



W.P.(MD).Nos.10148 of 2023 batch cases

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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.10148, 10149, 10151, 10152, 10153, 10157, 10158, 10159,
10160, 10162, 10164, 10165, 10166, 10167, 10168, 10169, 10170, 10171,
10172, 10174, 10175, 10176, 10178, 10180, 10700 and 10884 of 2023
and**

**W.M.P(MD).Nos.8968, 14506, 8978, 14536, 9033, 14504, 9040,
14067, 9049, 14076, 9053, 14069, 9006, 14057, 9023, 14056, 9028, 14074,
8965, 14092, 8984, 14534, 8969, 14075, 8979, 14058, 8982, 14513, 8993,
14515, 9000, 14500, 9001, 14537, 9047, 14073, 9056, 14061, 9068, 9072,
14538, 9093, 14068, 9104, 14071, 9115, 14059, 9540, 17188, 9431 and
17193 of 2023**

W.P(MD).No.10148 of 2023

S.K.Selvaraj

....Petitioner

Vs

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

2.The Chairman
Represented 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

Prayer in WP(MD).No.10148 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.0039/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 Deputy Manager (Quality Control) within a reasonable time with all attendant benefits.

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.Devasenani
Standing counsel for the respondents



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COMMON ORDER

The present writ petitions have been filed by various employees of the second respondent District Co-operative Milk Producers 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 which were made pursuant to the advertisement dated 13.11.2020, 26.01.2021 and 30.01.2021. A consequential order has been passed by the third respondent herein on 06.01.2023 cancelling the appointment orders issued to the writ petitioners. These two orders are under challenge in the present writ petitions.

2.Since a common issue is involved, all the writ petitions are tagged together and a common order is passed.

3.Facts leading to the filing of these applications are as follows:

(i)The third respondent herein namely the General Manager, Theni District Co-operative Milk Producers Union Limited had issued three Employment Notifications on 13.11.2020, 26.01.2021 and 30.01.2021 calling for applications for various posts from the eligible candidates. These advertisements are published in newspapers.



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(ii)The petitioners herein have applied for the same and appeared for the written examination. On being successful, they were called for an interview and certificate verification. The petitioners were selected and appointed to their respective posts.

(iii)Based upon complaints received from the general public relating to the alleged illegalities/irregularities in the recruitment process pursuant to the above said three notifications, the first respondent herein had passed an order on 30.11.2021 appointing the fourth respondent as an Enquiry Officer for conducting an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act.

(iv)The fourth respondent herein after conducting the enquiry, submitted a report to the first respondent on 05.05.2022. In the said enquiry report, it was found that various procedural irregularities have been committed during the recruitment process and he had recommended for cancellation of the appointments and for initiating appropriate departmental proceedings as against the officials concerned.

(v)Based upon the above said report, the first respondent herein had passed an order on 30.12.2022 wherein he had directed the third respondent



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to cancel the appointment orders issued to all these petitioners who were selected pursuant to three advertisements dated 13.11.2020, 26.01.2021 and 30.01.2021. In compliance with the said order, the third respondent herein had passed an order on 06.01.2023 cancelling the appointment orders issued to the writ petitioners. These two orders are under challenge in the present writ petitions.

4.Contentions of the learned counsel appearing for the writ petitioners are as follows:

(i)All the petitioners are fully qualified as per Employment Notification and they were successful in the written examination as well as in the interview. Only after strictly following the recruitment process, they have been appointed.

(ii)Though the petitioners were called upon to appear for an enquiry under Section of 81 of the Tamil Nadu Co-operative Societies Act, they were not aware of the reason for which they were called for an enquiry.

(iii)The Enquiry Officer has not questioned anything about the recruitment process.



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(iv)The enquiry report alleging certain irregularities in the recruitment process has not been furnished to the selected candidates. Therefore, the petitioners did not have any opportunity to refute the findings in Section 81 enquiry report.

(v)The orders impugned in the writ petition have been passed solely relying upon Section 81 enquiry report. No independent enquiry has been conducted. No reasons have been assigned in the impugned orders to issue the order of cancellation of the appointments. Before issuing the cancellation of appointment orders, no show cause notice was issued to the writ petitioners nor any independent enquiry was conducted.

(vi)As far as the appointment and termination of an employee of a Co-operative Society is concerned, only the second respondent Board is legally entitled to do so. However, in the present case, the first respondent and the third respondent have passed the orders impugned in the writ petitions which is without jurisdiction.

(vii)The orders impugned in the writ petitions do not assign any reason whatsoever for issuing cancellation of appointment orders and therefore, these orders are liable to be set aside.



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(viii)The orders impugned in the writ petitions being bereft of any reason are liable to be quashed.

(ix)Even assuming that the petitioners are undergoing probation, these impugned orders being stigmatic in nature, they could be terminated only after conducting a detailed enquiry. Hence, they prayed for allowing the writ petitions and for reinstating the petitioners in their respective posts.

5.Contentions of the learned Additional Advocate General for the respondents are as follows:

(i)The applications ought to have been invited from the prospective candidates only through the official website of Aavin. However without getting a proper permission or approval from the first respondent, the applications have been invited through a private website. Therefore, there was a large scope for manipulation of the applications.

(ii)For preparation of question papers and for conducting written examination, a request was made to Madurai Kamarajar University, Trichy Bharadhidasan University and Virudhunagar Kalasalingam University. Though it is orally contended, citing Covid-19, Bharadhidasan University and Kamarajar University have refused to undertake the said work, no letter of



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rejection has been placed on record. Hence, the entire work of preparation of question paper and conduct of examination was handed over to a private University.

(iii)The first respondent by his proceedings dated 24.02.2015 had directed all the Co-operative Union to send hall tickets for any competitive examination only through registered post, at least 15 days prior to the date of examination. However, in the present case, for conducting written examination on 26.12.2020, the hall tickets have been sent through Courier only on 16.12.2020 giving only 9 days time between the date of examination and despatch of hall tickets.

(iv)In cases, where the candidates were called for interview, a 10 days clear notice is mandatory as per order of the first respondent. However, for conducting the interview on 11.01.2021, e-mails have been sent to the concerned candidates only on 04.01.2021.

(v)In view of the above said irregularities committed at the time of recruitment process, many candidates had remained absent in the written examination and the interview. Taking advantage of the same, the petitioners herein have been appointed.



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(vi) Since there was a large scale fraud in the recruitment process, the entire selection has been cancelled.

(vii) The petitioners being probationers, no notice is required for terminating them, in view of the fact that the order of cancellation of appointment orders are not stigmatic in nature. The petitioners have participated in Section 81 enquiry and therefore, the contention of the petitioners that they were not given adequate opportunity to represent their cases is not legally sustainable. Hence, he prayed for dismissing the writ petitions and to sustain the orders impugned in the writ petitions.

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

Discussion:

7. The petitioners herein have applied for various posts pursuant to the employment notification issued by the third respondent herein on 13.11.2020, 26.01.2021 and 30.01.2021. On being successful in the written examination and the interview, all the petitioners have been appointed on various dates in January and February 2021. An enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act has been ordered by the first respondent on



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30.11.2021 and the enquiry report has been submitted by the fourth respondent on 05.05.2022. Based upon the enquiry report, the orders impugned in the writ petition have been passed by the respondents 1 and 3 on 30.12.2022 and 06.01.2023 respectively. These facts are not in dispute.

8.The primary contention of the learned counsels appearing for the writ petitioners is that no allegations have been made as against writ petitioners with regard to their eligibility or qualification to be appointed to the respective posts. In the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act, the petitioners have not been found to be privy to the alleged irregularities in the recruitment process. No allegations have been made as against any appointees specifically. All the alleged irregularities have been cited only as against the authorities who were part of the recruitment process. In such an event, the petitioners ought to have been granted an opportunity to explain their stand.

9.A perusal of the impugned orders of the first respondent dated 30.12.2022 reveals that he had directed the third respondent to cancel the order of appointments only based upon the report submitted under Section 81 of the Tamil Nadu Co-operative Societies Acts. No independent reason has been assigned by the first respondent for passing the said impugned orders.



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10.A perusal of the consequential impugned order of the third respondent dated 06.01.2023 reveals that in view of the order dated 30.12.2022 of the first respondent, he is issuing the order of cancellation of appointment. Even in the consequential impugned order, no specific reason has been assigned whatsoever with regard to each one of the appointees. Therefore, it is clear that both the impugned orders are as vague as it could be.

11.A perusal of Section 81 enquiry report which touches upon the appointment of the petitioners reveals that no specific allegation has been made as against any one of the petitioners alleging that they are privy to the fraud or any irregularity in the recruitment process. No allegation of any corrupt practice has been placed on record with regard to the petitioners. That apart, the said 81 enquiry report has not been furnished to the petitioners or any explanation was called for from the petitioners relating to the said report.

12.As far as the allegation of calling for applications through private website is concerned, the learned counsel for the petitioners have brought to the notice of the Court that a corrigendum was issued in newspapers relating to change of website due to defect in server of the official website. There is no allegation from any one of the non-selected candidates with regard to the



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mode of preparation of question papers or valuation of the answer scripts. No complaint has been placed on record with regard to non-receipt of hall-tickets for the written examination or call letter for the interview.

13. Therefore it is clear that the role of the petitioners in these alleged irregularities require to be enquired into and without arriving at such a finding, the appointment orders cannot be cancelled. Though the petitioners are undergoing probation, the impugned order of cancellation of appointment orders clearly reveal those orders have been issued, in view of illegality/irregularity in the recruitment process. Therefore, these orders are clearly stigmatic in nature. Unless the petitioners are put on notice and an explanation is called for from them, the cancellation of appointment orders could only be construed to be in violation of principles of natural justice warranting interference from this Court.

Conclusion:

14. In view of the above said deliberations, this Court is inclined to pass the following orders:

(i) The orders impugned in the writ petitions are set aside and the petitioners are directed to be reinstated in service with all attendant benefits without back wages.



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(ii)The authorities are at liberty to issue individual show cause notices to the concerned employees pointing out the specific allegations, if any, warranting cancellation of appointment that is permissible in law and take further action after receiving explanation from the concerned employees in accordance with law.

(iii)The authorities are at liberty to conduct further enquiry to verify the applications, answer sheets/marks. In case, if they gather further information, they are at liberty to lodge a criminal complaint or initiate disciplinary proceedings as the case may be.

(iv)The respondent authorities are at liberty to scrutinize the educational qualification or the certificates and the antecedents of the concerned candidates in accordance with law.

(v)The authorities are also at liberty to lodge a complaint before the Vigilance and Anti Corruption Unit, Theni, if warranted.

15.All 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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