



W.P(MD).Nos.10081 of 2023 etc. batch case

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 12.11.2024

ORDER PRONOUNCED ON : 15.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).Nos.10081, 10082, 10083, 10084, 10085 and 10087 of 2023
and**

**WMP(MD).Nos.8852, 8853, 8856, 8867, 8868, 8869, 8860, 8864, 8865,
8870, 8871, 8873, 8857, 8858, 8859, 8861, 8862, 8866, 14079, 14080,
14078, 16381, 14083 and 16376 of 2023**

W.P(MD).No.10081 of 2023

T.Chinnaraja

....Petitioner

Vs

1.The State of Tamil Nadu

Represented by its Principal Secretary to Government
Department of Animal Husbandry, Dairying, Fisheries,
Secretariat, Chennai

2.The Commissioner

The Department of Milk Production and Dairy Development
Chennai 51

3.The Managing Director (Aavin)

The Tamil Nadu Co-operative Milk Producer Federation
Chennai 35

4.The Deputy Registrar (Dairy)

Office of Deputy Registrar Office
District Co-operative Milk
Producer's Union Ltd.,
Madurai, Madurai District



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5.The General Manager
Madurai District Co-operative Milk
Producer's Union Ltd.,
Madurai
Madurai District

....Respondents

Prayer in WP(MD).No.10081 of 2023: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent vide his proceedings in Na.Ka.No.1330/N3/2022-4 dated 28.12.2022 and the consequential impugned order passed by the fifth respondent vide his proceedings in Na.Ka.No.86/Tho.U/2023 dated 04.01.2023 and quash the same as illegal and consequently direct the respondents to reinstate the petitioner with all monetary benefits.

For Petitioner : Mr.Sricharan Rengarajan
Senior Counsel
For Mr.Ramsundar Vijayaraj

For Respondents : Mr.A.Baskaran
Additional Government Pleader for R1

:Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.J.Devasenar
Standing Counsel for R2 to R5

COMMON ORDER

These writ petitions have been filed by various technicians of Madurai Milk Producers Co-operative Society Limited challenging the order passed by the Commissioner of Milk Production and Dairy Development dated



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28.12.2022 and the consequential order passed by the General Manager, Madurai District Co-operative Milk Producers Union Limited dated 04.01.2023.

2.Since common issues are involved, these writ petitions are tagged together and a common order is being passed.

(A) Facts leading to the filing of these writ petitions are as follows:

3.The Madurai District Co-operative Milk Producer's Union had issued an employment Notification on 19.06.2019 in Advertisement No.2 of 2019 calling for applications to the post of Technician (Electrical), Technician (Operation), Technician (Refrigeration) and Technician(Boiler).The Notification was issued for filling up 12 vacancies for the above said four posts. Out of 12 vacancies, only for 6 vacancies, posting orders were issued in February and March 2020.

4.On the basis of complaints received from the general public alleging illegality /irregularity in the recruitment process, the Commissioner of Milk Production and Dairy Development Department had ordered for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and appointed the Deputy Registrar (Dairy) Development Department, Madurai as an enquiry officer. After enquiry, a report was submitted on 05.08.2022 alleging certain irregularities in the recruitment process. Accepting the said report, the second respondent in the writ petition vide proceedings dated 28.12.2022 had



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directed the fifth respondent to initiate appropriate action and cancel the appointment orders. The fifth respondent by way of his proceedings dated 04.01.2023 had passed an individual impugned order terminating the services of the writ petitioners. These orders are under challenge in the present writ petitions.

(B)Contents of the impugned orders are as follows:

5.The second respondent in his impugned order after referring to the report under Section 81 of the Tamil Nadu Co-operative Societies Act, has found that the cadre strength has not been approved by the second respondent and the communal rotation has not been followed. That apart, there are several violations in following the administrative procedure.

6.Based upon the above said observations, the second respondent has directed the fifth respondent to initiate appropriate action. The fifth respondent in his impugned order dated 04.01.2023 had referred the following reasons for cancelling the appointment orders:

(a)Several complaints have been received from the general public alleging irregularity in appointment which resulted in conducting an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act.

(b)The communal rotation has not been followed.

(c)There is a direction issued by the second respondent to cancel the order of appointment.



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(C)Contentions of the learned Counsels appearing on either side are as follows:

(i) Though Section 81 enquiry report is the sole basis for passing both the impugned orders, such a report was not furnished to the petitioners before passing the impugned orders.

(ii)Once appointed to the post, unless proper enquiry is conducted after issuing notice, the order of termination cannot be issued. The present impugned order has been issued without calling for any explanation from the writ petitioners. Therefore, they are in violation of the principles of natural justice.

(iii)The Hon'ble Division Bench in its judgment dated 13.10.2023 in WA(MD).Nos. 554 to 597 of 2023 batch cases, while dealing with the similar issue arising out of Virudhunagar Union in Paragraph Nos. 7.9 to 7.11 has extensively considered the allegations and had quashed the termination order with a direction to the respondent to issue show cause notice and thereafter, initiate further action. However, such a procedure has not been adopted in the present case.

(iv)The learned Senior Counsel appearing for the petitioner in WP(MD).No.10085 of 2023 had contended that an additional reason has been assigned for issuing termination order to the petitioner in the said case to the effect that the petitioner in the said writ petition had inserted the demand



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draft after the cut-off date. The learned Senior Counsel had relied upon the application form of the petitioner in the said writ petition namely A.Satheesh Kumar and contended that the said application was submitted on 09.07.2019. The petitioner had relied upon a letter issued by the Canara Bank dated 04.06.2022 to the effect that the said Satheesh Kumar has purchased the Demand Draft for Rs.250/- on 04.07.2009 in favour of the General Manager, MDCMPU Limited, Madurai. Therefore, according to him, the Demand Draft has been purchased five days prior to the date of submission of the application and hence, the reason assigned in the impugned order of termination order is factually incorrect.

(v)The learned Senior Counsel had relied upon a judgement of the Hon'ble Supreme Court reported in **(2021) 4 SCC 631 (Sachin Kumar and others Vs. Delhi Subordinate Service Selection Board (DSSSB) and others)** especially Paragraph No.35 wherein it is held that where there is a possibility of segregating the wrongdoers, the selection of the untainted candidates could be allowed to pass muster by taking the selection process to its logical conclusion. In the present case, no such serious allegation has been made which would warrant cancellation of the entire selection process. Hence, he prayed for allowing the writ petition.

7.Per contra, the learned Additional Advocate General appearing for the respondents herein had contended that Theni District was bifurcated from



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Madurai on 01.09.2019 and therefore, the cadre strength of Madurai had fallen down warranting fresh approval from the Commissioner for revision of cadre strength. This would automatically result in revision of communal rotation. However, in the present case, without stopping the selection process, the officers in-charge have proceeded and issued appointment orders. Therefore, it is clear that the communal roster was not strictly followed.

8.The union has not maintained the register for receipt of application or the names of the candidates who have been called for to the interview. In such circumstances, it could only be presumed that there was a systematic fraud in the entire recruitment process. He had further contended that the petitioners herein have appeared before the enquiry officer under Section 81 of the Tamil Nadu Co-operative Societies Act and have offered their explanation. Only based upon the enquiry report, the impugned orders have been passed. Therefore, the question of again granting a second opportunity to offer explanation does not arise. Hence, he prayed for sustaining the termination orders.

9.I have considered the submissions made on either side and perused the material records.

(D)Discussion:

10.The petitioners herein have been appointed as Technicians in February and March 2020. The impugned termination orders have been



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issued on 28.12.2022 and January 2023 after a lapse of 2 ½ years. A perusal of the impugned order passed by the fifth respondent discloses that the order of termination has been issued on the sole ground that communal rotation has not been followed. The Hon'ble Division Bench in WA(MD).Nos. 554 to 597 of 2023 batch case dated 13.10.2023 while dealing with a similar allegation arising out of Virudhunagar Union in Paragraph No.7.9 had considered that the allegation relating communal rotation and found that it is only a procedural irregularity and it cannot be considered to be a case of wholesale malpractice or egregious fraud. The Hon'ble Division Bench has proceeded to set aside the order of termination and has passed consequential orders.

11.As far as the case of the petitioner in WP(MD).No.10085 of 2023 is concerned, one additional reason has been assigned by the fifth respondent while issuing the impugned order of termination, that the demand draft for Rs.250/- has been inserted after the cut off date. However, from the typed set of papers filed on the side of the petitioners, it is manifest that a demand draft was purchased by the petitioner on 04.07.2019 favouring the General Manager, MDCMPU Ltd., Madurai for a sum of Rs.250/- and the application was submitted only on 09.07.2019. Therefore, whether the demand draft was inserted on a later date or along with the application has to be ascertained only after conducting an enquiry.



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12.The allegations catalogued by the respondents relate to, not following the roster system, not maintaining proper register for receipt of applications and not obtaining approval from the Commissioner for re-fixation of cadre strength. The petitioners herein are no way connected with these procedural irregularities and they have applied based upon the notification and they have been selected and appointed. In such circumstance, this Court is of the considered opinion that the entire selection process cannot be considered to be a fraudulent one warranting cancellation.

13.It is no doubt true that the petitioners have been called for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and they have given their statement. However, the report has not been furnished to them. Without issuing any show cause notice calling for explanation, the impugned order of termination have been passed. Therefore, this Court is of the considered opinion that the order of termination is in violation of principles of natural justice. Therefore, this Court is inclined to follow the procedure adopted by the Hon'ble Division Bench dated 13.10.2023 in WA(MD).Nos.554 to 597 of 2023 while dealing with similar allegations arising out of Virudhunagar Union.

(E)Conclusion:

14.The writ petitions are disposed of on the following terms.



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a)The orders impugned in the writ petitions are set aside and the writ petitions are allowed.

b)The writ petitioners shall be reinstated into service with continuity of service and all other benefits except backwages.

(c)It would be open to the respondents to issue show cause notices to the employees specifically pointing out the allegation warranting cancellation of appointment and may proceed in accordance with law after giving due opportunity to the petitioners to offer their explanation.

(d)In case, if any serious irregularities are found out appropriate criminal proceedings or departmental proceedings may also be initiated as against the persons concerned.

(e)The respondents are at liberty to verify the credentials/ educational qualifications and other services including the character and antecedents.

(f)This order would not preclude the Vigilance and Anticorruption Unit, Madurai from proceeding with its enquiry in a manner known to law.

15.The writ petitions are allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

15.11.2024.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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