

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2018
Delivered on : 28.06.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.239 of 2013 and
M.P.No.1 of 2013

D.PrabhuAppellant/Petitioner
Vs

- 1.The Government of Tamilnadu
Rep. by the Secretary to Government,
Industries (MIC.2) Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Sugar,
690, Anna Salai,
Nandanam, Chennai - 600 035.
- 3.The Administrator,
The Chengalrayan Co-operative Sugar Mills Limited,
Periasevalai - 607 209, Villupuram District.
- 4.V.Gunasekaran
- 5.M.Ganesan
- 6.V.Gunasekaran
- 7.A.Sundaravadivel
- 8.R.Madhavan
- 9.S.Ariff Basha
- 10.V.Balu
- 11.G.Damodaran
- 12.S.Sivakumar
- 13.M.Venkatesan
- 14.M.K.Selvam
- 15.M.Murugan
- 16.Sakthivel
- 17.G.Vasudevan
- 18.M.Chinnapillai
- 19.M.Munusamy
- 20.K.Sekar
- 21.G.Suresh
- 22.Punnamurthy
- 23.M.Ramesh
- 24.Manmudi
- 25.A.L.Venkataraman

WEB COPY

26.A.Boopathy Raja
27.E.Gunasekaran
28.R.Pandian
29.A.Ravichandran
30.P.Selvaraju
31.P.Anandan
32.K.Gopisigamany
33.N.Guruvaraja
34.S.Anbudasan
35.E.Ramu
36.C.Vijayakumar
37.A.Subburaj

...Respondents

(RR 35 to 37 impleaded as party respondents vide order of Court dated 20.07.2017 by HGRJ & GJJ in CMP No.3026/2017)

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 31.01.2012 made in W.P.No.10201 of 2011.

W.P.No.10201 of 2011:

This Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate writ or direction in the nature of Writ Calling for the records pertaining to the order passed in Proceedings in G.O(MS) No.68 dated 01.03.2011 on the file of the First respondent and quash the same.

For Appellant : Mr.R.Natarajan

For Respondents: Mr.S.T.S.Murthy

Addl.Advocate General

Assisted by

Mr.L.P.Shanmugasundaram

Special Govt.Pleader (Co-op)

for R1 and R2

Ms.G.Thilakavathy, Senior Counsel

for Mr.R.Gopinath for R3

Mr.P.Mohanraj for R9 to R12

Mr.R.Rajarajan for R24 to R37

No appearance for R4 to R8,

13 to 18, 20 and 21 to 23

R19 Died

J U D G M E N T

K.K. SASIDHARAN, J.

The appellant challenged the constitution of common cadre as per the order in G.O.Ms.No.68 dated 1 March 2011 primarily on the ground that it was issued without following the mandatory requirements prescribed under Section 75 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as "the Act"). The learned single Judge without addressing the legal

issues raised by the appellant dismissed the writ petition along with many other writ petitions by referring only to the policy underlying such creation of common cadre. Feeling aggrieved, the unsuccessful writ petitioner has come up with this intra court appeal.

Basic Facts

2. The appellant was appointed as a Cane Officer in Chengalrayan Co-operative Sugar Mills Limited, Periasavalai, Villupuram District on 2 July 1988. The Government constituted a common cadre for the sugar mills as per order in G.O.Ms.No.866 Industries Department, dated 25 July 1984. The Commissioner of Sugar on the strength of the order in G.O.Ms.No.866 transferred the appellant to Ambur Sugar Mills by order dated 14 October 1994. The order was unsuccessfully challenged by the appellant in W.P.No.21290 of 1994. The related appeal was allowed by the Division Bench by judgment dated 4 September 1997 in W.A.No.722 of 1997. The Special Leave Petition was dismissed by the Supreme Court by order dated 6 February 1998 in SLP (Civil) 1447 of 1998.

3. The common cadre system was abolished by the Government as per Order in G.O.Ms.No.834 dated 8 December 1997. The employees were sent back to the respective mills by restoring their original cadre.

4. The second respondent after a period of 13 years once again constituted a common cadre by issuing an order in G.O.Ms.No.834 dated 8 December 1997. The Government Order was challenged by the appellant on the ground of non-compliance of the procedure contemplated under Section 75 of the Act, which was pointed out by the Division Bench in W.A.No.722 of 1997.

5. The learned single Judge dismissed the writ petition in W.P.No.10201 of 2011 primarily on the ground that Section 75 of the Act empowers the Government to constitute the common cadre from time to time.

Submissions

6. The learned counsel for the appellant by placing reliance on Section 75 of the Act and the observations made by the Division Bench in the earlier Judgment dated 4 September 1997 in W.A.No.722 of 1997 contended that the impugned order was issued without following the mandatory procedure prescribed by the statute. According to the learned counsel, sub-section (3) of Section 75 of the Act was not followed by the Government even after three years. The learned counsel contended that there was no adjudication of the issue raised by the appellant in the writ petition. The writ petition was dismissed only on the ground that power is available to the Government to constitute the common cadre without examining whether such power was exercised

in accordance with law.

7. The learned Additional Advocate General contended that the common cadre system has been in existence for the past seven years. According to the learned Additional Advocate General, several employees were promoted based on the common cadre. Therefore, the Government Order cannot be quashed solely on account of the violation of procedure under Section 75.

8. The learned counsel for the impleaded parties, who are the beneficiaries of the common cadre system supported the order passed by the learned single Judge.

Discussion

9. The appellant challenged the common cadre system on certain legal grounds and more particularly violation of Section 75 of the Act. The observation made by the Division Bench in its judgment dated 4 September 1997 in W.A.No.722 of 1997 was also relied on by the appellant to invalidate the system.

10. The learned single Judge took up large number of writ petitions together and by way of a common order dismissed the writ petition in question.

11. We have perused the grounds taken by the appellant in his writ petition, the counter affidavit filed by the Government and the reasoning given by the learned single Judge.

12. The counter affidavit filed on behalf of the Government is silent on the legal question raised by the appellant by placing reliance on Section 75 of the Act.

13. The learned single Judge was more on the policy decision taken by the Government to constitute a common cadre and the power of the Government for such constitution under Section 75 of the Act.

14. There is no dispute that the Government is empowered to constitute a common cadre under Section 75 of the Act. However, the core question is whether the Government has followed the mandatory procedure contemplated under Section 75 of the Act as pointed out by the Division Bench in W.A.No.722 of 1997. This primary question which goes to the root of the matter was not at all answered by the learned single Judge.

15. The Government Order in G.O.Ms.No.68 was issued on 1 March 2011. The appellant filed the writ petition on 18 April 2011. The writ petition was dismissed on 31 January 2012. The Government was obliged to provide for the constitution of the competent authority, which shall be the committee consisting

both the officers of the Government and non-official, which shall not exceed 5 to exercise the powers of recruitment, transfer and to exercise disciplinary control, under sub-section (3) of Section 75 of the Act. The first proviso to Section 75(3) permits the Government to dispense with the constitution of the committee for a period of 3 years and entrust the task of the committee with an officer of the Government, not below the rank of a Joint Registrar or not below such rank in other department as may be prescribed.

16. Even though the Government revived the common cadre system by order dated 1 March 2011, the fact remains that the Committee under Section 75(3) has not been constituted. The Commissioner of Sugar continued to function as the competent authority even after a period of three years from the date of initial constitution. There was no adjudication of these vital issues in view of the dismissal of the writ petition even before the completion of three years of the common cadre system introduced by G.O.Ms.No.68 dated 1 March 2011.

17. The other question is as to whether this Court in this intra court appeal should decide the larger question including the issue that has arisen on account of the expiry of three years period fixed initially for dispensing with the constitution of the committee. There are no pleadings relating to this issue. We are therefore of the view that the matter requires fresh consideration by the Writ Court.

18. We set aside the order dated 31 January 2012 in W.P.No.10201 of 2011. We give liberty to the appellant and the respondents to file additional affidavits covering the subsequent events and more particularly to highlight the effect of sub-section (3) and the first proviso to Section 75 of the Act. We request the learned single Judge to consider the entire matter afresh on merits and as per law as expeditiously as possible.

19. The intra court appeal is disposed of as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

svki

To

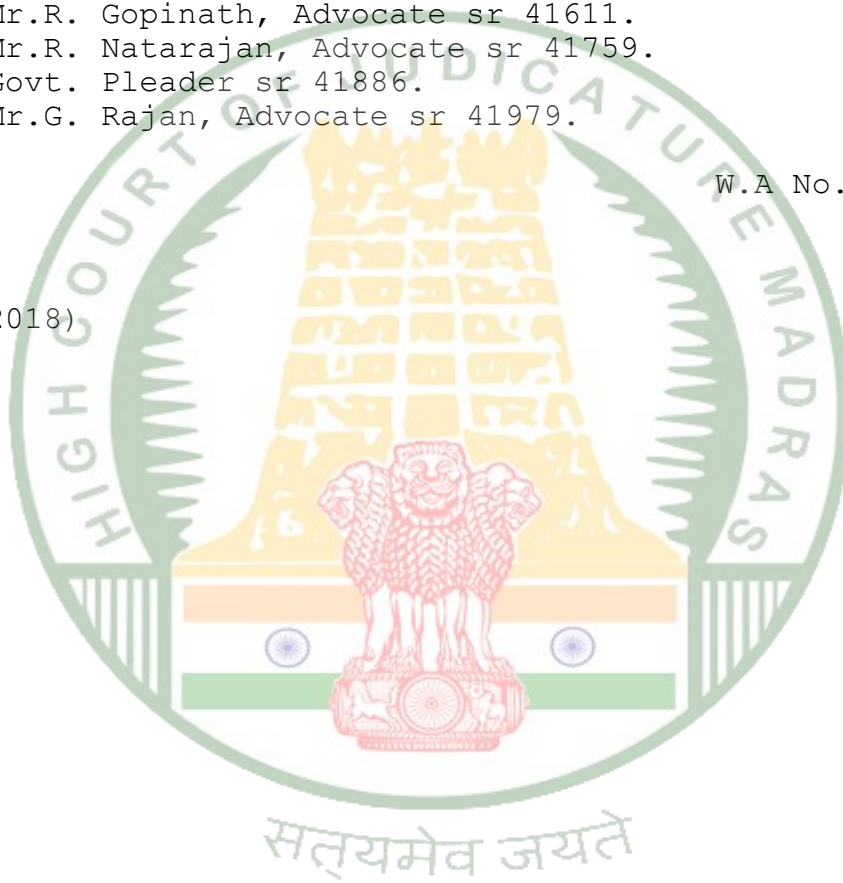
1.The Secretary to Government,
The Government of Tamilnadu
Industries (MIC.2) Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Sugar,
690, Anna Salai,
Nandanam, Chennai - 600 035.

+1 CC to Mr.R. Gopinath, Advocate sr 41611.
+1 CC to Mr.R. Natarajan, Advocate sr 41759.
+1 CC to Govt. Pleader sr 41886.
+1 CC to Mr.G. Rajan, Advocate sr 41979.

W.A No.239 of 2013

AK(CO)
SP(18/07/2018)



WEB COPY