



W.P.(MD)No.1916 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2025

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD)No.1916 of 2023 &
W.M.P.(MD)No.1699 of 2023

The President,
National Horticultural Research and
Development Foundation (NHRDF),
Chitegaon Phata Village,
Darna Sangvi (Post), Niphad Taluk,
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.

...Petitioner

VS.

1.P.Murugesan

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

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records relating to the impugned award of the Labour Court passed in I.D.No.100 of 2010 dated 16.11.2022, quash the same.

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

For Respondents : Mr.P.Murugesan,
Party-in-person for R1

No appearance for R2

ORDER

This writ petition has been filed to quash the impugned award of the Labour Court, Tiruchirappalli dated 16.11.2022 in I.D.No.100 of 2010. By virtue of the said award, the Labour Court found that the Director of National Horticultural Research and Development Foundation [hereinafter called as 'NHRDF'] has no power to initiate disciplinary proceedings against the first respondent herein.

2. According to the learned counsel appearing for the petitioner, only the Director of NHRDF has got powers to initiate disciplinary proceedings against the first respondent in terms of the Clause 27(b) of



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the amended Memorandum of Association and Rules and Regulations of Associated Agricultural Development Foundation [hereinafter called as 'AADF']. As per the above provisions, only the Director has got powers to initiate disciplinary proceedings against the first respondent and to pass order of removal from service. Further, he would submit that without considering the above Clause, the Labour Court, following the Classification, Control and Appeal Rules [in short called as CCS (CCA) Rules] found that the Director would not have any power to initiate disciplinary proceedings against the first respondent. He would submit that the finding of the Labour Court is totally contrary to the amended Memorandum of Association and Rules and Regulations of the AADF. Further, he would submit that after the initiation of the disciplinary proceedings and before passing of the order of termination, approval of the President was obtained on 15.05.2010. Only thereafter, the Director passed the order of termination on 21.07.2010. Therefore, he would submit that without considering all these aspects, the Labour Court without application of mind, passed the impugned order and the same is liable to be set aside.



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3. On the other hand, the first respondent who has appeared as party-in-person before this Court would submit that he was initially appointed as temporary 'Technical Assistant' by the President / petitioner in the year 1983 in terms of the powers available to him under the Memorandum of Association and Rules and Regulation of AADF, marked as Ex.C1. Thereafter, the first respondent was made as a permanent employee with effect from 04.04.1984 and once again, his permanency status stood confirmed with effect from 03.01.1985. Therefore, he would submit that contrary to the Memorandum of Association and Rules and Regulation of AADF, the Director, without any power has initiated the disciplinary proceedings against him passed the order of termination on 21.07.2010. He would submit that by referring the Memorandum of Association and Rules and Regulation of AADF only, his appointment was made by the President. By virtue of the same, only the President has got power to initiate disciplinary proceedings and pass the order of termination against him.

4. Further, by referring to Resolution passed in Agenda Item No.2 of the Minutes of 79th meeting of the Managing Committee held on



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30.03.1998, he would submit that the Director has got power to initiate disciplinary action against only those whose appointments are made by him and not by the President. On any case, he would submit that the initiation of disciplinary proceedings as against him by the Director is against the decision taken in the 79th meeting of the Managing Committee. He would further submit that he has challenged the dismissal order before the Labour Court, Tiruchirappalli, wherein, the Labour Court vide order dated 22.10.2018 confirmed the order of termination. Thereafter, the same was challenged in W.P.(MD)No.25060 of 2018. The said writ petition was allowed by an order dated 28.11.2019, wherein, the Writ Court found that the order of termination is passed by the authority who did not possess the said power. Challenging the same, a Writ Appeal was filed by the petitioner herein in W.A.(MD)No.1215 of 2020, wherein, this Court has passed the following order on 01.04.2021.

"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



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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.”

Thereafter, the matter was remanded to the Labour Court, Tiruchirappalli for fresh consideration. The Labour Court after re-considering all the aspects, passed an order on 16.11.2022 setting aside the order of termination of the first respondent. Therefore, he prays that the same may be confirmed.

5. I have given due consideration to the submissions made by the petitioner as well as the first respondent and perused the records available before this Court.



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6. In the present case, the petitioner was initially appointed as temporary Technical Assistant in the year 1983 by the President and thereafter, he was made permanent on 04.04.1984. The permanency status was once again confirmed by virtue of the proceedings dated 03.01.1985. There is no dispute on the above aspects by either sides. By virtue of the power available in the Memorandum of Association, the President of AADF has appointed the first respondent as temporary Technical Assistant. For the ready reference, the relevant Clause in the Memorandum of Association and Rules and Regulations of AADF, marked as Ex.C1, is reproduced hereunder.

"Specific Powers of the President

36(b) The President shall appoint and at his discretion remove or suspend such Secretaries, Officers, Clerks, Agents and Servants for permanent, temporary or special services as he may from time to time think fit and to determine their powers and duties and fix their salaries or emoluments and to require security in such instances and of such amount as he thinks fit."

Based on the power available under the Clause 36(b), the first respondent's appointment was made. Reading of the above Clause shows that the President has got powers to appoint, remove and suspend the



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employees. In such case of removal from service, he has to initiate disciplinary action against the person who he has appointed.

7. The name of AADF was changed into NHRDF and amended Certificate of Change was also issued in the name of NHRDF on 21.05.2004. The Clause 26 (a) to (d) of the amended Memorandum of Association and Rules and Regulations of AADF speaks about the Specific Powers of the President as follows.

"Specific Powers of the President

26(a) The President shall have power to appoint, remove or suspend at his discretion Secretary, Officer, Clerk, Agent, Servant or employee whether permanent, temporary or on special services as he may think proper from time to time and to determine their powers, duties and to fix up their salaries, emoluments or any other benefit and also to require such employees of the Association to deposit security in such form and in such manner in such amount as he may think fit within the overall budget approved by the rules framed.

(b) The President shall have general control and overall supervision for the affairs of the Foundation with object of the ensuring implementations of all policies laid down by the Managing Committee.

(c) President shall be competent to take decision on matters which are of an urgent nature affecting the policy of the Foundation on behalf of Managing Committee which may be deemed urgent on the advice of the Director. Such matters would, however, be placed before next Managing Committee for



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ratification. He or his nominee shall represent the Foundation in different organisation / institutes.

(d) In absence of President, Vice President will exercise all the powers vested in him or may delegate his powers to others as he thinks fit."

8. A reading of the Clause 26(a) shows that the President has power to appoint, remove or suspend at his discretion Secretary, Officer, Clerk, Agent, Servant or employee whether permanent, temporary or on special services as he may think proper from time to time and to determine their powers, duties and to fix up their salaries, emoluments. Therefore, it can be clearly understood that in the event, if the appointment is made by the President, then the removal power is available with him / her.

9. Clause 27(b) of the amended Memorandum of Association and Rules and Regulations of AADF reads as follows.

"Director

27(b) The Director shall be Chief Executive of AADF who will exercise control on research and development, administration, finance and accounts. The Director shall have power to appoint, remove or suspend at his discretion the employee of AADF within the pay scale of Rs.2250 - 3200 to 5000 - 8000 in consultation with President.



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A reading of the Clause 27(b) shows that the Director is also having power to appoint, remove or suspend certain category of employees in consultation with the President. Now, the issue is whether the President or the Director has got power to initiate disciplinary proceedings against the first respondent and terminate his services. As far as this issue is concerned, the Labour Court vide its order date 16.11.2022 has come to the conclusion that the Director will not have any power to initiate disciplinary proceedings and pass the order of termination against the first respondent by referring CCS (CCA) Rules.

10. In view of the Clauses 26(a) and 27(b), it is seen that both the President and the Director have got power to appoint, remove and suspend certain category of employees. When both the persons got power as such, in the event if a person is appointed by the President, then, removal power of that person is with the President and if a person is appointed by the Director, then the Director has power to remove that specific person, which would mean that the removal power is vested with the appointing authority. Even on that perspective, in the present case, only the President has got power to initiate disciplinary proceedings



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against the first respondent and also to pass the order of termination.

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There is no dispute on the aspect that, in the present case, only the Director initiated disciplinary proceedings and approval was obtained from the President only before passing the order of termination. Whether such an approval can be considered either as initiation of disciplinary proceedings by the President or removal order passed by the President, certainly not. If at all any appointment is made by the President, he has to take steps to initiate disciplinary proceedings and remove that employee from service. Getting approval for any proceedings is differing from initiation of the actual proceedings on his own. Therefore, the Director in the present case has passed the order of termination beyond his power in terms of the Clause 27(b) of the amended Memorandum of Association and Rules and Regulations of AADF.

11. That apart, it is also mandatory to refer the Minutes of 79th meeting of the Managing Committee held on 30.03.1998, wherein the following Resolution has been passed in the Agenda Item No.2.

"...

Further, the Managing Committee and also President authorised Director to act as disciplinary authority for various other posts also for which he is not the



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appointing authority so as to complete disciplinary proceedings in time in future and improve discipline in the office."

A reading of the above Minutes would show that the Managing Committee and the President have authorised the Director to act as Disciplinary Authority for various other posts for which he is not the appointing authority so as to complete the disciplinary proceedings in time in future and to improve discipline in the office, from which, it is clear that the Director can only act as a disciplinary authority and to pass orders of dismissal of any person, who he has not appointed.

12. In the present case, though by virtue of the Minutes of 79th meeting of the Managing Committee held on 30.03.1998, the Managing Committee and the President empowered and authorized the Director to initiate disciplinary action, no such authorization has been provided and placed on record before the Labour Court or referred to in any of the proceedings. Such being the case, initiation of the disciplinary proceedings by the Director is beyond his powers and the Labour Court has also extensively referred the CCS (CCA) Rules and found that the



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Director has violated the said Rules. On going through the amended Memorandum of Association and Rules and Regulations of the AADF read with the Minutes of the 79th meeting of the Managing Committee would clearly prove that the exercising of power by the Director to initiate proceedings against the first respondent and passing of order of termination against the first respondent are in contrary to the Memorandum of Association and Minutes of meeting. In view of the same, the order of the Labour Court stands confirmed.

13. Accordingly, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.01.2025

NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order

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To

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



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KRISHNAN RAMASAMY, J.

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