



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

WEB COPY

W.A(MD)No.1215 of 2020
and Cont.P(MD)No.144 of 2020

1.W.A(MD)No.1215 of 2020:-

1.The President,
National Horticultural Research &
Development Foundation,
Chitegaonphata Village,
Damasangvi (Post),
Niphadtaluk, Nasik District,
Maharashtra - 422 201.

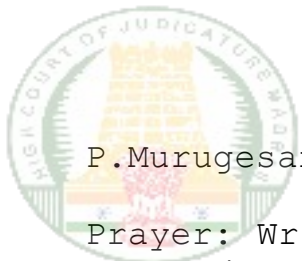
Now shifted to
The President,
National Horticultural Research and
Development Foundation (NHRDF),
Plot No.47, Pankha Road, Institutional Area,
Janakpuri, New Delhi - 110 058.

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

A part of Work of Dindigul Centre shifted and
Presently functioning at
National Horticultural Research and
Development Foundation (NHRDF),
5/5, B-1B, Sakthi Vinayagar Nagar,
Vellalore,
Coimbatore - 641 111.

Another part of work Dindigul Centre retained
and presently functioning at

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



P.Murugesan

... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order, dated 28.11.2019 made in W.P(MD)No.25060 of 2018 on the file of this Court.

Prayer in WP(MD). 25060 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorarified Mandamus after calling for the records from 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 Appellants : Mr.M.Silambanan
Senior Counsel
for Mr.V.O.S.Kalaiselvam

For Respondent : Mr.P.Murugesan
(Party-in-Person)

2.Cont.P(MD)No.144 of 2020:-

P.Murugesan

... Petitioner

Vs.

Dr.Bijender Singh Ex-MLA,
President,
National Horticultural Research and
Development Foundation,
Plot No.47, Pankha Road,
Institutional Area,
Janakpuri,
New Delhi - 110 058.

... Respondent

Prayer: Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the contemnor/respondent herein for the wilful disobedience of the order of this Court made in W.P(MD) No.25060 of 2018, dated 28.11.2019.

Prayer in WP(MD). 25060 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorarified Mandamus after calling for the records from 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. Mr.P.Murugesan
(Party-in-Person)
For Respondent : Mr.V.O.S.KalaiSelvam

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COMMON JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

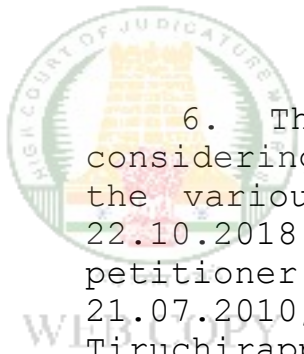
W.A(MD)No.1215 of 2020 has been preferred by the National Horticultural Research and Development Foundation (NHRDF), challenging the order passed by the learned Single Judge in W.P (MD)No.25060 of 2018, dated 28.11.2019.

2. Alleging that the order of this Court made in W.P(MD) No.25060 of 2018, dated 28.11.2019, has not been complied with, the writ petitioner has come up before this Court with Cont.P(MD) No.144 of 2020.

3. The respondent in the Writ Appeal was the writ petitioner, who had challenged the order passed by the Labour Court, Tiruchirappalli, in I.D.No.100 of 2010, dated 22.10.2018.

4. The said Writ Petition was allowed on 28.11.2019. Against which, a review application in Rev.Aplc(MD)No.5 of 2020 was filed by the appellants herein, which was also dismissed on 03.09.2020, confirming the order passed earlier.

5. The writ petitioner was appointed as a Technical Assistant in the year 1983. It is the case of the writ petitioner that he was fully qualified to be appointed as a Deputy Director of Horticulture in the first appellant Society. When he tried to apply for the said post, his application was rejected, which constrained the writ petitioner to file an Industrial Dispute with the Assistant Commissioner of Labour, Dindigul. The first appellant Society attended the Conciliation proceedings and the first appellant Society was aware of the pendency of the Conciliation proceedings. Secondly, there was also a claim petition in C.P.No.20 of 2009, which was pending under Section 33 (C)(2) of the Industrial Disputes Act, 1947. Thirdly, there was a general charter of demand submitted by the AADF workers Union and that was also pending before the Assistant Commissioner of Labour, Nasik, for Conciliation. While so, the writ petitioner was dismissed from service on 21.07.2010, which was challenged in I.D.No.100 of 2010 before the Labour Court, Tiruchirappalli.



6. The Labour Court, Tiruchirappalli, after elaborately considering the case of the writ petitioner and after advertng to the various documents, had dismissed the Industrial Dispute on 22.10.2018. In the Writ Petition filed against the same, the writ petitioner had challenged the order of termination, dated 21.07.2010, which was confirmed by the Labour Court, Tiruchirappalli. The learned Single Judge allowed the writ petition setting aside award of the Labour Court as well as the termination order passed by the Director of National Horticulture Research & Development Foundation (NHRDF).

7. The learned Single Judge held that the contention of the writ petitioner that he was dismissed from service by the authorities without following the procedure under Section 33(2) (b) of the Industrial Disputes Act, 1947, is without merits. It was further held by the learned Single Judge that there was no industrial dispute pending at the time of order of termination. Therefore, the only point that was to be considered was whether the dismissal order issued by the Director was correct or not?

8. According to the writ petitioner, only the President has the power to initiate disciplinary proceedings against him and has power to terminate the services of the writ petitioner, as the President is the competent authority. It is further contended that the Director of National Horticultural Research and Development Foundation (NHRDF) has no power to initiate disciplinary proceedings and to terminate the services. Any authority in support of the appointing authority has no power to terminate the services of the employee. Accordingly, the learned Single has held as follows:-

"The Director of National Horticultural Research and Development Foundation (NHRDF) who had initiated disciplinary proceedings and terminated the services of the petitioner does not have power to do so. The Labour Court has committed perversity in not considering all the issues raised by the petitioner and failed to give a finding."

9. Aggrieved by the said order, the appellants filed a review application and that was dismissed by the learned Single Judge vide order dated 03.09.2020. Hence, this Writ Appeal.

10. The learned Senior Counsel appearing on behalf of the appellants contended that the authority of the Director to terminate the writ petitioner was challenged only for the first time before the learned Single Judge in the said Writ Petition and the said ground was not raised before the Labour Court, Tiruchirappalli. The learned Senior Counsel further contended that



the Writ Court had accepted the award of the Labour Court on all the grounds, however, set aside the same on the ground that the Director was not empowered to terminate the writ petitioner, as he was not the appointing authority.

11. It was pointed out by the learned Senior Counsel that the Director got the approval of the President for the termination of the writ petitioner before the same was issued. He further pointed out that in the meeting of 79th Managing Committee held on 30.03.1998, it was decided and resolved in the minutes of discussion, as agenda item No.2, that the Managing Committee and also the President, authorized the Director to act as a disciplinary authority for various other posts, for which, the Director is not the appointing authority, so as to complete the disciplinary proceedings in time in future and improve the discipline in the office. Thus, the learned Senior Counsel endeavoured to substantiate that the Director had powers to terminate the employee.

12. The Writ Petition was allowed setting aside the termination order placing reliance of the Hon'ble Apex Court in **Krishna Kumar Vs. The Divisional Assistant Electrical Engineer, Central Railway** reported in **AIR 1979 SC 1912**, which reads as follows:-

"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 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."

13. The above dictum was considered by the learned Single Judge even in the order passed in the Review Application and held as follows:-

"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..... I am of the 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 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."

14. As admittedly, the writ petitioner was appointed by the President though it has been argued that the Director was authorized to act as a disciplinary authority by the Managing Committee and also the President, the termination of the writ petitioner by the President other than the appointing authority is held to be illegal in view of the above ratio. However, the labour Court has not properly appreciated the contention raised by the employee/writ petitioner.

15. As stated earlier, the learned Single Judge also in paragraph 11 of the order has stated that "the Labour court has committed perversity in not considering all the issues raised by the petitioner and failed to give a finding." Therefore, we are of the opinion that the matter requires consideration afresh by



the Labour Court to decide as to whether the Director of National Horticulture Research & Development Foundation (NHRDF), has power to initiate disciplinary proceedings. On all other aspects, the findings of the learned Single Judge is confirmed.

16. In the result, the Writ Appeal is partly allowed and the order of the learned Single Judge dated 28.11.2019 made in W.P(MD)No.25060 of 2018, is hereby set aside, except the extent indicated above and the matter is remanded back to the Labour Court, Trichirappalli, for fresh consideration.

17. In view of the order passed in W.A(MD)No.1215 of 2020, the Contempt Petition stands closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

The Labour Court,
Trichirappalli.

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-15071[F] dated 01/04/2021)

+1 CC to M/s.P.MURUGESAN, Advocate (SR-15102[F] dated 01/04/2021)

W.A(MD)No.1215 of 2020

and

Cont.P(MD)No.144 of 2020

01.04.2021

ac(CO)

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