



W.P(MD).Nos.10147 & 10154 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 19.12.2023

ORDER PRONOUNCED ON : 16.02.2024

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).Nos.10147 & 10154 of 2023
and
W.M.P(MD).Nos.8959, 8960, 9012,
9014 & 14539 of 2023**

1.M.RevanthPetitioner in WP(MD).No.10147 of 2023

2.R.RavikumarPetitioner in WP(MD).No.10154 of 2023

Vs

1.The Commissioner of Milk Production
and Dairy Development Department
Mathavaram Milk Colony
Chennai 600 051

2.The Chairman
Representing by the Board cum Competent Authority
TID 483, Theni District Co-operative Milk Producers
Union Ltd.,
Natesh Apartments, Amman Nagar
Palanichettipatti
Theni District



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3.The General Manager

TID 483, Theni District Co-operative Milk Producers

Union Ltd.,

Natesh Apartments, Amman Nagar

Palanichettipatti

Theni District

4.The Deputy Registrar (Dairying)

Dairy Development Department

Aavin Complex, Sathamangalam

Madurai 625 020

....Respondents in both petitions

Prayer in WP(MD).No.10147 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 in connection with the impugned order passed by the first respondent in Na.Ka.No.2413/M.2/2021-1 dated 30.12.2022 and the consequential order passed by the third respondent in Na.Ka.No. 0073/Admin/2023 dated 06.01.2023 and quash the same and further direct the respondents to permit the petitioner to continue in the post of Executive Engineering within a reasonable time with all attendant benefits.

Prayer in WP(MD).No.10154 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 in connection with the impugned order passed by the first respondent in Na.Ka.No.2413/M.2/2021-1 dated 30.12.2022 and the consequential order passed by the third respondent in Na.Ka.No. 0074/Admin/2023 dated 06.01.2023 and quash the same and further direct the respondents to permit the petitioner to continue in the post of Driver (LVD) within a reasonable time with all attendant benefits.



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(In both the petitions)

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For Petitioners : Mr.K.S.Viswanath
Senior Counsel
For M/s.A.Banumathy

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.J.Devasenar
Standing counsel for the respondents

COMMON ORDER

The present writ petitions have been filed by two employees of the second respondent Co-operative Union challenging the order passed by the first respondent dated 30.12.2022 wherein he had directed the third respondent to cancel the appointment orders issued to the writ petitioners. A consequential order has been passed by the third respondent on 06.01.2023 cancelling the order of appointment. Challenging these two orders, the present writ petitions have been filed.

2.Facts leading to the filing of the present writ petitions are as follows:

(i)An Employment Notification was issued by the third respondent herein calling for applications for various posts from eligible candidates in Advertisement No.2 of 2021 dated 26.01.2021.

(ii)The petitioner in W.P(MD).No.10147 of 2023 had applied to the post of Executive(Engineering). Out of two vacancies, one was reserved for



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General Turn-Priority and other was reserved for scheduled caste (Arunthathiar-Priority). The petitioner belonging to backward class community had applied under General Turn-Priority.

(iii)The petitioner in WP(MD).No.10154 of 2023 had applied for the post of Driver/LVD. The said post for reserved for General Turn-Non Priority.

(iv)The petitioner in WP(MD).No.10147 of 2023 had appeared for skill examination on 13.02.2021 and on being successful, he had appeared for an interview on 24.02.2021. The petitioner was issued with an appointment order on 05.05.2021 and he joined duty on 06.05.2021.

(v)The petitioner in WP(MD).No.10154 of 2023 had appeared for skill examination on 24.02.2021 and on being successful, he had appeared for an interview and the certificate verification on the same date. The petitioner was issued with an appointment order on 26.02.2021 and he joined duty on the same date.

(vi)Based upon certain complaints from the general public relating to the irregularity in the recruitment process, the first respondent herein had initiated ordered for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act by his order dated 30.11.2021 appointing the Deputy Registrar (Dairy) Madurai as the Enquiry Officer.

(vii)The Enquiry Officer has submitted his report on 05.05.2021 alleging various irregularities in the recruitment process. Based upon the said



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report, the first respondent had issued a direction to the third respondent on 30.12.2022 to cancel the appointment that have been made pursuant to the notification dated 26.01.2021. In compliance with the order of the first respondent, the third respondent had issued a consequential order on 06.01.2023 cancelling the orders of appointment with regard to both the writ petitioners. Challenging the same, the present writ petitions have been filed.

3.Contentions of the learned Senior Counsel appearing for the petitioners:

(i).According to the learned senior counsel appearing for the writ petitioners, no specific reasons have been assigned by the authorities concerned for passing of the impugned orders in both the writ petitions. In the enquiry report filed under Section 81 of the Tamil Nadu Co-operative Societies Act, it is pointed out that some of the relatives of the petitioners are working in the said society and therefore, the appointment order is illegal. However, no such relatives are working at the relevant point of time. The learned counsel had further contended that a copy of the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act has not been furnished to the writ petitioners. The petitioners have not been given any proper opportunity in the said enquiry.

(ii)The learned sernior counsel had further contended that without conducting any further enquiry or giving opportunity to the writ petitioners,



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the first respondent had passed a blanket order directing the third respondent to cancel all the appointments. The consequential impugned order also does not reveal the reason for cancelling the orders of appointment.

(iii)The learned counsel for the petitioners had further contended that only the Board is the competent authority to appoint or remove any employee from service. In the present case, the cancellation order has been issued by the third respondent under the order of the first respondent herein. Therefore, the order of cancellation of appointment order is without jurisdiction. Hence, he prayed for allowing the writ petitions.

(iv)The learned senior counsel appearing for the petitioners had further contended that the General Manager and the Deputy Registrar (Dairy) are part of the recruitment process. However, no action has been initiated as against them.

(v)The order of cancellation of appointment is stigmatic in nature and therefore, even a probationer is entitled to have a show cause notice before such an order being passed. No allegations have been made as against both the petitioners in Section 81 enquiry report. There is no allegation of any egregious fraud in the selection process and therefore, the order of cancellation of appointment is clearly in violation of principles of natural justice.



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4.Contentions of the learned Additional Advocate General appearing for the State are as follows:

(i)A perusal of the report under Section 81 of the Tamil Nadu Co-operative Societies Act will clearly reveal that the petitioner's father in WP(MD).No.10147 of 2023 namely Dr.Murugan was working in the same Society as Special Grade Manager (Veterinary). The petitioner's father in WP(MD).No.10154 of 2023 namely Mr.C.Rajasekaran was one of the Board of Directors of the said Union. He had resigned the said post only to enable his son to get the post of driver. The resignation letter was not placed before the Board for his approval and therefore, on the date of appointment, the petitioner's father (W.P(MD).No.10154 of 2023) continued to be a Director of the said Union. As per Rule 149 (5) of the Tamil Nadu Co-operative Societies Rules, 1988, no person who is a near relative or of a member of the Board or an officer of a society shall be appointed to any post in the service of such society. If a doubt arises as to whether a person is or is not a near relative of a member of the board or of an officer of a society, the board shall refer it to the Registrar for decision.

(ii)In the present case, the father of the petitioner in both the writ petitions were either a Director or an Officer of the said Union at the relevant point of time. Therefore, their appointments are clearly in violation of Rule 149(5) of Tamil Nadu Co-operative Societies Rules. In view of the said facts,



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the question of issuing a show cause notice would not arise. The petitioners being probationers, need not be issued with any show cause notice before issuing a non-stigmatic termination order. Hence, he prayed for sustaining the orders impugned in the writ petitions.

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

6.Discussion:

(i)A perusal of the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act reveals that the petitioner's father in W.P(MD).No. 10147 of 2023 was working as a Special Grade Manager (Veterinary) in the same Union when the petitioner was appointed as Executive (Engineering). The enquiry report further reveals that the petitioner's father in W.P(MD).No. 10154 of 2023 was the member of the Board of Directors when the petitioner was appointed as Driver (LVD). According to the respondent authorities the said appointments are clearly in violation of Rule 149(5) of Tamil Nadu Co-operative Societies Rules, 1988.

(ii)Based upon the said enquiry report, the first respondent has issued a direction to the third respondent to cancel all the appointments. In compliance with the said order, the third respondent has passed the consequential impugned orders. A perusal of both the impugned orders would disclose that no reasons have been assigned for cancellation of the



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appointment orders except relying upon the enquiry report under Section 81 and the orders of the first respondent.

(iii) It is the contention of the learned counsel appearing for the writ petitioners that the petitioner's father in WP(MD).No.10147 of 2023 was working on deputation basis in the said Union and therefore, he can never be considered to be an Officer of the said union in which the petitioner came to be appointed. He had further contended that the petitioner's father in WP(MD).No.10154 of 2023 had already resigned from the post of member of Board of Director and during the recruitment process, he was not a Board Member. Therefore, these factual disputes have to be addressed and only thereafter, the validity of the appointment orders issued to the writ petitioners could be found out. In such circumstances, the cancellation of the appointment orders without issuing any show cause notice to the writ petitioners is clearly in violation of the principles of natural justice.

(iv) Even assuming that the order of appointments issued to the concerned writ petitioners are in violation of Rule 149(5) of Tamil Nadu Co-operative Societies Rules, a show cause notice ought to have been issued to them calling for an explanation.



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7.In view of the above said facts, this Court is inclined to pass the

following orders:

(i)The orders impugned in both the writ petitions are set aside and the matters are remitted back to the file of the concerned respondents.

(ii)The respondents are directed to reinstate the petitioners in their respective posts with continuity of service, but without backwages.

(iii)The respondent authorities are at liberty to issue a show cause notice specifically mentioning the reason for proposing to cancel the appointment orders and based upon the explanation submitted by the petitioners, the authorities can proceed further in accordance with law.

8.The writ petitions are allowed to the extent as stated above. No costs.

Consequently, connected miscellaneous petitions are closed.

16.02.2024.

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

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Pre-delivery common order made in

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