



W.P.(MD).Nos.10410 to 10417 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 18.12.2023

ORDER PRONOUNCED ON : 01.02.2024

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

**W.P.(MD).Nos.10410 to 10417 of 2023
and**

**W.M.P(MD).Nos.9213, 9217, 9215, 9218, 9220, 9221, 9228, 9229, 9224,
9227, 9234, 9235, 9222, 9223, 9225 and 9226 of 2023
and WMP(MD).Nos.20732, 20722, 20726, 20728, 20729,
20706, 20708 and 20709 of 2023**

W.P(MD).No.10410 of 2023

R.Poornima

....Petitioner

Vs

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

2.The Chairman
Representing the Board Cum Competent Authority
Tanjore District Co-operative Milk Producers Union Ltd.,
Nanjikottai Road
Tanjore

3.The General Manager
Tanjore District Co-operative Milk Producers Union Ltd.,
Nanjikottai Road
Tanjore



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4.The Deputy Registrar (Dairying)
Tanjore District Co-operative Milk Producers Union Limited
Nanjikottai Road
Tanjore

....Respondents

Prayer in WP(MD).No.10410 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.1330/N.3/2022-2 dated 28.12.2022 and the consequential impugned order passed by the third respondent in Na.Ka.No. 650/admin/81 enquiry/2021 dated 03.01.2023 and quash the same and further direct the respondents to permit the petitioner to continue in the post of Manager (Account) 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.K.Prabhu
Standing Counsel for the respondents

COMMON ORDER

The present writ petitions have been filed by various employees of Thanjavur District Co-operative Milk Producers Union Limited challenging the order passed by the Commissioner of Milk Production and Dairy Development Department, Chennai dated 28.12.2022 and the consequential



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order passed by the General Manager of Thanjavur District Co-operative Milk Producers Union Limited on 03.01.2023 cancelling the appointment orders issued to the writ petitioners on various grounds.

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

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

(i)The Milk Producers Union, Thanjavur had issued Advertisement No. 1/TNJ/2019 on 29.11.2019 calling for applications from the eligible candidates for 15 vacancies to 10 different posts.

(ii)The petitioners herein have applied to the said posts to the third respondent. The last date for receipt of applications was fixed as 31.12.2019.

(iii)The writ petitioners had appeared for written examination held on 13.12.2020 and on being successful, they have appeared for an interview on 12.01.2021. On being selected, the petitioners had appeared for certificate verification on 29.01.2021. All the petitioners were issued with an appointment order to their respective posts on 26.02.2021.

(iv)On the basis of the complaint received from the general public relating to the alleged illegalities/irregularities in the recruitment process, the Commissioner of Milk Production and Dairy Development Department, Chennai had ordered for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and appointed the Deputy Registrar (Dairy)



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Development Department, Madurai as the Enquiry Officer. After conducting enquiry, he had submitted a report on 06.05.2022. In the said report, the Enquiry Officer had found some irregularity/illegality in the recruitment process. Accepting the said report, the first respondent had instructed the third respondent to initiate appropriate action by an order dated 28.12.2022.

(v) In compliance with the said order, the third respondent had passed separate impugned orders on 03.01.2023 terminating the services of all the writ petitioners on various grounds. Challenging these two orders, the present writ petitions have been filed.

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

(i) Though Notification was issued for 15 vacancies of 10 posts, only 8 of them were appointed in the recruitment process. All the 8 appointees have been terminated without assigning any reason whatsoever.

(ii) A perusal of both the impugned orders will clearly indicate that without assigning any reason whatsoever, solely based upon the recommendation made by the Enquiry Officer appointed under Section 81 of the Tamil Nadu Co-operative Societies Act, the present impugned orders have been issued.

(iii) The petitioners have not been put on notice or any enquiry being conducted before passing the order of termination.



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(iv)The power to appoint and terminate the employees of the Co-operative Society vest only with the Board of Directors as per byelaws.

Neither the first respondent nor the third respondent have any power to terminate the already appointed employees.

(v)An enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act is only a fact finding enquiry and therefore, the same cannot be implemented unless it is followed by subsequent legal proceedings.

(vi)No allegations have been made as against the writ petitioners either under Section 81 Enquiry Officer or in the vigilance enquiry.

(vii)The petitioners cannot be found fault with for some irregularities committed by the officials in not strictly following the recruitment process. Hence, he prayed for setting aside the order of termination and for reinstatement of the writ petitioners.

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

(i)The provisions under Sections 149(1) and 149 (2) of the Tamil Nadu Co-operative Societies Act have not been followed in the recruitment process. The scrutiny of the applications have to be carried out by three members. However a committee consisting of only two members have scrutinized the said applications. A representative from the Commissionerate has not been included in the selection committee.



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(ii) Large number of applications have been received and many of them have been rejected without assigning any reason whatsoever. The applications have not been segregated as accepted and rejected and rejected the applications without assigning reasons for rejections.

(iii) The question paper for the post of Manager Accountant has not been prepared with reference to the institution that provide certificate for chartered accountant and ICWA of India.

(iv) The petitioners have filed the present writ petitions after participating in the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act.

(v) Disciplinary action has been initiated as against the officials involved in the irregularities in connection with the direct recruitment.

(vi) When the appointment of the petitioners are illegal in nature, the question of issuing any show cause notice prior to termination is unwarranted.

(vii) The petitioners have not completed their probation on the date when the termination orders were issued. Therefore, the petitioners cannot contend that due process of law has not been followed before terminating them.

(viii) As far as the post of the petitioner in WP(MD).No.10410 of 2023 is concerned, it has to be filled up only by promotion as per the byelaws.



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However, it has been filled up through the direct recruitment. 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.A perusal of the impugned orders passed by all the authorities clearly reveal the following:

(a)On receipt of complaints from the general public, the first respondent has ordered for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act on 01.02.2022 appointing the Deputy Registrar (Dairy), Madurai as the Enquiry Officer to look into the alleged irregularities in the recruitment process.

(b)The Enquiry Officer has submitted his report on 06.05.2022. A perusal of the enquiry report reveals that irregularities have been pointed out in page No.7 of the said report.

(c)In the enquiry report, the Enquiry Officer has found that the appointments have been made over and above the cadre strength and without following the special byelaws of the Co-operative Society. He had recommended for cancellation of the appointment order and for issuance of fresh advertisement. The Enquiry Officer has further recommended for initiation of departmental proceedings as against some of the officials.



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(d)The first respondent herein accepting the report in its entirety has sent a communication to the third respondent on 28.12.2022 to cancel all the appointments which has taken place in the concerned society in the year 2020-2021. The first respondent has also recommended for departmental action as against the Manager (Administration).

(e)In compliance with the order of the first respondent, the third respondent has passed the consequential impugned order on 03.01.2023 cancelling the appointment order issued to the writ petitioners. A perusal of the order of the third respondent would clearly reveal that it is a template order for all the petitioners and no specific reason has been assigned to each one of the individual petitioners for cancelling the order of appointment.

(f)Though it is contended on the side of the respondents that serious irregularities in the selection process have taken place, out of 15 vacancies only 8 of them have been selected in the recruitment process. The rest of the vacancies could not be filled up for want of eligible candidates. It may not be difficult for the respondent authorities to segregate the applications and credential of these 8 candidates and verify whether there is any irregularity in the recruitment process or not.

(g)The finding of the Enquiry Officer under Section 81 of the Tamil Nadu Co-operative Societies Act would reveal that all the allegations relate to



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certain procedures which have not been followed at the time of conducting the recruitment process. There are no allegations as against the petitioners as to the fact that they were privy to any fraud or irregularity committed by the concerned officials.

(h) There are no allegations relating to the submission of applications, conduct of examination or publication of results.

(i) When similar allegations were made with regard to the selection of candidates to the Virudhunagar Union, the Hon'ble Division Bench in its judgement dated 13.10.2023 in W.A(MD).Nos.554 to 597 of 2023 and Batch Cases in paragraph No.7.10 has held as follows:

“7.10 As far as the Virudhunagar Union is concerned, there is a selection on record to satisfy the process of recruitment standing the test of Articles 14 and 16 of the Constitution of India and the result of the 81 enquiry and the material so far unearthed by the respondents is not enough to point out any gross illegality or fraud or corruption or nepotism so as to accept the case of the respondents that the services of the employees can be terminated without even a show cause notice. Accordingly, we are constrained to interfere with the orders impugned in the writ petitions as well as the order of the learned Single Judge in respect of the Virudhunagar Union is concerned.”



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WEB COPY 8. 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 matters are remitted back to the file of the concerned respondents.

(ii) The petitioners are directed to be reinstated into service with continuity of service and other benefits except backwages.

(iii) It is open to the respondent authorities to issue individual show cause notices to the concerned employees categorically pointing out the allegations, if any, warranting the cancellation of appointment. After giving due opportunity to the petitioners and after considering their explanation, orders may be passed in accordance with law.

(iv) The authorities are at liberty to initiate any disciplinary or criminal proceedings as against those responsible for the alleged irregularities after giving due opportunity to the concerned candidates/employees.



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WEB COPY 9.The writ petitions are allowed to the extent as stated above. No costs.

Consequently, connected miscellaneous petitions are closed.

01.02.2024.

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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