



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.[MD].Nos.1143 and 1144 of 2018

and

C.M.P. (MD).Nos.8144 and 8145 of 2018

Aringnar Anna Sugar Mills,
Represented by its Chief Executive,
Kurungulam,
Thanjore 613 303.

: Appellant

Vs.

1. A.Karunanidhi,
Cane Officer [Terminate],
S/o.Andikalai, Srinivasa Nagar,
Near Moopatheru, Vallam,
Thanjavur Taluk, Thanjavur District.

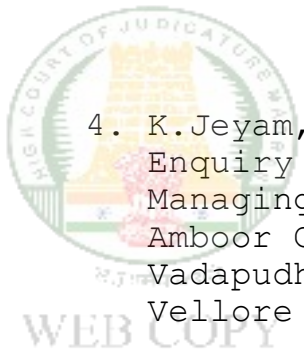
: 1st Respondent in W.A.
[MD].No.1143/2018 /
Petitioner in WP(MD)
No.2709/2018

1. P.Pandian,
Cane Officer [Terminate],
S/o.M.Paramasivam,
Arignar Anna Sugar Mills,
Kurungulam, No.106/1, North Street, Peraiyur Post,
Mannarkudi Taluk, Thiruvarur District.

: First Respondent in W.A.
[MD].No.1144/2018
/Writ Petitioner in
WP (MD) No.3400/2018

2. State of Tamil Nadu,
Represented through,
The Secretary, Department of Industries,
St.George Fort, Chennai 9.

3. The Commissioner of Sugar Mills,
The Director of Sugar,
The Tamil Nadu Sugar Corporation Limited,
State of Tamil Nadu, 696, Anna Salai, Nandhanam,
Chennai.



4. K.Jeyam,
Enquiry Officer/Domestic Enquiry Officer,
Managing Director,
Amboor Co-operative Sugar Mills,
Vadapudhupet, Amboor,
Vellore District.

: Respondents 2 to 4 in
both Writ Appeals

PRAYER: Writ Appeals are filed under Clause 15 of the Letters Patent against the order dated 04.06.2018 made in W.P.(MD).Nos.2709 and 3400 of 2018, on the file of this Court.

Prayer in WP(MD)No. 2709/ 2018 :

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 respondents pursuant to the termination order issued by the 3rd respondent in Se.Mu.Na.No.P.A/923/2016/Pi 5 dated 18/11/2017 and quash the same and consequently direct the 3rd respondent to reinstate petitioner in his original employment with all the attendant benefits.

Prayer in WP(MD)No. 3400/ 2018 :

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 respondents pursuant to the termination order issued by the 3rd respondent in Se.Mu.Na.No.Pa.A/754/2016/Pi5 dated 18/11/2017 and quash the same and consequently direct the 3rd respondent to reinstate petitioner in his original employment with all the attendant benefits.

For Appellant : Mr.Isaac Mohanlal
Senior Counsel
For Mr.S.Sajibino
in both Writ Appeals

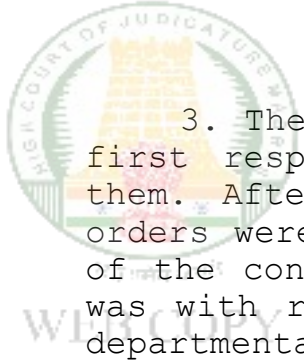
For respondent No.1 : Mrs.S.Devasena
in both Writ Appeals

COMMON JUDGMENT

[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

By consent, both the Writ Appeals are taken up for disposal and they are disposed of by means of this Common Judgment.

2. The appellant is a Government Corporation, having its own set of Rules and Regulations, governing its employees including the disciplinary proceedings. The appellant is certainly not a Co-operative Society coming under the purview of the Tamil Nadu Co-operative Societies Act, 1983 and the Rules framed thereunder. Admittedly, the appellant has not registered it as a society.



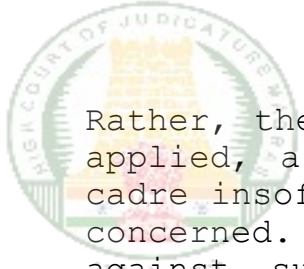
3. The appellant initiated disciplinary proceedings against the first respondent/writ petitioners for the misconduct indulged by them. After due enquiry, orders of dismissal were passed. These orders were put into challenge before the learned Single Judge. One of the contentions raised by the first respondent/writ petitioners was with respect to the jurisdiction to initiate and conclude the departmental proceedings, resulting in the impugned orders. It was contended by the first respondent/writ petitioners that in view of the Government Order issued in G.O.(Ms).No.68, Industries (MIC.2) Department, dated 01.03.2011, by which common cadre system was introduced, the appellant does not have jurisdiction and therefore, the first respondent/writ petitioners are governed by Section 75 of the Tamil Nadu Co-operative Societies Act, 1983. The learned Single Judge concurred with the contentions of the first respondent/writ petitioners and thus, allowed the Writ Petitions. Aggrieved over the same, the present Writ Appeals are filed.

4. Mr.Isaac Mohanlal, learned Senior Counsel, representing Mr.S.Sajibino, learned counsel on record, would submit that the Government Order issued in G.O.(Ms).No.68, Industries (MIC.2) Department, dated 01.03.2011, by which common cadre system was introduced is meant for the service conditions, inter se seniority and promotion. Thus, the said system, which has been implemented, admittedly, does not make the appellant as a society registered under the Tamil Nadu Co-operative Societies Act, 1983 and consequently, the first respondent/writ petitioners would not become the employees of the society. The net result would be Section 75 of the Tamil Nadu Co-operative Societies Act, 1983 cannot have any application.

5. Per contra, the learned counsel appearing for the first respondent/writ petitioners would submit that as there is no dispute about the creation of the common cadre system, as per the Government Order issued in G.O.(Ms).No.68, Industries (MIC.2) Department, dated 01.03.2011, Section 75 of the Tamil Nadu Co-operative Societies Act, 1983 would apply and therefore, no interference is required.

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.

9. The Writ Appeals are allowed, as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Secretary to Government,
Department of Industries,
St.George Fort, Chennai 9.

2.The Commissioner of Sugar Mills,
The Director of Sugar,
The Tamil Nadu Sugar Corporation Limited,
State of Tamil Nadu, 696, Anna Salai, Nandhanam,
Chennai.

Copy To:

1.The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.



+2CC to Mrs.S.Devasena, Advocate, SR.Nos. 81140,81137,
+4CC to Mr.S.Sajibino, Advocate, SR.Nos.80696, 80697

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28.08.2018

NB

ES/RP/SAR 2/11.09.2018/5P/11C