

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-04-2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11404 of 2018

And

W.M.P.Nos.13312 and 13313 of 2018

Swaminathan

Petitioner

Vs.

1.The Secretary,
The Department of Co-operation,
Government of Tamil Nadu,
Chepauk,
Chennai-5.

2.The General Manager,
Coimbatore District Co-operative Milk
Producers Union Ltd.,
Pachapalayam,
Kalampalayam P.O.,
Coimbatore-641 016.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records relating to the employment notification Advertisement No.4545/ESTT/1/2018 dated 7.2.2018 issued by the second respondent and to quash the same.

For Petitioner : Mr.C.Deivasigamani

For Respondents : Mr.L.P.Shanmugasundaram,
Special Government Pleader
(Co-operative Societies)

O R D E R

The writ petitioner Mr.Swaminathan, S/o.P.Ramasamy, residing in Site No.29, Gil Nagar, Perur P.O., Chettipalayam, Coimbatore, filed the present writ petition in WP No.11404 of 2018 and the prayer in the writ petition is extracted hereunder:-

"Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records relating to the employment notification Advertisement No.4545/ESTT/1/2018 dated 7.2.2018 issued by the second respondent and to quash the same."

2. It is pertinent to note that the employment notification dated 7.2.2018 is under challenge in the present writ petition. The matter is posted for admission today i.e., on 28.4.2018.

3. When the matter is taken up today i.e., on 28.4.2018, the Court raised a question that how the writ petition is maintainable in view of the fact that the Coimbatore District Co-operative Milk Producers Union Limited is a Co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983, which is not a State within the meaning of Article 12 of the Constitution of India.

4. The learned Special Government Pleader, appearing on behalf of the respondents, sought for a passover for the purpose of ascertaining the legal status of the said Co-operative Society. When the matter is taken up for further hearing at 2.15 p.m., on 28.4.2018, the learned Special Government Pleader, appearing on behalf of the respondents, made a submission that the second respondent-Coimbatore District Co-operative Milk Producers Union Limited is a Society registered under the Tamil Nadu Co-operative Societies Act, 1983 and the elected members of the Board are functioning and administering the said Society. Further, it is clarified by the learned Special Government Pleader for the respondents that there is no Government contribution or otherwise in respect of the principal capital of the said Co-operative Society. Thus, it is clarified that the second respondent Co-operative Society is not a "State" within the meaning of Article 12 of the Constitution of India.

5. Surprisingly, the learned Special Government Pleader, appearing on behalf of the respondents, submitted a copy of the affidavit and the typed set of papers filed in another writ petition in WP No.5904 of 2018. The learned Special Government Pleader for the respondents contended that the very same writ petitioner Mr.Swaminathan, S/o.P.Ramasamy, residing in Site No.29, Gil Nagar, Perur P.O., Chettipalayam, Coimbatore, has filed the writ petition earlier challenging the very same employment notification dated 7.2.2018. The prayer sought for in WP No.5904 of 2018 is extracted hereunder:-

"Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling

for the records relating to the employment notification Advertisement No.4545/ESTT/1/2018 dated 7.2.2018 issued by the respondent and to quash the same."

6. It is unfortunate to note that the very same writ petitioner has filed two writ petitions, that too, the first writ petition in WP No.5904 of 2018 was filed on 13.3.2018 and, the present writ petition WP No.11404 of 2018 was filed on 26.4.2018. Within a period of one month and 13 days, the very same writ petitioner filed two writ petitions, challenging the very same employment notification.

7. Thus, an inference is to be drawn that the writ petitioner in order to achieve his goal and to get an order from this Court, somehow or other, abused the process of Court of Law. It is unambiguously an abuse of process of Court and therefore, this Court is of an opinion that the earlier writ petition and the present writ petition are liable to be rejected.

8. First of all, the earlier and the present writ petitions are not maintainable in view of the fact that the Coimbatore District Co-operative Milk producers Union Ltd., is not a "State" within the meaning of Article 12 of the Constitution of India. No writ can be entertained against a Co-operative Society in view of the legal principles settled by the larger Bench of this Court in the case of K.Marappan vs. Deputy Registrar of Co-Operative Societies, Namakkal Circle, Namakkal [(2006) 4 CTC 689 (FB)]. Thus, the present writ petition is liable to be dismissed on the ground of maintainability.

9. Since the writ petitioner has abused the process of Court by filing two writ petitions, namely the earlier and the present writ petitions, challenging the very same notification dated 7.2.2018 and made an attempt to secure an order one way or the other, this Court is of an opinion that the present writ petition is to be rejected by imposing an exemplary costs.

10. The learned counsel, appearing on behalf of the writ petitioner, made a submission that the earlier writ petition was filed against the General Manager, Coimbatore District Co-operative Milk Producers Union Ltd., and the present writ petition has been filed wherein the Department of Co-operation also has been impleaded as the first respondent in the writ petition and therefore, there is a change in the writ petition. Such a submission of the learned counsel for the writ petitioner deserves to be rejected at the outset in view of the fact that merely by impleading yet another respondent another writ petition with the same prayer by challenging the very same notification by the very same writ petitioner cannot be filed.

The copy of the affidavit and the typed set of papers, now submitted by the learned counsel for the respondent in WP No.5904 of 2018 is kept as part of the record in this writ petition.

11. This being the factum of the case, this Court is of an opinion that the writ petitioner has abused the process of Court of Law and accordingly, a cost of Rs.25,000/- (Rupees Twenty Five Thousand only) is imposed on the writ petitioner. The writ petitioner is directed to pay Rs.25,000/- (Rupees Twenty Five Thousand only) towards costs to the High Court Legal Services Authority, within a period of four weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition stands dismissed as not maintainable with the costs of Rs.25,000/-. Consequently, connected miscellaneous petitions are also dismissed.

13. The Registry is directed to list the matter for reporting compliance on 4th June 2018.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

Svn
To

The Secretary,
The Department of Co-operation,
Government of Tamil Nadu,
Chepauk,
Chennai-5.

Copy to: 1. The Chairman,
High Court Legal Service Authority,
High Court, Madras
2. The Section Officer,
Writ Section,
High Court, Madras
(List the matter on 4.6.2018 for
reporting compliance)

+1cc to Mr.C.Deivasigamani, Advocate SR.No.32396

sm:9.5.2018

W.P.No.11404 of 2018