



WP.(MD).No.20037 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.20037 of 2023
and
W.M.P.(MD)No.16515 of 2023

Paramaguru

... Petitioner

Vs.

1.The Commissioner,
Dairy Milk Development Department,
Chennai 51.

2.The General Manager,
Thoothukudi District Cooperative Milk Producers Union,
No.74 F Balavinayagar Kovil Street, 2nd Floor,
Thoothukudi 2.

3.The Deputy Registrar (Dairy Milk),
Thoothukudi.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the impugned order of termination dated 04.08.2023 vide proceedings in Na.Ka.No.1072/Offl/2023 issued by the second respondent and quash the same as illegal and arbitrary and consequently directing the respondents to reinstate the petitioner



WP.(MD).No.20037 of 2023

into service.

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For Petitioner : Mr.T.Lajapathi Roy, Senior Counsel
For 1st Respondent : Mr.C.Baskaran
Government Advocate
For Respondents 2 & 3: Mr.K.Prabhu
Standing Counsel

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of termination dated 04.08.2023 vide proceedings in Na.Ka.No. 1072/Offl/2023 issued by the second respondent and to direct the respondents to reinstate the petitioner into service.

2.The petitioner was appointed as an Assistant at 0922 Thoothukudi Cooperative Milk Users Union office on consolidated wages. In the meanwhile, two Milk Societies namely TUT 20 Thoothukudi District Milk Producers Cooperative Society and 0922 Thoothukudi Cooperative Milk Users Society, which functioned under the control of the Joint Registrar of Thoothukudi was merged into a single Society namely TUT 34 Thoothukudi District Cooperative Milk Producers Union. Following which, the first respondent vide proceedings dated 09.10.2020 directed the respondents 2 and 3 to absorb the employees of 0922 Thoothukudi Cooperative Milk Users Union office to the appropriate posts in the



WP.(MD).No.20037 of 2023

second respondent Union commensurating to their educational qualification in accordance to the relevant Rules and Guidelines, thereby, fixing appropriate scale of pay and other service benefits. Consequently, the third respondent vide proceedings dated 16.10.2020, communicated to the second respondent furnishing the details of four employees including the petitioner to take necessary steps to comply with the communication of the first respondent dated 09.10.2020 and thereby, absorbing the said employees into the service of the second respondent Union. Following which, vide proceedings of the second respondent dated 09.02.2021, the petitioner was appointed to the post of Deputy Manager and the relevant portion of the appointment order is extracted as follows:-

“As per the instruction of Commissioner of Milk Production and Dairy Development, Chennai and the Deputy Registrar (Dairying), Thoothukudi in the ref. 1st and 2nd cited Thiru.N.Paramaguru who has been absorbed after mergeed 0.922 Thoothukudi Cooperative Milk Supply Union with TUT 20 Thoothukudi District Cooperative Milk Producer's Union Ltd., and forming new TUT 34 Thoothukudi District Cooperative Producers' Union Ltd., is appointed for the post of Deputy Manager (Office/Marketing) in the pay band of Rs.36,900/- -1,16,600 with effect from 01.12.2020 with other usual allowances and other benefits under the terms and conditions.”



WP.(MD).No.20037 of 2023

3.After being appointed as the Deputy Manager (office/Marketing), the petitioner was further promoted to the post of Executive Engineer considering his qualification and experience in the second respondent Union. The second respondent also passed a resolution in its Board Meeting stating that the services of the petitioner and other similarly placed persons were regularized. While so, one S.Murukesh filed a case in W.P.(MD)No.18609 of 2020 before this Court seeking to forbear the respondent officials from making any appointment to the newly amalgamated TUT 34 Thoothukudi District Co-operative Milk Producers Union. This Court vide order dated 17.12.2020, disposed of the said Writ Petition with a direction to the fifth respondent I.e. the second respondent herein to make appointments only by following due procedure at the earliest possible period of time.

4.In the meanwhile, on the petition dated .Nil of one M.Ramesh dated 13.09.2021, vigilance enquiry was initiated into the affairs of the second respondent Union. The allegations were as against one Chinnathurai, the then Chairman and one Paul Gnanaiyya, the then Deputy Chairman of Thoothukudi District Co-operative Milk Producers Union and they have misused the powers



WP.(MD).No.20037 of 2023

by violating the Co-operative Act and submitted forged documents to issue appointment for the petitioner herein, who is the nephew of the said Chinnathurai the then President and one Renoldo, who is the son of the said Paul Gnanaiayya, the then Deputy Chairman of the second respondent Union. After investigation, the Superintendent of Police vide communication dated 12.05.2022, submitted a note to the Managing Director of the second respondent Union in this regard. On the basis of the said report, an enquiry was initiated under Section 81 of the Tamil Nadu Cooperative Societies Act and an Enquiry Officer was duly appointed. After enquiry, the Enquiry Officer submitted his enquiry report on 21.09.2022. Thereafter, the second respondent issued a show cause notice on 06.04.2023 calling for the explanation of the petitioner within a period of seven days with respect to the decision taken by the second respondent to terminate the services of the petitioner and another employee on the ground that they were appointed without following the Rules on the basis of the enquiry report under Section 81 of the Tamil Nadu Cooperative Societies Act. Challenging the same, the petitioner filed W.P.(MD)No.8569 of 2023 before this Court. This Court vide order dated 05.06.2023, passed the following order:-



WEB COPY



WP.(MD).No.20037 of 2023

“What is under challenge in the writ petition is only a notice calling upon the petitioner as to why disciplinary action should not be taken against him. It is not as if the employer arbitrarily issued the impugned notice. It was issued after holding enquiry under Section 81 of the provisions of Tamil Nadu Co-operative Societies Act.

2. It appears to be adverse to the petitioner. The learned Standing counsel appearing for the second respondent asserts that a copy of the enquiry report was made available to the petitioner. The petitioner has also given his explanation. It is for the respondents to take a call in the matter. At this stage, the rights of the writ petitioner have not been infringed. Therefore, this Court will not be justified in interfering at this stage. Leaving open all the contentions and the defences of the petitioner, this writ petition stands disposed of.”

5. After the order passed by this Court in the aforesaid Writ Petition, the petitioner approached the second respondent in person to furnish the 81 enquiry report enabling him to submit his explanation. He also submitted a requisition on 21.04.2023 for the said purpose seeking the enquiry report. In response to the same, the second respondent furnished the details of the enquiry report vide letter dated 26.04.2023 to the petitioner on 03.05.2023. Thereafter, the petitioner submitted another letter dated 08.05.2023 seeking all the documents pertaining to the enquiry report. The second respondent immediately responded to the same



WP.(MD).No.20037 of 2023

by letter dated 16.05.2023 requiring the petitioner to elaborate the details of the documents sought for by him within three days. The petitioner vide another letter dated 18.05.2023 sought for the documents mentioned in the enquiry report along with the statements of the various witnesses, which the second respondent vide letter dated 20.05.2023 communicated the petitioner to approach the office of the Joint Registrar, Thoothukudi between 24.05.2023 to 26.05.2023 directly and receive the necessary documents from the said office, since all the documents are maintained only in that office, due to the pendency of the departmental proceedings. However, without approaching the said office of the Joint Registrar, Thoothukudi, the petitioner further submitted another letter dated 23.05.2023 seeking the documents again. Thereafter, on 04.08.2023, citing the order passed by this Court in W.P.(MD)No.8569 of 2023 dated 05.06.2023, the second respondent terminated the petitioner from the service of the second respondent Society vide proceedings dated 04.08.2023. Challenging the same, this Writ Petition came to be filed.

6.The learned Senior Counsel Mr.T.Lajapathi Roy, appearing for the petitioner submitted that the second respondent had



WP.(MD).No.20037 of 2023

dismissed the petitioner from service by means of a non speaking illegal order in breach of principles of natural justice. It is submitted that the 81 enquiry report on the basis of which, the impugned termination order has been passed was not furnished to the petitioner despite several requests made by the petitioner. He vehemently contended that the impugned order of termination has been passed without giving sufficient opportunity to the petitioner. Having passed a major punishment of dismissal from service, the respondents ought to have conducted a detailed enquiry and should have passed a reasoned order. However, the second respondent has passed a cryptic order without assigning any order for dismissal.

7.Relying upon the judgment passed by the Hon'ble Apex Court in the case of **Kranti Associates Private Limited and Another v. Masood Ahmed Khan and others** reported in **(2010) 9 Supreme Court Cases 496**, the learned Senior Counsel submitted that the requirement to record reasons emanates from the broad doctrine of fairness in decision making and the said requirement is virtually a component of human rights. Hence, having taken an administrative decision to terminate the petitioner recording of reasons serve the wider principles of justice. That too



WP.(MD).No.20037 of 2023

reasons in support of the decisions must be cogent, clear and succinct. However, the impugned order is an unreasoned, cryptic order, which has to go and on that basis, pressed for quashing the impugned order and allowing the Writ Petition.

8.Per contra the second respondent has filed a counter and the respondents 1 and 3 have together filed yet another counter. The learned Standing Counsel, Mr.K.Prabhu appeared for the respondents 2 and 3 and learned Government Advocate Mr.C.Baskaran appeared for the first respondent. The arguments on behalf of the respondents is that the petitioner was appointed as Clerk with effect from 01.09.2019 at 0922 Thoothukudi Co-operative Milk Supply Union under consolidated wages. The second respondent Milk Union came to be formed by amalgamation of the TUT 20 Thoothukudi District Milk Producers Co-operative Society and 0922 Thoothukudi Co-operative Milk Producers' Union. Further the first respondent instructed the second respondent to absorb the existing employees of 0922 Thoothukudi Co-operative Milk Supply Union into second respondent Union based on merits in accordance with Special By-laws, Acts and Rules. However, the second respondent without following the procedure laid under the by-laws



WP.(MD).No.20037 of 2023

of the Union and the relevant Acts and Rules absorbed the contract wages employees including the petitioner and the petitioner was placed under probation for two years vide proceedings of the second respondent dated 09.02.2021. After completion of the probation period, his services was regularized with effect from 09.02.2021 and the said exercise is illegal and baseless. Thereafter, the petitioner was appointed as Deputy Manager from 01.12.2020 in the place of promotional post.

9.While so, the third respondent vide proceedings dated 25.03.2022, appointed the Deputy Registrar (Dairy Milk) as Enquiry Officer for conducting Section 81 enquiry to trace out the illegalities which happened during the absorption made by the second respondent. The said order of proceedings with Section 81 inquiry was based on the Auditor Objection for the academic year 2019-2020, with respect to a huge loss of Rs.1,44,886/- incurred by the Union. Enquiry was conducted and report was submitted on 21.09.2022. Based on the report, the first respondent instructed the second respondent to take necessary action against the petitioner by terminating him and as against the erring Officer during the appointment. It was found that the appointment of the

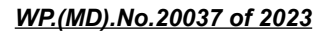


WP.(MD).No.20037 of 2023

petitioner in 0922 Thoothukudi Co-operative Milk Supply Union under consolidated pay was illegal and without any prior permission from the third respondent Deputy Registrar (Dairy Milk). That apart no proposal was also submitted by the Union based on the By-laws of the Union. The appointment was made without fixing any cadre strength.

10.It was also vehemently submitted that the Milk Supply Union without approval of the Board has fraudulently inserted a paper and had pasted the same as second resolution passed in its Board meeting held on 01.06.2019 for the purpose of appointing the petitioner and another as Clerk, as if two persons have retired from service. In actual terms, no post of Clerk was vacant at the time of appointment of petitioner. On 01.08.2019, seven employees were working in the Union and thereafter, the petitioner was appointed as Clerk based on the fraudulently inserted typed paper which was pasted as second resolution passed in its Board meeting held on 24.08.2019.

11.My attention was drawn to the Board meeting held on 24.08.2019 and according to the first resolution, it was resolved



12. Heard the learned counsel appearing for the petitioner,
 13. the Government Advocate appearing for the first respondent
 14. the learned Standing Counsel appearing for the respondents 2 and
 15. and carefully perused the materials available on record.



WP.(MD).No.20037 of 2023

13.The petitioner himself has accepted that he was appointed as an Assistant with effect from 01.09.2019 at 0922 Thoothukudi Co-operative Milk Supply Users Union on consolidated basis. The formation of new Union namely TUT 34 Thoothukudi District Co-operative Milk Producers Union merging 0922 Thoothukudi Co-operative Milk Users Union, wherein the petitioner had been working, along with TUT 20 Thoothukudi District Co-operative Milk Users Union, the first respondent directed the respondents 2 and 3 to take necessary steps to absorb the employees serving at 0922 Thoothukudi District Co-operative Milk Users Union office into the office of the second respondent Union, which was newly formed. In that exercise, the petitioner was absorbed into the second respondent Union and thereafter, appointed to the post of Deputy Manager with effect from 01.12.2020 vide proceedings of the second respondent dated 09.02.2021.

14.I am not hesitant to record that such an appointment came to be made by the second respondent pursuant to the order passed by this Court in W.P.(MD)No.18609 of 2020 dated 17.12.2020, directing the second respondent to make appointments by following due procedure. The appointment of the petitioner and another one



WP.(MD).No.20037 of 2023

Ronaldo culminated in one M.Ramesh lodging a petition dated Nil as received on 30.09.2021 by the Aavin Vigilance as against the said appointments. In such circumstances, Section 81 enquiry was initiated on the basis of Audit report of the second respondent Union as well as a parallel vigilance enquiry was also conducted by the Aavin Vigilance with respect to the appointment of the petitioner and other persons in the second respondent Union. Section 81 enquiry was conducted and a report was submitted on 21.09.2022 and the report of Aavin vigilance enquiry was submitted on 12.05.2022. Only on the basis of those two reports, the first respondent instructed the second respondent to take necessary action against the petitioner and also as against the Officer, who erred by making such appointments.

15.Following which, a show cause notice dated 06.04.2023 came to be issued as against the petitioner seeking his explanation within seven days as to why his service should not be terminated. Rather submitting his explanation to the said show cause notice, the petitioner proceeded to challenge the same by filing W.P. (MD)No.8569 of 2023. This Court in the aforesaid Writ Petition, by its order dated 05.06.2023, refrained from interfering with the



WP.(MD).No.20037 of 2023

show cause notice observing that the petitioner's right has not been infringed by the issuance of the said show cause notice. Thereafter, on the requisition made by the petitioner, having furnished the enquiry report under Section 81 of the Co-operative Societies Act, the second respondent sought for further explanation from the petitioner. However, the petitioner without giving an explanation kept on giving further requests on several dates to furnish all the documents pertaining to the enquiry report along with the statement of the various witnesses. The said request was promptly replied by the second respondent by directing the petitioner to approach the Deputy Registrar (Dairy Milk), Thoothukudi wherein the entire file of the petitioner has been maintained due to the pendency of the disciplinary proceedings. Having failed to receive the same by approaching the office of Joint Registrar (Dairy Milk), Thoothukudi, the petitioner made further request for issuance of necessary documents. Hence, citing the order passed by this Court in W.P.(MD)No.8569 of 2023 dated 05.06.2023, the second respondent passed the impugned order of termination dated 04.08.2023. Challenging the same, this Writ petition has been filed by the petitioner.



WP.(MD).No.20037 of 2023

16.No doubt the petitioner was appointed as a Clerk at the first instance at 0922 Thoothukudi Co-operative Milk Users Union with effect from 01.09.2019 on consolidated pay and not appointed as against a cadre post. Pursuant to the formation of the second respondent Union by amalgamating the Society wherein the petitioner was working along with other another Society, under the guise of absorbing the employees of 0922 Thoothukudi Co-operative Milk Users Union into the office of the second respondent Union, the petitioner was also absorbed in the service of the second respondent Union and his service was also regularized in the second respondent Union. However, the said absorption and further regularization of the petitioner was not based on the By-laws of the Union. Thereafter, the petitioner was appointed as Deputy Manager from 01.12.2020 in the place of a promotional post.

17. Being promoted to the post of Deputy Manager (office/Marketing), the one who is promoted must have three years experience in the post of Executive Office in the second respondent Union. However, the petitioner without any such experience was directly appointed in the post of Deputy Manager (office/Marketing). That apart the special By-law of the second



WP.(MD).No.20037 of 2023

respondent Union has provided in page 45 that, if no qualified candidates are available for appointment by promotion/by recruitment/by transfer to any of the category, such vacancy shall be filled up by direct recruitment on the basis of non availability of suitable persons/employees to be promoted on seniority, to the post of Deputy Manager (office/Marketing). That apart the By-laws 7(1) of the second respondent Union clearly provides the recruitment rules as follows:-

“7.(1)Recruitment Rule:

(1)(a)Except as otherwise provided in these Rules or any Rules specially made in this behalf, recruitment to any service or posts shall be made by direct recruitment which may be either by competitive examination or by selection or by promotion, which may be by selection on the basis of Merit-cum-Seniority. The methods of recruitment shall be as specified in the rules of the recruitment.

No appointment by Direct recruitment to any post shall be made except by calling for a list of eligible candidates from the Employment Exchange and by also giving due publicity by means of announcement in the Notice Board of the Society and also of the affiliated Societies, inviting application from the eligible employees of such societies. Where the Employment Exchange issues a non-availability certificate, the Union shall invite applications by giving advertisement in more than one daily newspaper in which one should be in regional language having wide circulation throughout the area of operation.

Provided that the above stipulation shall not apply to the



WP.(MD).No.20037 of 2023

appointment made on compassionate grounds.

(1)(b) Subject to the provisions of these Rules/or by any other Rules, appointment to any service or posts shall be made:

(1) in the case of Direct recruitment

(a) If it is by a competitive examination after giving adequate publicity (either by notifying the vacancy to the Employment Exchange or published in the newspaper) as the appointing authority may determine in the order of merit from the list of candidates prepared by the Selection Committee appointed for that purpose by the Board.

(b) If it is by Selection, after giving such adequate publicity to the recruitment as the appointing authority may determine, in the order of merit of candidates as determine by the Selection Committee or appointing authority as the case may be.

(c) Selections for the posts shall be done in accordance with the Service Rules/any other Rules of the DCMPU in force from time to time.

(d) Promotion to the posts as mentioned in these Rules shall be governed in accordance with the provisions of the Service Rules DCMPU or any other rules in force from time to time.

(e) The Division Heads of the Union shall not have any powers to appoint any person whether on contract, temporary, casual, daily wage or on consolidated salary basis without the prior permission of the General Manager."

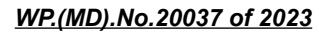
18. Violating the mandates of By-law 7(1) of the second respondent Union, the appointment of the petitioner has been made violating the established procedure of law. It is needless to state



WP.(MD).No.20037 of 2023

that the appointment of the petitioner at the first instance as an Assistant at 0922 Thoothukudi Co-operative Milk Users Union itself was not as against a cadre post or available vacancy but the same was on consolidated pay on the sweet will of the then President of second respondent Union. It is further recorded in the enquiry report that despite the availability of one candidate namely Muthulakshmi, who served for more than five years in the post of Executive qualifying herself to be appointed on promotion on seniority basis to the post of Deputy Manager (Office/Marketing) of the second respondent Union, the petitioner has been illegally appointed to the said post. Even if the second respondent Society decided to go for direct recruitment to the post of Deputy Manager (Office/Marketing), the same should be done in accordance with the relevance Rules and By-laws of the second respondent Union. If a vacancy arises in a Public Office, the said vacancy would automatically transpire into a national wealth in the job market, and appropriate opportunity has to be given to the competent candidates by allowing them to take part in the selection process with transparency.

19.It is needless to say that neither the petitioner's initial



20/24



WP.(MD).No.20037 of 2023

20.I have no hesitation to hold that a person appointed in a post illegally cannot complain that the termination procedure is arbitrary. A person who came in through the back door must go out through the same door. Moreover Section 81 of Tamil Nadu Co-operative Societies Act contemplates statutory enquiry. Based on Section 81 enquiry report, departmental disciplinary proceedings may be initiated and secondly a criminal case can be registered before the Commercial investigation Wing and thirdly Subcharge proceedings may be initiated by invoking Section 87 of the Tamil Nadu Co-operative Societies Act to recover the financial loss caused to the Co-operative Society. In the instant case, the second respondent proceeded to initiate departmental disciplinary proceedings by issuing the show cause notice requiring the petitioner to submit explanation within a period of seven days. Without giving explanation to the show cause notice, despite the second respondent Union furnishing copy of the enquiry report, without submitting an explanation kept on requesting for documents related to the enquiry report, despite the second respondent Union advising the petitioner to approach the Joint Registrar (Dairy Milk) for receipt of whatever documents as required by him. Without approaching the said office, the petitioner



WP.(MD).No.20037 of 2023

kept the matter dragging.

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21. In view of the same, the impugned order of termination came to be passed by the second respondent Union. The petitioner was appointed in the temporary capacity by a process contrary to Article 14 of the Constitution without competitive selection, as an individual favour to him by the then President of the second respondent Union. As Article 14 is an integral part of our system, each and every State action is to be tested on the touch stone of equality. Any appointment made in violation of the mandates of Article 14 and 16 of Constitution is not only irregular but also illegal and cannot be sustained and stand the scrutiny of law. Thus holding that the appointment of the petitioner has been made in violation of the mandatory provisions of the relevant Statute, Acts, Rules and By-laws of the second respondent Society. I am not inclined to interfere with the impugned order.



WP.(MD).No.20037 of 2023

22.In view of the above, this Writ Petition stands dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

- 1.The Commissioner,
Dairy Milk Development Department,
Chennai 51.
- 2.The General Manager,
Thoothukudi District Cooperative Milk Producers Union,
No.74 F Balavinayagar Kovil Street, 2nd Floor,
Thoothukudi 2.
- 3.The Deputy Registrar (Dairy Milk),
Thoothukudi.

23/24



WEB COPY



WP.(MD).No.20037 of 2023

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)No.20037 of 2023

19.02.2024