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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD) No.25060 of 2018

Judgment reserved on	Judgment pronounced on
24.09.2019	28.11.2019

P.Murugesan ... Petitioner

Vs.

1.The President
National Horticultural Research &
Development Foundation
Chitegaon Phata Village,
Darna Sangvi (Post0
Niphad Taluk, Nasik District.
Maharastra – 422 201.

Now shifted to

The President
National Horticultural Research &
Development Foundation (NHRDF)
Plot No.47, Pankha Road,
Institutional Area, Janakpuri,
New Delhi – 110 058.

2.National Horticultural Research &
Development Foundation (NHRDF)
55, Pandiyan Nagar, Dindigul – 624 001.

A part of work of Dindigul centre
shifted & presently functioning at

National Horticultural Research &
Development Foundation (NHRDF)
5/5 B-1B, Sakthi Vinayagar Nagar,
Vellalore, Coimbatore – 641 111.

Another part of work of Dindigul
centre retained & presently
functioning at

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3. National Horticultural Research &
Development Foundation (NHRDF)
T.Kombai Village, Pannaipatti B.P.O
Kannivadi Via Dindigul West Taluk,
Dindigul District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issue of writ of certiorarified mandamus calling for the records from the Labour Court relating to the impugned order dated 22.10.2018 of the Labour Court in I.D.No.100 of 2010, quash the same and consequently to direct the 1st respondent to reinstate the petitioner into service with full back wages, continuity of service with other consequential benefits.

For Petitioner : Mr.P.Murugesan
Party-in-person

For Respondents : Mr.V.O.S.Kalaiselvam

O R D E R

This Writ Petition has been filed seeking for writ of certiorarified mandamus calling for the records from the Labour Court relating to the impugned order dated 22.10.2018 of the Labour Court in I.D.No.100 of 2010, quash the same and consequently direct the 1st respondent to reinstate the petitioner into service with full back wages, continuity of service with other consequential benefits.

2. The brief case of the petitioner is as follows -

2 (a) The petitioner was appointed as Technical Assistant in National Horticulture Research & Development Foundation (NHRDF) with effect from 23.08.1983 by the 1st respondent and was posted at Dindigul. The petitioner was promoted to the post of Technical Officer with effect from 02.11.1993. Subsequently, he was transferred to various places and lastly posted at Kurnool, Andhra Pradesh.

2(b) The 1st respondent tried to punish the petitioner in a arbitrary manner by conducting enquiries. The petitioner was having sufficient number of leave to his credit but the 1st respondent rejected the leave applications of the petitioner. The petitioner gave a complaint to The Asst. Commissioner of Labour, Dindigul. The petitioner, as a Secretary of National Horticulture Research & Development Foundation (NHRDF) Association, raised Industrial Dispute. While these proceedings were pending, the petitioner was transferred from Kurnool, Andhra Pradesh to Varanasi, Uttar Pradesh on 17.08.2009. The 1st respondent did not pay the eligible TA/DA amount to the petitioner to go to Varanasi. The petitioner did not

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join at the transferred place, as the request of the petitioner for payment of TA/DA amount was not complied with. The petitioner was eligible to be promoted as Deputy Director. The application of petitioner for appointment as Deputy Director of Horticulture was rejected, as the then Director Dr.R.P.Gupta wanted to appoint a person of his choice. The petitioner brought to the knowledge of higher authorities the irregularities committed by A.K.Singh in procuring and disbursing seeds to the farmers and also the irregularities when a National level seminar was conducted on 4th & 5th of May 2009.

2(c) While so, the Director of the 1st respondent issued a charge memo dated 22.09.2009 containing 10 charges. The petitioner sought for various clarifications. The Director did not furnish the clarifications and did not pay TA/DA to attend the domestic enquiry at Nasik. The enquiry officer did not conduct the enquiry in a fair and proper manner but conducted the same in violation of principles of natural justice. The enquiry officer gave a report that charges levelled against the petitioner were proved. Based on the said report, the Director of NHRDF dismissed the petitioner from service.

2(d) The petitioner raised Industrial Dispute in I.D.No.100 of 2010 before the Labour Court, Trichirapalli. The Presiding Officer, without properly considering the contentions of the petitioner, dismissed the Industrial Dispute. Challenging the said order, the petitioner has come out with the present Writ Petition.

3. The petitioner appeared as party-in-person and contended that -

(i) The petitioner was appointed by the President of National Horticulture Research & Development Foundation (NHRDF) and he is the disciplinary authority. The Director of NHRDF has initiated disciplinary proceedings and dismissed the petitioner from service. The Director who is subordinate to the President, without any authority had initiated the disciplinary proceedings and dismissed the petitioner from service. On this ground alone, the order of dismissal is liable to be set aside.

(ii) The Labour Court did not even consider the contentions of the petitioner that the Director of NHRDF did not have authority to initiate disciplinary proceedings and dismiss the petitioner from service.

(iii) The enquiry was not conducted in a fair and proper manner and it was conducted in violation of principles of natural justice.

(iv) The 1st respondent did not pay TA/DA amount to the petitioner to go to Nasik for attending domestic enquiry.

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(v) The charges levelled against the petitioner are vague and

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rules are extracted as though the petitioner has committed misconduct, as alleged in the charge memo.

(vi) The 1st respondent has not mentioned the Rule under which the charge memo is issued, namely whether the disciplinary proceedings is initiated for minor or major punishment.

(vii) The 1st respondent has not furnished the documents relied on in the enquiry. Due to vagueness in the charges levelled against the petitioner and non-furnishing copies of the documents, the petitioner could not submit his explanation.

(viii) The 1st respondent has transferred the petitioner from Kurnool, Andhra Pradesh to Varanasi, Uttar Pradesh on 17.08.2009, pending proceedings under Industrial Disputes Act. As such, the transfer is unfair labour practice, i.e. the transfer is in violation of Section 9A of the Industrial Disputes Act.

(ix) The petitioner has given complaint to the Conciliation Officer and has raised dispute as Secretary of NHRDF Union. While the said proceeding was pending, the 1st respondent, without obtaining prior permission from the competent court under Sections 32, 33 (2)(b) of Industrial Disputes Act, dismissed the petitioner from service.

(x) The petitioner was subjected to many transfer, suspension and dismissal in violation of Section 33 (2)(b) of Industrial Disputes Act as the petitioner did not co-operate in the illegal activity of some officers for seed procurement in open market for packing and disbursement under seed production program for claiming subsidy of Government of India.

(xi) When an employee is transferred, one month salary must be given to him so that the employee so transferred can be sustained in the transferred place.

4. In support of his contention, the petitioner relied on paras 5 & 6 of the judgment of Hon'ble Apex Court in ***Krishna Kumar v. The Divisional Assistant Electrical Engineer, Central Railway and others reported in AIR 1979 SC 1912,*** which is extracted hereunder -

> *5. In defence of the legality of the order of removal, counsel for the respondents relies on paragraph 2 of respondent 1's affidavit, dated January 7, 1978, wherein he has stated that the power to make appointments to the post of the Train Lighting Inspector was delegated to certain other officers including the Divisional Assistant Electrical Engineer. It is urged that since the Div. Asstt. Elect. Engineer has been given the power to make appointments to the post of the Train Lighting Inspector, he would have the*

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power to remove any person from that post. We cannot accept this contention. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Art. 311 (1) becomes available to the person holding, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorization made in favour of respondent 1 in regard to making appointments to the post held by the appellant cannot confer upon respondent 1 the power to remove him. On the date of the appellant's appointment as a Train Lighting Inspector, respondent 1 had no power to make that appointment. He cannot have, therefore, the power to remove him.

6. Besides, delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An Officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. The Divisional Engineer, in other words, does not cease to be subordinate in rank to the Chief Electrical Engineer merely because the latter's power to make appointments to certain posts has been delegated to him.

and prayed for allowing the writ petition.

5. The learned counsel appearing for the 1st respondent contended that -

(i) The petitioner was appointed as Technical Assistant and subsequently promoted as Technical Officer. The post held by the petitioner is transferrable one. After certain transfers, the petitioner was transferred to Kurnool, Andhra Pradesh. When the petitioner was transferred to Varanasi, Uttar Pradesh, the petitioner did not join at the transferred place. The reason given by the petitioner for not joining at the transferred place is not valid. The petitioner was informed to withdraw Rs.2000/- but he refused to receive the same and insisted for payment of more money for which he is not entitled.

(ii) The petitioner committed various misconduct and charge memo dated 22.09.2009 was issued to him containing 10 charges furnishing the details of witnesses and list of documents were also

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issued to the petitioner.

(iii) The petitioner, without submitting his explanation and participating in the domestic enquiry, went on writing letters allegedly seeking clarifications.

(iv) The enquiry officer gave ample opportunity to the petitioner to participate in the domestic enquiry. The enquiry officer, even after commencement of enquiry, adjourned the enquiry on number of times to enable the petitioner to participate in the enquiry.

(v) The domestic enquiry was conducted in a fair and proper manner following the principles of natural justice.

(vi) In the domestic enquiry, the charges levelled against the petitioner were proved.

(vii) The enquiry officer's report dated 18.04.2010 was sent to the petitioner with a covering letter dated 19.04.2010 directing him to make his submissions. The petitioner did not make his submissions. The second Show Cause Notice dated 17.05.2010 was issued to the petitioner calling upon him to submit his explanation. The petitioner, instead of submitting his explanation, by letter dated 22.05.2010 made various allegations.

(viii) Considering the charge memo, enquiry proceedings and the documents filed in the enquiry, the petitioner was terminated from services, by order dated 21.07.2010.

(ix) When the order of termination dated 21.07.2010 was issued to the petitioner, there was no Industrial Dispute pending in any forum.

(x) The petitioner filed a complaint on 05.06.2009 before the Assistant Commissioner of Labour, Dindigul. The said authority issued a failure report on 30.10.2009. The petitioner was terminated from services only on 21.07.2010. Similarly, the charter of general demand raised by AADF Workers Union before the Asst. Commissioner of Labour, Nasik was over much before the termination of services of the petitioner.

(xi) The Director of NHRDF has power to initiate disciplinary proceedings against the petitioner and has power to terminate the services of the petitioner. The said power is delegated to the Director. In view of the same, the order of termination dated 21.07.2010 is valid.

(xii) The Labour Court has considered all the points raised by the petitioner and by considering the materials on record has dismissed the Industrial Dispute raised by the petitioner by giving

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valid reasons. There is no error in the award of the Labour Court dismissing the Industrial Dispute raised by the petitioner. In the absence of any perversity, there is no reason to interfere with the award in the writ proceedings.

5(a) The learned counsel appearing for the 1st respondent , in support of his contention, relied on the following judgments -

(i) **1977 LAB I.C. 1035 [A.K. Corporation v. State of West Bengal]**

> *6. By deeming provision of S.2A of the Act, an individual dispute becomes an industrial dispute. But in that dispute the other workmen are not concerned. There must be a common feature in the nature of dispute in two cases which would serve as a connecting link thereby rendering workman in later case also workman concerned i n dispute in the earlier case. So where the pending Reference was an individual dispute in respect of one employee, it could not be said that all other workmen were concerned in the that dispute. Accordingly, in my view, provisions of S.33 (2) (b) of the Industrial Disputes Act, 1947, are not attracted where a reference under S.2A of the Act is pending before any Industrial Tribunal.*

(ii) 1957 AIR (Gauhati) 111 [Mohon Rice Mill v. Hazarika and others]

> *16. There is, however, an earlier decision of the Supreme Court, D.N. Banerjee v. P.R. Mukherjee 1953-I L.L.J. 195. There, what was held was that a single employee's case might develop into an industrial dispute when it is taken up by the trade union of which he is a member and there is a concerted demand by the employees for redress. The relevant paragraph in the judgment which gives a clear exposition of the position runs as follows:*
>
> > *The words "industrial dispute" convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interest such as wages, bonuses, allowances, pensions, provident fund, number of working hours per week, holidays and so on. Even with reference to a business that is carried on, we would hardly think of saying that there is an industrial dispute where the employee is dismissed by his employer and the dismissal is questioned as wrongful.*
>
> *But at the same time, having regard to the modern conditions of society where capital and labour have organized themselves in to groups for the purpose of*

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fighting their disputes and settling them on the basis of the theory that in union is strength, and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when as often happens it is taken up by the trade union of which he is a member, and there is a concerted demand by the employees for redress.

Such trouble may arise in a single establishment or a factory. It may well arise also in such a manner as to cover the industry as a whole in a case where the grievance, if any, passes from the region of individual complaint into a general complaint on behalf of all the workers in the industry. Such wide-spread extension of labour unrest is not a rare phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular business becomes a large scale industrial dispute, which the Government cannot afford to ignore as a minor trouble to be settled between the particular employer and workman.

17. From these two judgments alone we can see that, what was really needed to be investigated on the objections of the parties was, as to whether Abdur Rahman's case had been sponsored by any of the workers of his industry or by the union to which he belonged or by a federation of the unions of one of which he was a member. Though the learned Judge of the industrial tribunal has observed that Abdur Rahman's case was taken up by the Indian National Trade Union Congress which is a federation of which the Mill Ma2door Union was one of the units, it does not really appear from the record that the Mill Mazdoor Union had taken up the case of Abdur Rahman.

(iii) Judgment of this Court dated 06.10.1972 in W.P.No.1293 of 1971 [The Management of Madura Mills Co. Ltd. v. The Presiding Officer, Industrial Dispute Tribunal, Madras and others]

4. A Bench of this Court in Kandan Textiles Ltd. v. Industrial Tribunal, Madras, [1949-L.L.J. 875], observed at Page 880 :

"In the absence of any definite particulars as to the membership of this union and its representative character, and in the absence of anything to show that it was decided by the workmen-members of this union by resolution or otherwise to take up the cause of the aggrieved workmen and in the absence of evidence to show that the aggrieved workmen put forward the president of this union as their

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representative and spokesman, it is impossible to hold in law that an industrial dispute existed between the employer and the workmen to enable the Government to make an order under S.10 (1) of the Act... In our opinion, it was incumbent on the union by production of the relevant records to positively establish the fact that the union is entitled to represent and that it is, as a matter of fact, representing these 36 aggrieved workers".

Following this decision, Balakrishna Ayyar, J. held in Murugan Transport v. Its Workers, [1961-I L.L.J. 349], that in the absence of any evidence or proof to show that the general body of the union authorised its secretary or any of its other office bearers to make the demand on behalf of the eight dismissed employees on the management, the reference under S.10 was invalid.

6. ..... But if the dispute relates to any of the other matters contemplated in S.2(k), then, the parties to the disputes hould have a direct or substantial interest. In other words, the persons who seek to support the cause of the concerned workmen must themselves be directly or substantially interestde in the dispute and such persons should be considered or substantial in number. In the instant case, as already noticed, the dispute is not one that relates to discharge, dismissal or retrenchment or termination of service of any workman, but is o ne that relates to abolition of the contract system. This dispute should, therefore satisfy the requirement that it has been sponsored by a substantial number of workmen of the petitioner-company.

6. Heard the party-in-person and the learned counsel appearing for the 1st respondent.

7. The petitioner is challenging the order of termination dated 21.07.2010 which was confirmed by the Labour Court by dismissing the Industrial Dispute on 22.10.2018, filed by the petitioner. In the affidavit filed in support of the writ petition and during arguments, the petitioner made elaborate submissions with regard to alleged malafide transfer, transferring him from Kurnool, Andhra Pradesh to Varanasi, Uttar Pradesh. The said transfer order is not the issue in this writ petition. Therefore, the various submissions made by the petitioner as well as the learned counsel for the 1st respondent is not considered and not decided in the present writ petition.

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8. As far as termination order is concerned, the petitioner is challenging the same on the ground that when Industrial Disputes were pending, the 1st respondent, without obtaining approval under Section 33 (2)(b) of the Industrial Disputes Act, terminated the petitioner from service.

9. From the materials on record, it is seen that the petitioner had given a complaint on 05.06.2009 before the Asst. Commissioner of Labour, Dindigul. The Asst. Commissioner of Labour, Dindigul, has given failure report on 30.10.2009. This fact is not disputed by the petitioner. His contention is that the failure report was sent to the Government by the Asst. Commissioner of Labour, Dindigul and before the same reached the Government and before the Government acted on the failure report, the 1st respondent, by order dated 21.07.2010, terminated the services of the petitioner, without following the procedures laid down in Section 33 (2) (b) of the Industrial Disputes Act. This contention is without merits. Admittedly, the failure report is dated 30.10.2009. When the termination order dated 21.07.2010 was passed, there was no dispute pending before any authority.

10. The petitioner has alleged that the Industrial Dispute with regard to charter of general demand raised by AADF Workers Union was pending before the Asst. Commissioner of Labour, Nasik. The learned counsel for the 1st respondent contended that the said dispute was over long before the order of termination dated 21.07.2010. Both the petitioner as well as the learned counsel for the 1st respondent have not furnished any details as to when the said dispute was raised and when the same was concluded. The petitioner has failed to prove that termination order dated 21.07.2010 was issued when the above Industrial Dispute was pending. For the above reason, I hold that the contention of the petitioner that 1st respondent terminated the services of the petitioner, without following the procedure under Section 33 (2)(b) of the Industrial Disputes Act is without merits. As no Industrial dispute was pending at the time of order of termination, the judgments relied on by the learned counsel for the respondents are not relevant to the facts of the present case.

11. The other contention of the petitioner is that he was appointed by the President of National Horticultural Research & Development Foundation (NHRDF). Only the President has power to initiate disciplinary proceedings against him and has power to terminate the services of the petitioner. The contention of the petitioner that Director of National Horticultural Research & Development Foundation (NHRDF), has no power to initiate disciplinary proceedings and terminated his services has considerable force and is acceptable. The contention of the learned counsel for the respondents that the Director has power to initiate disciplinary proceedings and pass orders terminating the services of the petitioner is untenable. The Hon'ble Apex Court, in the

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judgment in ***Krishna Kumar v. The Divisional Assistant Electrical Engineer, Central Railway and others reported in AIR 1979 SC 1912,*** has held that authority, subordinate to appointing authority has no power to terminate the services of the employee. Paras 5 & 6 of the said judgment, cited supra, relied on by the petitioner are squarely applicable to the facts of the present case. The Director of National Horticultural Research & Development Foundation (NHRDF) who had initiated disciplinary proceedings and terminated the services of the petitioner does not have power to do so. The order of termination is passed by the authority who did not possess the said power. Before the Labour Court, the petitioner raised this issue. The Labour Court did not consider the contention of the petitioner that Director, without power had initiated disciplinary proceedings and dismissed the petitioner and did not give any finding. The Labour Court has committed perversity in not considering all the issues raised by the petitioner and failed to give a finding.

12. For the above reason, the award of the Labour Court dated 22.10.2018 passed in I.D.No.100 of 2010 is set aside. Consequently, the order of termination dated 21.07.2010 passed by the Director of National Horticultural Research & Development Foundation (NHRDF) is also set aside.

13. In the result, writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

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Dindigul District.

+1 CC to M/s.V.O.S. KALAISELVAM, Advocate (SR-102489[F] dated 29/11/2019)

+1 CC to M/s.P.MURUGESAN, Advocate (SR-102873[F] dated 02/12/2019)

Order in
W.P (MD) No.25060 of 2018
28.11.2019

JMN(18.12.2019) 12P : 6C

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