



W.P.(MD).Nos.10150, 10155, 10161, 10163 & 10173 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. 10150, 10155, 10161, 10163 & 10173 of 2023

and

**W.M.P(MD).Nos.8989, 9019, 8999, 9011, 9061, 14507, 14501, 14060,
14077 & 17210 of 2023**

W.P(MD).No.10150 of 2023

P.Nivetha

....Petitioner

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



W.P.(MD).Nos.10150, 10155, 10161, 10163 & 10173 of 2023

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.10150 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. 0067/Pers.Estt/2019 dated 06.01.2023 and quash the same and further direct the respondents to permit the petitioner to continue in the post of Sales Executive within a reasonable time with all attendant benefits.

For Petitioner : 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



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COMMON ORDER

These writ petitions have been filed 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. The third respondent has passed a consequential order on 06.01.2023 cancelling the order of appointment of the writ petitioners. These two orders are under challenge in the present writ petitions.

2.Since a common issued is involved, the present writ petitions have been tagged together and a common order is passed.

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

(i)The respondents 2 and 3 herein had issued an employment notification in Advertisement No.2 of 2021 on 26.01.2021 calling for applications from eligible candidates for 18 posts. All the petitioners herein have applied to the post of Executive (Engineering). The notification was issued for filling up of two vacancies in the said cadre. One vacancy was reserved for General Turn-Priority and other vacancy was reserved for Scheduled Caste (Arunthathiar-Priority)



W.P.(MD).Nos.10150, 10155, 10161, 10163 & 10173 of 2023

(ii)The petitioners herein had applied for the said post and appeared for

a written examination on 13.02.2021. On being successful, the petitioners were directed to appear for an interview and certificate verification on 26.02.2021. Vide proceedings dated 05.05.2021, the petitioners were appointed as Sales Executive and they joined duty on 06.05.2021.

(iii)Based on certain complaints relating to illegality /irregularity in the recruitment process, the first respondent had directed for conducting an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and by his proceedings dated 30.11.2021 appointed the fourth respondent as Enquiry Officer.

(iv)The fourth respondent herein had submitted his enquiry report on 05.05.2022 alleging various irregularities in the recruitment process.

(v)Based upon the said enquiry report, the first respondent herein has addressed a communication to the third respondent on 10.12.2022 requesting him to cancel all the appointment orders issued pursuant to the notification dated 26.01.2021. In compliance with the said order, the third respondent herein had passed an order on 06.01.2023 cancelling the appointment orders.

The order dated 30.12.2022 of the first respondent and the consequential



W.P.(MD).Nos.10150, 10155, 10161, 10163 & 10173 of 2023

order dated 06.01.2023 of the third respondent are impugned in the writ petitions.

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

(i)The first respondent alone had granted permission to appoint the petitioners herein as Sales Executives. Therefore, there is no violation as alleged in the impugned orders.

(ii)The petitioners have not been put on notice or any opportunity of hearing providing to them before passing the impugned orders. Hence, the impugned orders are in violation of the principles of natural justice.

(iii)The second respondent herein alone is the competent authority to exercise any power of appointment or cancellation of appointment. Therefore, the order passed by the third respondent herein is without any jurisdiction.

(iv)In case of violation of any Rules/Regulation, a charge memo should have been issued to the petitioners and regular enquiry should have been conducted. Without following the established procedure, the orders impugned in the writ petitions have been passed which amounts stigmatic.



W.P.(MD).Nos.10150, 10155, 10161, 10163 & 10173 of 2023

(v)The respondents 3 and 4 are part of the selection process and the first respondent is the person who had accorded sanction for the selection. Therefore, Section 81 enquiry cannot be relied upon to issue the impugned order of cancellation of appointment.

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

(i)The petitioners have applied for the post of Executive (Engineering), but they have been selected for the post of Sales Executive for which no advertisement was issued.

(ii)In fact, the post of Sales Executive is an ex-cadre post which is filled up through out sourcing. Therefore, the appointment of the petitioners is clearly illegal.

(iii)He had further contended that when there is no such post in the Milk Producers Union, the issuance of employment notification or following recruitment process will not confer any legitimacy upon the appointment of the writ petitioners.

(iv)The petitioners being probationers, their services can be terminated at any point of time without issuing any notice.



W.P.(MD).Nos.10150, 10155, 10161, 10163 & 10173 of 2023

(v)The impugned orders are not stigmatic in nature and therefore, the question of conducting an enquiry before terminating the petitioners would not arise. Hence, he prayed for dismissal of the writ petitions.

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

Discussion:

7.The Bye-laws of the second respondent Union have been approved by the Deputy Registrar (Dairy) Theni on 16.12.2020. Clause 7-(3) deals with mode of recruitment /promotion for any category of posts in the Union. Under the said Clause, Sub-clause 49 deals Executive (Engineering). A perusal of the said Clause indicates that it is a promotional post based on selection process. As per the said Sub-rule, the candidates should have worked for not less than 3 years in District Co-operative Milk Producers Union in handling dairy plant and machinery/transport/cattle feed unit/stores. It further reveals that the salary is in Level-9 having a pay band of Rs. 20,000/- - 63,600/-. Therefore, it is clear that the Executive (Engineering) is reserved as a promotional post and not open for direct recruitment.

8.A perusal of Employment Notification dated 26.01.2021 reveals that the applications have been called for from the eligible candidates for the post



W.P.(MD).Nos.10150, 10155, 10161, 10163 & 10173 of 2023

of Executive(Engineering). Therefore, it is clear that for a post which is reserved for promotees, an advertisement has been issued for direct recruitment which is clearly in violation of the bye-laws of the said society. The first respondent has no power to permit the Union to go for a direct recruitment of Sales Executive is violation of the approved bye-laws. Hence, calling for applications for the above said post is clearly illegal and it will not confer any right upon the writ petitioners, merely because they have applied for the said post.

9.Though the petitioners have applied to the post of Executive (Engineering), they have been issued with an appointment order to the post of Sales Executive on 05.05.2021. The post of Sales Executive carries a pay band of Rs.20,600/- -65,500/- which is higher than the pay band of Executive (Engineering) for which post the petitioners have applied. A perusal of the approved Bye-laws of the concerned Union further reveals that there is no such post in the said Union. Therefore, it is clear that the petitioners have been appointed as Sales Executive which is not falling within the cadre strength of the concerned Union.

10.It is clear from the above said discussion that the petitioners who had applied for the post of Executive (Engineering) have been appointed to the post of Sales Executive for which no advertisement has been issued. The



W.P.(MD).Nos.10150, 10155, 10161, 10163 & 10173 of 2023

Bye-laws of the society also reveals that there is no such post as Sales Executive. The impugned order of the third respondent reveals that the post of Sales Executive is an out-sourced job and it does not fall within the sanctioned cadre strength. Hence, it is clear that the petitioners' appointment to the post of Sales Executive is not only in violation of the Bye-laws, but also contrary to the employment notification.

11.Though no allegations have been made as against the petitioners in 81 enquiry, the petitioners cannot have any defence whatsoever for being appointed as Sales Executive (not within the approved cadre strength) when they have applied for the Executive (Engineering) which is a promotional post. Therefore, remitting the matter back to the authorities for issuing a notice or conducting an enquiry would only be an empty formality.

12.In view of the above said deliberations, there are no merits in the writ petitions. All the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

16 .02.2024.

Internet : Yes/No
Index : Yes/No
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W.P.(MD).Nos.10150, 10155, 10161, 10163 & 10173 of 2023

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Pre-delivery common order made in

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