

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2025

Pronounced on: 28.03.2025

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CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

Review Application Nos.256, 264, 265, 285, 288, 260, 261, 262, 263, 266, 277,
278, 279, 280, 284, 286, 287, 257, 258, 259, 281, 289, 290, 273, 274, 275, 267,
268, 269, 271, 272, 276, 282, 283 & 270 of 2015

B.Ganesan	... Petitioner in Rev.Appl. No.256/2015
R.Manoharan	... Petitioner in Rev.Appl. No.257/2015
J.Palanisamy	... Petitioner in Rev.Appl. No.258/2015
K.R.Venkatesan	... Petitioner in Rev.Appl. No.259/2015
K.Ramasamy	... Petitioner in Rev.Appl. No.260/2015
M.Maragathavel	... Petitioner in Rev.Appl. No.261/2015
A.Deivasigamani	... Petitioner in Rev.Appl. No.262/2015
A.Basha	... Petitioner in Rev.Appl. No.263/2015
M.Ramadoss	... Petitioner in Rev.Appl. No.264/2015
K.Gopalachari	... Petitioner in Rev.Appl. No.265/2015
S.C.Kandasamy	... Petitioner in Rev.Appl. No.266/2015
C.Muniraju	... Petitioner in Rev.Appl. No.267/2015
G.Ranganathan	... Petitioner in Rev.Appl. No.268/2015
C.Alagiri	... Petitioner in Rev.Appl. No.269/2015
S.Jagatheeswaran	... Petitioner in Rev.Appl. No.270/2015
V.Parthasarathy	... Petitioner in Rev.Appl. No.271/2015
C.H..Ramakrishna	... Petitioner in Rev.Appl. No.272/2015
R.A.Varadarajan	... Petitioner in Rev.Appl. No.273/2015
P.Chandran	... Petitioner in Rev.Appl. No.274/2015
K.Selvaraju	... Petitioner in Rev.Appl. No.275/2015
N.SivaSubramanai	... Petitioner in Rev.Appl. No.276/2015
R.Lazer	... Petitioner in Rev.Appl. No.277/2015
A.Latha	... Petitioner in Rev.Appl. No.278/2015
A.Kumanan	... Petitioner in Rev.Appl. No.279/2015



A.Muniappan
S.Vijayakumaran
P.Gunasekaran
R.Rajagopal
P.M.Gunasekaran
R.Elango
R.Jeyapandian
S.Sundaram
K.Karunaboopathi
K.Saminathan
G.Karunakaran

... Petitioner in Rev.Appl. No.280/2015
... Petitioner in Rev.Appl. No.281/2015
... Petitioner in Rev.Appl. No.282/2015
... Petitioner in Rev.Appl. No.283/2015
... Petitioner in Rev.Appl. No.284/2015
... Petitioner in Rev.Appl. No.285/2015
... Petitioner in Rev.Appl. No.286/2015
... Petitioner in Rev.Appl. No.287/2015
... Petitioner in Rev.Appl. No.288/2015
... Petitioner in Rev.Appl. No.289/2015
... Petitioner in Rev.Appl. No.290/2015

Vs

1.The Government of Tamil Nadu,
Rep. By its Secretary, Industries Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner of Sugars,
696, Anna Salai,
Nandanam, Chennai-600 035.

... R1 & R2 in all Review Applications

3.The Administrator,
Tiruttani Co-operative Sugar Mills Ltd.,
Thiruvalangadu – 631 210.

.... R3 in Rev.Appl.Nos.256, 270, 271,
272, 276, 289 & 290/2015

4.The Administrator,
Subramaniya Siva Co-operative Sugar Mills Ltd.,
Gopalapuram-636 904,
Dharmapuri District.

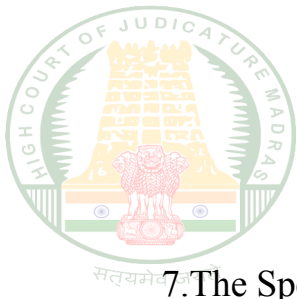
.... R3 in Rev.Appl.Nos.257,
258, 264, 266, 267, 268, 269,
273, 274, 275, 278, 279 & 280/2015

5.The Special Officer,
Dharmapuri District Co-operative Sugar Mills Ltd.,
Palacode, Dharmapuri District.

.... R3 in Rev.Appl.Nos.259, 261 &
265 /2015

6.The Special Officer,
Salem Co-operative Sugar Mills Ltd.,
Mohanur-637 015.
Namakkal District.

.... R3 in Rev.Appl.Nos.260, 277 &



281/2015

7.The Special Officer,
N.P.K.R.R Co-operative Sugar Mills Ltd.,
Thalainayur, Elenthoppu Post – 609 201
Nagapattinam District.

.... R3 in Rev.Appl.Nos.262 &
282/2015

8.The Administrator,
Kallakurchi-II Co-operative Sugar Mills Ltd.,
Kachirayapalayam-606 207.
Villupuram District.

.... R4 in Rev.Appl.No.262/2015 &
R3 in Rev.Appl.Nos.263, 283,
284, 285, 286 & 287/2015

9.The Special Officer,
Kallakurchi-II Co-operative Sugar Mills Ltd.,
Kachirayapalayam-606 207.
Villupuram District.

.... R4 in Rev.Appl.No.288/2015

COMMON PRAYER: Review Applications under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code to review order dated 02.12.2010 passed in W.A.Nos.395, 398, 399, 405, 406, 408, 413, 415, 419, 420, 421, 422, 423, 424, 433, 435, 438, 442, 446, 447, 1679, 1681, 1683, 1684, 1685, 2342, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2358 & 2359 of 2010 respectively on the file of this Court.

In all Rev.Applns.

For Petitioners : Mrs.Hema Sampath
Senior Counsel
for Mrs.R.Meenal

For Respondents : Mr.P.Kumaresan
Additional Advocate General
assisted by
Mr.P.Ananda Kumar
Government Advocate – R1 and R2
Mrs.GeethaThamaraiselvan
Special Government Pleader – R3 & R4
Mr.B.Tamil Nidhi – R3



(Rev.Appln.No.256, 264, 271, 272, 276
and 290 of 2015)

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COMMON ORDER

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

This is a batch of 35 Review Applications. The petitioners have sought a review of an order passed by the Division Bench dated 02.12.2010 in a batch of Writ Petitions.

2.Mrs.Hema Sampath, learned Senior Counsel appearing for Mrs.Meenal, learned counsel for the petitioners makes the following submissions:

- i) The petitioners, employees in various Cooperative Sugar Mills had, along with other identically/similarly placed colleagues, sought parity in pay based on a Common Cadre System that had been introduced in the Sugar Mills for the posts above Supervisory C – category.
- ii) The Common Cadre System (CCS) had been introduced in 1984 and abolished in 1997.
- iii) An Industrial Dispute was filed by the Tamil Nadu Cooperative Public Sector Sugar Mills Staff Peravai (in short ‘Peravai’) seeking parity of pay with erstwhile common cadre employees with effect from 01.01.1990.



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- iv) According to the petitioners, they were members of the unions that were members in the Peravai.
- v) The first Writ Petition filed was W.P.No.15192 of 2000, where the Writ Petitioner was one Chandra, a Supervisor in the C category in Dharmapuri District Cooperative Sugar Mills. She sought a mandamus seeking revision and re-fixation of scale of pay on par with the other C category Supervisors, with effect from 01.01.1990 when it had been implemented for that category.
- vi) The Industrial Dispute filed by the Peravai in I.D.No.48 of 2000 was decided and an award was passed on 21.02.2002 to the effect that the pay should be rationalised and re-structured with parity in pay scale for employees in CCS and non-CCS.
- vii) Neither the Government nor the Sugar Mills challenged award dated 21.02.2002 and it was only the Peravai that challenged the award by way of W.P.No.2325 of 2004. The scope of their Writ Petition was only qua the direction to re-structure the pay scale of the employees under the CCS.
- viii) The Writ Petition filed by Chandra (W.P.No.15192 of 2000) was allowed on 24.02.2003, the learned Judge holding that omission of a particular category in C grade should not be taken advantage of.



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- (ix) As against order dated 24.02.2003 allowing W.P.No.15192 of 2000, Writ Appeals were filed by the Sugar Mills in W.A.No.1089 of 2004 and by the Government in W.A.No.4074 of 2004, that came to be dismissed on 12.07.2007 holding that all persons in the same category, whatever be the post, were entitled to the same benefits. These orders have attained finality.
- x) In July, 2008, on the heels of the dismissal of the above Writ Appeals, representations were made by the Review Petitioners seeking similar benefits as they too belong to the C category.
- xi) Their Writ Petition in W.P.No.16784 of 2008 was allowed on 23.07.2008 directing the authorities to pass orders on their representation within a period of four weeks.
- xii) On 26.09.2008, their representations were rejected and their cases distinguished from Chandra's case on the ground that the direction to ratify her pay was in personam and does not apply in rem. That order was challenged in a batch of Writ Petitions, W.P.Nos.27949 of 2008, 2278, 2279, 9546, 9550, 9562, 17132, 17137, 17146, 17151 of 2009, 28827 of 2008, 17147, 17149, 17152, 17154 of 2009, 25896, 27947, 27958, 28840, 28842, 27948 of 2008, 2286, 17133, 17159, 17161, 2283, 9560, 17128, 17129, 17130, 17136,



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17138, 17142 of 2009, 28829 and 28843 of 2008. (herein after referred to as Batch I of writ petitions))

- xiii) On 12.12.2008, the Commissioner of Sugar passed an order increasing the Dearness Allowance for employees in CCS from 47% to 54% widening the disparity between the two cadres. That order came to be challenged by the Peravai in W.P.No.30656 of 2008.
- xiv) On 02.09.2009, the Writ Petitions filed by the Review Petitioners along with other Writ Petitions were taken up and the Writ Petitions filed by the Review Petitioners were allowed by S.Nagamuthu,J. granting them parity, similar to other employees including Chandra, however, only from September, 2008.
- xv) Order dated 02.09.2009 came to be challenged by the Commissioner of Sugar as well as some of the Sugar Mills, agitating the matter specifically only against some of the Writ Petitioners and not against all. However, all the present Review Petitioners, who were Writ Petitioners in Batch I of the Writ Petitions have filed Writ Appeals in W.A.Nos.395, 398, 399, 405, 406, 408, 413, 415, 419, 422, 442, 420, 421, 423, 424, 433, 435, 438, 446, 447, 1679, 1681, 1683, 1684, 1685, 2342, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2358 and 2359 of 2010 (hereinafter referred to as Batch I of



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Writ Appeals)) challenging the restriction of the benefit from September, 2008 onwards only and seeking grant of the same from an earlier period as in Chandra's case. Those Writ Appeals were filed in October, 2009.

xvi) On 09.12.2009, W.P.Nos.25189 to 25199 of 2009 (herein after Batch II of writ petitions)) filed by another batch of employees seeking parity in pay had been dismissed by K.Chandru,J holding them to be non-maintainable. There was no reference therein to the order passed by S.Nagamuthu,J. Likewise, another batch of Writ Petitions in W.P.Nos.23428 to 23457 and 23544 of 2009 (hereinafter referred to as Batch III of Writ Petitions) also came to be dismissed as non-maintainable, by order dated 25.01.2010 by K.Chandru,J.

xvii) The orders passed in the three batches of Writ Petitions were all heard by a Division Bench comprising Eliphe Dharma Rao,J and K.K.Sasidharan,J, in W.A.Nos.450 to 457, 395 to 449, 740 to 753, 1655, 1679 to 1685, 1885 to 1897, 2248 to 2250 and 2292 to 2359 of 2010 and 1839 to 1842 of 2009.

xviii) The above appeals were disposed by order dated 02.12.2010, the appeals filed by the authorities being allowed and the appeals filed



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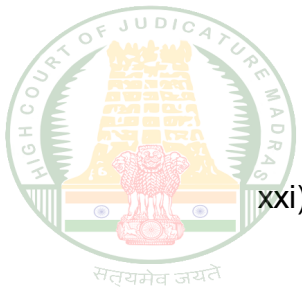


by the present Review Petitioners seeking parity of pay in line with Chandra's case from an earlier date, coming to be dismissed.

xix) A reading of order dated 02.12.2010 indicates that the Court had proceeded on the assumption that Writ Appeals have been filed by the Commissioner of Sugar and the Sugar Mills in the cases of all Writ Petitioners covered in I, II and III Batch of Writ Petitions. However, that is not the correct position, as appeals had not been filed in the cases of the present Review Petitioners, i.e., petitioners in Batch I of Writ Petitions, in whose cases, the order of the learned single Judge dated 02.09.2009 had become final as it has not been challenged.

xx) The present Review Petitioners filed a petition seeking leave before the Hon'ble Supreme Court challenging order dated 02.12.2010 (SLA Nos.29645 – 29681 of 2011), which ultimately came to be withdrawn on 14.11.2011 permitting them to file Review Petitions before this Court. The Review Petitions were to be taken on board if they were filed within two weeks from that date. Hence, the present Review Petitions.

There are some events that have taken place post the filing of the Writ Petitions, brought to the note of this Court by all learned counsel.



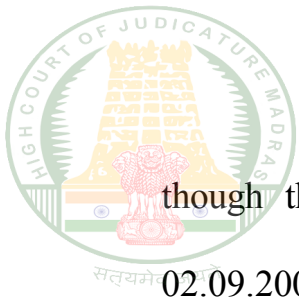
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xxi) On 22.04.2015, W.P.No.2325 of 2004 and 30656 of 2008 filed by the Peravai challenging an award passed by the Industrial Tribunal on 21.02.2002 in I.D.No.48 of 2000 came to be allowed by K.B.K.Vasuki,J. directing parity of pay by enhancing the pay of non-CCS employees and bringing them on par with CCS employees, with effect from 01.04.2003. The exercise was directed to be completed within a period of three months from date of that order.

xxii) Writ Appeals filed challenging the aforesaid order in W.A.Nos.54 to 56, 98 to 101 and 318 of 2016 and 11 to 13, 58 and 59 of 2017 by the Sugar Mills and Commissioner of Sugar came to be dismissed by a Division Bench comprising J.Nisha Banu,J and P.Dhanapal,J. on 13.11.2024 as non-maintainable, as the authorities had not challenged the award passed by the Industrial Tribunal on 21.02.2002. The Sugar Mills and the Commissioner of Sugar were directed to carry out the directions within two months from date of receipt of a copy of that order.

3. The dates and events set out above are admitted by both parties. On the admitted sequence of events, the petitioners would argue that there is an apparent error on the face of order dated 02.12.2010, as the Bench has proceeded as



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though the Government and the Sugar Mills have challenged order dated 02.09.2009 in the case of all Writ Petitioners. This is admittedly not the case as no writ appeals have been filed in the case of the present 35 Review Petitioners.

4. It is imperative for an aggrieved party to seek reversal of an order with which it is aggrieved. Since neither the Government nor the Sugar Mills have challenged order dated 02.09.2009 in the case of the present Review Petitioners, the aforesaid order has attained finality in their cases. Hence, it is incumbent on the authorities to implement those orders in light of the fact that they had consciously not chosen to challenge the same. The Review Petitioners are specifically aggrieved by the conclusion in Order dated 02.12.2010 where the Division Bench concludes thus:

'36.The background facts as narrated above would show that these employees have approached this court with a stale claim after a period of about twenty five years and that too, after the abolition of the Common Cadre System.

37.The Common Cadre System had its own advantages and disadvantages. The posts included in the Common Cadre System were made transferrable from one organisation to another. Therefore, the employees under the Common Cadre System were liable to be transferred to another organisation situated elsewhere. They have to retire at the age of 58 years. It was only on account of all these factors better pay structure was given to the employees under the Common Cadre System. By making the claim after the abolition of the Common Cadre, these employees wanted only to enjoy the benefits of the system. In any case, no such claim could be made ten years after abolishing the Common Cadre Service.

Disposition:

38. For the reasons set out above, the learned Judge was wrong to quash the orders impugned in the first batch of writ



petitions. It follows that we agree that the learned Single Judge was correct in dismissing the second batch of writ petitions.

39. In the upshot, we allow all the writ appeals challenging the directions given by the learned Judge to include the subject posts in the Common Cadre Service. We would dismiss the second batch of appeals confirming the dismissal of the writ petitions. Consequently, the connected MPs are closed. No costs.

5. The Bench has proceeded as though Writ Appeals had been filed in the case of all the Petitioners in Batch I of the Writ Petitions and hence, it becomes necessary to review order dated 02.12.2010 to distinguish between those cases where Writ Appeals had been filed by the authorities and those cases where no Writ Appeals had been filed.

6. On merits, it is the petitioners' say that substantially all employees similarly placed to them, have been granted the benefit of parity under CCS. Only they have been singled out selectively for non-grant of the benefits. In such circumstances, they have been unfairly discriminated against. The respondents were well aware of the fact that order dated 02.09.2009 had been passed in a batch of matters but have consciously chosen to file appeals only qua some Petitioners and the present Review Petitioners are thus legitimately entitled to parity of pay.

7. Yet another facet of the error that has been committed in order dated 02.12.2010 is rejection of their request for the grant of benefits from September, 2008 onwards. The restriction of the benefit in their case is also discriminatory as



the relief has been granted from September, 2008 onwards in Chandra's case as well as in the case of other similarly placed employees.

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8. The rejection of the relief by the Division Bench on 02.12.2010 is itself patently erroneous as the Bench has not looked into the position of commonality and uniformity in approach that is necessary for matters such as the present involving similarly placed employees in one organisation. The petitioners rely on the decision of the Supreme Court in *G.K.Dudani and others v. S.D.Sharma and others*¹

9. Mr.Kumaresan, learned Additional Advocate General assisted by Mr.P.Ananda Kumar, learned Government Advocate for the State as well as for Commissioner of Sugar would not dispute the dates and events that have been adumbrated by Mrs.Hema Sampath. He would, however, urge that there is no error in order dated 02.12.2010. While he agrees that no Writ Appeals have been filed challenging order dated 02.09.2009 qua the present 35 Review Petitioners, according to him, that is nothing but a technical inconvenience that can be got over and condoned.

10. He would argue that the very fact that the Commissioner of Sugar and Sugar Mills have filed Writ Appeals in the cases of some employees identical to the present Review Petitioners, would establish that they are aggrieved by the conclusions in order dated 02.09.2009.

¹1986 (Supp) SCC 239



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11. In matters concerning large batches of individuals, it is not uncommon for there to be technical difficulties in preparation of papers and following the procedures. It is only on this account that appeals were not filed in the case of present 35 Review Petitioners. Hence, this Court must, he would urge, accord weightage to the fact that appeals had been filed in the cases of employees similar to the 35 Review Petitioners and presume that the order passed on 02.12.2010 would apply to the present Review Petitioners as well.

12. If this were not to be done, it would result in an incongruous consequence, where a certain set of conclusions would apply qua the present Review Petitioners, whereas a totally different conclusion would apply in case of other similarly placed set of employees. For his part, he would rely on the following decisions:

1. *Fida Hussain and others v. Moradabad Development Authority and another*²
2. *Chandramohan Ramchandra Patil and others v. BapuKoyappa Patil (Dead) Through LRs, and others*³
3. *M/s.Shenoy and Co., Represented by its Partner, Bele Srinivasa Rao Street, Bangalore and others v. Commercial Tax Officer, Circle II, Bangalore and others*⁴
4. *Asharfi Devi (Dead) Through Legal Representatives v. State of Uttar Pradesh and Others*⁵
5. *Sanjay Kumar Agarwal v. State Tax Officer (1) and another*⁶
6. *Ajit Kumar Rath v. State of Orissa and others*⁷

² (2011) 12 SCC 615

³ (2003) 3 SCC 552

⁴ (1985) 2 SCC 512

⁵ (2019) 5 SCC 86

⁶ (2024) 2 SCC 362

⁷ (1999) 9 SCC 596



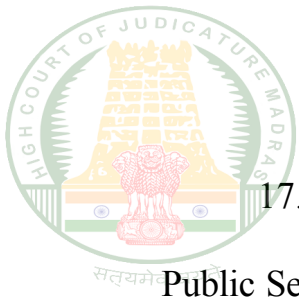
13. We have heard all learned Counsel in detail and have also studied the relevant materials and case law.

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14. The dates and events as set out in sub-paragraphs (i) to (xxii) are admitted by both parties. The Review Petitioners were appointed as Superintendents in various Cooperative Sugar Mills in the supervisory cadre in C category. G.O.Ms.No.866 had been passed on 25.07.1994 permitting the Commissioner Sugar to introduce CCS for posts above the C category and on 16.10.1994 that order had been implemented.

15. On 27.12.1984, CCS had been extended to C category supervisory cadre II. The benefit initially encompassed 9 posts, subsequently extended to 11 posts. Other similar posts, such as Superintendent, Store Keeper, Head time keeper of which the petitioners form part, were omitted. Admittedly, there is no basis for such omission, which appears to be inadvertent as no justification has been offered at any stage of the proceedings for such exclusion.

16. The CCS was in force till 31.12.1997 when it was abolished under G.O.Ms.No.834 dated 31.12.997. Different groups of employees in C category had approached either this Court or the authorities under the Industrial Disputes Act seeking relief. Some of them have also been granted the relief. Those that have been granted the relief include Chandra in W.P.No.15192 of 2000 who had been granted full pay parity from the inception of the benefit.

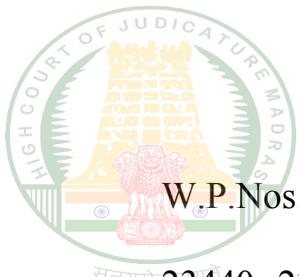


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17. Members of various unions who form part of Tamil Nadu Cooperative Public Sector Sugar Mills Staff Peravai had filed Industrial Dispute in I.D.No.48 of 2000 which also came to be awarded in their favour. Award dated 21.01.2002 has attained finality qua the Government and the Sugar Mills and it is only the members of the Union who challenged the directions of the Labour Court to re-structure the pay scale of the employees under the CCS who are before this Court in W.P.No.2325 of 2004.

18. That Writ Petition (W.P.No.2325 of 2004) ultimately came to be allowed on 22.04.2015 and the appeals filed by the Government and the Sugar Mills in W.A.Nos.54 to 56 of 2016 came to be dismissed on 13.11.2024 on the ground that there had been no challenge to award in I.D.No.48 of 2000 dated 21.02.2002. With this, the position becomes final that both Chandra, who appears to be a pioneer of sorts in this litigation as well as several staff members who were part of the Peravai obtained the relief that they were seeking with effect from the date of inception of the benefit.

19. The Writ Petitioners in W.P.Nos.25895 to 25905 of 2008 etc. batch also were granted the benefit initially. Number of Writ Petitioners in this batch (Batch I of Writ Petitions) are 155. The relief was however, truncated to operate only from September 2008. As against that restriction, appeals were filed by all the Writ Petitioners, numbering 155. It is only those petitioners in



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W.P.Nos.25189, 25191 to 25196, 25198 and 25199, 23429, 23433, 23436, 23440, 23441, 23444, 23445, 23446, 23447, 23449, 23450, 23451, 23452 and 23457 of 2009 (22 in number) who were disappointed as K.Chandru,J had dismissed all those Writ Petitions as non-maintainable who had filed appeals in W.A.Nos.450 to 457 and 740 to 753 of 2010 (22 in number) in Batches II and II of Writ Petitions before the Division Bench challenging the order of K.Chandru,J.

20. As against order dated 02.09.2009, the Government filed Writ Appeals in W.A.Nos.1885 to 1897, 2248 to 2260 of 2010 (26 in number) in relation to W.P.Nos.9544, 9565, 9566, 9567, 9569, 17126, 17131, 17134, 17135, 17139, 17143, 17144, 17145, 9542, 9563, 17127, 17140, 17141, 17155, 17157, 17158, 17160, 17162, 17163, 17164, 17165 of 2009 only (26 in number). Hence, the Government has not filed appeals in the cases of the petitioners in the present Review Petitions, numbering 35.

21. While the Review Petitioners would argue that this is relevant, in that, order dated 02.09.2009 has attained finality, the Government would seek to brush it off as inadvertent and an inconsequential event. At this juncture, it would be relevant to discuss the cases cited by both parties to aid us to come to a conclusion on this aspect of the matter.

22. In *Shenoy and Co.*,⁸ three Hon'ble Judges of the Supreme Court

⁸ Foot Note supra (4)



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considered an issue similar to the one we are faced with. The Karnataka High Court had allowed several Writ Petitions by way of a common judgment declaring certain provisions of the Karnataka Acts, 10 of 1984 and 13 of 1982, i.e., Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act 1979 (in short 'Karnataka Entry Tax Act') as unconstitutional. The Writ Petitions were allowed by way of a common judgment dated 24.08.1979 (hereinafter referred to as '*Hansa Corporation case*') and mandamus was issued as against the State Government forbearing it from taking any proceedings under the Karnataka Entry Tax Act.

23. The State was aggrieved by that decision, but as against a common judgment in several cases, only one appeal was filed which was allowed by the Supreme Court on 25.09.1980. When that Civil Appeal was pending before the Supreme Court, the State of Karnataka promulgated Karnataka Ordinance 5 of 1980, whereunder the infirmities noted by the Karnataka High Court in *Hansa Corporation case* were removed.

24. The Ordinance gave way to Act 21 of 1980 which was given retrospective effect from the date of the Ordinance. The Supreme Court rendered a judgment in the *Hansa Corporation case* reversing the order of the Karnataka High Court dated 24.08.1979 and as a consequence thereof, Ordinance 11 of 1980 was promulgated repealing the Karnataka Entry Tax Act. Karnataka Act 10 of 1981 followed along with the Karnataka Entry Tax Act 1981 repealing the



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1980 Act. However, Ordinance 11 of 1980 was not repealed. Thereafter, Ordinance 3 of 1981 came into force followed by Karnataka Act 12 of 1981 which finally repealed Ordinance 5 of 1980.

25. As a consequence of the aforesaid, the 1979 Karnataka Entry Tax Act was re-activated/revived, though with effect from 01.10.1980 and not 01.06.1979. The authorities initiated proceedings under the new Act which was challenged by those assessee's who argued that the 1979 Act had been held to be invalid in their cases by judgment in *Hansa Corporation case* that had attained finality.

26. The defence of the State was that the judgment of the Supreme Court in *Hansa Corporation case* upholding the validity of the 1979 Act was applicable in rem, even in those cases where the State had not challenged the decision of the Karnataka High Court in the *Hansa Corporation case*.

27. The Writ Petitions came to be dismissed both by the single Judge as well as the Division Bench and ultimately came before the Supreme Court for decision. The High Court had referred to and relied upon the effect of two judgments of the Supreme Court in *State of Punjab V. Joginder Singh*⁹ and *Makhanlal Waza V. J&K State*¹⁰.

28. In *Shenoy and Co.*¹¹ the Supreme Court discussed the effect of the

⁹ AIR 1963 SC 913

¹⁰ (1971) 1 SCC 749

¹¹ Foot Note Supra (4)



aforesaid two cases. They noted that in the appeal filed by the State against the decision in *Hansa Corporation case*, the validity of the Karnataka Entry Tax Act, 1979 had been upheld in the following terms:

23. The Judgment in the Hansa Corporation case rendered by one of us (Desai , J.) concludes as follows

"As we are not able to uphold l the contentions which found favour with the High Court in striking down the impugned Act and the notification issued thereunder and as we find no merit in other contentions canvassed on behalf of the respondent for sustaining the Judgment of the High Court , this appeal must succeed. Accordingly , this appeal is allowed and the Judgment of the High Court is quashed and set aside and the petition filed by the respondent in the High Court is dismissed with costs throughout."

To contend that this conclusion applies only to the party before this Court is to destroy the efficacy and integrity of the Judgment and to make the mandate of Article 141 illusory. By setting aside the common Judgment of the High Court , the mandamus issued by the High Court is rendered ineffective not only in one case but in all cases.

29. The Court thus concluded that the dispute before them in the context of the Karnataka Entry Tax Act constituted a cause or controversy between the petitioner and the State. It had no element of individual or personal interest or anything personal or peculiar, to each petitioner. At paragraph 22, they state as follows:

22. Though a large number of writ petitions were filed challenging the Act , all those writ petitions were grouped together, heard together and were disposed of by the High Court by a common Judgment. No petitioner advanced any contention peculiar or individual to his petition , not common to others. To be precise, the dispute in the cause or controversy between the State



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and each petitioner had no personal or individual element in it or anything personal or peculiar to each petitioner. The challenge to the constitutional validity of 1979 Act proceeded on identical grounds common to all petitioners. This challenge was accepted by the High Court by a common Judgment and it was this common Judgment that was the subject matter of appeal before this Court in Hansa Corporation's case. When the Supreme Court repelled the challenge and held the Act constitutionally valid , it in terms disposed of not the appeal in Hansa Corporation's case alone , but all petitions in which the High Court issued mandamus on the none existent ground that the 1979 Act was constitutionally invalid. It is , therefore , idle to contend that the law laid down by this Court in that Judgment would bind only the Hansa Corporation and not the other petitioners against whom the State of Karnataka had not filed any appeal. To do so is to ignore the binding nature of a Judgment of this Court under Article 141 of the Constitution. Article 141 reads as follows:

"The law declared by the Supreme Court shall be binding on all courts within the territory of India.

A mere reading of this Article brings into sharp focus its expanse and it's all pervasive nature. In cases like this, where numerous petitions are disposed of by a common Judgment and only one appeal is filed, the parties to the common Judgment could very well have and should have intervened and could have requested the Court to hear them also. They cannot be heard to say that the decision was taken by this Court behind their back or profess a ignorance of the fact that an appeal had been filed by the State against the common Judgment. We would like to observe that , in the fitness of things , it would be desirable that the State Government also took out publication in such cases to alert parties bound by the Judgment , of the fact that an appeal had been preferred before this Court by them. We do not find fault with the State for having filed only one appeal. It is , of course , an economizing procedure.

30. This judgment is relied on by the State as being applicable on all fours



to the present matters.

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31. In *Chandramohan Ramchandra Patil*¹² the Supreme Court was concerned with the rule of primogeniture and the importance of pedigree in proving relationships. The contest was to the ownership of Inam lands. The Court notes that erstwhile Inam or watan lands were held by the senior-most member of the family through lineal descendant on the rule of primogeniture. A suit had been filed for partition of Inam lands that had been dismissed by the trial Court. An appeal had been filed only by some of the legal heirs of the original plaintiff.

32. One of the arguments raised before the Supreme Court was that in such circumstances, where not all the legal representatives of the original plaintiff had preferred an appeal against the dismissal of the Suit, the appellate Court could not, in line with Order 41 Rule 4 of the Code of Civil Procedure, have varied the judgment of the trial Court against the defendants. The specific argument was that such an order could have been passed only if all the legal representatives of the original plaintiffs had preferred appeals. That argument was rejected in the following terms:

12. Lastly, it is urged that not all the legal representatives of the original plaintiff had preferred appeal against the dismissal of suit by the trial court. In accordance with Order 41 of Rule 4 of Code of Civil Procedure, the appellate court could not have varied the judgment of the trial court against the defendants at

¹² Foot Note Supra(3)



the instance of only some of the plaintiffs appealing against the decree.

13. This argument has no merit. In a suit for partition, plaintiff and defendants are parties of equal status. If the right of partition has been recognised and upheld by the court, merely because only some of the plaintiffs had appealed and not all, the court was not powerless. It could invoke provisions of Order 41 of Rule 4 read with Order 41 of Rule 33 of Code of Civil Procedure. The object of Order 41 of Rule 4 is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The court in such an appeal may reverse or vary the decree in favour of all the parties who are in the same interest as the appellant. [See Ratanlal Shah vs. Firm Lalmandas Chhadammalal (AIR 1970 SC. 108; and Mahabir Prasad V. Jage Ram (AIR 1971 SC 742)].

33. In the above judgment, the Court was concerned with the impact of Order 41 Rules 4 and Rule 33 of the Code of Civil Procedure (CPC) holding that the purport of the aforesaid provisions is to enable the Court to reverse or vary the decree in favour of all parties, who are in the same interest as the appellant. Thus, by invocation of the aforesaid provisions, relief could be granted by the Court even to plaintiffs who had not appealed as against the adverse order and it was not for the defendants to urge that the decree of dismissal of suit passed by the trial Court had attained finality inter se the plaintiffs who had not appealed, and the defendants.

34. In a batch of Review Petitions in *Sanjay Kumar Agarwal*¹³, the Supreme Court has reiterated yet again the well settled contours of interpretation of Order 47 Rule 1 of the Code of Civil Procedure dealing with review. They

¹³ Foot Note Supra (6)



referred to various judgments in the context of review jurisdiction and set out the gist of the decisions as follows:

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16. The gist of the afore-stated decisions is that: -

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2 A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

16.3. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

16.4 In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."

16.5. A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

16.6. Under the guise of review, the petitioner cannot be permitted to reargue the questions which have already been addressed and decided.

16.7. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

16.8. Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

35. In conclusion, they rejected the review petitions on the ground that no mistake or error apparent on the face of the record had been made out in the judgment impugned before them. Learned Additional Advocate General would urge that we should take a similar view.

36. In *Fida Hussain*¹⁴, the Supreme Court delved into what the binding

¹⁴ Foot Note Supra (2)



effect of a judgment was and what would form a precedent for the Courts.

According to the learned Additional Advocate General, the decision of the Bench dated 02.12.2010 which has decided the issue on merits should persuade us to dismiss the review petitions, seeing as that decision has laid down a binding precedent on the merits of the claim of the petitioners, and in the interests of uniformity.

37. In *Ajith Kumar Rath*¹⁵, the question related to the fixation of seniority of direct recruits with reference to year of vacancy instead of year of appointment. While rejecting that plea, the Court had had occasion to consider the validity or otherwise of the order of the Orissa Administrative Tribunal which had dealt with that issue in a batch of review petitions. Thus, what was assailed before the Supreme Court was not just the fixation of seniority itself but also the procedure adopted by the Orissa Administrative Tribunal in deciding the question of seniority in a batch of review petitions.

38. In that context, the Supreme Court holds that the Orissa Administrative Tribunal had deviated from the settled principles for dealing with review petitions. Referring to Section 22(3)(f) of the Administrative Tribunals Act, 1985 which states that an Administrative Tribunal shall have the same powers as are vested in a Civil Court under the Civil Procedure Code for the purposes of deciding its functions under that Act, the Court observes that power was not

¹⁵ Foot Note Supra (7)



absolute and was hedged in by the restrictions indicated under Order 47 of the Civil Procedure Code.

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39. Learned Additional Advocate General would draw support from these observations to reiterate the settled nature of review petitions by exercise of power under Order 47 of the Civil Procedure Code.

40. In the case of *Ashrafi Devi*¹⁶ the Supreme Court has held that the order passed in that case did not come within the four corners of Order 47 attracting the rigour of that provision. It is thus a matter of examination on a case-on-case basis.

41. The aforesaid judgments rendered in the context of procedure to be followed in the case of review petitions, bring home to us the proposition that while review jurisdiction has to be understood and applied, strictly and scrupulously in the context of Order 47 of the Civil Procedure Code in line with the guidelines set out in the case of *Sanjay Kumar Agarwal*¹⁷, such an examination would have to be on a case-on-case basis.

42. Mr.Tamil Nidhi relies on an order passed by the Division Bench of this Court in *The Special Officer, Tiruppattur Coop. Sugar Mills Ltd., Kethandapatti, Vellore District-635 815 v. P.Ramar and others*¹⁸ allowing the Writ Appeal of the Sugar Mill in terms of order dated 02.12.2010.

¹⁶ Foot Note Supra (5)

¹⁷ Foot Note Supra (6)

¹⁸ W.A.No.3952 of 2019 dated 29.08.2023



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43. The review petitioners has circulated a decision in *G.K.Dudani*¹⁹ in the context of labour and service law to urge the proposition that the rule of res judicata is applicable to the Writ Petitioners as well. At paragraph 18, this is what the Court states in that context.

18. In view of this categorical finding in Chauhan's case, it was not open to the direct recruits to reagitate this point. Although by reason of the Explanation which was inserted in section 141 of the Code of Civil Procedure, 1908, by the Code of Civil Procedure(Amendment) Act, 1976,section 11 of the Code does not in terms apply to any proceeding under Article 226 of the Constitution, the principle of res judicata does apply to all writ petitions under Article 226. This point was, therefore, barred by the principle of res judicata and should never have been allowed by the High Court to be reagitated. In view of this categorical finding in Chauhan's case, it was not open to the direct recruits to reagitate this point. Although by reason of the Explanation which was inserted in section 141 of the Code of Civil Procedure, 1908, by the Code of Civil Procedure (Amendment) Act, 1976, section 11 of the Code does not in terms apply to any proceeding under Article 226 of the Constitution, the principle of res judicata does apply to all writ petitions under Article 226. This point was, therefore, barred by the principle of res judicata and should never have been allowed by the High Court to be reagitated.

44. We now proceed, in the paragraphs to follow, to examine the facts in the present case having due regard to the guidelines that we have culled from the aforesaid cases. The relevant facts that commend themselves to us are that the review petitioners seek the relief of parity of pay with other similarly/identically placed employees in supervisory “C” category who have admittedly been given the relief. Several others who had sought parity alongside, before or after the

¹⁹ Foot Note Supra (1)



review petitioners have also been granted the same. There is no dispute on this position.

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45. Though the respondents would make a tentative submission to say that a wage settlement has been entered into with some of the members of the Unions, whereby relief of enhanced pay had been granted to them, though we had specifically sought details of the same, no such clinching materials are produced before us in that regard.

46. Even assuming that wage settlements had been entered into by the respondents with some employees, that cannot be a legitimate ground for denying the relief of parity of pay to the review petitioners. We are dealing with the matter on the principle involved, on the larger question of parity of pay of similarly/identically placed employees.

47. The decision not to challenge order dated 02.09.2009 in these cases may not be conscious and as the respondents state, it may have been inadvertent. However it does have a consequence and repercussion and the respondents cannot escape from that. There has been no justification given why, barring the selective filing of appeals in some of the cases, there have also been other cases where similarly/identically placed employees have been given the benefit. Hence seen wholistically, it is clear that relief has been granted selectively to some employees and not to others. No explanation has been canvassed to justify this



selective approach.

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48. The judgments that have been relied on by the learned AAG do not in our considered view support their case. In the case of the *Shenoy and Co.*²⁰, dealing with the Karnataka Entry Tax Act, the non-filing of appeals had been justified by the Supreme Court holding that the lis was between the State and the assesseees in respect of a taxing Statute. Such a Statute is one that would apply to all citizenry of the Country or the State unless specifically excluded from the application of the same. In fact every Statute would commence with a clause stipulating its territorial application. It is in those circumstances that the Supreme Court held that non-filing of appeals in some cases would not be fatal to the cause of the State.

49. The case of *Chandramohan Ramchandra Patil*²¹ would likewise not support the case of the respondents as it turns specifically on the impact of Order 41 of the CPC in a civil dispute. In fact, Rules 4 and 33 of Order 41 which deal with appeals from original decrees, specifically contemplate a situation where one of several plaintiffs or defendants may plead the cause of all plaintiffs or defendants and obtain reversal of a decree where it proceeds on a ground common to all. The conclusion of the Supreme Court is, hence, premised on this principle which is enshrined in the CPC itself.

50. Then again, the judgments in the context of review parameters would

²⁰ Foot Note Supra (4)

²¹ Foot Note Supra(3)



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also have to be applied on a case-on-case basis and, in the facts and circumstances of the present batch of cases, we do believe that the non-filing of appeals which has not been noticed by the Bench in order dated 02.12.2010 is an error apparent from the face of the record. It might have been a different matter had the Division Bench noted the fact that appeals had not been filed in the case of some writ petitioners and had addressed the issue then and there noticing that the ratio of their decision would extend even to those writ petitioners in whose cases appeals had not been filed. However, this was never been done.

51. It was not even the case canvassed by the State before the Division Bench that some appeals had inadvertently not been filed and that the ratio of the decision should extend to those cases also. Hence the fact that the Division Bench has proceeded as though appeals had been filed in all cases is a clear error and cannot be taken to be anything else. In such circumstances, the parameters under Order 47 Rule 1 would clearly apply and we are of the considered view that such an error must be corrected atleast now.

52. Mr.Kumaresan has urged that we should be persuaded by the decision rendered by the Division Bench on merits. However, we have ascribed reasons in the paragraphs supra as to why we believe that selective grant of benefits would not be a proper approach in a matter such as the present. In fact, there is a contradiction in the argument advanced on this score.



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53. While on the one hand the respondents would urge that the order of the Division Bench dated 02.12.2010 must apply in rem to all the employees irrespective of whether appeals have been filed, the letter rejecting the representation of these petitioners which was the subject matter of challenge in I batch of Writ Petitions took a diametrically opposed stand. We extract that letter below:-

Department of Sugar

FROM

..... I.A.S.,
Commissioner of Sugar,
690, Anna Salai, Nandanam,
Chennai - 600 035.

TO

.....
Superintendent,
Tiruttani Cooperative Sugar Mills
Ltd.

THROUGH:

The Administrator,
Tiruttani Cooperative Sugar Mills

RC. No. 22324 / S L 2 / 2008-1, dt: 26.9.2008
Purattasi, 10th Thiruvalluvar Aandu, 2039.

Sub: Pay revision - Hon'ble High Court Order, dt:23.7.2008 in W.P. No. 16781 to 16886 of 2008 - Filed by Thiru C. Sundaravadivel and 8 others Directions issued - Regarding.

Ref: 1)Thiru S. Jagadeeswaran, Superintendent. Tiruttani Cooperative Sugar Mills representation dt: 24.10.2007, 24.12.2007.

2) Hon'ble High Court Order, 23.7.2008 in W.P. No. 16781 to 16886 of 2008 filed by Thiru C.Sundaravadivel and 8 others.

-X-X-

I invite your attention to the references cited.

Your representation 1st cited has been examined in the light of the Honble High Court Order second cited, wherein the Hon'ble High



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Court has directed the Commissioner of Sugar to consider your above representation and pass orders on merits and in accordance with law within a period of 4 weeks from the date of receipt of the copy of the said Court Order. A copy of the above Court Order has been received in this office on 9.9.2008.

In your representation first cited, you have stated that your respective post viz. (Superintendent) comes under the Supervisory "C" Grade and requested to revise your pay scales on par with that of Government Scale with effect from 1.12.88 i.e., the date of your joining in the post of Superintendent in Supervisory "C" Grade based on the Government Orders, Commissioner of Sugar Circulars indicated in your representation and also based on the Hon'ble High Court Order passed in W.P. No. 15192 / 2000, dt: 22.4.2003 and in W.A. No. 1089 and 4074 of 2004 dt: 12.7.2007.

In this connection, it is informed that the Common Cadre System was introduced by the Government as per the G.O. Ms. No. 866 Industries Department, dt: 25.7.1984, and as per the Commissioner of Sugar letter in Rc. no. 23941 / 1984 / C1, dt:16.10.1984 certain posts / categories were brought under Common Cadre System due to exigencies and administrative reasons and the Common Cadre System was further extended to cover certain other posts also as per the Commissioner of Sugar letter No. 25185 / C3 / 1989, dt: 27.12.1989. It is also informed that not all the posts in Supervisory "C" Grade were brought under Common Cadre System, only certain posts of Supervisory "C" Grade were brought under Common Cadre System due to its exigencies and administrative reasons.

However, the post of Superintendent has not been brought under Common Cadre System and it is continued to be covered under Wage Board Scale and hence your claim to revise your pay on par with Government Pay Scales as in the case of other Supervisory Grade employees included in Common Cadre System cannot be considered.

Regarding the Court Order issued in W.P. No. 15192/2000, dt: 22.4.2003 and in W.A. No. 1089 and 4074 of 2004 dt: 12.7.2007, it is informed that, in the above Court Order, the Hon'ble High Court has directed only to revise and refix the pay scale of the Petitioner in the above Writ Petition. Also in the G.O. Ms. No. 123, Industries Department, dt: 30.5.2008, issued based on the above Court Order, directions were issued to the Commissioner of Sugar to revise the pay scale of the Petitioner in the above Writ Petition only, and not



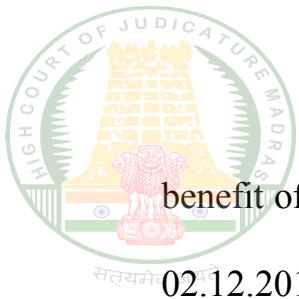
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ordered for revision of pay scales to all Supervisory "C" Grade employees and hence your request for revision of your pay scale in the post of Superintendent with effect from 1.12.88, i.e, the date of your joining in the post on par with the Government scale of pay applicable to other Supervisory "C" Grade employees included in Erstwhile Common Cadre System cannot be considered. Your representation first cited in the reference is thus stands disposed.

*Sd/-
Commissioner of Sugar.*

54. A perusal of the above letter would show that the stand of the respondents in rejecting the petitioners' plea for parity was that the grant of benefit of parity under the CCS should be in personam and not in rem. This militates against the argument taken now, that the ratio of order dated 02.12.2010 must apply across the board and in rem. Clearly, the respondents are shifting their stand as it suits them, depending on the exigencies of the case and this certainly cannot be permitted. This is not a case where we are concerned with the application of a Statute and, on the other hand, it is specifically a case where the respondents have taken a stand that the grant of benefit would be in personam and qua specific employees, as evidenced by their letter dated 26.09.2008 extracted above.

55. In light of the same we allow these review petitions and have no hesitation in holding that the benefit granted to the petitioners under order dated 02.09.2009 passed in the I batch of Writ Petitions by Nagamuthu J., which remains unchallenged by the State and the Commissioner of Sugar enures to the



benefit of these petitioners. The conclusion in order of the Division Bench dated 02.12.2010 is liable to be amended to read that it would be applicable only qua those writ petitioners in whose cases the State had filed appeals and the present petitioners not being the subject matter of State appeals would not be disadvantaged by the conclusions set out therein.

56. The appeals of the present review petitioners seeking the grant of benefits from an anterior date, have been rejected by the Division Bench and as regards that point, there is no error arising from order dated 02.12.2010, amenable to review. The Bench has dealt with the issue and concluded against the petitioners and in such cases, we are not persuaded to hold that there is any error apparent on the face of the record.

57. The Review Petitions are disposed in the manner as set out above. No costs.

(A.S.M.,J) (G.A.M.,J)
28.03.2025

Index:Yes
Speaking order
Neutral Citation: Yes
sl

1.The Secretary,
Industries Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner of Sugars,



696, Anna Salai,
Nandanam, Chennai-600 035.

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3.The Administrator,
Tiruttani Co-operative Sugar Mills Ltd.,
Thiruvallangadu – 631 210.

4.The Administrator,
Subramaniya Siva Co-operative Sugar Mills Ltd.,
Gopalapuram-636 904,
Dharmapuri District.

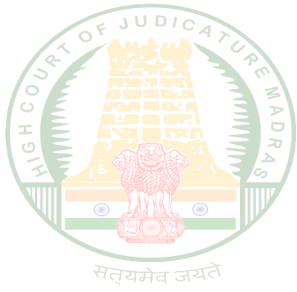
5.The Special Officer,
Dharmapuri District Co-operative Sugar Mills Ltd.,
Palacode, Dharmapuri District.

6.The Special Officer,
Salem Co-operative Sugar Mills Ltd.,
Mohanur-637 015.
Namakkal District.

7.The Special Officer,
N.P.K.R.R Co-operative Sugar Mills Ltd.,
Thalainayur, Elenthoppu Post – 609 201
Nagapattinam District.

8.The Administrator,
Kallakurchi-II Co-operative Sugar Mills Ltd.,
Kachirayapalayam-606 207.
Villupuram District.

9.The Special Officer,
Kallakurchi-II Co-operative Sugar Mills Ltd.,
Kachirayapalayam-606 207.
Villupuram District.



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Review Appln.Nos.256 of 2015 etc. b:



DR. ANITA SUMANTH,J.
and
MR. G.ARUL MURUGAN,J.

sl

Review Application Nos.256, 264, 265, 285, 288,
260, 261, 262, 263, 266, 277, 278, 279, 280,
284, 286, 287, 257, 258, 259, 281, 289, 290,
273, 274, 275, 267, 268, 269, 271, 272, 276,
282, 283 & 270 of 2015

28.03.2025