



W.P.No.12318 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.12318 of 2020
and W.M.P.Nos.15127, 15130 & 17986 of 2020

1.T.Somasundaram
2.A.Venkatesan

... Petitioners

VS.

- 1.The Secretary to Government
Animal Husbandry, Dairying and
Fisheries Department,
F.S.G., Chennai 600 009.
- 2.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George, Chennai 600 009.
- 3.The Commissioner of Milk,
Production and Dairy Development,
Madhavaram Milk Colony,
Chennai 600 051.
- 4.The Additional Milk Commissioner,
Office of the Commissioner,
For Milk Production and Dairy Development,
Madhavaram Milk Colony,
Chennai 600 051.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order dated 05.11.2019 made in G.O.(D)No.310, Animal Husbandry, Dairying and Fisheries Department passed by the 1st respondent and connected consequential orders (i) dated 06.01.2020 made in G.O.(D)No.8 Animal Husbandry, Dairying and Fisheries Department and (ii) dated 04.08.2020 made in G.O.(D)No.198, Animal Husbandry, Dairying and Fisheries Department passed by the 1st respondent and quash the same as null and void and consequently directing the 1st and 3rd respondents to create one post of Additional Milk Commissioner with the post of Deputy Milk Commissioner (Co-operation) as only a feeder category to the aforesaid newly created Additional Milk Commissioner.

For Petitioner : Mr.R.Sethu Pandian

For Respondents : Mr.M.Rajendiran
Addl.Govt.Pleader

ORDER

The present writ petition has been filed challenging the impugned order t dated 05.11.2019 and consequential orders (i) dated 06.01.2020 made in G.O.(D)No.8 Animal Husbandry, Dairying and Fisheries Department and (ii) dated 04.08.2020 made in G.O.(D)No.198, Animal



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Husbandry, Dairying and Fisheries Department passed by the 1st respondent and quash the same and consequently direct the 1st and 3rd respondents to create one post of Additional Milk Commissioner with the post of Deputy Milk Commissioner (Co-operation) as only a feeder category to the aforesaid newly created Additional Milk Commissioner.

2. The case of the petitioners is that they are working in the Office of the Deputy Registrar(Dairying), Thiruvallur and more than 800 staff including officers are working in the Dairy Development Department. The third respondent herein is officiating as functional Registrar for Diary Co-operatives in addition to the head of Department and who is also vested with all the powers of Tamil Nadu Co-operative Societies Act, 1983 and Rules 1988 as far as Dairy Co-operative Societies are concerned. On 20.04.1993, personnel of the Dairy Development Department (DDD) are being promoted in hierarchy basis and various vacant posts of the Department including Deputy Milk Commissioner(Co-operation) are being filled by promoting internal candidates of the Department. Either the posts of Deputy Registrar (Dairying) and Deputy Milk Commissioner (Co-operation) were filled by transfer of service from the Co-operative



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Department, now after the creation of own cadre vide G.O.Ms.No.105 AH & F Department dated 20.04.1993, the posting of officers by transferring from the Co-operative Department to this Department were completely stopped and the aforesaid Department is being run by its own cadre officers at all level from Junior Inspector to Deputy Milk Commissioner (Co-operation). The Commissioner for Milk Production and Dairy Development /3rd respondent is the I.A.S. Cadre.

3. It is the further case of the petitioner that in the impugned order dated 05.11.2019, it was not mentioned in the post of Deputy Milk Commissioner (Co-operation) as a feeder category to the newly created post of Additional Milk Commissioner and to redeploy the existing Deputy Milk Commissioner (Co-operation post to the proposed Regional Deputy Milk Commissioner. Aggrieved by the said impugned order, the petitioner has come forward with the present writ petition.

4. The learned counsel appearing for the petitioner would submit that only in the post of Senior Inspector and Deputy Registrar (Dairying) Direct Recruitment through Tamil Nadu Public Service Commission to



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the extent of certain percentage. Apart from that, the aforesaid own cadre staff, the Dairy Officer (Veterinary Doctor), Assistant Engineer (Civil) from PWD Department Accounts Officer from Treasury and Accounts Department and Agricultural Officer from Agricultural Department are working under the control of 3rd respondent. All the District Officers in the cadre of Deputy Registrar (Dairying) (Field level) along with requisite staff are working under the direct control of 3rd respondent to implement Government Policy and Schemes in addition to the administration of Dairy Co-operatives of the District. He would further submit that the post of Deputy Milk Commissioner (Co-operation) is vital to the Department since all the statutory powers of Tamil Nadu Co-operative Societies Act, 1983 and Rules 1988 except few important powers are conferred on him and also the Deputy Milk Commissioner(Co-operation) is to look after the interests of staff as well as the members/milk producers (farmers) of the Department and also powers of the Project Manager (Administration) which was abolished as early as in the year 1999, were conferred upon to the Deputy Milk Commissioner (Co-operation) .



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5. It is further submitted that after creation of own cadre vide G.O.Ms.No.105, Animal Husbandry and Fisheries Department dated 20.04.1993 and as per rules of the Department vide G.O.MsNo.2596 Agriculture Department dated 03.09.1968 and the said G.O. was amended as G.O.Ms.No.144 dated 31.08.2006 for changing nomenclature of the post of Deputy Registrar of Co-operative Societies as Deputy Registrar (Dairying) and the post of Sub-Registrar of Co-operative Societies as Co-operative Sub-Registrar in the Dairy Development Department with retrospective effect from 17.05.1998 i.e. the date of approval of the first panel of Deputy Registrar (Dairying) in the Department, the Deputy Registrar(Dairying) is the feeder category of the Deputy Milk Commissioner (Co-operation). Thereafter, the impugned order vide G.O.(D)No.310 , Animal Husbandry, Dairying and Fisheries Department dated 05.11.2019 was issued by the first respondent by the surrendering important and permanent post of Executive Engineer along with other posts. In lieu of surrender of the aforesaid post, one new post of Additional Milk Commissioner was created with malafide intention in order to accommodate certain individuals of the Department and orders were also passed in the aforesaid impugned order to deploy the vital post



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of Deputy Milk Commissioner and subsequently the post of Deputy Milk Commissioner (Co-op) has been deployed at Madurai vide G.O.(D)No.198, Animal Husbandry, Dairying and Fisheries Department dated 04.08.2020.

6. The learned counsel for the petitioner would further submit that as far as G.O(D)No.310, Animal Husbandry, Dairying and Fisheries Department dated 05.11.2019 anybody can be appointed as Additional Milk Commissioner since in respect of Feeder Category for promoting only Deputy Milk Commissioner (Co-operation) as Additional Milk Commissioner and hence there is ample scope for other officers of the department to claim the newly created Additional Milk Commissioner in the name of seniority and they would make back door entry to the pot of Additional Milk Commissioner. Since the above impugned order will directly impact the livelihood of milk producers especially women members of the SC/ST Community and due to non-mentioning of the feeder category in the impugned order dated 05.11.2019 to be promoted to the post of newly created Additional Milk Commissioner there is possibility to post any officer who may be alien to the members of the



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milk co-operative societies and hence one Mr.Vijayakumar, Advisor of Tamil Nadu Government Dairy Development Department SC/ST Employees Welfare Sangam (Reg.No.48/1976) submitted a detailed representation dated 13.03.2020 to the 1st and 3rd respondents requesting them to take immediate action to annul the GO.Ms.No.310, A.H.D. &F Department dated 05.11.2019 which is totally affront to Government Policy as laid down in the G.O.ms.No.105 dated 20.04.1993, but till date the respondents have failed to take action on the said representation dated 13.03.2020. Pursuant to the impugned order, the 4th respondent has been appointed as Additional Milk Commissioner vide G.O(D)No.8 Animal Husbandry, Dairying and Fisheries Department dated 06.01.2020. Without following the rule provisions vide Rule No.7(1) of Tamil Nadu Government Servants (Condition of Service) Act, 2016 wherein it has been specifically provided the list of approved candidates must be prepared prior to the aforesaid promotions. But, in the case, the promotion was given straightaway which is violation of the aforesaid Rule 7(1) of the Tamil Nadu Government Servants (Condition of Service) Act, 2016.



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7. The learned counsel further would submit that the feeder category to the post of additional Milk Commissioner ought to be the Deputy Milk Commissioner (Co-operation) since the Deputy Milk Commissioner (Co-operation) is promoted from its feeder category of Deputy Registrar (Dairying) as per hierarch rule which was in vogue since inception of the Department. But in the impugned order, no such order has been mentioned Deputy Milk Commissioner (Co-operation) as a feeder category to the newly created post of Additional Milk Commissioner and the said post also redeployed to Madurai vide G.O.(D) No.198 dated 04.08.2020. In the impugned order, it does not disclose the vital point of feeder category i.e who should be appointed as Additional Milk Commissioner since there is no post of Deputy Milk Commissioner, as discussed in the impugned order only the post of Deputy Milk Commissioner (Co-operation) is in existence in the Department and hence the impugned order is liable to be quashed.

8. A counter affidavit was also filed by the second respondent on 13.09.2024.



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9. The learned Additional Government Pleader appearing for the respondents would submit that the Deputy Registrar will be considered for the promotion of the post of the Deputy Milk Commissioner only after fulfilling the following condition as per the Agriculture Department G.O.Ms.No.2596, Agriculture Department dated 03.09.1968. Para 7 of the counter affidavit, it is extracted hereunder :-

- i) Must possess the minimum General educational qualification.
- (ii) Must have passed the examination in Co-operation Auditing, Banking and Book Keeping conducted by the Tamil Nadu Public Service Commission, Madras.
- (iii) The Account Test for Sub-Ordinate Officers, Part-I and
- (iv) Must have worked as Deputy Registrar (Dairying) for a period of not less than five years either in the Dairy Development or in the Madras Co-operative Service.

10. The learned Additional Government Pleader would further submit that as per G.O(D)No.310, Animal Husbandry Dairying and Fisheries Department dated 05.11.2019, the present post of Additional Milk Commissioner was created and in the absence of specific feeder



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category for promotion to the post of Additional Milk Commissioner was created and in the absence of specific feeder category for promotion to the post of Additional Milk Commissioner it is likely that any Group I Officers may be promoted and posted as Additional Milk Commissioner which is now challenged by the petitioner. He would further submit that as per Article 323(B)(3)(A)(a) of the Constitution of India , there must be feeder category to the promotional post. As per Tamil Nadu Government Servants (Service Conditions) Act, 2016 for promotion to higher post each post to be prescribed with qualifications and method of recruitment for Ministerial service, sub-ordinate service and State services posts.

11. Heard the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and also perused the materials evidence available on record.

12. The grievance of the petitioner is that the feeder category to the post of Additional Milk Commissioner is not mentioned in the impugned order and anybody can be appointed as Additional Milk Commissioner. In the impugned order, it is mentioned that it was proposed to surrender



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the post of one Executive Engineer and five posts of Extension Assistant in lieu of creation of one post of Additional Milk Commissioner by promotion and it may be filled from Deputy Milk Commissioner post on seniority basis from Dairy Development Officials. It is also mentioned that the Director for Milk Production and Dairy Development Department has therefore requested the Government to create one post of Additional Milk Commissioner in lieu of surrendering one Executive Engineer post and five posts of Extension Assistant and to redeploy the existing Deputy Commissioner (Co-operation) post to the proposed Regional Deputy Milk Commissioner.

13. In view of the surrender of above said post stated supra and to redeploy the existing Deputy Milk Commissioner (Co-operation)post to the proposed Regional Deputy Milk Commissioner. After carefully examining the proposal of the Director for Milk Production and Dairy Development Department and deciding to accept the proposal of the aforesaid Officer. The Government sanctioned the creation of one post of the Additional Milk Commissioner in the minimum pay of Rs.1,23,100/- (level 28 – 1,23,100-2,15,900) by surrendering the above said posts.



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14. This Court cannot interfere with the prerogative or discretion or the Policy of the Government and direct the respondents 1 to 3 to create one post of Additional Milk Commissioner with the post of Deputy Milk Commissioner (Co-operation) as only a feeder category to the aforesaid newly created Additional Milk Commissioner.

14. In view of the above facts and circumstances of this case, I do not find any grounds to interfere with the the impugned order passed by the first respondent dated 05.11.2019 .

15. Accordingly, this writ petition is dismissed as devoid of merits.
No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking: Non-speaking Order
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J.SATHYA NARAYANA PRASAD,J.

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To

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