

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-02-2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.2695 of 2018

And

W.M.P.Nos.3340 and 3341 of 2018

Mr.P.Dinesh

.. Petitioner

-vs-

1. The Deputy Registrar of Co-operative Societies (Milk),
Vellore-9.
2. C-1706, Sholingapuram Milk Producers
Co-operative Society Ltd.,
Represented by its President,
No.25, Venkatarayapillai Street,
Sholingapuram Post,
Vellore District.
3. The Manager (In-charge),
C-1706, Sholingapuram Milk Producers
Co-operative Society Ltd.,
No.25, Venkatarayapillai Street,
Sholingapuram Post,
Vellore District.

4.M.Palani

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relevant to the order dated 25.1.2018 passed by the third respondent and quash the same as illegal, improper, unreasonable, arbitrary and against the principles of natural justice.

For Petitioner - Mr.B.Gopalakrishnan

For Respondent-1 - Mr.L.P.Shanmugasundaram,
Special Government Pleader.

For Respondent-2&3 - Mrs.T.Girija,
Government Advocate.

For Respondent-4 - Mr.M.S.Palanisamy

ORDER

This writ petition is directed against the impugned order dated 25.1.2018 passed by the third respondent/Manager (In-charge), C-1706, Sholingapuram Milk Producers Co-operative Society, Vellore District, wherein the Manager, who is put in-charge of the third respondent Milk Producers Co-operative Society has placed the petitioner under suspension, who was appointed as a Milk Vendor, on 1.9.2016 on daily wage basis by the President of the Milk Producers Co-operative Society on the basis of the Resolution No.5 dated 28.3.2017.

2. The learned counsel, appearing for the petitioner, assailing the impugned order, submitted that when the Manager (In-charge) of the third respondent/Milk Producers Co-operative Society, has no right or jurisdiction to pass any order of termination or suspension as a President of the second respondent/Milk Producers Co-operative Society, who is having control over the affairs of the Society as an Appointing Authority, the third respondent, who has been usurping the powers of President of the Cooperative Society, has wrongly, arbitrarily and without any authority ought not to have passed this order, therefore, the same is liable to be interfered with.

3. Mr.L.P.Shanmugasundaram, learned Special Government Pleader, appearing on behalf of the first respondent and Mrs.T.Girija, learned Government Advocate, appearing on behalf of the second and third respondents, also supporting the arguments of the learned counsel appearing for the petitioner, submitted that the Manager of the Co-operative Society, is not an Appointing Authority, when the President of the Co-operative Society is the Controlling Authority/ Appointing Authority. In support of her submission, the learned Government Advocate, appearing on behalf of respondents 2 and 3, also placing on record the Bye-laws of the Co-operative Society, submitted that as per Bye-law 13(i), the Manager cannot pass the impugned order removing the petitioner. It is necessary to extract the Bye-Law 13(i) as follows:

"13 (i). Any member of the establishment may, for good and sufficient be punished in one or other of the following ways in the discretion of the authority competent to award the punishment as shown in the table below:-

Society of the Employee punished	----- ----- Censure of Find	Authority Competent to ----- ----- Withhold increment	----- ----- Suspend or Reduce	----- ----- Dismiss
(1)	(2)	(3)	(4)	(5)
Secretary or Manager	President	President	Sub- Committee	Sub- Committee
All other Employees	Secretary	- do -	- do -	- do -

Notwithstanding anything contained in these special bye-laws, the President or the Chief Executive shall be competent to place any employee under suspension from service pending enquiry into grave charges, where such suspension is necessary in the interest of the Society or where a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest or in the interest of the Society."

4. The above provision clearly shows that the President of the Co-operative Society is the Competent Authority to place any employee under suspension from service pending enquiry into grave charges, where such suspension is necessary in the interest of the Society or where a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest or in the interest of the Society.

5. Refuting the abovesaid contention of the learned counsel for the petitioner, the learned counsel appearing on behalf of the fourth respondent, submitted that the petitioner is only a Milk Vendor working on daily wage basis, therefore, when any malpractice or irregularities committed by such Milk Vendor is brought to the notice of the third respondent, he can take action in the interest of the administration. But, without even following the Rules and Regulations, the Manager (In-charge) is also entitled to take action, cannot be accepted. When the Bye-law No.13(i), as extracted above, clearly shows that who are the competent authorities, to take action against the employees, whether it is daily wage employee or a permanent employee, only the Officer/Competent Authority mentioned under the Bye-law alone is entitled to proceed against the erring employees or the officials. While-so, in the present case, since the Manager or the Secretary has been shown only as an employee of the Society, they are not the Competent Authorities.

6. Mr.M.S.Palanisamy, learned counsel appearing for the fourth respondent, drawing the attention of this Court to the

proceeding dated 28.03.2017, appointing the petitioner as daily wagger from 01.09.2016 submitted that as the petitioner was appointed only on daily wage basis in the respondent-Co-operative Society, for any misconduct or misbehaviour, the Manager is legally entitled to relieve him from services, does not impress upon this Court, inasmuch as the very same proceeding dated 28.03.2017, appointing the petitioner on daily wage basis from 01.09.2016, has been issued by the President of the respondent-Co-operative Society. Therefore, when the petitioner is serving only as one of the employees in the respondent-Co-operative Society, this Court, not being satisfied with the argument advanced by Mr.M.S.Palanisamy, learned counsel appearing on behalf of the fourth respondent, is inclined to allow the writ petition.

7. In view of the above, this Court finding full agreement with the submissions made by the learned counsel appearing for the petitioner, the learned Special Government Pleader, appearing on behalf of the first respondent and the learned Government Advocate, appearing on behalf of the respondents 2 and 3, that the third respondent, who is a Manager, has no power and not a Competent Authority, is inclined to allow the writ petition by setting aside the impugned order.

8. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Deputy Registrar of Co-operative
Societies (Milk),
Vellore-9.

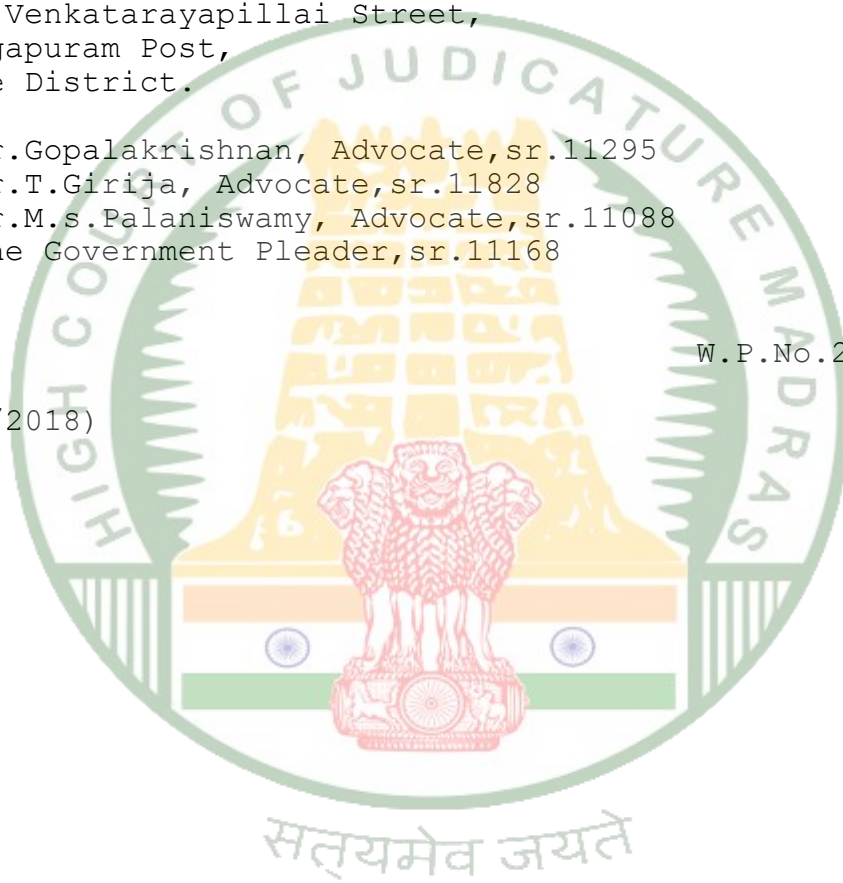
2. The President,
C-1706, Sholingapuram Milk Producers
Co-operative Society Ltd.,
No.25, Venkatarayapillai Street,
Sholingapuram Post,
Vellore District.

3. The Manager (In-charge),
C-1706, Sholingapuram Milk Producers
Co-operative Society Ltd.,
No.25, Venkatarayapillai Street,
Sholingapuram Post,
Vellore District.

+1cc to Mr.Gopalakrishnan, Advocate,sr.11295
+1cc to Mr.T.Girija, Advocate,sr.11828
+1cc to Mr.M.s.Palaniswamy, Advocate,sr.11088
+1cc to The Government Pleader,sr.11168

W.P.No.2695 of 2018

RMP (22/03/2018)



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