

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1487 OF 2018

Dr. Swapan Garain	]	
A citizen of India, age 57 years	]	
Residing at Flat No.605, B-Wing,	]	
6 th Floor Orchid Residency CHS	]	
Behind Jain Mandir, Govandi (East)	]	
Mumbai 400 088	]	Petitioner

Versus

- | | | | |
|-----------|---|---|------------------|
| 1. | Tata Institute of Social Sciences, |] | |
| | A Deemed University |] | |
| | Through its Director |] | |
| | having office at Deonar, |] | |
| | V. N. Purav Marg |] | |
| | Mumbai 400 088 |] | |
| | |] | |
| 2. | The Chairman and Members of the |] | |
| | Governing Body and the Appellate |] | |
| | Authority |] | |
| | Tata Institute of Social Sciences |] | |
| | having office at Deonar, |] | |
| | V. N. Marg |] | |
| | Mumbai 400 088. |] | |
| | |] | |
| 3. | The Director and Disciplinary |] | |
| | Authority, Tata Institue of Social |] | |
| | Sciences |] | |
| | having office at Deonar, |] | |
| | V. N. Purav Marg |] | |
| | Mumbai 400 088 |] | |
| | |] | |
| 4. | D. N. Sandanshiv |] | |
| | Inquiry Authority |] | |
| | Tata Institute of Social Sciences |] | |
| | having office at Deonar, |] | |
| | V. N. Purav Marg |] | |
| | Mumbai 400 088. |] |Respondents |

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Mr. Jaiprakash Sawant, for the Petitioner.

Mr. Dhruva Gandhi a/w Mr. Dheer Sampat i/b M. V. Kini & Co., for the Respondents.

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**CORAM : M. S. KARNIK &
SANDESH D.PATIL, JJ.**

RESERVED ON : 27th AUGUST 2026

PRONOUNCED ON : 16th SEPTEMBER 2026

JUDGMENT [PER SANDESH D. PATIL, J.] :-

1. By the present Petition, the Petitioner seeks quashing of the order dated 29th March, 2016 passed by the Respondent No.3, whereby the Petitioner was placed under suspension w.e.f. 29th March, 2016. The Petitioner is also challenging the Order dated 6th September, 2017 passed by the Respondent No.3, imposing upon the Petitioner the punishment of compulsory retirement from the services w.e.f. 6th September, 2017. The Petitioner is also seeking direction against Respondent Nos.1 to 3 to reinstate the Petitioner in services with continuity in services, full back wages and other consequential benefits as if no such impugned Orders have been passed by the Respondent Nos.1 to 3.

2. The Petitioner was in employment of the Respondent No.1. The Petitioner was appointed on 13th July, 1985, and he was working as

Professor in the school of social work of the Respondent No.1 i.e. Tata Institute of Social Sciences. He was also a ex-student of the Respondent No.1. The Respondents alleged that the Petitioner had created a parallel WhatsApp group styled as “TISSians Career Impact2” without the permission of the Institution and that too with the institute’s official logo. This was a clear violation of Clause No.21 of the Code of conduct applicable to the “TISS employees”. It was further alleged that the Petitioner by creating the parallel group for placement services, therefore, breached his service conditions. The WhatsApp group created by the Petitioner was nothing but virtually a placement service, soliciting students and alumni for his personal gains. According to the Respondents, this also amounted to engaging in business of placement services, which he being a full-time, permanent faculty of the Institute was prohibited from doing under the Service Rules. Apart from this, using the logo of the Institute, was also an infringement of intellectual rights of the Institute. The Petitioner was alleged to have used the Institute’s resources, knowledge and information, which was in breach of the accepted service conditions, besides being a criminal offence under Section 72 of the Information Technology Act 2000. The Petitioner was vide an

Order dated 29th March, 2016 placed under suspension under Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [for short **“CCS (CCA) Rules, 1965”**].

3. The Respondent No.3 thereafter issued a memorandum of charges on 22nd April, 2016 to the Petitioner where the charges are mentioned in detail. The Petitioner by his reply dated 1st May, 2016 denied the charges levelled against him. The Respondent No.3 thereafter appointed an Inquiry Committee to inquire into the charges framed against the Petitioner and appointed the Presenting Officer to present the case on behalf of the Respondents. By an Order dated 22nd September, 2016, the Petitioner was informed that the period of suspension was extended further by 90 days. The Respondent No.3 by an Office Order dated 28th October, 2016 appointed ‘One Man Committee’ of Professor D.N. Sandanshiv who is the Respondent No.4 to conduct the inquiry. The Petitioner vide several letters requested the Respondent No.3 to change the Inquiry Authority namely Respondent No.4, who was biased against him and had prejudged the issues. Since the Petitioner was not allowed to engage a lawyer to present his case before the Inquiry Committee, he

had filed Writ Petition No. 10966 of 2016 before this Court. This Court vide an Order dated 26th April, 2017, directed the Respondent No.4 to permit the Petitioner to engage a lawyer to represent his case. Thereafter, the oral evidence of Witness No.1 was recorded. The Petitioner submitted his statement of defence on 11th July, 2017. The Petitioner however, was not provided an opportunity to submit his written brief as provided under rule 14(19) of the CCS (CCA) Rules 1965. The Petitioner was forwarded the Inquiry Authority's Report dated 22nd July, 2017 along with the memorandum dated 31st July, 2017. The Inquiry Authority had framed the following six issues :

- (i) Whether Prof. Swapn Garain has created the WhatsApp Group?
- (ii) What position is declared by Prof. Swapn Garain in the WhatsApp group?
- (iii) Whether the position declared by Prof. Garain has an effect of influencing members?
- (iv) Whether Prof. Garain has engaged himself in any private trade or business or the activities are amounting to trade or business?

(v) Whether Prof. Swapan Garain has violated the conduct rules applicable to him and charges in the charge sheet?

(vi) Whether said WhatsApp group has used the logo of TISS anytime?

4. The Petitioner forwarded representation dated 21st August, 2017 thereby praying that, no disciplinary action should be taken against the Petitioner. The Petitioner had preferred a Writ Petition No.10344 of 2017 in this Court thereby challenging the Order of his suspension dated 29th March, 2016. During the pendency of the said Writ Petition, the Respondent No.3 passed the impugned Order dated 6th September, 2017 imposing upon the Petitioner the punishment of compulsory retirement. The Petitioner preferred an Appeal as per Clause No.1.9.7. of the Bye-Laws of the Respondent No.1, however, the same was not heard inspite of several requests from the Petitioner. The Appellate Authority ultimately by an Order dated 16th January, 2018, rejected the Appeal filed by the Petitioner mechanically, without application of mind. Hence, the present Writ Petition is filed.

5. Learned Counsel appearing for the Petitioner contended that the punishment of compulsory retirement has been imposed upon the Petitioner, mainly on the charge that a few WhatsApp posts in relation to the career opportunities by the members of the WhatsApp group which was formed by ex-students of the Respondent No.1 amounts to trade and business on the part of the Petitioner is totally perverse. He submitted that the domestic inquiry was not fair and proper and the findings of the Inquiry Authority were perverse. He contended that the Petitioner was a Guide for PhD student and that the career of the Petitioner was ruined by passing of the impugned Orders. The Petitioner was placed under prolonged suspension from 29th March, 2016 to 6th September, 2017. He submitted that the WhatsApp messages referred to in the Inquiry Authority's Report, if read as it is, does not amount to any misconduct on the part of the Petitioner. Learned Counsel for the Petitioner submitted that by memorandum dated 31st July, 2017, Respondent No.3 forwarded to the Petitioner the Inquiry Authority's Report dated 22nd July, 2017, and called upon the Petitioner to submit his representation as to why disciplinary action should not be taken against the Petitioner. According to the Petitioner, the Respondent No.3 without considering

the representation of the Petitioner had expressed his decision to punish the Petitioner in violation of principles of natural justice and therefore, this itself amounted to violation of Rule 15(2) of the CCS (CCA) Rules, 1965 warranting all further action against the Petitioner to be declared as null and void.

6. The learned Counsel appearing for the Petitioner, contented that the Petitioner was entitled to continue in his services up to his age of 65 years as per his service conditions. The Petitioner, however, at the age of 58 years has been penalised with punishment of compulsory retirement. He further contended that it is a disproportionate penalty and therefore the same deserves to be quashed and set aside. In support of his contention, the learned Counsel for the Petitioner relied upon the following judgments:

- (i) *Anil Kumar Vs. Presiding Officer*¹
- (ii) *Ranjit Thakur Vs. Union of India*²
- (iii) *Managing Director, ECIL Vs. B. Karunakar*³
- (iv) *Kuldeep Singh Vs. The Commissioner of Police & Ors.*⁴
- (v) *Roop Singh Negi Vs. Punjab National Bank*⁵
- (vi) *M. V. Bijlani Vs. Union of India*⁶

1 (1985) 3 SCC 378

2 (1987) 4 SCC 611

3 (1993) 4 SCC 727

4 AIR 1999 S C 677; 1999 (2) SCC 10; 1999 AIR SCW 129

5 (2009) 2 SCC 570

6 (2006) 5 SCC 88

- (vii) H. P State Electricity Board Ltd. Vs. Mahesh Dahiya*⁷
- (viii) Jai Prakash Saini Vs. Managing Director, U. P Cooperative Federation and Others*⁸
- (ix) Union of India Vs. Deepak Mali*⁹
- (x) Union of India Vs. Ashok Kumar Aggarwal*¹⁰

7. Learned Counsel appearing for Respondents supported the impugned orders. He submitted that due process of law was followed. He submitted that the punishment which was imposed upon the Petitioner was not shocking and was in consonance and in proportion with the allegations proved against the Petitioner. He submitted that the WhatsApp conversation clearly showed that members were appealed to raise funds. He submitted that job opportunities were provided and members/ job aspirants were invited. He submitted that there was nothing on record to show that permission from the Respondent No.1 was obtained for formation of such group and its activities. He submitted that except their statement that the Whatsapp Group was not for personal gain and no financial or material transaction was visualised in this group, the Petitioner has not brought anything to show to the contrary.

⁷ (2017) 1 SCC 768

⁸ (2026) INSC 305 : (2026) SCC OnLine SC 505

⁹ (2010) 2 SCC 222

¹⁰ (2013) 16 SCC 147

8. Learned Counsel for the Respondents submitted that the act of the Petitioner was nothing but creating parallel placement services. He submitted that there was a conversation on 23rd February, 2016 which was a mail from Naukri.com for CSR opportunity in Godrej & Boyz, Mumbai. He also submitted that there was an attempt to raise funds. He invited our attention to the communication which was in the nature of WhatsApp chat. He submitted that the memorandum was issued to the Petitioner and a copy of the Report and findings of the Inquiry Authority was given to the Petitioner and the Petitioner was provided opportunity of 15 days to explain as to why appropriate disciplinary action should not be taken against him in accordance with Rule 15(2) of the CCS (CCA) Rules, 1965. He relied upon the following Judgments in support of his contention:

(i) *Deputy General Manager & Ors Vs. Ajai Kumar Srivastava*¹¹

(ii) *Indian Oil Corporation & Ors. Vs. Ajit Kumar Singh*¹²

By relying upon the judgments mention above, the learned Counsel for Respondents submitted that the power of judicial review of Constitutional Courts is an evaluation of the decision making process and not the decision itself. He submitted that the scope of

¹¹ (2021) 2 SCC 612

¹² (2023) 19 SCC 102

judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact. In the end he sought dismissal of the Writ Petition.

9. We have heard the learned the Counsel appearing for the parties. We have considered the documents on record. We have also considered the citations which were cited across the Bench by the learned Counsel for the Petitioner as well as learned Counsel for the Respondents. The Petitioner was in employment of the Respondent No.1 with effect from 13th July, 1985 and was holding the post of Professor in the Institute of the Respondent No.1. The Petitioner vide an Order dated 29th March, 2016 was placed under suspension.

10. Before we proceed further, it is relevant to note that the basic charge against the Petitioner is that the Petitioner had formed a WhatsApp group of the alumni of the Respondent No.1. The allegations against the Petitioner is as under :

“1. Dr. Swapan Garain, Professor, Centre for Social Justice and Governance, School of Social Work, Tata Institute of Social Sciences (hereinafter referred to as TISS), Deonar, Mumbai 400 088 has parallelly created a Whatsapp group styled as "Tissians Career Impact 2" and that too with Institute's official logo which is in clear violation of clause 21 of the Code of Conduct, applicable to TISS employees.

2. *Dr. Swapan Garain's attention is drawn to the letter of appointment no.Admn/2/85 dated 21 June 1985 and the fact that his appointment is governed by the Memorandum of Association and the Rules and Regulations of the Institute, under which he was under obligation not to engage in any trade, profession or any other activity while during the services of TISS*

3. *Dr. Swapan Garain, by creating the parallel group for the placement services therefore is clear breach of his service conditions, which were specifically accepted by him. The Whatsapp group created by him is nothing but virtually a placement service soliciting students and alumni for his personal gains. The same also amounts to engaging in the business of placement services, which he being full time permanent faculty of the Institute is prohibited under the service rules applicable to him.*

4. *Apart from the above, using logo of the Institute is itself is an infringement of the intellectual rights of the Institute and no one has any authority to use the same for any purpose except with the prior permission of the competent authority.*

5. *Similarly, Dr. Swapan Garain, creating a Whatsapp group, soliciting students and alumni who are attached to the Institute and using the Institute's resources, knowledge, information is also in breach of accepted service conditions, besides a criminal offence under section 72 (Penalty for breach of confidentiality and privacy) of Information Technology Act, 2000 since he had access to the information pertaining to the students and alumni for which serious consequences can follow. The said information is also used as communication device through the computer network by using Institute's data which is clear breach of rule 11 of the Central Civil Services (Conduct) Rules 1964 as the Institute's employee is prohibited from directly or indirectly using, disclosing the official communication or any classified information acquired by him during his official duties to anyone.*

6. *Dr. Swapan Garain, by creating a parallel 'Whatsapp' group and soliciting students, has acted in total dishonesty with the Institute for his personal gains. The Institute has information that the mobile number on which the Whatsapp group is created belongs to him.*

7. *The Institute has the requisite information about the communication solicited and exchanged by him and the invitee-members of the group wherein he has sought the students to become the members of the group.*

8. *All the above acts of omissions and commissions amount to gross misconduct under CCS (Conduct) Rules of Government of India /University Grant Commission, which are applicable to the Institute. ”*

In light of the said allegations, the following charges were levelled upon the Petitioner:

“i) Commission of an act of failure to maintain absolute integrity, devotion to duty and act unbecoming and subversive of discipline, and prejudicial to the interest of the Institute, being a faculty member is misconduct under sub rule (i), (ii) & (iii) respectively of Rule 3 (1) of Central Civil Services (Conduct) Rule 1964 applicable to the employees of the Institute.

ii) Failure to maintain high ethical standard and honesty, misusing the official position in order to derive financial and material benefit for himself, commission of an act contrary to rules and regulations and established practices of the Institute and failure to perform and discharge the duties with high degree of professionalism and high dedication being a faculty member is misconduct under sub rule (vi), (xv), (xviii) & (xxi) respectively of Rule 3(1) of Central Civil Services (Conduct) Rules 1964 applicable to the employees of the Institute.

iii) *Engaging in a trade or business while in the services of the Institute, which is a misconduct under the clause Rule 15 (1) (a) and (b) of Central Civil Services (Conduct) Rule 1964 applicable to the employees of the Institute and in clear breach of the provisions of the rules and regulations of the Institute as stated in your letter of appointment.*

iv) *Using the Institute's official logo with your "Tissians Career Impact2" Whatsapp group amounts to using the Institute's intellectual property rights for your personal gains amounts to misconduct under sub rule (xx) of Rule 3 and 11 of Central Civil Services (Conduct) Rule 1964 applicable to the employees of the Institute and violation of clause 20 of the Code of Conduct for employees of TISS.*

v) *Soliciting students, alumni and others to become part of your group and thereby soliciting business amounts to misuse, dishonesty with the Institute's aims, values, resources, breach of trust of your terms of appointment, which is a misconduct under clause 15 (d) Central Civil Services (Conduct) Rule 1964 applicable to the employees of the Institute and violation of clause 6 of the Code of Conduct. Apart from the above, the same also amounts to criminal breach of trust for which serious consequences can follow*

vi) *All the above acts of omissions and commissions, causing damage to the reputation and credibility of the Institute, amounts to misconduct under sub rule (i), (ii), (iii), (vi), (xv), (xviii), (xx) & (xxi) of Rule 3(1) and Rule 11 and Rule 15 (1) (a), (b) & (d) of CCS (Conduct) Rules, 1964 applicable to the employees of the Institute."*

11. The WhatsApp communication which is the basis of the entire charge, finds place on Page No.40 onwards of the Petition. The

WhatsApp group is titled as 'TISSians Career Impact2'. We have gone through the said communication in detail. The case of the Petitioner is that there exists a registered alumni association namely 'TISS Alums Association' (TISSAA). The said Association was registered on 11th March, 2013 as a Society having registered office at TISS Mumbai campus with approval of TISS Authorities. One of the basic allegation is that the present WhatsApp group was a parallel group of the placement services, soliciting students and alumni by the Petitioner for his personal gains and the same also amounts to engaging in business of placement services. Admittedly, the 'TISSAA' which was registered on 11th March, 2013 as a Society, has not filed any complaint. This said registered Association has not made any grievances. The said registered Association is neither a witness nor a party to the entire proceedings. This being the position it is difficult to understand as to what was the prejudice caused to the Respondent No.1.

12. We are aware of the limitations of this Court while exercising the power of judicial review. However, this Court can definitely interfere in the matter where the findings of the Inquiry Report as

well as the Respondent No.4 in the present case are perverse. In this case, after perusal of the WhatsApp group, there is nothing to indicate that the Petitioner was charging money for the placement services. As a matter of fact, the chat dated 23rd February, 2016 clearly shows that the said chat was only for those persons who were looking for CSR opportunity in Mumbai. The chat makes it clear that the person sending the chat does not want to apply but it could be useful for any other person/member of the WhatsApp group. There is information regarding online services offered by the Government of India. This group was exclusively for the 'TISSians' from all streams. As a matter of fact, the chat dated 24th February, 2016 clearly records that the platform was exclusively for 'TISSians career'. They made it clear that the members of the chat who were not 'TISSians' should be removed. This itself shows that there was no personal gain for the Petitioner in any manner.

13. The impugned Order records that the Petitioner has created the WhatsApp group. There is no finding that, the funds which were allegedly tried to be raised were used for the benefit of the Petitioner. Although it is true that there was nothing on record to show that

permission from the Respondent No.1 was obtained for formation of such group. Merely because permission was not obtained from the Respondent No.1 would not be cogent ground for imposing such excessive punishment upon the Petitioner. The finding that there was a parallel placement service is totally perverse. There is nothing to suggest that the placement services were offered for consideration and further the said consideration was diverted for the benefit of the Petitioner. As a matter of fact, the members of the WhatsApp group merely shared the placement offers in the industry on the WhatsApp Group. The Respondent No.4 has not bothered to consider the explanation of the Petitioner. Admittedly, the logo was initially used and was thereafter removed. WhatsApp being a social media platform, merely starting a WhatsApp group and being member of the WhatsApp group without there being further finding of any personal gain diverted to the benefit of the Petitioner, in our view, the punishment of 'voluntarily retirement' is grossly disproportionate.

14. The Petitioner has correctly relied upon the judgment in the matter of *Ranjeet Thakur Vs. Union Of India*¹³ to contend that the penalty imposed must be commensurate with the gravity of the

¹³ (1987) 4 SCC 611

misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution of India. In the present case also, the punishment which is imposed, namely, that of compulsory retirement is grossly disproportionate. In the words of Lord Diplock ***“you cannot use a sledge-hammer to crack a nut”***. In this case, although it is true that the permission of Respondent No.1 was not taken for the purpose of starting the WhatsApp group, this itself would in our respectful opinion, not be sufficient for imposing such a disproportionate punishment. The Petitioner was a guide to many PhD students who were taking education under him. The Petitioner is a man of repute.

16. In these circumstances, we hold that the punishment of compulsory retirement was quite disproportionate and therefore we are inclined to interfere with the said punishment imposed upon the Petitioner. The findings of the Inquiry Officer are perverse. The said punishment is so strikingly excessive that it cannot be allowed to be remained uncorrected while exercising the powers of judicial review. Merely starting a WhatsApp group by an employee without the permission of the organisation itself is not sufficient to put an end to long standing accomplished the career of a person. In this case, the

allegation that the Petitioner has started the WhatsApp group without the permission of the Respondent No.1 even if accepted to be correct on the face of it, was not sufficient to compulsorily retire the Petitioner. We are guided in our aforesaid finding by the judgment of the Hon'ble Supreme Court in the matter of the ***Omsairam Steels & Alloys (P) Ltd. Vs. State of Odisha***,¹⁴

33. It is here that we consider it appropriate to examine the applicability of the doctrine of proportionality. This doctrine has slowly but steadily found its way into this Court's jurisprudence. In Coimbatore District Central Coop. Bank v. Employees Assn. [Coimbatore District Central Coop. Bank v. Employees Assn., (2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68] , albeit discussing the proportionality of the punishment imposed on striking workmen, this Court delineated the basis of the doctrine as follows : (SCC pp. 678-79, paras 18-19 & 21)

18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

19. de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or

14 (2024) 9 SCC 697

interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-605, para 13.085; see also Wade & Forsyth : Administrative Law (2005), p. 366.]

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no “pick and choose”, selective applicability of the Government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a “sledgehammer to crack a nut”. As has been said many a time, “where paring knife suffices, battle axe is precluded.”

(emphasis supplied)

17. The judgment of the Hon’ble Supreme Court in the matter of ***Indian Oil Corporation*** (supra) relied by the Respondents takes a view that if the conclusion or finding are of such a nature that no reasonable person would ever have reached the said findings and where, upon consideration of the evidence reached by the disciplinary authority, the findings are perverse or suffer from patent error on the face of record, the power of judicial review can be exercised.

18. Whilst we were pondering upon the extent to which the back wages could be given to the petitioner, the learned Counsel appearing for the petitioner on instruction of his client fairly submitted that his client would be happy if 50% of the back wages would be granted. Taking into consideration the aforesaid statement, coupled with the fact that the petitioner was not in employment from 29 March 2016, till attaining the age of superannuation, we are inclined to reinstate the petitioner with 50% of back wages.

19. For the reasons mentioned above, we proceed to pass the following Order:

ORDER

- (i) Writ Petition No.1487 of 2018 is allowed.
- (ii) The impugned Order dated 29th March, 2016 passed by the Respondent No.3 in placing the Petitioner under suspension w.e.f. 29th March, 2016 till 6th September, 2017; the impugned Order dated 6th September, 2017 passed by the Respondent No.3 imposing upon the Petitioner the punishment of the compulsory retirement

from the services w.e.f. 6th September, 2017; and the impugned Order dated 16th January, 2018 passed by the Respondent No.2 are hereby quashed and set aside

(iii) The Respondent Nos.1 to 3 are directed to pay 50% back wages to the Petitioner from the date of his termination till the date of his superannuation with continuity of services and all consequential benefits. The retirement benefits be recomputed accordingly. Arrears, if any, be paid within a period of 3 months from the date of uploading of this Order.

(iv) There shall be no order as to costs.

(SANDESH D.PATIL, J.)

(M. S. KARNIK, J.)