

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.14527 of 2004

And

W.P.M.P.No.17200 of 2004

A.Joseph

... Petitioner

Vs.

The Special Officer,
The Kallakurichi Co-operative Sugar Mills Ltd., I.I.389
Moongilthuraipattu 605 702,
Villupuram District.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records made in the impugned notice in Na.Ka.No.554/2003/Tho.Na.Aa dated 05.05.2004, on the file of the respondent and quash the same.

For Petitioner : Mr.S.Sathia Chandran

For Respondent : Mr.K.Rajasekaran

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records made in the impugned notice in Na.Ka.No.554/2003/Tho.Na.Aa dated 05.05.2004, on the file of the respondent and to quash the same.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3.The brief facts of the case is as follows: The petitioner is working as Waterman in Engineering Section under the respondent Society registered under the Societies Registration Act. He was issued with a show cause notice on 05.05.2004 calling for him to show cause the reason for not attending the duty and regarding the criminal case lodged against him and not submitting the criminal case particulars including the judgments, against which, the writ petition has been filed.

4.The learned counsel for the petitioner would submit that the show cause notice has been issued in an arbitrary and hasty manner, without considering the explanation of the petitioner and with pre-determined and mala fide intention. In paragraph (d) of the grounds raised by the petitioner, it is stated that the petitioner was not given any reasonable opportunity to defend his case and while conducting the enquiry, procedures were not followed and hence, he prayed for setting aside the show cause notice issued by the respondent.

5.The respondent issued show cause notice in order to conduct enquiry and called for the explanation from the petitioner. Mere issuance of the show cause notice does not mean that the authority has pre-considered the issue and approaching this Court under Article 226 of the Constitution of India is not maintainable as per the decision of the Hon'ble Supreme Court reported in (2006) 12 SCC 28 (Union of India and another Vs. Kunisetty Satyanarayana). For the sake of convenience, the relevant portions of the same are extracted hereunder:

"14.The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15.Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet."

6.Further, the writ petition is also not maintainable as against the Special Officer as per the decision of the Larger

Bench of this Court reported in (2006) 4 CTC 689 (K.Marappan Vs. Deputy Registrar of Co-operative Societies).

7.Further, the writ petition is of the year 2004 and nearly thirteen years have elapsed. Hence, this Court is not inclined to interfere with the impugned show cause notice. Hence, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

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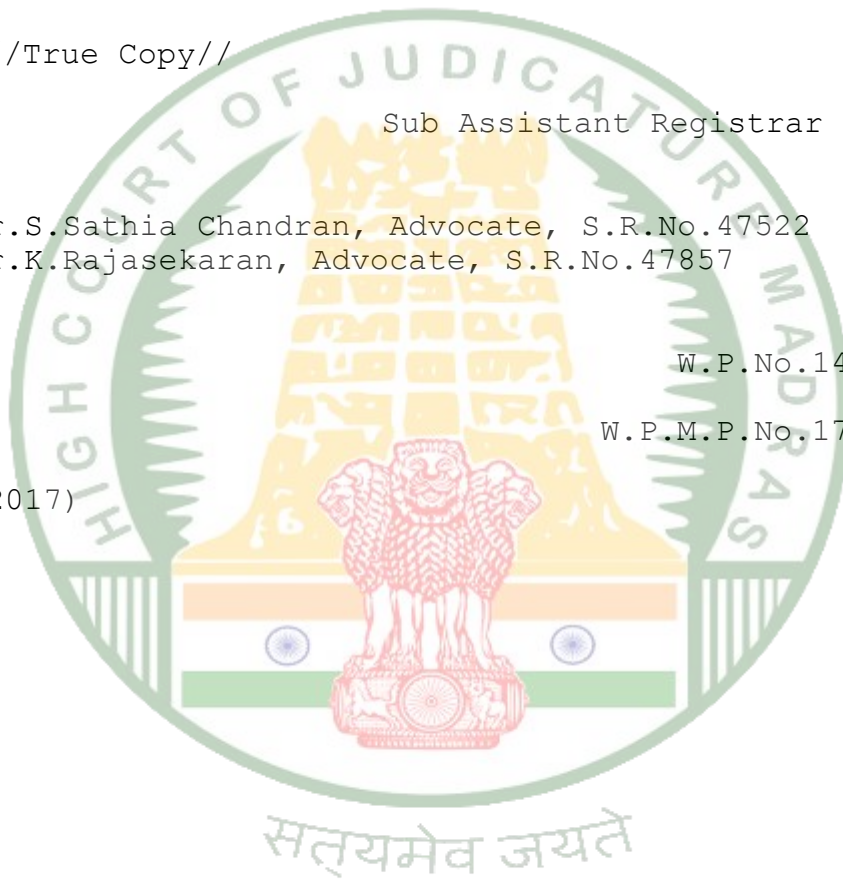
Sub Assistant Registrar

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+1cc to Mr.S.Sathia Chandran, Advocate, S.R.No.47522
+1cc to Mr.K.Rajasekaran, Advocate, S.R.No.47857

W.P.No.14527 of 2004
and
W.P.M.P.No.17200 of 2004

RR(CO)
CA(26/07/2017)



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