



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.10.2018
CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD).No.1004 of 2018
Against WP(MD)No.22702/2017
and
C.M.P.(MD).No.6979 of 2018

Aringar Anna Sugar Mills
Represented by its Chief Executive,
Kurungulam,
Tanjore-613 303.

... Appellant/2nd Respondent

Vs.

1.N.Gururaja

...1st Respondent/Petitioner

2.The Director Sugar
Registrar of Sugar Mills,
No.69, Anna Salai,
EVR Periyar Buildings,
Nandanam, Chennai-35,
Chennai.

... 2nd Respondent/1st Respondent

3.National Co-operative Sugar Mill,
Represented by its Managing Director,
B.Mettupatti Village,
Alanganallur,
Madurai-625 502.

...3rd Respondent/3rd Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent, against the order passed by this Court in W.P.(MD).No.22702 of 2017 dated 04.06.2018.

Prayer in WP(MD). 22702/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Chae.Mu.Na.No.PaA/1017/2016/P5 dated 18.11.2017 and the consequential order passed by the 3rd respondent in Na.Ka.No.385/2017cipa dated 27.11.2017 and quash the same and consequently direct the respondents to reinstate the petitioner back into service with all attendant and consequential benefits.



For Appellant : Mr. Isaacmohanlal, Senior Counsel
for Mr. S. Saji Bino
For Caveator : Mr. N. Balamuralikrishnan

JUDGMENT

WEB COPY [Judgment of the Court was made by M.M. SUNDRESH, J.]

The issue with respect to the jurisdiction for initiating disciplinary action is no longer res integra. The learned Single Judge, while dealing with the similar matter, on an earlier occasion, was pleased to hold that the provision of Tamil Nadu Co-operative Societies Act 1983 and Rules 1988 would strictly apply to section 75(4) (a) of the said Act, notwithstanding the fact that the employer is, at the relevant point of time, a Public Sector Mill. The said decision was accordingly reversed by this Court.

2. The relevant paragraphs in the order dated 28.08.2018 passed in W.P. (MD) Nos. 1143 and 1144 of 2018, are extracted hereunder:

"6. We find force in the submission made by the learned Senior Counsel appearing for the appellant. The creation of the common cadre system stands in a different footing from the departmental proceedings initiated against the delinquent officer. By the aforesaid creation, an employee of the appellant would not become an employee of the registered Co-operative Society. For the aforesaid reason, the Government Order issued in G.O. (Ms). No. 68, Industries (MIC.2) Department, dated 01.03.2011, cannot and will not change the character of the appellant, which is a Corporation, into a registered Co-operative Society, coming within the purview of the Tamil Nadu Co-operative Societies Act, 1983, and the Rules framed thereunder.

7. We are not dealing with a case of an employee going from one department to another department and become permanent thereunder. Rather, the common cadre system merely provides for a maximum to be applied, after its creation between the individuals, who form the cadre insofar as their inter se seniority and further promotions are concerned. To make the position clear, the departmental proceedings against such an individual, if comes out from a Co-operative Society, would be under the Tamil Nadu Co-operative Societies Act and if from the appellant would be under the Rules and Regulations governed under the Public Sector undertaking. Therefore, the first respondent/writ petitioners are continued to be the employees of the appellant Corporation. The learned Single Judge, in our considered view, has not considered this aspect. Thus, we are constrained to set aside the order passed by the learned single Judge.



8. Accordingly, the order dated 04.06.2018 made in W.P. (MD).Nos.2709 and 3400 of 2018 is set aside. As the learned single Judge has not gone into the merits of the case, while setting aside the order passed, we remit the matter back to the learned single Judge, dealing with the Service Matters, as per the roster, to decide the other issues on merits."

3. Since the learned single Judge has not gone into the merits of the case and allowed the writ petition on the question of jurisdiction, while setting aside the order passed, we remit the matter back to the learned single Judge dealing with the Service Matters, as per the roster to decide the other issues on merits. However, all the issues are left open.

4. With the above observation, the writ appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Director Sugar
Registrar of Sugar Mills,
No.69, Anna Salai,
EVR Periyar Buildings,
Nandanam, Chennai-35,

2. National Co-operative Sugar Mill,
Represented by its Managing Director,
B.Mettupatti Village,
Alanganallur,
Madurai-625 502.

+1CC to Mr.v.Karthikeyan, Advocate, SR.No.93282
+2CC to Mr.S.Saji Bino, Advocate, SR.No.93030

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Against WP (MD) No.22702/2017
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