



W.P(MD)No.6199 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6199 of 2023
and
W.M.P.(MD)Nos.5902 and 5903 of 2023

Visalam

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Co-Operative Milk Producers
Federation Ltd.,
Pasumpon Muthuramalingam Salai,
Nandanam, Chennai.

2.The General Manager,
Kanyakumari District Co-Operative Milk
Producer Union Ltd.,
K.P.Road, Nagercoil-3.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file of the 1st respondent in connection with the impugned order of transfer passed by him in his proceedings in Ref. No.319/PE2/2023 dated 10.03.2023 and quash the same as arbitrary and unlawful.



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For Petitioner : Mr.M.Saravanan,
For Mr.P.T.Ramesh Raja

For Respondents : Mr.J.Devasenani
Standing Counsel.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was appointed as Senior Factory Assistant in Kanyakumari District Co-Operative Milk Producers Union Limited, Nagercoil in the year 1994. She is presently working as Deputy Manager. By the impugned proceedings dated 10.03.2023 issued by the Managing Director of Tamilnadu Cooperative Milk Producers' Federation Limited, Chennai, the petitioner had been transferred and posted to work at Cuddalore, DCMPU on on duty basis. The petitioner questions the said order primarily on the ground of lack of jurisdiction.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and



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called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The first respondent filed a detailed counter affidavit and the learned standing counsel took me through its contents. The stand of the first respondent is that on 20.02.2023, the Human Resources Committee met and passed certain resolutions. The relevant part of the minutes is as under:-

“Short tern arrangement on OD basis:

Since the TCMPF Limited and CDMPUs are separate legal entities as per Rule 149 (2A) of the Tamil Nadu Cooperative Societies Rules, 1988 deputation of employee is proved from one society to another society initially for one year and for the maximum of 3 years.

Hence, sharing of knowledge, skills among the employees of TCKPF limited and DCMPUs could not be done and in some cases sudden manpower requirement arises due to shortage of manpower, natural calamities and the District Unions find it difficult to manage the day to day activities.

To address the same, system of short term work arrangement orders on OD basis may be considered transferring an employee from TCMPD to any DCMPU,



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DCMPU to TCMPF & one DCMPU to another DCMPU irrespective of cadre on need basis for a period of 6 moths. In case the services of the individual is required beyond 6 months the services of the individual can be recommended for deputation as per Rule 149 (2A) of the Tamil Nadu Cooperative Societies Rules, 1988.”

5.The said decision was also subsequently accepted by the Commissioner for Milk Production and Dairy Development, Chennai – 51 vide proceedings bearing Rc.No.5371/N3/2023, dated 28.03.2023. The commissioner had given permission to the Managing Director of Tamil Nadu Milk Cooperative Producers' Federation Limited to issue work arrangement orders on OD basis in respect of employees from one DCMPU to other DCMPUs. The stand of the learned standing counsel is that in view of the aforesaid minutes and the order passed on 20.02.2023 by the Commissioner of Milk Production and Dairy Development, there is no merit in the contention of the petitioner's counsel. He would add that under Section 181 of the Tamil Nadu Cooperative Societies Act, 1983, the Commissioner is empowered to issue such a direction. He pressed for dismissal of the writ petition.



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6.I carefully considered the rival contentions and went through the materials on record. The minutes of the Human Resources Committee itself concedes that the Federation and the Milk Producers Union are separate legal entities. The petitioner is employed only in the second respondent union. The second respondent union is the appointing authority and the petitioner is receiving her pay only from the second respondent union. There is no master-servant relationship between the petitioner and the first respondent (Managing Director of the Federation). The question that arises for consideration is whether the petitioner can be transferred from the second respondent union to any other union. The byelaws as well as statutory rules do provide for such transfers. The Special byelaws No.7.1.3. (b) is as follows:-

“7.1.3 (b) Deputation on union employee

The board of the union on request or at its discretion may place the service of a Union employee for a specific period, at the disposal of a Co-operative institution, or Public Sector Undertakings or any State Government Departments, on foreign service terms. Such deputation shall conform to the conditions of Cooperative Act, Rule and Government



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Orders and as may be prescribed by the Board in this regard.

The competent authority for this purpose of 7.1.3(b) is:

(i) The Board of District Cooperative Milk Produces Union of deputing any Union employee to any institution or organization on foreign service terms, up to an below the cadre and rank of Deputy Manager within the State of Tamil Nadu

(i) The Board of Tamil Nadu Co Operative Milk Produces

(ii) Federation for deputing any Union employee inclusive of the cadre and rank of Manager and above within the State of Tamil Nadu / outside the state.

A reading of the aforesaid provisions would indicate that if the employee is the rank of the Manager or over, the competent authority is the Board of the Federation. If the employee in the rank of the Deputy Manager or below, then it is only Board of the concerned union that would be the competent authority. The writ petitioner is only holding the rank of Deputy Manager and she does not belong to common cadre.



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7.The petitioner can be transferred to any other union provided the other union is willing to take the petitioner. Thus, it is a matter between the managements of two unions. The first respondent patently lacks the power or jurisdiction or authority to transfer an union employee from one union to another union.

8.Then, the question that arises for consideration whether the subsequent proceeding dated 20.02.2023 issued by the Commissioner for of Commissioner of Milk Production and Dairy Development under Section 181 of the Tamil Nadu Cooperative Societies Act, 1983 will validate the impugned order of transfer. It is admitted that the proceeding of the Commissioner is subsequent in time. Section 181 of the Act is follows:-

“181. Power of Registrar to give directions in the public interest, etc.__(1) Where the Registrar is satisfied that in the public interest or for the purpose of securing proper implementation of co-operative production and other development programmes approved or undertaken by the Government or to secure the proper management of the business



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of any class of registered societies generally, or for preventing the affairs of any registered society being conducted in a manner detrimental to the interests of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of registered societies generally or to any registered society or registered societies in particular, he may, by order issue directions to them from time to time, and all registered societies or the registered society concerned, as the case may be, shall be bound to comply with such directions.

(2) The Registrar may, by order, modify or cancel any directions issued under subsection (1), and in modifying or cancelling such directions may impose such conditions as he may deem fit.”

This section was considered in the decision reported in (1999) 2 CTC 626 (T.Mutheeswaran Vs. The Registrar of Cooperative Societies (Housing), Gandhi Nagar, Adyar, Chennai – 20 and Others). A learned Judge of this Court had categorically held that Section 181 of the Act confers general powers of the Registrar to give direction for public interest. Where there is a specific provision, Section 181 of the Act will not be applicable. Since in this case, the special byelaws as well as the statutory rules specifically provide for transfer of an employee from one union to another, there is no question of falling back on the general



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power conferred under Section 181 of the Act.

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9.Looked at from any angle, the impugned order cannot be sustained. It is set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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G.R.SWAMINATHAN, J.

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