



WEB COPY

W.A.(MD)No.1147 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.1147 of 2019

and

C.M.P (MD)No.10213 of 2019

R.Gunasekaran

... Appellant/Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Industrial Department,
Secretariat,
Chennai.

2.The Managing Director,
National Cooperative Sugar Mills Ltd.,
Mattupatti,
Alanganallur,
Madurai - 625 502.

3.The Director of Sugar,
690, Anna Salai,
Periyar EVR Buildings,
2nd Floor, Nandanam,
Chennai - 600 035.

...Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 30.07.2019 passed in W.P(MD)No.19352 of 2015.

Prayer in WP(MD). 19352/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the records No.218/2015/CPaA, dated 29.09.2015 on the file of the 2nd respondent and quash the same as illegal, incompetent and without jurisdiction.

For Appellant

: Mr.S.Ramesh

For R-1 & R-3

: Mr.S.Angappan,

Government Advocate

For R-2

: Mr.P.Chandrabose

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

<https://hcservices.ecourt.gov.in/hcservices/> Heard Mr.S.Ramesh, learned counsel appearing for the



appellant, Mr.S.Angappan, learned Government Advocate appearing for the respondents 1 and 3 and Mr.P.Chandrabose, learned counsel appearing for the second respondent.

2. By consent of either side, the writ appeal is taken up for final disposal.

3. This writ appeal filed by the writ petitioner is directed against the order passed by the learned Single Bench in W.P(MD)No.19352 of 2015 dated 30.07.2019.

4. The writ petition is filed challenging the proceedings issued by the second respondent directing the writ petitioner to remit a sum of Rs.27,054/-, which according to the second respondent is an excess payment of Earned Leave benefit.

5. Similar demand was raised by proceedings dated 09.06.2015 issued by the second respondent, which can be taken as a show-cause notice, because, the second respondent has stated that as to why they termed it as a double benefit taking into consideration the benefit obtained by the appellant from his erstwhile employer. The appellant has given his reply dated 28.09.2015 stating as to why it is not to be termed as a double benefit and requested to drop the proceedings dated 09.06.2015. However, the contentions which have been placed by the appellant/writ petitioner in his reply dated 28.09.2015 have not been adverted to and not dealt with in the order dated 29.09.2015 as it only reiterates the directions to repay the earned leave benefit availed by the appellant.

6. The learned Single Judge was of the view that the appellant should avail the alternative remedy available under the provisions of the Tamil Nadu Cooperative Societies Act, 1983(the Act). It is no doubt true that the remedy available under the Act is not only effective but also efficacious. However, to avail such a remedy, there should be an order, which should have been passed by the respondent/employer namely the second respondent.

7. The proceedings impugned in the writ petition cannot be taken to be an order because it is only a direction to the appellant to repay the earned leave benefit availed by him. An order has to be passed dealing with the objections/explanation offered by the appellant. It is only thereafter the appellant can approach the revisional authority or the appellate authority under the provisions of the Act.

8. Thus for the above reasons, this writ appeal is allowed and the order and directions issued by the writ Court are set aside and the matter is remanded to the second respondent with a



direction to pass a speaking order after considering the appellant's reply dated 28.09.2015 within a period of one week from the date of receipt of a copy of this judgment and communicate the same to the appellant by registered post with acknowledgment due. If the appellant is aggrieved, it is well open to him to file a revision or appeal before the concerned authority under the provisions of the Act. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Secretary,
Government of Tamil Nadu,
Industrial Department,
Secretariat,
Chennai.

2.The Managing Director,
National Cooperative Sugar Mills Ltd.,
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Alanganallur,
Madurai - 625 502.

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Periyar EVR Buildings,
2nd Floor, Nandanam,
Chennai - 600 035.

+1 CC to M/s.P.CHANDRABOSE, Advocate (SR-96511[F] dated 06/11/2019)

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-96508[F] dated 06/11/2019)

+1 CC to M/s.SPL GP (SR-96640[F] dated 07/11/2019)

JUDGMENT MADE IN
W.A. (MD) No.1147 of 2019
06.11.2019

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