

**C. Kathiresan Vs. The Commissioner for Milk Production and Dairy Development, Madhavaram, Chennai and Others**

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**Court :** Chennai Madurai

**Decided On :** Jan-10-2017

**Judge :** R. Suresh Kumar

**Appeal No. :** W.P.(MD)No. 10999 of 2011 & M.P.(MD) No. 2 of 2011

**Appellant :** C. Kathiresan

**Respondent :** The Commissioner for Milk Production and Dairy Development, Madhavaram, Chennai and Others

**Judgement :**

(Prayer: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned revision order in RC No.22771/10/M1 dated 18.06.2011 and consequential review order in RC.No.11335/11 M1 dated 20.08.2011 passed by the 1st respondent and to quash the same as illegal and consequently direct the 1<sup>st</sup> respondent to take the review petition dated 10.07.2011 filed by the petitioner on file and pass orders on merits in accordance with law within the period that may stipulated by this Hon'ble Court.)

1. The prayer in the Writ Petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned revision order in RC No. 22771/10/M1

dated 18.06.2011, and consequential review order in RC.No.11335/11 M1 dated 20.08.2011, passed by the 1st respondent and quash the same and consequently direct the 1st respondent to take the review petition dated 10.07.2011, filed by the petitioner and pass orders on merits and in accordance with law within the period that may stipulated by this Court.

2. The petitioner is a Special Grade Manager (Industrial Relations) at the third respondent office. He claimed to have given a complaint on 10.03.2008, against certain alleged irregularities/misdeeds at the third respondent's office and he questioned the appointment made to the 4th respondent as she was appointed initially without her name being sponsored by the employment exchange. The petitioner further claims that aggrieved by the said complaint given by the petitioner, the third respondent had issued a charge memo against the petitioner on 25.08.2008, framing three charges against him. During the pendency of the charges, the petitioner was placed under suspension by the orders of the third respondent dated 01.08.2008. Therefore, the petitioner had approached this Court by filing W.P.No.3150 of 2009, with a prayer for a direction to the second respondent and the Deputy Registrar to hold enquiry into the alleged irregularities committed by the third respondent and fourth respondent and others to protect the interest of the third respondent Milk Union. By order dated 10.09.2009, this Court without going into the merits of the contentions raised in the said writ petition, directed the fourth respondent therein to consider the complaint given on various dates, after affording opportunity to the petitioner and other persons, who are proper and necessary parties to the enquiry and pass orders in accordance with law within a period of eight weeks.

3. Pursuant to the orders passed by this Court, the petitioner's complaint was enquired into by the second respondent herein and after having enquired into various aspects of the complaint given by the petitioner, the second respondent has given a report on 23.11.2009, addressed to the first respondent. In the said report, among other things, some reference has also been made about the appointment of the 4th respondent and the relevant portion of the said report of the second respondent pertaining to the 4th respondent is reproduced hereunder:

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4. In response to the said report of the second respondent, the third respondent had issued a Show Cause Notice to the 4th respondent calling for explanation/show cause from the 4th respondent as to why her services should not be terminated, in view of the report of the second respondent, where it was stated that the 4th respondent was appointed initially without her name being sponsored by the employment exchange. According to the petitioner, as against the said Show Cause Notice, the fourth respondent had approached this Court by way of filing W.P.No.6715 of 2010, which came to be dismissed and thereafter, the fourth respondent had preferred a revision before the first respondent under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983 (herein after referred to as Act). The first respondent after having considered the relevant merits of the issue by calling for the records from the Office of the third respondent, has passed a detailed order in the revision on 18.06.2011 and gave finding that there is no proof to show that the initial appointment made to the fourth respondent was without her name having been sponsored by the employment exchange and therefore, the first respondent on the basis of the available materials on record had come to the conclusion that the appointment made to the fourth respondent was only on the sponsorship of her name by the employment exchange and such appointment was subsequently regularized and there is no substance in the report submitted by the second respondent and accordingly, the revision filed by the fourth respondent was allowed by the first respondent in the said order dated 18.06.2011.

5. However, the petitioner as against the order passed by the first respondent in the revision filed by the 4th respondent had filed review before the first respondent, once again seeking to review the said order of the first respondent dated 18.06.2011. The said review filed by the petitioner has been rejected by the first respondent by order dated 20.08.2011, for the reason that review under Section 154 of the Act can be made only either by appellant or applicant of the revision or the respondent. Since the petitioner is neither appellant, nor respondent or applicant in the revisional proceedings, under Section 154 of the Act a third party request cannot be entertained and accordingly rejected the review.

Therefore, challenging the order dated 18.06.2011, passed in revision as well as the order dated 20.08.2011, passed in review by the first respondent are under challenge before this Court in the present Writ Petition with the aforesaid prayer.

6. Heard the respective learned counsel appearing for the parties.

7. At the outset the present writ petition moved by the petitioner herein is a service dispute. Basically it is a settled legal proposition that there can be no third party writ petition against proceedings relating to service disputes. Even though the petitioner seems to have given complaints on various heads by alleging irregularities/misdeeds said to have been committed by the officials concerned at the third respondent Milk Union, the main focus of the petitioner from the beginning seems to have been only against the fourth respondent. Whether the fourth respondent was appointed in the manner known to law and whether the fourth respondent continuing in the service at the 3rd respondent Union is in accordance with law or not is certainly a service dispute between the fourth respondent and her employer. Even though the same is service dispute between the employer and employee, because of the report filed by the second respondent, wherein it has been mentioned that the initial appointment of the fourth respondent was not made in accordance with law because her name has not been sponsored by the employment exchange, rightly, the third respondent had issued a show cause notice asking explanation from the 4th respondent. Though the fourth respondent initially approached this Court against such show cause notice unsuccessfully had subsequently filed revision under Section 153 of the Act before the first respondent, who is a revisional authority. The first respondent in the said revision has dealt with the matter in detail and exhaustive findings have been given.

8. Certain reasons and findings given by the first respondent in the revisional order dated 18.06.2011 are extracted herein for better appreciation of the issue:

The District Collector in Para IV (2) of his report, has stated among other things, about the appointment of Mrs.R.Lalitha, that, in the Personnel Committee Meeting held on 11.04.87, in which Commissioner for Milk Production and Dairy Development has participated, it was resolved to appoint Mrs.R.Lalitha who was

working in Pudukottai DCMPU in Sivagangai DCMPU on permanent basis. However, the Collector has concluded in his remarks that it is proved that she has not been employed through Employment Exchange and hence concluded that the allegation of Mr.Kathiresan as correct. The conclusion was given without any reasoning and not supported by any documents. It is seen that in the Personnel Committee Meeting held on 11.04.87, that it was resolved to appoint her by the Personnel Committee which was chaired by Mr.Karuppan, I.A.S., the then Commissioner for Milk Production and Dairy Development. In the appointment order issued by the then Managing Director, Sivagangai DCMPU on 17.07.1987, it was also mentioned clearly that in the letter dated 17.12.1986 of MD, Pudukottai DCMPU that the individual was recruited through Employment Exchange. When all these records shows that she has been recruited through Employment Exchange, it is not known how the Collector has come to the conclusion that she has not been appointed through Employment Exchange.

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From the above, it is evident from the documents produced that she has been recruited through Employment Exchange by Pudukottai DCMPU and by a PC resolution chaired by CMPDD her services were transferred and absorbed from Pudukottai DCMPU to Sivagangai DCMPU. While forwarding the request letter of the revision petitioner herein to Sivagangai District Cooperative Milk Producer's Union, the MD, Pudukottai DCMPU has informed the Ramanthapuram Pasumpon Muthuramalinga Thevar District Cooperative Milk Producer's Union that she has been recruited through Employment Exchange only. No documents were produced before this authority to show that she has not been recruited through Employment Exchange. The documents they rely such as the Collector's report and District Employment Officer's report do not say specifically that she has not been appointed through Employment Exchange.

...

Hence it is clearly evident in the appointment order issued to the individual by the MD, Ramanthapuram Pasumpon Muthuramalinga Thevar District Cooperative Milk Producer's Union (now Sivagangai DCMPU) that she is recruited in Pudukottai

DCMPU thorough Employment exchange. As such, it is clear that the grounds for issuing show cause notice that she has not been recruited through Employment Exchange could not be proved by the respondent.

Hence under the circumstances stated above, the show cause notice issued Rc.3418/Pa.ne1/06-1 dated 07.05.2010 of the General Manager, Sivagangai DCMPU is hereby set aside. If the management has any fresh evidence to prove their case or come to know that she has wantonly suppressed any basic information or she has fabricated or falsified any records shows that she has been recruited through Employment Exchange, the management is at liberty to take action at any point of time irrespective of the length of service. The revision petition is disposed of accordingly.

9.The aforesaid findings given by the first respondent in the revisional order was certainly on the basis of sound reasoning cogently given by the first respondent in the said order. Absolutely, there is no contra evidence produced either by the petitioner or any other authority including the 3rd respondent to show that the fourth respondent was appointed without her name being sponsored by the Employment Exchange. That apart, the fourth respondent has also produced communication of the Pudukkottai District Cooperative Milk Union, where initially the 4th respondent was appointed on 07.08.1985. Subsequently, on 29.10.1986, the fourth respondent has been transferred to the third respondent Milk Union. The said order is extracted hereunder:

We send herewith the representation received from Selvi R.Lalitha, Clerk of this Union.

In this connection, we wish to inform that Selvi R.Lalitha is working in this Union with effect from 7.8.85. She has been sponsored through Employment Exchange. We are willing to relieve her. Her request may be considered favourably.

10. The fourth respondent has also produced yet another document of the Pudukkottai Cooperative Milk Union limited dated 17.07.1987, by the said order the 4th respondent has been permanently absorbed by the third respondent as she had foregone the lien at the Pudukkottai Milk Producers Union. Relevant portion of

the said order is reproduced hereunder:

In the letter IV cited, it has also been informed that the individual was recruited through Employment Exchange.

In the reference V cited, it has been informed that the matter regarding the absorption of the individual may be placed before the Personnel Committees of both the unions. The Personnel Committee of this Union, in its meeting held on 11.4.87 at Karaikudi Dairy, resolved to absorb Selvi R.Lalitha as Junior Assistant in the scale of pay of Rs. 610-20-730-25-955-30-1075 on permanent absorption basis in this union. The Personnel Committee of the Pudukottai District Cooperative Milk Producers' Union in its meeting held on 17.6.87 at Madras has resolved to relieve Selvi R.Lalitha, Clerk, from the Pudukottai District Cooperative Milk Producers' Union Ltd., who has opted for joining as Junior Assistant in the Ramanathapuram and Pasumpon Muthuramalingam Districts Cooperative Milk Producers' Union Ltd.

Under the circumstances stated above, Selvi R.Lalitha, Clerk is transferred from Pudukottai District Cooperative Milk Producers' Union Ltd. and appointed as Junior Assistant in this union in the scale of pay of Rs.610-20-730-25-955-30-1075 plus other allowances admissible as per the rules of this union in force, forgoing her past seniority in the post of Clerk held in Pudukottai District Cooperative Milk Producers' Union Ltd., Pudukottai. She will have no lien in the Pudukottai District Coop. Milk Prods. Union Ltd. hereafter. She is also not eligible for TTA.

11. These documents would go to show that the initial appointment made to the fourth respondent had been made only after getting the name of the fourth respondent sponsored by the concerned employment exchange. There is no other contra records available either at the employment exchange concerned or at the office of the third respondent or at the office of the Pudukkottai Cooperative Milk Producers Union. The first respondent has passed a detailed and exhaustive order, which is impugned herein, accepting the case of the fourth respondent that she was appointed on the basis of sponsorship of the employment exchange. Therefore, the first respondent has rightly allowed the revision filed by the fourth respondent.

12. Insofar as the grievance of the petitioner that since he only made complaint against some of the officials of the third respondent Union as well as against the fourth respondent, questioning her appointment, he should have been heard by the first respondent at the time of hearing the revision of the 4<sup>th</sup> respondent is concerned, such a plea cannot be countenanced for the reason that the issue to be decided by the first respondent is only as to whether the fourth respondent's appointment made initially was based on the sponsorship of the employment exchange. There is no material produced by any one including the petitioner even at the time of making complaint against the 4<sup>th</sup> respondent, contra to the records available with the third respondent office or erstwhile office, where she was originally appointed. Moreover, since it is a service dispute between the 4<sup>th</sup> respondent and her employer, namely, the 3<sup>rd</sup> respondent and the issue has to be decided by the first respondent only on the aspect of the 4<sup>th</sup> respondent services, the same had to be decided only based on the documents available with the third respondent office as well as the documents produced by the fourth respondent. Here a third party in service dispute is totally out of context and therefore, the petitioner's claim that he should also been heard by the first respondent before deciding the revision is liable to be rejected.

13. With regard to the rejection of the review filed by the petitioner in the consequential impugned order dated 20.08.2011, passed by the first respondent is concerned, no doubt the said review has been rejected on the ground that the petitioner had no locu-standi to maintain the review under Section 154 of the Act. Section 154 of the Act reads thus:

154. Review. - (1) The appellant or the applicant for revision or the respondent may apply for the review of any order passed under section 152 or section 153 on the basis of the discovery of new and important facts which, after the exercise of due diligence, were not then within his knowledge or could not be produced by him when the order was made or on the basis of some mistake or error apparent on the face of the record or for any other sufficient reason:

Provided that no application for review shall be preferred more than once in respect of the same order.



14. Quoting the said provision, the consequential impugned order rejecting the review of the petitioner has been passed by the first respondent. On a plain reading of the said Section, which reveals that either the appellant or the applicant of the revision or the respondent, under Section 152 or 153 of the Act alone can file review. The said words used that appellant/applicant or respondent for revision means only those who stood either as appellant or applicant or as respondent in any revision filed either under Section 152 or 153 of the Act alone would be entitled to maintain a review under Section 154 of the Act. Herein in the case on hand, the petitioner admittedly a third party and he was not a party before the revisional authority and the revision is relating to another service dispute between the 4th and 3rd respondents and the same has been resolved by the first respondent after having considered the relevant documents and merits of the issue. Therefore, the plea now raised on behalf of the petitioner that the petitioner's review ought to have been entertained by the first respondent cannot have any substance.

15. Therefore, in view of the above said facts and circumstances of the case and for all the reasons discussed above, this Court is of the firm view that the writ petition does not have any merits and the impugned order passed by the first respondent both as revisional authority as well as the reviewing authority under Sections 153 and 154 of the Tamil Nadu Co-operative Societies Act respectively are in consonance with the import of the said provisions. Therefore, those orders require no interference by this Court.

16. Resultantly, the writ petition is dismissed. No costs. Consequently connected Miscellaneous Petition is also dismissed.

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