



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.09.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

W.A. (MD) .No.611 of 2014 against WP(MD)No.11027/2013 and
W.P. (MD) .Nos.9150 and 9151 of 2017 &
W.P. (MD) .No.1054 of 2011 &
M.P. (MD) .No.1 of 2014 &
W.M.P. (MD) .Nos.6958 and 6959 of 2017

W.A. (MD) .No.611 of 2014

1.E.Muruganantham
2.S.Shanmugam Pillai
3.S.Thangam
4.T.Iyappan

... Appellants/Petitioners

Vs.

1.The Commissioner for Milk Production and
Dairy Development Department,
Chennai-600 051.

2.The President,
Kanyakumari District Co-operative Milk Producers Union,
Nagercoil-3.

3.The General Manager,
The Kanyakumari District Co-operative
Milk Producers Union,
Nagercoil,
Kanyakumari District.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 10.07.2013 made in W.P.(MD).No.11027 of 2013.

Prayer in WP(MD). 11027/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned communication dated 12.06.2013 vide Roc. No. 4773/13/N1 dated 12.06.2013 issued by the 1st respondent and quash the same and pass such further or other orders.



For Appellants : Mr.S.Manohar
For Respondents : Mr.M.Murugan for R1
Government Advocate
Mr.VOS. Kalaiselvam for R3

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W.P. (MD) .Nos.9150 and 9151 of 2017

E.Muruganantham
... Petitioner in W.P. (MD) .No.9150/2017

T.Iyyappan
... Petitioner in W.P. (MD) .No.9151/2017

Versus

1.The Commissioner of Dairy Development & Department,
Aavin Illam,
Mathavarm,
Chennai-600 051.

2.Kanyakumari District Co-operative Milk Producers Union
Ltd.
No.2946, Rep by General Manager,
Nagercoil-3,
Kanyakumari District.
... Respondents in both the petitions

PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the impugned proceedings bearing Na.Ka.No.237/A1/2012, dated 09.05.2017 issued by the 2nd respondent insofar as the petitioners are concerned and quash the same.

For Petitioner : Mr.S.Manohar in both WP's
For Respondents : Mr.M.Murugan, Government Advocate
for R1 in both WP's
Mr.V.O.S.Kalaiselvam for R2 in both WP's

W.P. (MD) .No.1054 of 2011

1.E.Muruganantham
2.S.Shanmugam Pillai
3.S.Thangam
4.Iyappan

.. Petitioners



- 1.The Commissioner of Milk Production and
Dairy Development Department,
Chennai -600 051.
- 2.District Collector cum Special Officer
For The Kanyakumari District Co-operative
Milk Producers Union
Nagercoil,
Kanyakumar District.
- 3.The General Manager,
The Kanyakumari District Co-operative
Milk Producers Union,
Nagercoil,
Kanyakumari District.
- 4.Tmt.S.Visalam
Junior Executive
The Kanyakumari District Co-operative
Milk Producers Union,
Nagercoil,
Kanyakumari District.
- 5.Thiru.K.Iyappan
Junior Executive
The Kanyakumari District Co-operative
Milk Producers Union,
Nagercoil,
Kanyakumari District.
- 6.Tmt.I.Vigila Gnanabai
Junior Executive
The Kanyakumari District Co-operative
Milk Producers Union,
Nagercoil,
Kanyakumari District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned issued proceeding Rc.No.359/A1/2008, dated 19.07.2010 issued by the 3rd respondent and quash the same and consequently direct the 2nd respondent to promote the petitioners as Junior Executive in the 3rd respondent Union.

For Petitioner	: Mr.R.Jeyaraj
For Respondents	: Mr.M.Murugan, Government Advocate for R1 and R2 Mr.V.O.S.Kalaiselvam for R3 Mr.T.Arul for R4 to R6

COMMON JUDGMENT

[Common Judgment of the Court was delivered by M.M.SUNDRESH,J]
The writ appeal has been filed against the order of the learned Single Judge, who was pleased to dismiss the writ petition which was filed challenging the order, dated 12.06.2013, by which a decision was made to fill up the post namely Extension Officer, Junior Executive and Technician, by calling for application through open market. The appellants are working as Senior Factory Assistant. It is a specific case that the post sought to be filled up through open market are promotional posts, in which they are qualified to hold. The learned Single Judge was pleased to dismiss the writ petition by holding that the basic graduation obtained by the appellants through the open university cannot be taken as such for a purpose of promotion by the Government Order issued in G.O.Ms.No.116. Dated 18.08.2010. Challenging the same, the present appeal has been filed. In the meanwhile attempts have been made to fill up the vacancies through open market. The appellants were also transferred to some other job with the same respondent. These action are also put to challenge in the writ petition.

2. The learned counsel appearing for the appellants would submit that the appellants have been waiting for so long and the Government Order has come into being subsequently. There is legitimate expectation in favour of the appellants. Hence, the Writ Appeal will have to be allowed.

3.The learned counsel appearing for the respondents would submit that the Government Order passed is only an expression of the legal position. A degree obtained through the open university cannot be given its status contrary to the UGC regulation as held by the Apex Court. Since the appellants did not have a qualification of a basic Degree they are not entitled to consider for promotional post. Resultantly, the writ petitions will also have to be dismissed. It is not as if the appellants were demoted, on the contrary, they have been transferred from one part to another part in the same cadre without having any impact on the monetary perks.

4. There is no merit in this appeal. Admittedly, the appellants did not have a basic degree required for the promotional post, which has sought to be filled up through open competition. Right to promotion is not a vested right. Therefore, it only mean that such a promotion can only be considered subject to qualification prescribed. Admittedly, the Government order was passed in compliance with the order passed by the Apex Court. In such view of the matter, the request made by the appellants before the learned Single Judge for relaxation was rightly rejected. There cannot be any relaxation as a matter of course that too with respect of basic degree requirement. What is not permissible in law cannot be relaxed. There is no legitimate expectation involved contrary to



the Statute. In such view of the matter, we do not find any error in the order passed by the learned Single Judge. Accordingly, the writ appeal is dismissed. In view of the admitted position that the appellants have not been reverted or demoted, the writ petitions also dismissed. Once the appellants are not entitled to be considered for promotion for want of qualification, they cannot question the decision of the respondents to fill up the post from the open market. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Commissioner for Milk Production and
Dairy Development Department,
Chennai-600 051.

2.The District Collector cum Special Officer,
Kanyakumari District Co-operative Milk Producers Union,
Nagercoil-3., Kanyakumari District

3.The General Manager,
The Kanyakumari District Co-operative
Milk Producers Union,
Nagercoil,
Kanyakumari District.

+2ccs to Mr.S.Manohar, Advocate, SR.No.79776

jikr
RL/6C/5P/SV/MMS/SAR4/26/12/2017

Judgment made in
W.A. (MD) .No.611 of 2014 against WP(MD)No.11027/2013 and
W.P. (MD) .Nos.9150 and 9151 of 2017 &
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