Government has sanctioned provisional pension 75% vide G.O.Rt No.318 dated 26.11.2019 under Rule 52(1)(a)&(b) of A.P. Revised Pension Rules 1980.

15. It is pertinent to mention here Rule 9(2)(b) of the A.P. Revised Pension Rules 1980, reads as under:

(2) (a)

(b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment:

(i)...

(ii) shall not in respect of any event which took place more than four years such institution; and

(iii)

(3) ...

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any department or judicial proceedings are instituted or where departmental proceedings are continued under Sub-Rule(2), a provisional pension as provided in Rule 52 shall be sanctioned.

(6) For the purpose of this Rule -

(a) Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the government servant or pensioner or if the government servant has been placed under suspension from an earlier date, on such date;

16. On a perusal of the above, it is observed that, the period of limitation is 4 years from the date of event. In the present case, the alleged event had occurred on the date of the execution of the mining lease on 23.2.2004 and the work order on the same date. It is also observed that, in this case, no proceedings have been initiated by the disciplinary authority prior to the retirement and that no charge memo has also been issued. Therefore at no stretch of imagination it can be construed that the departmental proceedings have been initiated in the light of Rule 9(6)(a) of the Revised Pension Rules which specifically contemplates that the date of service of charge memo would be the reckoning date for institution of departmental proceedings.

17. As seen from the vigilance report No.17(C.No.888/V&E/NR/2014), dated 11.3.2016, wherein it is observed at Para D-2(iv) that, "take necessary action against the officials of Mines & Geology, who executed allowed mining

operations and issued transit permits for transportation of Beach Sand Minerals like Ilmenite, Garnet, Siliminite, Rutile, Leucoxene and Zircon from the disputed area of 387.72 Acres of un-surveyed coastal land of Vatsavalasa village, Gara Mandal against G.O.Ms.No.31 Industries & Commerce (M-III) Department, dated 6.2.2004.

18. In a case of State of Jharkhand and others versus **Jitendra Kumar Srivastava and another**¹, wherein the Hon'ble Apex Court held that:

"The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property".

14. [Article 300](#) A of the Constitution of India reads as under:

"300A Persons not to be deprived of property save by authority of law. - No person shall be deprived of his property save by authority of law." Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in [Article 300](#) A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid [Article 300A](#). On the basis of such a circular, which is not having force of law, the appellant cannot withhold -even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.

19. Having regard to the facts and circumstances, it is observed that, the G.O.Rt.No.154, dated 28.6.2019 only refers to the earlier vigilance report, dated 11.03.2016, but not the subsequent vigilance report, dated 21.03.2019 though it was available as on 28.6.2019. So, it appears that the entire exercise has been done by the respondents without application of mind. Viewed from any angle, the petitioner is entitled for full pension and the

¹ (2013) 12 Supreme Court Cases 210

respondents do not have any right to withhold his pension in part of in hold. Insofar as W.P.No.21912 of 2022 is concerned, the impugned Memo does not contain any reasons as to how and why a criminal action should be taken against the petitioners when neither of the reports dated 11.3.2016 and 21.3.2019 contemplates the same. Further, it is also observed that, there is no allegation of commission of criminal offences as against the petitioners in the vigilance reports and that they are retired from service and are senior citizens. Therefore, this Court deems fit to allow the present writ petitions while declaring the action of the respondents as illegal and arbitrary.

20. Accordingly, both the Writ Petitions are allowed. The impugned G.O.Rt No.318 dated 26.11.2019 issued by the 1st respondent and consequential Memo vide Memo Lr NO.18314/E1/1984, dated 13.12.20219 issued by the 2nd respondent in WP No.19438 of 2022; and the Memo No.4149/VIG.A1/2016 dated 13.7.2022 issued by the 1st respondent in WP No.21912 of 2022 are hereby set aside and further directed the respondents to pass appropriate orders afresh within a period of three (03) months from the date of receipt of this order. Failing which, the 1st respondent is directed to pay full pension to the petitioners. There shall be no order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

DR. K. MANMADHA RAO, J.

Date : 28 -03-2025

Gv/

HON'BLE DR. JUSTICE K. MANMADHA RAO

WRIT PETITION Nos.19438/2022 & 21912/2022

Date :28.03.2025

Gvl