

W.P(MD).Nos.10177 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).No.10177 of 2023
and
W.M.P(MD).Nos.9100, 14505 and 22472 of 2023**

S.Keerthana

....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

3.The General Manager
TID 483, Theni District Co-operative Milk Producers
Union Ltd.,
Natesh Apartments, Amman Nagar
Palanichettipatti
Theni District



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4. The Deputy Registrar (Dairying)
Dairy Development Department
Aavin Complex, Sathamangalam
Madurai 625 020

....Respondents in both petitions

Prayer : 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.0038/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 Manager (Agri/F&F) 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

ORDER

The present writ petition has been filed challenging the order passed by the first respondent herein on 30.12.2022 wherein he had directed the third respondent to initiate steps for cancellation of appointment orders of the writ petitioner and others. The petitioner has also challenged the consequential



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order passed by the third respondent on 06.01.2023 wherein the appointment order of the writ petitioner as Manager (Agri/F&F) dated 13.01.2021 has been cancelled.

2.Facts leading to the filing of this writ petition are as follows:

(i)The third respondent herein had issued an Employment Notification in Advertisement No.1 of 2020 dated 13.11.2020 and published the same on 17.11.2020 calling for applications for various posts from eligible candidates.

(ii)The petitioner had applied to the post of Manager (Agri/F&F) pursuant to the said notification. The notification was issued for one vacancy which was reserved for General Turn- Non Priority.

(iii)The petitioner had appeared in the skill examination test on 26.12.2020 and on being successful, she appeared for the interview and for certificate verification on 11.01.2021. The petitioner was selected and appointed on 13.01.2021 and she joined duty on the same day.

(iv)On receipt of allegations from the general public relating to illegality/irregularity in the recruitment process, the first respondent had appointed the fourth respondent as an Enquiry Officer for conducting an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act by proceedings dated 30.11.2021. The Enquiry Officer submitted his report on 30.11.2021 alleging that there are various illegalities/ irregularities in the recruitment process. Based upon the said report, the first respondent had



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addressed a communication to the third respondent on 30.12.2022 instructing him to cancel all the appointments which were made pursuant to Advertisement dated 13.11.2020.

(v)The third respondent had passed a consequential order on 06.01.2023 cancelling the appointment order of the writ petitioner. Challenging the same, the present writ petition has been filed.

3.Contentions of the learned counsels are as follows:

(i)The learned Senior Counsel appearing for the writ petitioner had contended that the petitioner was not given adequate opportunity in the enquiry proceedings conducted under Section 81 of the Tamil Nadu Co-operative Societies Act.

(ii)The enquiry report was also not furnished to her.

(iii)The appointment of the writ petitioner has also been approved by the first respondent and therefore, based upon the enquiry report, the appointment order of the writ petitioner cannot be cancelled by the same respondent.

(iv)The order impugned in the writ petition has not specifically mentioned the relative who is working in the said Union attracting disqualification. Therefore, the order impugned in the writ petition is liable to be set aside.



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(v) Only the second respondent Board is the competent authority to appoint or terminate any employee. Neither the first respondent nor the third respondent have got any jurisdiction to terminate or cancel any appointment order.

(vi) Before issuing the impugned order, the petitioner has not been put on notice or any enquiry has been conducted. Therefore, the orders are in violation of the principles of natural justice.

(vii) Even assuming that there are any irregularities, the petitioner should have been issued with a charge memo and a proper enquiry should have been conducted before passing the impugned order, especially when the impugned orders are stigmatic in nature. Hence, he prayed for allowing the writ petition and to reinstate the petitioner in service.

4. Per contra, the learned Additional Advocate General appearing for the respondents had contended that the petitioner had applied for the post of Manager (Agri/F&F) pursuant to the Notification dated 17.11.2020. However, by proceedings of the first respondent dated 22.12.2020, the said post was deleted from the cadre strength. Without cancelling the recruitment process, the petitioner had been permitted to appear for examination on 26.12.2020 and the authorities have proceeded to appoint the petitioner.



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5.He had further contended that the petitioner's father is working as an Assistant Manager in the same Co-operative Union during the recruitment process. As per Rule 149(5) of the Tamil Nadu Co-operative Societies Rules, 1988, a near relative of an employee cannot be appointed. With the said facts, the order of appointment was cancelled.

6.The learned Additional Advocate General had further contended that the petitioner is yet to complete her probation period and the order of termination is not stigmatic in nature. Therefore, the question of issuing a show cause notice or conducting an enquiry prior to the issuance of cancellation order is not required. Hence, he prayed for dismissal of the writ petition.

Discussion

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

8.Under the impugned order, the order of appointment issued to the writ petitioner has been cancelled on the following grounds.

- (i)There was a vacancy for the post of Manager (Agri/ F & F) on the date of notification namely 17.11.2020. However, the said post was deleted from the cadre strength by the subsequent



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proceedings of the first respondent dated 22.12.2020. Therefore, the petitioner should not have been permitted to appear in the written examination on 26.12.2020 and an order of appointment should not have been issued to a non existing vacancy.

(ii)The petitioner's father namely Mr.S.Saravanamuthu was working as an Assistant Manager in the same Co-operative Union at the time of recruitment process which is clearly in violation of Rule 149(5) of Tamil Nadu Co-operative Societies Rules.

9.A perusal of the writ affidavit indicates that the petitioner has not disputed any one of these grounds on which the order of cancellation of appointment has been issued. When a post has been deleted from the cadre strength by the first respondent on 22.12.2020, the Union should have immediately stopped the recruitment process for the said post. However, they permitted the petitioner to appear for the written examination on 26.12.2020 and conducted the interview on 12.01.2021 and issued an appointment order on 13.01.2021 which is clearly against the special Bye-laws of the Co-operative Union. Therefore, it is clear that the appointment order has been issued to the writ petition for a non-existing vacancy.



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10.Rule 149(5) of the Tamil Nadu Co-operative Societies Rules, 1988

is extracted as follows:

“149(5). No person who is a near relative as specified in rule 63, 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.”

11.The relevant portion of Rule 63 of the Tamil Nadu Co-operative Societies Rules is extracted as follows:

“63. Near relations of a paid employee for purposes of disqualification for membership of the board. ___For the purpose of clause (a) of sub-section (1) of section 34, the following near relations of the paid employee shall be disqualified for membership of the board, namely:-

- (1) Spouse (wife or husband)*
- (2) Father (including step-father)*
-”*

12.A perusal of Rule 149(5) read with Rule 63 of the Tamil Nadu Co-operative Societies Rules, 1988 would clearly reveal that if a candidate is a near relative of an Officer of the Society, he/she cannot be appointed to any post in the service of such Society. As per Rule 63, father of a candidate is classified as a near relation of a paid employee.



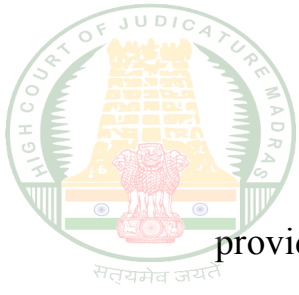
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13. Admittedly, the petitioner's father namely Mr.S.Saravanamuthu is working as an Assistant General Manager in the same Co-operative Union at the time of recruitment process. The petitioner has not disputed the same in her writ affidavit, but has only stated that the name of the person or relative who is working in the said Union has not been clearly mentioned in the impugned.

14. A perusal of Section 81 enquiry report indicates that at the time of her statement, the petitioner has admitted about the fact that her father S.Saravanamuthu is working as an Assistant General Manager. The petitioner's father has also been examined in the 81 enquiry wherein he has admitted that her daughter had applied for the post of Manager (Agri/ F&F). Therefore, it is clear that the petitioner has been appointed to the service of the Society in which her father is a paid employee at the relevant point of time.

15. The fact that the post of Manager (Agri/ F&F) was deleted from the cadre strength before the date of written examination by proceedings of the first respondent is not disputed. Another fact that the petitioner's father is working in the said Union during the recruitment process is also not disputed.

In such an event, remitting the matter to the authorities on the ground of not



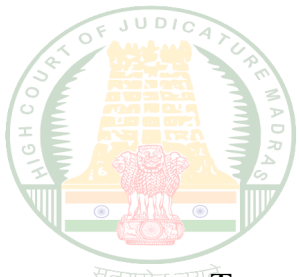
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providing opportunity to the writ petitioner would only be an empty
formality.

16.In view of the above said deliberations, there are no merits in the writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

16.02.2024.

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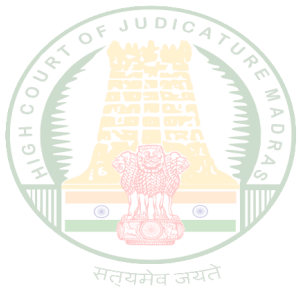
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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