

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2012

CORAM:

THE HON'BLE MR. JUSTICE K.CHANDRU

W.P.Nos.10201 and 17309 of 2011

1 D. PRABHU [PETITIONER in W.P.10201 of 2011]

1 K.N.MURUGAN
2 A.ARUL [PETITIONERS in W.P.17309 of 2011]

Vs

1 THE GOVERNMENT OF TAMILNADU
REP BY THE SECRETARY TO GOVT
INDUSTRIES (MIC.2) DEPARTMENT
FORT ST GEORGE
CHENNAI - 600 009.

2 THE COMMISSIONER OF SUGAR
690, ANNA SALAI
NANDANAM
CHENNAI 600 035.

3 THE ADMINISTRATOR
THE CHENGALRAYAN CO-OP SUGAR MILLS LTD.
PERIASEVALAI - 607 209
VILLUPURAM DISTRICT.

4 V.GUNASEKARAN

5 M.GANESAN

6 V.GUNASEKARAN

7 A.SUNDARAVADIVEL

8 R.MADHAVAN

9 S.ARIFF BASHA

10 V.BALU

11 G.DAMODARAN

12 S.SIVAKUMAR

(Respondents 4 to 12 were impleaded
as per order dated 8.7.2011
in M.P.Nos.3 &4 of 2011)

13 M.VENKATESAN

14 M.K.SELVAM

15 M.MURUGAN

16 SAKTHIVEL

17 G.VASUDEVAN

18 M.CHINNAPILLAI

19 M.MUNUSAMY

20 K.SEKAR

21 G.SURESH

22 PUNNIAMURTHY

23 M.RAMESH
(Respondents 13 to 23 were impleaded
as per order dated 12.8.2011
in M.P.No.5 of 2011)

24 MANMUDI

25 A.L.VENKATARAMAN

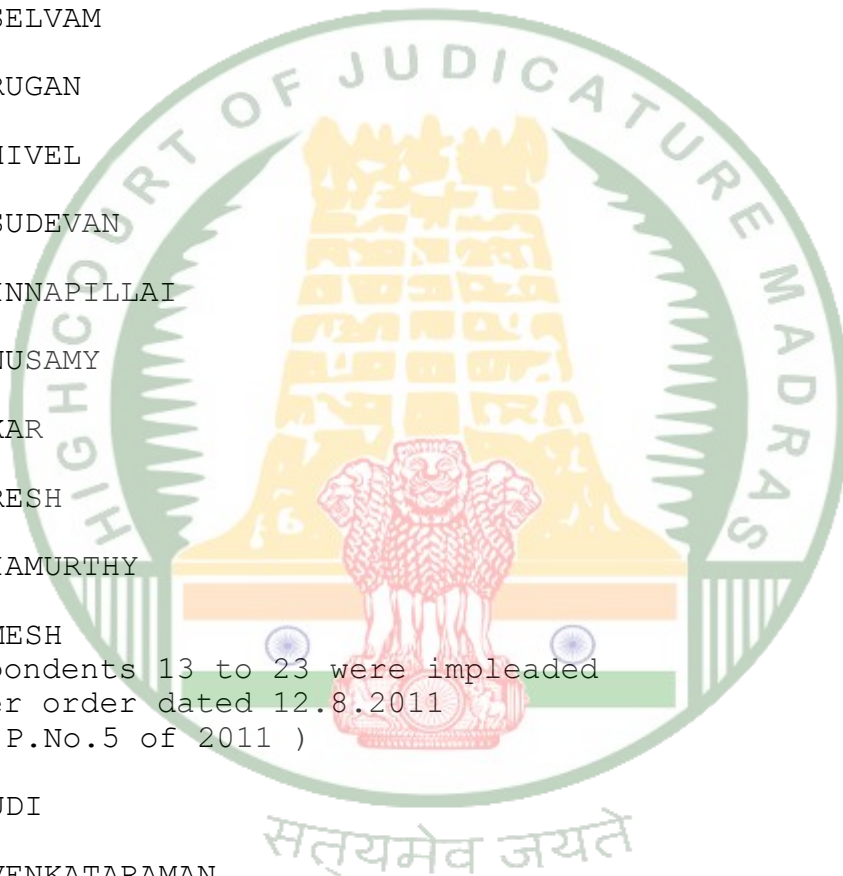
26 A.BOOPATHY RAJA

27 E.GUNASEKARAN

28 R.PANDIAN

29 A.RAVICHANDRAN

30 P.SELVARAJU



WEB COPY

- 31 P.ANANDAN
32 K.GOPISIGAMANY
33 N.GURUVARAJA
34 S.ANBUDASAN

(Respondents 24 to 34 were impleaded
as per order dated 13/10/2011
in M.P.NO.9 of 2011)

[RESPONDENTS in W.P.No.10201/2011]

- 1 PRINCIPAL SECRETARY TO GOVERNMENT
INDUSTRIES DEPARTMENT
FORT ST.GEORGE
CHENNAI-9.
- 2 THE COMMISSIONER OF SUGAR
NO.690, ANNA SALAI
NANDANAM
CHENNAI-35.
- 3 THE DIRECTOR OF SUGAR
NO.690, ANNA SALAI
NANDANAM CHENNAI-35.
- 4 MRK CO-OPERATIVE SUGAR MILL LTD
REP. BY ITS SPECIAL OFFICER
SETHIATHOPE-608 702
CHIDAMBARAM TALUK
CUDDALORE DISTRICT.

[RESPONDENTS in W.P.No.17309/2011]

Prayer in W.P.10201 OF 2011: Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for records pertaining to the order passed in proceedings in G.O.(Ms) No.68 dated 01/3/2011 on the file of the first respondent and quash the same as illegal unconstitutional and without jurisdiction.

Prayer in W.P.17309 OF 2011: Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the 1st Respondent to issue amendment to the Annexure relating to regulations for Tamil Nadu Co-operative and Public Sector Sugar Mills Managerial Officers Common Cadre System in G.O.Ms.No.68 Industries

(Mis.2) Department dated 01.03.2011

For Petitioner
in W.P.10201/2011 :: Mr.R.Natarajan

For petitioners
in W.P.17309/2011 :: Mr.M.Mohan

For Respondents
No.1 in both
Writ Petitions :: Mr.E.M.S.Ntarajan,
G.A(Coop.)

For Respondent Nos.1 & 2
in W.P.10201/2011
& For respondents
1 to 3 in
W.P.17309/2011 :: Mr.E.M.S.Ntarajan,
G.A(Coop.)

For 3rd respondent
in W.P.10201/2011 &
for 4th respondent
in W.P.17309/2011 :: Mrs.G.Thilagavathi

For respondents 4 to 8
in W.P.10201/2011 :: Mr.M.Govindaraj

For respondents 9 to 12
in W.P.10201/2011 :: Mr.P.Rajendran

For respondents 13 to 23
in W.P.10201/2011 :: Mr.K.Gandhi KumarA

For respondents 13 to 23
in W.P.10201/2011 :: Mr.G.Rajan

COMMON ORDER

The 1st Writ Petition is filed by a Cane Officer working in Chengalrayan Cooperative Sugar Mills Limited, Ulundurpet Taluk, challenging the order of the State Government in G.O.(Ms.) No.68 dated 1.3.2011 as it is illegal and unconstitutional and without jurisdiction. The Writ Petition was admitted on 21.4.2011. Pending the Writ Petition, interim stay of the impugned order was granted for a period of eight weeks on the same day. Subsequently, the interim order was extended till 26.8.2011 by an order dated 12.8.2011. Thereafter, when the matter came up on 20.10.2011, this Court held that interim stay will only apply to the petitioner and not to other employees. In the meanwhile, the contesting respondents 4 to 34 got

themselves impleaded opposing the prayer made by the petitioner.

2. When the matter came up on 30.1.2012, this Court having found that another case challenging the same G.O., is pending, directed that W.P.No.17309 of 2011 to be tagged along with the present Writ Petition. On notice from this Court, a counter affidavit has been filed by the 3rd respondent Administrator of the Cooperative Sugar Mills dated 16.7.2011.

3. In W.P.No.17309 of 2011 filed by two Assistant Engineers (Civil) working in MRK Cooperative Sugar Mills, Chidambaram Taluk, the prayer was to to direct the 1st respondent to issue amendment to the Annexure relating to regulations for Tamil Nadu Cooperative and Public Sector Sugar Mills Managerial Officers Common Cadre. In the averment made in paragraph 5 of the affidavit, it is stated that they are not opposed to formation of Common Cadre System, but they are only aggrieved about the non-inclusion of Assistant Engineer fit for promotion to the post of Assistant Executive Engineer and the said category has been left out in the Government Order.

4. Substantive attack against the Government Order, as contended by Mr.R.Natarajan, learned counsel for the petitioner in W.P.No.10201 of 2011 is that the question of formation of Common Cadre System in terms of Section 75 of the Tamil Nadu Cooperative Societies Act is unnecessary. According to the petitioner, each Cooperative Sugar Mills is a separate legal entity. The earlier attempt made by the Commissioner of Sugar Mills by forming the common cadre system through administrative orders was frowned upon by a Division Bench in Writ Appeal No.722 of 1997. Subsequently, the said attempt to form a common cadre was given up. The present G.O., comparing the service in the Cooperative Societies with that of the various Municipalities under the Tamil Nadu Municipalities Act is improper and has got no relevancy. Reviving the common cadre system by the impugned order by mechanical fashion is unconstitutional. The requirement of law under Section 75 of the Act for issuing the G.O., has not been observed. The G.O., is in total defiance of requirement of law and the G.O., also has not been published in the Government Gazette. According to the petitioner, he is working as Cane Officer and there are 10 Cane Officers in the 3rd respondent Mills and he is having further promotion as Chief Cane Officer. If the post of Cane Officer is clubbed along with the post of Cane Officers working in other Sugar Mills, he will be losing the chance of promotion and will be retiring only as a Cane Officer. Therefore, it is not open to the respondents to bring back the common cadre system in a different manner. Without resorting to the amendment of the bye-laws and other special bye-laws of the 3rd respondent Mill, which governs cadre strength and mode of recruitment, the 1st respondent State Government cannot issue the impugned G.O. The impugned G.O alters the composition, identity and nature of office being held by the petitioner to his detriment and

further career in the Mill as Cane Officer.

5. Opposing the contentions raised by the petitioner, in the counter affidavit filed by the Mills, it is stated that the Common Cadre System for suitable promotional opportunities from the inter level Officers posted to the level of Chief Officers in a particular Department is required and a Committee has been appointed to the formulate the service conditions of special bye-laws with reference to creation of common cadre. The earlier attempt to issue common cadre system by resorting to directives under Section 119(A) of the old Cooperative Societies Act was found to be not accepted by the Court as legally valid. Even under the special bye-laws framed in respect of the 3rd respondent mill, bye-law 55 provides for transfer of employees to other Cooperative Sugar Mills.

6. Under Section 75, the State Government has power to frame a Common Cadre in respect of all Cooperative Societies. Apart from this, Rule 149 Sub Rule 2(A) of the Tamil Nadu Cooperative Societies Rules enables an employee from one Mill to another Mill by way of deputation for a period not exceeding three years. As per the retirement Rules, if a person reaches a particular age, then he cannot be considered for further promotion. By the creation of a common pool, there will be modality and further chances of promotions to the higher cadre posts will be possible. The petitioner's attack on the G.O was due to possibility of transfer and not based on any real career interest of promotion. The petitioner's apprehension that he will lose seniority in the cadre of Cane Officer is without basis. There is no question of promotion from the cadre of Cane Officer to that of Cane Development Officer, as the post of Cane Development Officer is a direct recruitment post. When similarly placed persons are considered for promotion, the petitioner will also be given promotion whenever any vacancy arises in any other Sugar Mills. Therefore, there is no legal infirmity in the order passed by the State Government.

7. In W.P.No.17309 of 2011, as already noted, there is no serious challenge to the formation of common cadre, but it is only on the question of deprivation of further promotion to the Engineers from the Civil side. According to the petitioners, it was an omission by the State Government and not including the said post in the common cadre system for further promotion.

8. On behalf of the impleaded respondents, it is stated that their chance of promotion to the various posts in various cooperative mills has been affected and they are necessary and proper parties.

9. It must be noted that Section 75 of the Tamil Nadu Cooperative Societies Act enables the State Government to constitute from time to time the common cadre in respect of Cooperative Sugar Mills and various other Societies. Notwithstanding anything contained in the

Act or bye-laws made thereunder, the Act nowhere contemplates that the said Notification will be published in the Government Gazette as a pre-requisite for its implementation.

10. On the other hand when similar common cadres were formed, the same was attacked before this Court with reference to the post of General Manager, Assistant Manager in various Central Cooperative Banks. This Court in judgment in Coimbatore District Central Cooperative Bank Employees Association rep.by its Secretary vs. the Government of Tamil Nadu, rep.by its Secretary to Government, Cooperation, Food and Consumer Protection Department (V.S.Sirupurkar, J. as he then was) reported in 1999 WLR 789 upheld the power of the State Government to constitute common cadre and in paragraph No.8, it has been observed as follows:

"8. According to the learned Senior Counsel this exposure to the transfer is unfair as it is sudden and unexpected. However, one aspect cannot be forgotten while considering this aspect and that is the existence of Section 75 on the Statute book. Section 75 gives a wide power to change even the bye-laws which would govern the service conditions of the employees of the cooperative societies. It cannot be disputed that these employees who have joined the service, had before them Section 75 of the Tamil Nadu Cooperative Societies Act. In the wake of Section 75, now a complaint cannot be made that they are for the first time exposed to the transfers. Once there is a power in the State Government to create a common cadre and once the creation of common cadre is by way of a policy and once the policy is not found to be mala fide or arbitrary there can hardly be any challenge merely because the employees are exposed to the transfers by creation of common cadre. This argument therefore, must be rejected."

11. When similar G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department dated 24.3.2000 constituting a common cadre of all Secretaries working in the Primary Agricultural Cooperative Bank came to be challenged, a Division Bench of this Court in P.Baluchamy vs. the State rep.by the Secretary to Government, Cooperation, Food and Consumer Protection Department, Chennai and others reported in (2003) 3 MLJ 54 rejected the argument that such a formation of common cadre violates Article 19(1)(c) of the Constitution quoting the decision in Coimbatore District Central Cooperative Bank Employees' Association v. the Government of Tamil Nadu (cited supra) with its approval. In paragraph 22, the Division Bench had observed as follows:

"22. Such an argument was rejected by the learned Judge in Coimbatore District Central Cooperative Bank Employees' Association v. the Government of Tamil Nadu and others, 1999 W.L.R.789, while the validity of the order in G.O.Ms.No.130

dated 8.5.1997 came up for consideration under which a common cadre in respect of posts of General Manager and Assistant General Manager was created. In the said judgment, the learned Judge upheld the Government Order, holding that the salary of an employee has been protected under Sec.75(2) of the Act and that the transfer of employees is an incident of service. Such a conclusion was arrived at on the basis of the judgment of Apex Court in Virendra Pal Singh v. District Assistant Registrar, 1980(4) SCC 109. The principles laid down in the above decisions apply to the present case as the issues raised in the Writ Petitions are similar to the issues raised in the above cases."

12. When apprehensions were raised regarding the practical difficulties, the Division Bench held that it could be solved in future on the basis of practical difficulties, but on that score the existing notification can never be set aside. In paragraph No.24, it was observed as follows:

"24. Certain difficulties were expressed with respect to the posting of Officers on the basis of the status of the Primary Agricultural Cooperative Bank. Even if such a difficulty arises in enforcing the Government Order, it could be solved in future on the basis of the practical difficulty. On that basis, the impugned order need not be set aside."

13. In view of the above, the present attempt made by the petitioners challenging the G.O., notifying the common cadre for all Cooperative Sugar Mills both in Cooperative Department and Public Sector Sugar Mills, cannot be maintained. In fact, the Commissioner of Sugar in his recommendation to the State Government dated 24.9.2010 has spelt out the reasons for formation of common cadre in paragraphs 5 and 6 and it reads as follows:

"5. Hence, each and every post above the level of Supervisory "C" cadres in the mills, which is specified as Direct Recruitment post, is to be filled up through the process of selection, following the prescribed formalities such as consulting Employment Exchange, getting No Objection Certificate if eligible candidates are not available, giving open advertisement in the leading dailies, etc. Meanwhile, the available technically skilled and qualified employees already working in the mills with rice experience are constantly demanding to fill up the above posts based on common seniority. In view of their above long pending grievance, which remains un-dressed till now, there is a

feeling of frustration among the eligible employees seeking further prospects in their career in the sugar mills. Many of the experienced employees are also aggrieved over the fact that they have crossed the maximum age limit prescribed for the above post and cannot compete for the above post and cannot compete for the above said posts.

6. In order to preserve the talented manpower for the betterment of the sugar industry and also to motivate the employees by fulfilling their aspirations and also the redress their long pending grievance, it is imminent to charge the method of recruitment to the above category of posts, which currently fall under the mode of direct recruitment. Further, as the Government vide G.O.Ms.No.155 Industries Department, dated 29.12.2009, had ordered for one time relaxation of the upper age limit to certain categories of posts, viz., Deputy Chief Officers, Assistant Engineers, Manufacturing Chemists and Officer Managers, a large number of representations are being received from the employees working in certain other categories of posts such as Cane Assistants seeking relaxation of age limit to the post of Cane Officers. Hence, it has become an immediate necessity to look into the above demands. Accordingly, a committee of officers of the Department and the Cooperative Sugar Mills was constituted vide Commissioner of Sugar Proceedings Rc.No.7777/SL-1/2010 dated 5.5.2010 to examine the said issue and to submit their recommendations. The committee has since submitted its report, which has been carefully perused.

14. Therefore, it cannot be said that the State Government did not have any material and that the formation of common cadre was to the detriment of the existing employees. On the other hand, there is an increasing recession in Sugar Mills and number of the Cooperative Sugar Mills have been closed down due to lack of modernisation. The present move will benefit employees not only for the purpose of promotions but will also give job security.

15. Under the circumstances, this Court do not think any case is made out to set aside the impugned G.O. Hence, both the Writ Petitions stand dismissed.

16. If the petitioner in W.P.No.17309 of 2011, has made specific complaint about his non-inclusion, it is for him to file appeal to the State Government by making necessary amendment, if the State Government so desires. Dismissal of the Writ Petition will not disentitle the petitioner from making such representation. No costs.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

ajr

To

- 1 THE SECRETARY TO GOVERNMENT
GOVERNMENT OF TAMILNADU
INDUSTRIES (MIC.2) DEPARTMENT
FORT ST GEORGE
CHENNAI - 600 009.
- 2 THE COMMISSIONER OF SUGAR
690, ANNA SALAI
NANDANAM
CHENNAI 600 035.
- 3 THE ADMINISTRATOR
THE CHENGALRAYAN CO-OP SUGAR MILLS LTD.
PERIASEVALAI - 607 209
VILLUPURAM DISTRICT.
- 4 THE DIRECTOR OF SUGAR
NO.690, ANNA SALAI
NANDANAM CHENNAI-35.
- 5 SPECIAL OFFICER
MRK CO-OPERATIVE SUGAR MILL LTD
SETHIATHOPE-608 702
CHIDAMBARAM TALUK
CUDDALORE DISTRICT.

1 cc To Mr.M.S.Palanisamy, Advocate Sr 6709

1 cc To Mr.R.Natarajan, Advocate Sr 6087

1 cc To Mr.K.Gandhikumar, Advocate Sr 5890

2 ccs To Mr.G.Thilakavathi, Advocate Sr 5932 & 5933

1 cc To Mr. M.Mohan, Advocate Sr 5891

1 cc To Mr.P.Rajendran, Advocate Sr 6377

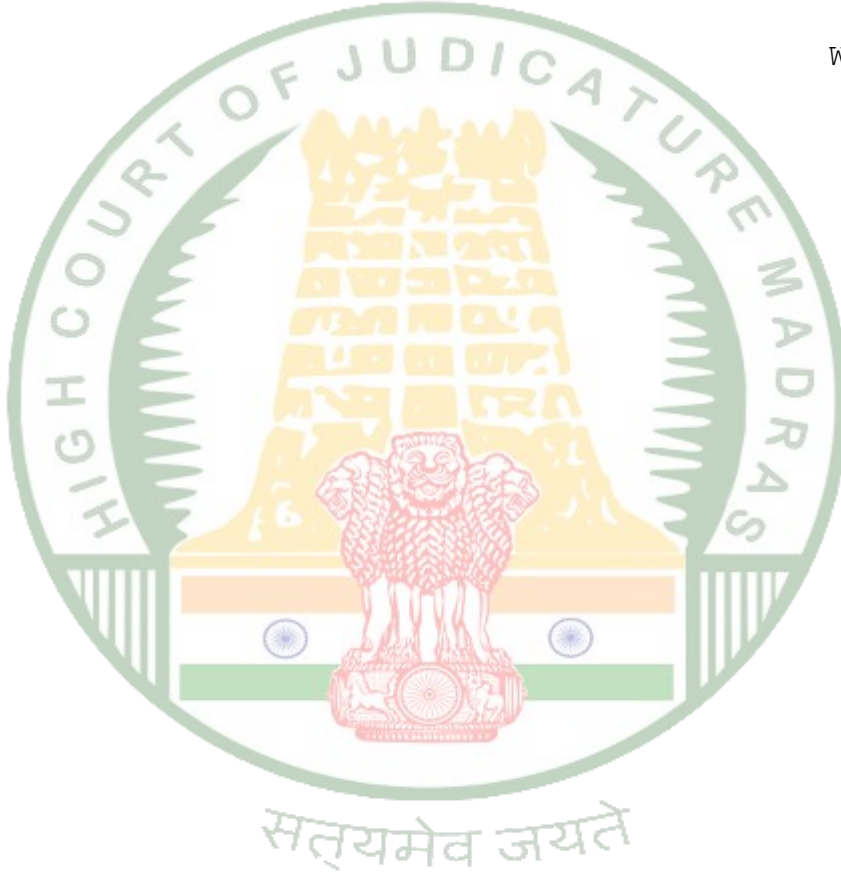
1 cc To Mr.G.Rajan Advocate Sr 6153

1 cc To Mr.G.Govindaraj, Advocate Sr 6156

1 cc to Govt. Pleader Sr.6257

sp[col
gp/16.2

W.P.Nos.10201 and
17309 of 2011



WEB COPY