



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Rev.Aplw (MD) .No.5 of 2020
and
W.M.P. (MD) .No.1845 of 2020

1.The President,
National Horticultural Research &
Development Foundation,
Chitegaon Phata Village,
Darna Sangvi - Post,
Niphad Taluk,
Nasik District,
Maharashtra - 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



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

.. Review Petitioners

Vs.

P.Murugesan,
S/o. Ponnappan,
136/L-173, R.M.Colony,
East Govindapuram,
Dindigul - 624 001.

.. Respondent

Prayer: Review Petition filed under Order 47, Rule 1, read with Section 114 of C.P.C praying to review the order dated 28.11.2019 passed in W.P.(MD).No.25060 of 2018.

Prayer in WP(MD). 25060 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus after 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 me into service with full back wages, continuity of service with other consequential benefits.

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

For Respondent : Party in person
(P.Murugesan)

O R D E R

The matter is heard through Video Conferencing.

2. The Review Petition is filed to review the order dated 28.11.2019 passed in W.P.(MD).No.25060 of 2018.

3. The respondent has filed W.P.(MD) No.25060 of 2018 to quash the impugned award dated 22.10.2018 of the Labour Court in I.D.No.100 of 2010 and consequently direct the 1st review petitioner herein to reinstate the respondent into service with full back wages, continuity of service with other consequential benefits.



4. This Court, by the order dated 28.11.2019 allowed the said Writ Petition by setting aside the award of the Labour Court dated 22.10.2018 passed in I.D.No.100 of 2010 and also the order of termination passed by the Director of National Horticultural Research & Development Foundation (hereinafter called as 'NHRDF'). To review the said order dated 28.11.2019, the review petitioners have come out with the present Review Application.

5. The learned counsel appearing for the review petitioners contended that even though the respondent has raised in paragraph No.21 of the claim petition before the Labour Court that the Authority who dismissed him do not have power, he did not canvass the said issue before the Labour Court and the Labour Court has no occasion to consider the said issue. Had the respondent canvassed the said issue, the review petitioners would have an opportunity to disprove the same. The respondent having failed to canvass the said issue before the Labour Court, is not entitled to canvass the said issue in the Writ Petition. The respondent has not even filed his appointment order to show that the Director has no power to terminate him. The judgment of the Hon'ble Apex Court reported in **AIR 1979 SC 1912** relates to Government Servants and civil post and is not applicable to the review petitioners, which is registered under Societies Registration Act. As per Staff Regulation, the Director is Appointing Authority of persons to the post in the scale of pay of Rs.2550 - 3200 to Rs.5000 - 8000. Hence, the Director is the only Appointing Authority for respondent.

5(i). The learned counsel appearing for review petitioners further contended that the review petitioners filed the Appointment Order of the respondent appointed by Director Shri U.B.Pandey and proved the same. The respondent was appointed as temporary employee in Associated Agricultural Development Foundation (hereinafter referred to as "AADF") by the order dated 09.08.1983 by the Director as per the power given to him under Article 27(b). As per Article 27(b), the Director shall be the Chief Executive of AADF who will exercise control of Research and Development, Administration, Finance & Accounts and the Director shall have the power to appoint, remove or suspend, at his discretion, the employee of AADF with the pay scale of Rs.750-940 to Rs.1400-2600 in consultation with President. Even after change of name of the review petitioners while registration of NHRDF, the same powers were given to the Director. Hence, the respondent was appointed by the Director and he is the Authority to punish the respondent. The order of termination issued by the Director is legal and proper. In the Minutes of 79th meeting of Managing Committee held on 30.03.1998 at Mumbai, the Director was conferred with the power to initiate disciplinary action for various other



posts also for which he is not the appointing authority.

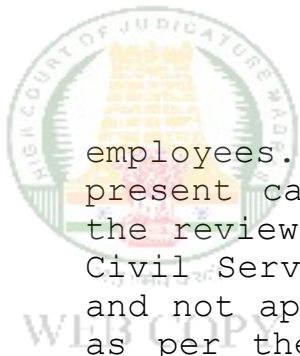
5(ii). The learned counsel appearing for the review petitioners further submitted that earlier, by order dated 22.05.2001, the respondent was terminated by the Director and the respondent did not challenge the power of Director at that time and prayed for reviewing the order dated 28.11.2019 passed in W.P.(MD).No.25060 of 2018.

6. Heard the learned counsel appearing for the review petitioners and perused the materials on record.

7. The first contention of the learned counsel appearing for the review petitioners is that the respondent did not canvass the issue before the Labour Court that Director has no power to initiate disciplinary proceedings and terminate his services and hence the respondent is not entitled to raise the said issue in the Writ Petition. In paragraph No.14 of the affidavit filed at Page No.97 of the typed set of papers filed in support of the Writ Petition, the respondent has raised the said issue. The review petitioners, in the counter affidavit did not raise the present point now raised but arguing the review petition, raising a new point.

8. As far as the contention of the review petitioners that Director is the Appointing Authority and therefore, disciplinary proceedings and order of termination passed by Director terminating the services of the respondent is proper, is contrary to the materials on record. The Appointment Order of the respondent produced by the review petitioners shows that it has been signed and issued "for President". Therefore, only the President is the Appointing Authority and he is the Authority to initiate disciplinary proceedings and terminate the services of the respondent. The review petitioners also argued at the time of hearing of the Writ Petition that Director was given delegated power to initiate disciplinary proceedings and terminate the services of the respondent. When such submission was made earlier and the same was considered by this Court, it is not open to the review petitioners to re-argue the same issue stating that Director only has power to appoint, remove or suspend, initiate disciplinary proceedings against the employees of review petitioners like respondent, at his discretion.

9. As far as the ratio in the judgment of the Hon'ble Apex Court reported in **AIR 1979 SC 1912 (Krishnakumar Vs. Divisional Assistant Electrical Engineer, Central Railway)**, it has been held that only the Appointing Authority has power to initiate disciplinary proceedings and terminate the services of the



employees. The said ratio is applicable to the facts of the present case and contention of the learned counsel appearing for the review petitioner that the said judgment is applicable only to Civil Servant as per Article 311 (i) of the Constitution of India and not applicable to the review petitioners, which was registered as per the provisions of Societies Registration Act, is without merits. The ratio laid down in the judgment of the Hon'ble Apex Court is applicable to all the organizations and all the employees whether they are Civil Servants or not. In the light of the dicta laid down by the Honourable Apex Court, I am of the considered view that the earlier order of the Court can be reconsidered only if there is an error apparent on the face of record and in that event, the said error can be rectified. Otherwise, a Review Application is not at all maintainable. In the present case on hand, the Review Applicant has not pointed out any error in the order of this Court. The review petitioners cannot re-argue the matter raising new points in the review petition.

10. In the result, the review petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Krk

+1 CC to M/s.V.O.S. KALAISELVAM, Advocate (SR-15764[F] dated 03/09/2020)

+1 CC to M/s.P. MURUGESAN, P-in-P (SR-15765[F] dated 03/09/2020)

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SRK(CO)
TR(23.09.2020) 5P 3C