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W.P.(MD).Nos.15022, 15023, 15447 of 2016,
15709, 15710, 22597 of 2017
and 8167 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.11.2022

DELIVERSED ON : 09.05.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.15022, 15023, 15447 of 2016,
15709, 15710, 22597 of 2017

and

8167 of 2018

and

W.M.P.(MD).Nos.11073 and 11369 of 2016,
12416, 12417, 18883 and 10853 of 2017

W.P.(MD).No.15022 of 2016:

R.Vengatasamy

... Petitioner

Vs

- 1.The Chief Executive,
Arignar Anna Sugar Mills,
Kurunkulam,
Thanjavur District – 613 303.
- 2.The Enquiry Officer/
Managing Director,
Amboor Co-operative Sugar Mills Limited,
Arignar Anna Sugar Mills,
Kurunkulam, Thanjavur District – 613 303.



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3.The Management Representative
The Executive Officer / Executive Member,
Arignar Anna Sugar Mills,
Kurunkulam,
Thanjavur District – 613 303.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the first and second respondents to permit the petitioner to engage Advocate to appear and defend the domestic enquiry in respect of proceedings of charge sheet dated 16.04.2016 in first respondent's proceedings bearing No.11.அ./999/2016/173.

(In all Writ Petitions):

For Petitioner : Mrs.S.Devasana

For Respondents : Mr.S.Saji Bino,
Standing Counsel

COMMON ORDER

The above Writ Petitions were filed challenging the various stages of disciplinary proceedings that was initiated against the petitioner R.Vengatasamy.



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2. The W.P.(MD)No.15022 of 2016 is filed to permit to engage an advocate and defend the case. The W.P.(MD)No.15023 of 2016 is filed to provide documents. The W.P.(MD)No.15447 of 2016 is filed to quash the order dated 21.07.2016 and consequently to permit to engage an advocate. The W.P.(MD)No. 15709 of 2017 is filed to quash charge memo dated 16.04.2016. The W.P. (MD)No.15710 of 2017 is filed to quash suspension order dated 12.11.2015. The W.P.(MD)No.22597 of 2017 is filed to quash the impugned show cause notice dated 18.08.2017 to recover the excess subsistence allowance. The W.P.(MD)No. 8167 of 2018 is filed to consider the representation dated 23.03.2018 and to pay subsistence allowance from August 2017 onwards.

3. The brief facts are that the petitioner had joined the service in the year 1988 and deputed to the respondent mill in the year 2011, which is a Public Sector Sugar Mill. The petitioner was working as “Cane Officer” in the respondent mill. Some irregularities were noticed in the Sugar Mill and proceedings were initiated against several persons including the petitioner. The



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petitioner was placed under suspension vide proceedings dated 12.11.2015 and the petitioner submitted a representation dated 21.01.2016 seeking revocation of suspension order. Since no order was passed, the petitioner filed W.P.(MD)No. 4095 of 2016 and this Court vide order dated 29.02.2016 directed the respondents to consider and pass orders. In the meanwhile, a criminal proceeding was initiated in Crime No.39 of 2016, District Crime Branch, Thanjavur. The respondents issued charge sheet dated 16.04.2016 alleging grave charges. The petitioner requested to issue the copies of documents to ascertain the basis the charge sheet and to submit detailed explanation. Since the same was not served, the petitioner submitted a petition for extension of time to submit his explanation through various letters dated 03.05.2016, 07.05.2016 and 27.05.2016. Since the respondents have not provided with the copies, the petitioner left with no option than to submit a partial reply to the charge sheet on 01.06.2016, by reserving his right to file a detailed explanation to the charge sheet. After the submission of the explanation, the respondents initiated departmental enquiry by appointing the Managing Director, Ambur Cooperative Sugar Mills Limited as Enquiry Officer, who fixed the enquiry date as 21.07.2016 and sent a summon on 01.07.2016.



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4. As per G.O.Ms.No.68 Department of Industries (MIC-2) dated 01.03.2011, the petitioner is 'B' Cadre Employee under “Common Cadre System”. For 'B' Cadre Employee the competent authority is the Commissioner of Sugar Mills for recruitment, transfer, promotion and disciplinary proceedings. The respondent is serving as Chief Executive and he has no jurisdiction to pass the suspension order or to issue the charge sheet. The further contention of the petitioner is since the enquiry officer being in the cadre of Joint Registrar of Cooperative Societies, since the petitioner is not having any legal knowledge to defend the case, moreover the petitioner was not supplied with required documents, hence the petitioner submitted a petition seeking permission to engage an Advocate through letter dated 21.07.2016 and filed W.P.(MD)No. 15022 of 2016 for a mandamus to permit the petitioner to engage an Advocate. Pending writ petition the enquiry officer rejected the request vide order dated 21.07.2016 and challenging the same W.P.(MD)No.15447 of 2016 was filed. The petitioner also submitted before the enquiry officer that the charge sheet contains only the charges and it is not having any list of documents or list of witnesses and



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requested to furnish the details. During the internal enquiry, the petitioner requested for relevant documents to give explanation for the charge memo. The enquiry officer also directed the Management to provide the documents as requested. But the respondents did not provide the documents, hence the petitioner filed W.P.(MD)No.15023 of 2016 seeking to issue documents. The Hon'ble High Court had granted interim order of status quo on 16.08.2016 in the said Writ Petition. After the interim order, the respondents directed the petitioner to visit the Mill in person and take particulars from the documents. However, the petitioner requested to issue the copy of the documents, since the charges are grave in nature. In the meanwhile, the interim suspension order was not extended periodically as per law. Moreover, in the suspension order and the charge memo, the respondents have not mentioned any provisions of law. In spite of several requests, the respondents have not issued any relevant documents. The interim order of status quo was also not obeyed by the respondents. Hence for these reasons, the petitioner filed W.P.(MD)No.15709 of 2017 to quash the charge memo and W.P.(MD)No.15710 of 2017 to quash the interim suspension order and to direct the respondent to reinstate the petitioner. The Hon'ble High Court issued



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notice. In the above circumstances, the respondents have issued impugned show cause notice dated 18.08.2017 that so far the respondents have granted subsistence allowance at the rate stipulated by the Tamil Nadu Subsistence Allowance Act and the amount of subsistence allowance excessively paid i.e. more than 50% and is liable to be recovered from the petitioner as per the provisions of the Fundamental Rules and call for explanation from the petitioner within a period of 10 days and indicated that the petitioner had received excessive amount of Rs.6,09,526/- and sought for explanation as to why it should not be recovered. The petitioner submitted a reply on 26.08.2017 and also submitted representation to the Commissioner of Sugar Mills, Chennai on 31.10.2017. In the meanwhile, the Writ Petition in W.P.(MD)No.15710 of 2017 was listed for hearing on 12.09.2017. The Hon'ble High Court quashed the suspension order dated 12.11.2015 and directed the respondents to reinstate the within a period of two weeks. Aggrieved over, the respondents preferred a Writ Appeal in W.A.(MD)No.1312 of 2017 and the same was allowed by the Hon'ble Bench and remanded back the matter for fresh consideration. Because of the order reducing the subsistence allowance, the petitioner is suffering to meet the



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expenses. Hence the petitioner had filed W.P.(MD)No.8167 of 2018 to consider the petitioner's representation dated 23.03.2018 and pay subsistence allowances from August 2017 to till date. The petitioner filed W.P.(MD)No. 22597 of 2017 challenging the order dated 18.08.2017 which directed the petitioner to show cause as to why the subsistence allowance should not be reduced with a consequential relief to grant full salary as subsistence allowance.

5. The respondents have filed a counter in the above Writ Petitions, wherein, it is stated that the petitioner was working as Cane Officer in the third respondent Cooperative Society. Since the respondent is a Cooperative Society it cannot be construed as Government under Article 12 of the Constitution and hence the Writ Petitions are not maintainable. The respondents further submitted that the petitioner along with other employees caused severe financial loss to the Sugar Mills to the tune of Rs.2,09,66,683/- by diverting the Sugar Mills money for their personal gains. Various complaints were submitted by the Cane Growers Associations and Farmers Associations to the Sugar Mills as well as the District Collector of Thanjavur. Hence, the District Collector formed a committee to



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enquire into the allegations against the employees relating to diversion and misappropriation of Sugar Mills money. After completion of enquiry pertaining to the allegations, prima facie materials were available against the Mills employees (totally 30 persons including the petitioner), based on which the District Collector had given a communication to the Sugar Mills to take necessary action against the erring officials as per law. Pursuant to the same, the erstwhile Chief Executive of the Sugar Mills sent a communication to the Director of Sugar Mills dated 07.11.2015. In turn, the Director of Sugar Mills had given delegation of powers to the erstwhile Chief Executive of Arignar Anna Sugar Mills to take necessary action against the erring officials through proceedings dated 20.11.2015, which includes the disciplinary action as well. In pursuant to the powers given by the Director, disciplinary action was taken against the erring officials and charge memo dated 16.04.2016 was issued. Since the preparation of charge memo as against the 30 officials / employees by perusing and segregating huge papers and official records, the charge memo was issued after four months. The petitioner comes under category 'B' as per G.O.Ms.No.68 and the petitioner will not come under the purview of the Tamil Nadu Subsistence Allowances Act,



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1981. But, the Management by bonafide mistake paid 100% subsistence allowance beyond the period of 180 days by applying the said Act. There is no delay in conducting disciplinary action directly attributable to the Management of the Sugar Mills. The petitioner is entitled what is permissible under law and not beyond that. Further the petitioner is not entitled to unjust enrichment against the entitlement under law that is Rule 53 of the Tamil Nadu Fundamental Rules, 1978. Hence, a show cause notice dated 18.08.2017 was issued calling for explanation from the petitioner and the petitioner submitted his explanation on 26.08.2017. After considering the explanation, the recovery order dated 29.08.2017 was passed. The issue of application of Tamil Nadu Fundamental Rules, 1978 to the employees of the Cooperative Society is no more res integra and it is settled by the Division Bench of the Hon'ble High Court reported in 2011(1) CTC 18 in para 5.

6. As far as the provisions of the Tamil Nadu Civil Servants Disciplines and Appeal Rules and the Tamil Nadu Civil Servants Conduct Rules, 1973, the Sugar Mills comes under the purview of Company under the Companies Act,



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1956 and hence, the disciplinary action as well as the payment of subsistence allowance governed by the Tamil Nadu Civil Service Discipline and Appeal Rules 1955 and Tamil Nadu Fundamental Rules 1978 respectively. As per Rule 149 of Co-operative Society Rules, 1988 deals with the disciplinary action wherein, no provision for providing subsistence allowance, hence the external aid have to be adopted as such the Government servant service rules and Government servant conduct rule and Tamil Nadu Fundamental Rule have to be applied to the category A and B. A conjoint reading of Rule 53(1)(a)(i) and Rule 53(1)(a)(ii) clearly reveals that if a delinquent is prolonging the disciplinary proceeding, then the subsistence allowance shall be reduced to 50%. In the present case the petitioner has not cooperated with the disciplinary proceedings and hence the respondents have issued show cause notice to reduce the subsistence allowance. The issue of monetary claim beyond the legally recoverable limit came up before Hon'ble Supreme Court of India in Civil Appeal No.11527 of 2014 and vide order dated 18.02.2014 held that, the money paid in excess to the employee can be recovered from the employee due to the bonafide mistake committed by the Management. Hence the respondents prayed to dismiss these Writ Petitions.



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7. Heard Mrs.S.Devasana learned counsel for the petitioner and Mr.S.Saji Bino, learned Standing Counsel appearing for the respondents and perused the records.

8. The petitioner has filed the Writ Petition in W.P.(MD)No.15709 of 2017 to quash the charge memo. The contention of the petitioner is that the second respondent has no jurisdiction to issue charge memo since the petitioner was working in the respondent Sugar Mills under the deputation from the original place of employment, i.e., Thirupathur Co-operative Sugar Mills, Thirupathur and hence the Thirupathur has the power to initiate disciplinary action. Even the Thirupathur Mills can only recommend to initiate disciplinary proceeding to the Commissioner of Sugar Mills. Since as per G.O.Ms.No.68, the first respondent Commissioner of Sugar Mills, Chennai is the appropriate authority for 'A' and 'B' category officers. Hence, the second respondent has no jurisdiction to pass suspension order or to issue charge memo or to proceed with the disciplinary proceedings. On a perusal of the said G.O.Ms.No.68 for Cane Officer, the Cadre Authority will be the Commissioner of Sugars, who will decide to recruit,



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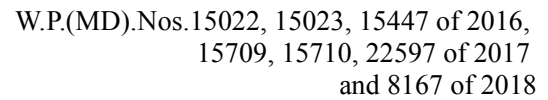


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promote, transfer of officers and the confidential report will be maintained by the Commissioner of Sugars. This would be evident from the clause 5 of the Government Order which is extracted hereunder:

“5. Cadre Authority:

The Commissioner of Sugar will be the cadre authority and the cadre authority will decide the recruitment, promotion and transfer of the officers. The confidential report on the officers in A and B grade will be maintained in the office of the common cadre authority. While directly recruiting to the entry level officers posts, all the conditions prescribed by the Government with regard to age at the entry and retirement and age relaxation communal rotation then and there ordered by the Government is applicable. In respect of promotion to the posts in Grade B there will not be any limit for entry. For promotion as mentioned above a common seniority will be adopted by the cadre authority for all the above posts. If the date of joining of the two individuals are same, the date of acquiring the requisite qualifications will be taken into account for deciding the seniority in a particular feeder Category. Once the superintendents are promoted as Office Manager and the Accountants are promoted as Accounts Officer they will be coming under the purview of the Tamil Nadu Co-op, & public sector sugar Mills Managerial Common Cadre System. Service conditions stipulated in Special bylaw and standing Orders will be applicable to Grade C and D. The rules and regulations stipulated to TNCS Act and Rules are applicable to Grade A and B officers”.



10. This issue was considered by another Learned Single Judge in W.P. (MD)No.2709 and 3400 of 2018 vide order dated 04.06.2018 and has held that the delegation is not legally sustainable. The relevant portion of the order is extracted hereunder:

“5.This Court made it clear on the very outset that it would not go into the merits of the matter. The preliminary issue that is to be taken up for consideration as to whether the third respondent has the jurisdiction to pass the impugned order of dismissal. If this issue is answered in favour of the writ petitioners, then there is no need to go into the merits of the matter. To sustain the contention that the Chief Executive of the Sugar Mill is having the jurisdiction to pass the impugned order of termination, the learned counsel appearing for the management invokes Rule 175 of the Tamil Nadu Co-operative Societies Rules, 1988. It can be seen there from that Chapter XVIII applies only to the Co-operative Societies Sugar Mills. Rule 189 of the Tamil



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Nadu Co-operative Societies Rules, 1988, sets out the power and functions of the Managing Director of the Sugar Mill.

6.The contention of the learned counsel for the respondents is that though as per Section 75 of the Tamil Nadu Co-operative Societies Act, 1988, the competent Authority is to deal with the common cadre, till date nobody has been designated. He would therefore submit that it is only the Managing Director, who must be taken as the competent authority for any common cadre servant. The learned counsel attempted to distinguish between the Co-operative sugar mills and the public sector sugar mills. The Commissioner of Sugar mills has administrative control over the public sector sugar mills. Likewise, in the case of the Co-operative Sugar Mills, it is only the concerned Managing Director, who is the competent authority. Referring to Rule 189(8) of the Tamil Nadu Co-operative Societies Rules, 1988, it was submitted that it is the Managing Director who has the disciplinary jurisdiction. He referred to Rc.No.23941/83/C1 dated 14.03.1985 and R.C.No.G1/25600/1999, dated 26.08.1999 to drive home the point that the Chief Executive is empowered to initiate disciplinary actions as per the provisions contained in the Special by-laws. He wanted this Court to sustain the jurisdiction of the Chief Executive to pass the impugned orders.

7.This Court is unable to agree.

8.It is not in dispute that the petitioners belong to the common cadre system. The common cadre system, which was abolished during the year 1997, was revived for the Officers of the Co-operative and Public Sector Sugar Mills and orders to that effect were issued vide G.O.(MS).No.68, Industries (MIC.2 dated 01.03.2011 and published in the Tamil Nadu Government Gazette dated 26.10.2011. Even the learned counsel for the respondents cannot dispute this factual position.

9.Section 75 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter, referred to as “the Act”) provides for constitution of common cadre of service. Section 75(4)(a) of the Act is relevant for the present case. The said provision reads as under:

“The registered society under which an employee borne on a common cadre of service is employed, may request the competent authority to take disciplinary action on, or action on,



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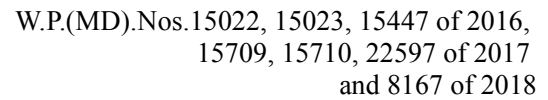
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or to transfer, such employee, and if the competent authority fails to take action within a period of thirty days from the date of such request, the registered society may report the matter to the Registrar for taking such action as he may deem necessary.”

10.A mere reading of the aforesaid provision indicates that at the request of the registered society under which the employee borne on a common cadre of service is employed, the competent authority may take disciplinary action. If the competent authority does not take action, the registered Society may report the matter to the Registrar for taking such action as he may deem necessary.

11.The petitioner in W.P.(MD).No.2709 of 2008 was transferred from one mill to another mill in his career. In fact, that is the special feature of being borne on a common cadre system. When the petitioner is borne on a common cadre system, it is only the competent authority, who is empowered by law, who can take action at the instance of the aggrieved Society. If the management of Aringar Anna Sugar Mill is of the view that the writ petitioners herein have committed irregularities, it should have written to the competent authority to initiate disciplinary action against them. If the competent authority had remained inactive, the Registrar should have been approached by the management. This is the scheme envisaged by the statute. But, in this case, the Chief Executive of Aringar Anna Sugar Mill had issued the charge memo, appointed the Enquiry Officer and also dismissed the petitioners from service. Such an approach is clearly not in consonance with the statutory scheme set out in Section 75 of the Act.

12.The learned counsel appearing for the management would refer to the Rules. It is well settled that if there is a conflict between the provision in the Act and the rules framed thereunder, it is the Act that will prevail over the rules. Therefore, the issue on hand must be tested in the light of Section 75 of the Act. No purpose will be served by looking into the rules. Likewise, there is no point in referring to the Circulars that were issued prior to the revival of the common cadre system. Again there is no point in comparing the commissioner of Sugar Mill and the Chief Executive. The Commissioner of Sugar Mill is the authority, who, has the administrative control over the public sector sugar mills. But for each Co-operative sugar mill there is a Chief Executive. It is the intention of the legislature that there will be one common cadre service. But having as many number of competent authorities as there are individual sugar



11. The contention of the petitioner is that the Commissioner of Sugar is the competent authority but the respondent's contention is that the Chief Executive is the competent authority. In the present case the learned Single Judge has dealt with the issue of competent authority vide order dated 04.06.2018 wherein it has been held the Commissioner of Sugar is the competent authority and the Chief Executive is not empowered to take disciplinary action. Aggrieved over, the respondents had preferred Writ Appeals in W.A.(MD)Nos.1143 and 1144 of 2018 and the Hon'ble Division Bench vide order dated 28.08.2018 had allowed the Writ Appeals wherein it is held that the G.O.Ms.No.68 was issued only for appointment, promotion, inter se seniority and remitted the case back to the learned Single Judge with a direction to decide the case on merits as well. The contention of the respondent before the Hon'ble Division Bench is that through



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G.O.Ms.No.68 Common Cadre System was introduced which is meant for the service conditions, inter se seniority and promotion. Hence the said G.O. would not make the Aringar Anna Sugar Mill a Society registered under the Tamil Nadu Cooperative Societies Act, 1983 and consequently the employees would not become the Society employees. The net result would be section 75 of the Tamil Nadu Cooperative Societies Act 1983 cannot have any application. Accepting the said argument, the Hon'ble Division had allowed the writ appeal. The Hon'ble Division Bench has held that the G.O.Ms.No.68 was issued only to deal with the appointment, inter se seniority and promotion and to deal with this alone would not make the Aringar Anna Sugar Mills become a registered society.

12. The contention of the writ petitioners is that the respondents accept the applicability of the G.O.Ms.No.68 to the respondent Mill, but respondents only state that the Tamil Nadu Cooperative Societies Act 1983 is not applicable to the Mill, since the G.O.Ms.No.68 only speaks about service conditions like appointment, inter se seniority and promotion of common cadre system. But according to the petitioner the said Act, 1983 is applicable for disciplinary



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proceedings also, since the G.O.Ms.No.68 covers the service conditions like disciplinary proceeding as well. In short, the question that ought to be considered is whether the phrase “service conditions” includes disciplinary proceeding.

13. To resolve this the G.O.Ms.No.68 and Section 75 of the Act ought to be scrutinized. The G.O.Ms.No.68 was passed to revive the Common Cadre System and the relevant portion of the said G.O. is extracted hereunder:

“In the Government Order first read above, orders were issued to for the creation of Common Cadre System for the officers working in the Co-operative and Public Sector Sugar Mills and the Director of Sugar was permitted to create a Common Cadre System for the second and third level officers working in the Co-operative and Public Sector Sugar Mills duly authorising him to frame necessary rules and regulations for appointment, transfer etc.

2. Subsequently during the year 1997, after reviewing the functioning of the common cadre system, Government felt that since each Co-op. Sugar Mills is a separate legal entity, the officers, staff and workers working in a sugar mill should be the employees of the particular Co-op. sugar Mills only and ordered the abolition of common cadre system in Co-op. Sugar Mills in Government order 2nd read above. Consequent on the above, the officers and employees who were covered under the above said system were de-caderised and positioned in the respective sugar mills permanently based upon their option and in public interest. Necessary guidelines were also issued by the Commissioner of Sugar prescribing the procedure to be adopted for filling up of the vacancies and the service conditions of the erstwhile Common Cadre employees. The mode of recruitment to the second and third level officer posts in the erstwhile Common Cadre System was specified as Direct Recruitment and a selection committee was also constituted for the said purpose.



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3. Now, the Commissioner of Sugar has sent a proposal for the revival of Common Cadre System in the name of “Tamil Nadu Co-operative and Public Sector Sugar Mills Managerial Common Cadre System” in the Co-operative and Public Sector Sugar Mills for the effective functioning of the Sugar Sector, since the above system would go a long way in creating the ladder of promotion to the eligible in-house personnel from the entry level officers posts up to the level of Chief Officers in their particular field. He has also stated that, the proposed policy of recruitment and promotion would not only satisfy / fulfil the manpower requirement of the mills but would serve as a boon to the qualified personnel to get into the higher posts by offering new avenues for promotion. He has therefore requested the Government to approve the proposal and issue orders in this regard.

The above G.O. is applicable to Co-operative and Public Sector Sugar Mills. The earlier G.O. has permitted the Director of Sugar to create a Common Cadre System and to frame necessary rules and regulations for appointment, transfer etc. Then the common cadre system was dispensed and each sugar mills was considered as separate legal entity. Then again the common cadre system was reviewed and the service conditions was formulated to accommodate for promotion. For this the G.O. has passed. Under the Heading “Annexure” the “Regulations for the Tamil Nadu Coop and Public Sugar Mills Managerial Officers Common Cadre System” was dealt with. The Cane Officers are classified as Cadre B. Thereafter it states that the



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date of acquiring the requisite qualifications will be taken into account for deciding the **seniority** in a particular feeder category. Once the Superintendents are promoted as Office Manager and the Accountants are promoted as Accounts Officer they will be coming under the purview of the Tamil Nadu Co-op. & Public Sector Sugar Mills Managerial Common Cadre System. **Service conditions stipulated in Special bylaw and Standing Orders will be applicable to Grade-C and D. The rules and regulations stipulated to TNCS Act and Rules are applicable to Grade A and B officers.**

When the G.O.Ms.No.68 specifically states that when the Cadre “C & D” is promoted to Cadre “B”, then the employee would come within the purview of Common Cadre service. And the G.O. further proceeds that the “Service Conditions” for C and D cadre is Special Bylaw and Standing Orders. **And the “Service Conditions” for A and B cadre is the rules and regulations stipulated under the Tamil Nadu Cooperative Societies Act and Rules.** When the G.O.Ms.No.68 states the “service conditions” are applicable as stated in the Tamil Nadu Cooperative Societies Act and Rules, then the phrase “service conditions” ought to be analysed, especially whether it includes disciplinary proceedings. The section 75 of the Tamil Nadu Cooperative Societies Act would throw some light.



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14. Section 73 is placed under the chapter VIII under the Heading “Paid Officers and Servants of Society”. The section 73 deals with the “Appointment of paid officers and servants of registered society and their conditions of service”. Section 74 “Recruitment Bureaus”. Section 75 deals with “Constitution of common cadre of service” and in this section deals with all service conditions including the disciplinary actions. Under 75(3) deals with suspension, disciplinary proceedings and punishment. 75(4)(a) deals with disciplinary proceedings and the provision is extracted hereunder:

“(4) (a) The registered society under which an employee borne on a common cadre of service is employed may request the competent authority to take disciplinary action on, or to transfer such employee, and if the competent authority fails to take action within a period of thirty days from the date of such request, the registered society may report the matter to the Registrar for taking such action as he may deem necessary”

The aforesaid provisions make it abundantly clear that the “service conditions” means including disciplinary proceedings like suspension, enquiry, punishment etc. Therefore, this Court is of the considered opinion that the G.O.Ms.No.68 is issued not only for qualification, appointment, reservation in



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appointment, inter se seniority, promotion, pay, but also disciplinary proceedings. The Hon'ble Division Bench has not taken into account the relevant portion of G.O.Ms.No.68 where it says that **“The rules and regulations stipulated to TNCS Act and Rules are applicable to Grade A and B officers.”**. Therefore this Court is of the considered opinion that the G.O.Ms.No.68 states not only promotion etc. but also disciplinary proceedings.

15. Having held that the G.O.Ms.No.68 deals with disciplinary proceedings, now it has to be considered who is the authority to initiate disciplinary proceedings. 75(4)(a) deals with disciplinary proceedings and the provision states that “the registered society under which an employee borne on a common cadre of service is employed may request the competent authority to take disciplinary action on, or to transfer such employee”. In such circumstances the Chief Executive of Aringar Anna Sugar Mills ought to request the Cadre Authority i.e. Commissioner of Sugars to initiate disciplinary proceedings. In the present case the Chief Executive has initiated the proceedings and hence the disciplinary proceeding is without jurisdiction.



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16. The respondents has submitted written submissions, where it is submitted that the Commissioner of Sugars is the authority and the relevant portion of the submission is extracted hereunder:

“13.It is submitted that the Managing Director and the Commissioner of Sugars are one and same person. The Managing Director having administrative control over the Cooperative Sugar Mills. The Commissioner of Sugar is having administrative control over the Public Sectors Sugar Mills.

14. It is submitted that therefore the Commissioner of Sugar is the competent authority”

The respondents themselves accepts that the Commissioner of Sugar is the authority, but submits that the Commissioner of Sugar has delegated the power vide circulars. When the G.O. and the Act has declared that Commissioner of Sugar as Cadre Authority, then he has no power to delegate his powers, unless the Act provides for delegation of powers. Therefore, the plea of delegated the power also cannot be sustained. For the aforesaid reasons this Court is of the considered opinion that the disciplinary proceeding was initiated without any jurisdiction and hence the impugned order is liable to be quashed.



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17. Having held that the charge memo is issued without jurisdiction, normally the case ought to be remitted back to the authorities for initiating disciplinary proceedings by the jurisdictional authorities. Since the petitioner was suspended from service on 12.11.2015, challenging the same filed a writ petition in W.P.(MD)No.15701 of 2017 and the same was allowed on the basis of prolonged suspension, but on appeal the same was reversed and remitted the case to the Learned Single Judge. That remitted writ petition W.P.(MD)No.15701 of 2017 is before this Court. Therefore, this Court proceed further to deal with the case on merits.

18. The charge memo was issued based on the complaint received from some farmers and on basis of the news reported in Daily magazine. The charge sheet is issued after 5 months from the date of suspension and there is an unexplained delay. This contention of the petitioner was already dealt with by the Hon'ble Division Bench and has held the delay cannot be a reason to revoke suspension and it is based on the facts and circumstances of the case. Moreover, the respondents submitted that there are voluminous documents and hence it took



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ought to be served on the petitioner. It is the categorical submission of the petitioner that the respondents failed to grant documents, but the respondents submitted that 14.6 kgs of documents were served to the petitioner. On perusal of the charge sheet it is seen that the respondents have relied on the statements of the farmers, but the list of witness was not provided. Interestingly the charge sheet is more of preliminary enquiry report. None of the statement states that the petitioner had directed the farmers to give false statement, that the farmers paid the excess amount to the petitioner and the petitioner is misappropriated the money. Therefore this Court is of the considered opinion that the charge sheet is bad for not providing list of documents and witnesses.

20. The next contention that was raised by the petitioner is that the charges are absolutely vague. The charges are as follows:

குற்றச்சாட்டு எண்.1

திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர் 7.9.2011 முதல் 13.01.2015 வரை ஆலைக் கரும்புகோட்ட அலுவலகத்தில் பணிபுரிந்தபோது, 2011-2012, 2012-2013, 2013-2014 மற்றும் 2014-2015 கரும்பு அரவைப்பருவத்தில் 13.01.2015 நாள் வரை கரும்பு சப்ளை செய்ததில் பல்வேறு முறைகேடுகள், அதாவது கரும்பு ஆலைக்கு வராமல் கரும்பு வந்ததுபோல் கணினியில் மோசடியாகவும், போர்ஜரியாகவும் பதிவுசெய்யப்பட்டு, அவ்வாறு மோசடியாக கணினியில் பதிவு செய்யப்பட்டதற்கு, கிரவுண்ட் சீட்டை சரிபார்க்காமல், பரிந்துரைசெய்து, கரும்பு வராமல் போர்ஜரியாக கணினியில் ஏற்றப்பட்டதற்கு



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உடந்தையாக இருந்து திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர், தனது அடிப்படைப் பணியில் அசிரத்தையாகவும், அலட்சியமாகவும், பணியைப் புறக்கணித்தும் செயல்பட்டுள்ளார் என்ற குற்றச்சாட்டை புரிந்துள்ளார். இக்குற்றச்சாட்டு நிரூபணமானால் இவர் தண்டனைக்கு உள்ளாவார்.

குற்றச்சாட்டு எண்.2

திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர், 7.9.2011 முதல் 13.1.2015 வரை ஆலைக்கோட்ட கரும்பு அலுவலகத்தில் கரும்பு அலுவலராக பணிபுரிந்த காலத்தில் குற்றச்சாட்டு 1ல் தெரிவித்தவாறு தனது அடிப்படைப் பணியை புறக்கணித்து செயல்பட்டதால், ஆலைக்கு பெரும் நட்டத்தை ஏற்படுத்தி ஓயங்கீனச் செயலைப் புரிந்து, அந்த நட்டத்திற்கு திரு.ஆர்.வெங்கடசாமி கரும்பு அலுவலர் தனியாகவும், கூட்டமாகவும் (jointly and severally liable) பொறுப்பாகின்றார் என்ற குற்றச்சாட்டு அவர்மீது சுமத்தப்படுகிறது. இக்குற்றச்சாட்டு நிரூபணமானால் இவர் நட்டத்திற்கு கூட்டாகவும், தனியாகவும் பொறுப்பாவதோடு தண்டனைக்கு உரியவராகிறார்.

குற்றச்சாட்டு எண்.3

திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர், 7.9.2011 முதல் 13.1.2015 வரை ஆலைக்கோட்ட கரும்பு அலுவலகத்தில் பணிபுரிந்தபோது, 2011-2012, 2012-2013, 2013-2014 மற்றும் 2014-2015 கரும்பு அரவைப்பருவத்தில் 13.1.2015 நாள் வரை ஆலைக் கோட்ட கரும்பு அலுவலகத்தில் கரும்பு அலுவலராக பணிபுரிந்த காலத்தில் தனது அடிப்படைப் பணியான வயலை ஆய்வு செய்யவில்லை என்ற ஓயங்கீனச் செயலைப் புரிந்துள்ளார். இக்குற்றச்சாட்டு நிரூபணமானால் அவர் நட்டத்திற்கு கூட்டாகவும், தனியாகவும் பொறுப்பாவதோடு தண்டனைக்கு உரியவராகிறார்.

குற்றச்சாட்டு எண்.4

திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர், 7.9.2011 முதல் 13.1.2015 வரை ஆலைக்கோட்ட கரும்பு அலுவலகத்தில் கரும்பு அலுவலராக பணிபுரிந்த காலத்தில் தனது அடிப்படைப் பணியான Ground Sheet-ஐ சரிபார்த்து விவசாயிகள் அனுப்பிய கரும்பு சரியாக உள்ளதா என்பதை தீர்மானித்து, கையொப்பமிட்டு தனது மேலதிகாரிக்கு விவசாயிகளுக்கு கரும்புப்பணம் கொடுப்பதற்காக பரிந்துரை செய்ய வேண்டும். ஆனால் திரு.ஆர்.வெங்கடசாமி, Ground Sheet-ல் கையொப்பமிடாமல் 2011-12, 2012-13ஈ 2013-14 ஆகிய அரவைப்பருவத்தில் பணம் மட்டுவாடாவிற்கு அனுப்பி, பொய்யாக கரும்பு



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சப்ளை செய்ததற்கு திரு.ஆர்.வெங்கடசாமி, துணை போயுள்ளார் என்ற ஓபங்கீன்ச் செயலை புரிந்துள்ளார்.

குற்றச்சாட்டு எண்.5

திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர், 7.9.2011 முதல் 13.1.2015 வரை ஆலைக்கோட்ட கரும்பு அலுவலகத்தில் கரும்பு அலுவலராக பணிபுரிந்த காலத்தில் தனது அடிப்படை பணியான வயலை ஆய்வு செய்யாமல் பயண விபர அறிக்கை (Tour Diary) மற்றும் வாகன எரிபொருளுக்காக ஒவ்வொரு மாதமும் பட்டியல் கொடுத்து ஆலை நிர்வாகத்தை ஏமாற்றி மொத்தமாக ரூ.1,27,916/-ஐ பெற்றுள்ளார் என்ற ஓபங்கீன்ச் செயலைப் புரிந்துள்ளார். இக்குற்றச்சாட்டு நிரூபணமானால் இவர் தண்டனைக்கு உரியவராகிறார்.

குற்றச்சாட்டு எண்.6

திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர், 7.9.2011 முதல் 13.1.2015 வரை ஆலைக்கோட்ட கரும்பு அலுவலகத்தில் கரும்பு அலுவலராக பணிபுரிந்துள்ளார். இவர் பி.எஸ்ஸி (விவசாயம்) படித்துள்ளார். அதனடிப்படையில், கரும்பு விவசாய வயல்களை ஆய்வுசெய்து நன்முறையில் ஆலைக்கு உறுதுணையாக இருப்பார் என்ற நம்பிக்கையின் அடிப்படையில் இவர் பணியமர்த்தப்பட்டார். ஆனால், திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர் நன்முறையில் செயல்படாது ஒவ்வொரு மாதமும் ஊதியத்தை பெற்று நிர்வாகத்திற்கு எதிராக செயல்பட்டுள்ளார். இக்குற்றச்சாட்டு நிரூபணமானால் இவர் தண்டனைக்கு உரியவராகிறார்.

குற்றச்சாட்டு எண்.7

திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர், 7.9.2011 முதல் 13.1.2015 வரை ஆலைக்கோட்ட கரும்பு அலுவலகத்தில் கரும்பு அலுவலராக பணிபுரிந்துள்ளார். கரும்பு வராமல் கரும்பு வந்ததுபோல் கணக்குகாட்டி பணம்பெற்ற விவசாயிகளுடன் சேர்ந்து ஆலையின் பணத்தை கையாடல் (Misappropriation of Mills money) செய்துள்ளார் என்ற ஓபங்கீன்ச்செயலை புரிந்துள்ளார். இக்குற்றச்சாட்டு நிரூபணமானால் திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர் தண்டனைக்கு உரியவராகிறார்.



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குற்றச்சாட்டு எண்.8

திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர், 7.9.2011 முதல் 13.1.2015 வரை ஆலைக்கோட்ட கரும்பு அலுவலகத்தில் கரும்பு அலுவலராக பணிபுரிந்துள்ளார். இவர் பொதுத்தொகுப்பு அலுவலர் முறையில் கரும்பு அலுவலராக பணியில் சேர்ந்தபோது திரு.ஆர்.வெங்கடசாமி வழங்கப்பட்ட உத்தரவு நாள் 23.6.1999ல் Annexure – II ல் பாரா 12ல் “He should discharge his duties, diligently and whole heartedly with devotion” என்ற நிபந்தனையை ஒப்புக்கொண்டு பணியில் சேர்ந்துள்ளார். ஆனால், அந்த நிபந்தனையை சிறதுகூட கடைபிடிக்கவில்லை என்ற ஒழுங்கீனச் செயலைப் புரிந்துள்ளார். இக்குற்றச்சாட்டு நிரூபணமானால் திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர் தண்டனைக்கு உரியவராகிறார்.

குற்றச்சாட்டு எண்.10

திரு.ஆர்.வெங்கடசாமி, கரும்பு அலுவலர், 7.9.2011 முதல் 13.1.2015 வரை ஆலைக்கோட்ட கரும்பு அலுவலகத்தில் கரும்பு அலுவலராக பணிபுரிந்துள்ளார். குற்றச்சாட்டுக்கான ஆதாரம் 1முல் 9 வரையில் சொல்லப்பட்டவாறு இவர் பணியைப் புறக்கணித்து ஆலைக்கு பெரும் நட்டத்தை ஏற்படுத்தி, ஆலையின் பணத்தை மற்ற விவசாயிகளுடன் சேர்ந்து கையாடல் செய்து இவரது பணியில் ஒழுக்கத்திற்கு புறம்பாக செயல்பட்டு (Involving in Moral Turpitude) ஒழுங்கீனமாகச் செயல்பட்டுள்ளார் என்ற குற்றச்சாட்டை புரிந்துள்ளார்.

For the aforesaid charges, the petitioner submitted that the charges are vague without any specific allegations against the petitioner for which the petitioner ought to face the enquiry and the petitioner would be in a position to reply for the vague charges and hence, the petitioner claims that the petitioner should be protected from facing the vague enquiry. Admittedly on perusing the



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charges, the charges are vague, the charges only state the dereliction of duties, the petitioner has not discharged whole heartedly and with devotion etc. Therefore, this Court is of the considered opinion that the charges are vague and the petitioner is in advantageous position.

21. As far as the allegations of misappropriation of Mills money and the entry in the computer is concerned, the petitioner has relied on the information provided under Right to Information Act. In the reply it is stated the control of computer is with the Head of the Department and nobody has accessed to the computer and nobody can open and access the computer without the permission from the Head of the Department. The operative portion of the Right to Information is extracted hereunder:



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வ.எண்.	கோரியுள்ள விபரம்	ஆலையின் பதிலுரை
	அறிஞர் அண்ணா சர்க்கரை ஆலையில் நடப்பு 2015-16 ஆலை அரவைப் பருவத்தில் கரும்பு வெட்டு உத்தரவில் குறிக்கப்பட்டுள்ள மகசூல் மதிப்பீட்டை அதிகமான கரும்பு அதே வெட்டு உத்தரவு மூலம் ஆலை அரவைக்கு வரும் போது கரும்பு எடை போட்டு அரவைக்கு ஆலை உள்ளே எடுத்து அரைப்பதற்கு கம்ப்யூட்டர் லாக் உள்பட என்னென்ன விதிமுறைகள் பின்பற்றப்பட்டு வருகிறது என்ற விபரம் கூறவும்.	அறிஞர் அண்ணா சர்க்கரை ஆலையில் நடப்பு 2015-16 ஆலை அரவைப் பருவத்தில் எடைத்தளத்திலுள்ள கணிப்பொறியில் மகசூல் மதிப்பீட்டை விட கூடுதலாக வரும் கரும்பை இறக்க இயலாத நிலையில் கம்ப்யூட்டர் லாக் செய்யப்பட்டுள்ளது. மேலும் கரும்பு வெட்டு உத்தரவில் குறிக்கப்பட்டுள்ள மகசூல் மதிப்பீட்டை விட கூடுதலாக கரும்பு அதே வெட்டு உத்தரவு மூலம் ஆலை அரவைக்கு வரும் போது கூடுதலாக வரும் மகசூல் மதிப்பீட்டை ஆலை அரவைக்கு எடுத்துக் கொள்ள சம்பந்தப்பட்ட மிரிவு கரும்பு உதவியாளர் சம்பந்தப்பட்ட வயலில் கூடுதலாக வரும் மகசூல் மதிப்பீட்டை ஆய்வுசெய்து கோட்ட கரும்பு அலுவலரும் மேற்படி வயலை ஆய்வுசெய்து மகசூல் மதிப்பீடு கூடுதலாக வரும் பதிவு கரும்பு வயலை அளந்து சரிபார்த்து மகசூல் மதிப்பீடு கூடுதலாக வரும்பட்சத்தில், கரும்பு அலுவலரின் பரிந்துரையின் அடிப்படையிலும், கரும்பு பெருக்கு அலுவலரின் பரிந்துரையின் அடிப்படையிலும் உண்மையாக இருக்கும் பட்சத்தில் தலைமை நிர்வாகி அவர்களின் உத்தரவு பெற்ற பிறகு கணிப்பொறி மேற்பார்வையாளர் மூலம்தான் எடைத்தளத்தில் உள்ள கணிப்பொறியில் மாற்றம் செய்து கூடுதலாக வரும் மகசூல் மதிப்பீடு ஆலை அரவைக்கு எடுத்துக் கொள்ளப்படுகிறது.

On perusing this reply, it is stated that the computer would be locked and false entries are not possible. Moreover, it is stated if the excess sugarcane is received, then the Chief Executive's permission is necessary to unlock and make entries. In such circumstances the allegation that the petitioner had concealed the excess sugarcane and excess payment to sugarcane is baseless. Moreover, the



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petitioner is not assigned with the work of making entries in the computer and he is no way in-charge of the computer. The work of a “Cane Officer” are that of a programming the work of an agriculture officers in department of agriculture and the work allotment order is produced before this Court and the relevant portion is extracted hereunder:

“1. Cane Officers: The cane officers are with basic qualification of B.Sc. (Agri). They are controlling one division office of the sugar mills. They are popularizing the cane varieties which are found new at research station level. They are responsible to follow the entire agronomical practices for cane crop advised by the universities and research stations. The adoptability of the variety, suitability of the tract, high sugar content varieties selection are done by these cane officers by following the intensive agriculture practices, they increases the cane yield. During cutting season, by engaging lorries for transport, maintain the priority of the registered farmers and to send the cane to the mills. **In a way they are programming the work of an agriculture officers in department of agriculture.**”

On perusing the work allotment order it is seen that the petitioner being a cane officer is a field officer and was not assigned the work of entry in the computer at all. The 1st charge against the petitioner states that the petitioner has made entries and also states the petitioner colluded to make entries. When the



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charge is against the work allotment, then the contention of the petitioner that the respondents are making the petitioner to face unnecessary allegations without duty assigned to the petitioner is right. Therefore, the petitioner is entitled to relief.

22. As far as the contention of subsistence allowance is concerned the respondents submitted that the petitioner did not cooperate with the enquiry, but the petitioner contended that the relevant documents were not served to the petitioner, moreover the charges are vague. This Court has already held that the charges are vague and therefore this Court is of the considered opinion that the petitioner is entitled to full subsistence allowance. The respondents further contented that the Payment of Subsistence Allowance Act is not applicable to the petitioner. This Court has held in several cases that the Payment of Subsistence Allowance Act is not applicable for employees working in societies. However, the by-Laws of the societies grants payment of subsistence allowance. Hence the plea of the respondents regarding payment of subsistence is rejected.



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23. Without proper investigation the charge sheet was issued, moreover the charge sheet is bereft of any materials. The second respondent failed to supply the relied upon documents in particular ground sheet, weighing bridge entry pass, weighing bridge weight entry ledgers etc., and the petitioner's travel allowance payment particulars etc. But the respondents subsequently have furnished the ground sheet but other documents were not furnished. The respondents failed to taken note of the fact that the Sugar Mills accounts have been audited by Auditor every year. If at all any misappropriation committed in any year that year audit report would reveal the truth. The nature of work of Cane Officer in Sugar Mill is fully field oriented, they have to visit sugar cane fields and sugar cane growing farmers along with Cane Assistants daily and they have to popularize new variety of seeds to the farmers, expose the farmers to the intensive Agriculture Practices so as to get higher sugar cane yield. Arranging crop loans to the farmers from Co-operative and Nationalized banks. During sugar cane crushing season, issuing cutting orders through Cane Assistants, as per priority list, engage tractors for cane transport to the sugar cane growers. The petitioner has not involved in



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any activity as alleged in the charge sheet. Moreover, the charge sheet is not issued on the basis of any concrete documentary evidence.

24. It is also seen that the petitioner was transferred to the present mill only in the year 2011 and the allegation is from the years 2011 onwards. It is highly improbable that the petitioner had committed such offences. It is also brought to the notice of this Court that other co-delinquents were imposed with lesser punishment and some of them were reinstated. Therefore, this Court is of the considered opinion that the charge sheet is liable to be quashed on jurisdiction and also on merits and the same is quashed on jurisdiction and on merits as well. Since the charge sheet is quashed, then the petitioner is entitled to reinstatement with continuity of service and backwages. Since the petitioner is already paid with the subsistence allowance, the respondents shall pay the balance subsistence allowance from 2017 onwards. This order shall be completed within a period of eight weeks from the date of receipt of the copy of the order.



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25. This Court is of the considered opinion that there may be some irregularities but the respondents failed to take action on the correct person who had really committed the offence. The respondents have taken action against some 30 officers based on the preliminary enquiry but without specific accusation against each officer.

26. In the result,

- i. The W.P.(MD)No.15022 of 2016 filed to permit to engage an advocate is closed.
- ii. The W.P.(MD)No.15023 of 2016 filed to provide documents is closed.
- iii. The W.P.(MD)No.15447 of 2016 filed to quash the order dated 21.07.2016 and consequently to permit to engage an advocate is closed
- iv. The W.P.(MD)No.15709 of 2017 filed to quash charge memo dated 16.04.2016 is allowed.
- v. The W.P.(MD)No.15710 of 2017 filed to quash suspension order dated 12.11.2015 is allowed.
- vi. The W.P.(MD)No.22597 of 2017 filed to quash the impugned show cause notice dated 18.08.2017 to recover the excess subsistence allowance is allowed.



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vii. The W.P.(MD)No.8167 of 2018 filed to consider the representation dated 23.03.2018 and to pay subsistence allowance from August 2017 onwards is allowed.

viii. The order shall be implemented within a period of eight (8) weeks from the date of receipt of a copy of this order.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.05.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes

Nsr



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To

- 1.The Chief Executive,
Arignar Anna Sugar Mills,
Kurunkulam,
Thanjavur District – 613 303.
- 2.The Enquiry Officer/
Managing Director,
Amboor Co-operative Sugar Mills Limited,
Arignar Anna Sugar Mills,
Kurunkulam,
Thanjavur District – 613 303.
- 3.The Management Representative
The Executive Officer / Executive Member,
Arignar Anna Sugar Mills,
Kurunkulam,
Thanjavur District – 613 303.



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S.SRIMATHY, J

Nsr

Pre-delivery Order made in
W.P.(MD).Nos.15022, 15023, 15447 of 2016,
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and 8167 of 2018

09.05.2023