

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.34982 & 34986 of 2019

and

WMP Nos.35778,35779, 35781 & 35782 of 2019

Dr.S.U.Basavaraja

... Petitioner  
in Both WPs

.v.

1.The Secretary to Government,  
Department of Animal Husbandry,  
Diary and Fisheries,  
Secretariat, Fort St.George,  
Chennai 600 009.

2.The Managing Director,  
The Tamil Nadu Co-operative Milk  
Producers Federation Ltd.,  
AAVIN Illam,  
No.3, Chamiers Road,  
Nandanam,  
Chennai-600 034.

.... Respondents  
in both WPs

Prayer in W.P.No.34982 of 2019:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the 2<sup>nd</sup> respondent in charge memo in Ref.No.6042/Pers.IR.2/2019 dated 25.06.2019 and quash the same as illegal, incompetent and ultra vires and consequently direct the respondents to re-instate the petitioner in the post of Assistant General Manager, Dharmapuri Co-operative Milk Producers Union.

Prayer in W.P.No.34986 of 2019:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the 2<sup>nd</sup> respondent in suspension order in Ref.No.6042/Pers.IR.2/2019 dated 23.04.2019 and quash the same as illegal, incompetent and ultra vires and consequently direct the respondents to re-instate the petitioner in the post of Assistant General Manager, Dharmapuri Co-operative Milk Producers Union.

For Petitioner : Mr.R.jayaprakash  
(Both Wps)

For Respondents : Mr.L.P.Shanmugasundaram  
(Both Wps) Special Government Pleader  
(Co-operatives)

### C O M M O N O R D E R

Both the above Writ Petitions are taken up together since the facts are common and the issue to be decided is interrelated in both the Writ Petitions.

2.The petitioner was working as an Assistant General Manager in the Dharmapuri Co-operative Milk Producers Union. The Co-operative Union had supplied milk to certain private companies to

the tune of Rs.2,31,11,039/- and the companies paid only a sum of rupees one crore and cheques that were issued towards the balance amount was dishonoured.

3.The 2<sup>nd</sup> respondent passed a suspension order on 23.04.2019, on the ground that the petitioner had supplied milk to the private dairies on credit basis instead of cash and carry basis and the payment was not received resulting in a loss of nearly a sum of Rs.1.5 crores to the Co-operative Union and therefore, for the grave mis-conduct on the part of the petitioner, he was suspended from service with effect from 23.04.2019.

4.Pursuant to the suspension order, a Charge Memo also came to be issued by the 2<sup>nd</sup> respondent on 25.06.2019, wherein, four charges were framed against the petitioner. The petitioner gave his explanation and not being satisfied with the explanation, an Enquiry Officer was appointed and the petitioner also participated in the enquiry and an enquiry report has also been submitted to the 2<sup>nd</sup> respondent on 25.10.2019. It is seen from the enquiry report that the Enquiry Officer has come to a conclusion that all the four charges are proved. At this stage, the above Writ Petitions have been filed - one challenging the suspension order and the other challenging the Charge Memo.

5.Mr.R.Jayaprakash, learned counsel appearing on behalf of the petitioner submitted that the entire exercise carried out by the 2<sup>nd</sup> respondent is attended with malafides. The learned counsel submitted that the petitioner had already

taken steps to initiate proceedings against the concerned private dairies under Section 138 of the Negotiable Instruments Act. The learned counsel further submitted that a Police complaint was also given and an FIR came to be registered and after registration of an FIR, the investigation has been stayed by this Court. The learned counsel submitted that the petitioner was also unnecessarily roped in as an accused in the FIR and therefore, he also approached this Court and challenges the FIR and the same is pending. The learned counsel submitted that there is absolutely no basis to initiate departmental proceedings against the petitioner and the same is being done only to victimise the petitioner and to make him responsible for the entire loss.

6.Per contra, Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the 2<sup>nd</sup> respondent is the Competent Authority to issue the suspension order as well as to initiate disciplinary proceedings against the petitioner. The learned counsel submitted that there are grave charges against the petitioner and the petitioner has caused a loss of nearly Rs.1.5 crores to the Society and therefore, the 2<sup>nd</sup> respondent thought it fit to proceed against the petitioner by initiating departmental proceedings. The learned counsel further submitted that the departmental proceedings is now at the stage of issuing 2<sup>nd</sup> Show Cause Notice to the petitioner to seek for his explanation on the enquiry report that has been submitted by the Enquiry Officer. Therefore, the learned counsel submitted that there is no reason to interfere with the Charge Memo at this stage and this Court can fix a time limit for the completion of the departmental proceedings.

7.The learned counsel further submitted that taking into consideration the gravity of the charges against the petitioner, it will not be in the interest of the Co-operative Union to revoke the suspension order and the petitioner can wait for the final result of the departmental proceedings that has already reached the final stage. A counter affidavit has also also been filed by the 2<sup>nd</sup> respondent in the writ petitions and the counter affidavit explains the charges against the petitioner and a stand has also been taken by the respondents to the effect that the writ petitions itself are not maintainable as against the Co-operative Society.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.This Court will first deal with the writ petition wherein, the Charge Memo has been challenged. The Charge Memo was issued on 25.06.2019 and the petitioner has given his

explanation for the Charge Memo. An Enquiry Officer was appointed and the petitioner has also participated in the enquiry and the Enquiry Officer has also given his report on 25.10.2019, wherein, he has found that all the four Charges framed against the petitioner has been proved. The disciplinary proceedings is now at the stage of issuing the 2<sup>nd</sup> Show Cause Notice to the petitioner seeking for his explanation on the findings of the Enquiry Officer.

10. This Court is of the considered view that there is no requirement to interfere with the Charge Memo at this stage since the disciplinary proceedings has almost reached the final stages. Therefore, in order to balance the rights of the petitioner and the respondents, it will be fit and proper to fix a time limit for the completion of the disciplinary proceedings.

11. The next issue to be taken up for consideration is as to whether the suspension order passed by the 2<sup>nd</sup> respondent requires to be interfered. The suspension order was passed on 23.04.2019 and it continues till date. The petitioner has given his explanation for the Charge Memo and he has already participated in the enquiry and the enquiry report has also been submitted to the 2<sup>nd</sup> respondent. The petitioner has been out of service for the last nine months. Since the departmental proceedings itself has reached the final stage, this Court does not find any justification to continue with the suspension of the petitioner. It must be borne in mind that it is not a case of mis-appropriation or any fraudulent activity. This is a case where the petitioner has been charged with dereliction of duty resulting in a loss caused to a society. Therefore, in the considered view of this Court, the suspension order passed against the petitioner can be revoked and the petitioner can be permitted to join in service. It is always open to the 2<sup>nd</sup> respondent to post the petitioner in a non-sensitive post till the completion of the disciplinary proceedings.

12. In view of the above discussion, the following directions are issued to the 2<sup>nd</sup> respondent.

[a] The 2<sup>nd</sup> respondent is directed to complete the disciplinary proceedings and pass final orders on or before 31.05.2020 and;

[b] The 2<sup>nd</sup> respondent is directed to pass necessary orders revoking the suspension against the petitioner and it is open to the 2<sup>nd</sup> respondent to post the petitioner in a non-sensitive post till the final orders are passed in the disciplinary proceedings. Appropriate orders in this regard shall be passed within a period of two weeks from the date of receipt of copy of this order.

The Writ Petitions are disposed of accordingly.  
There shall be no order as to costs. Consequently, the  
connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Secretary to Government,  
Department of Animal Husbandry,  
Diary and Fisheries,  
Secretariat, Fort St.George,  
Chennai 600 009.

2.The Managing Director,  
The Tamil Nadu Co-operative Milk  
Producers Federation Ltd.,  
AAVIN Illam,  
No.3, Chamiers Road,  
Nandanam, Chennai-600 034.

+2cc to Mr.L.P.Shanmugasundaram, Advocate SR.5221, 5222

+2cc to Mr.R.Jayaprakash, Advocate SR.5173, 5174

+1cc to Spl Government Pleader(CO-OP) SR.5309, 5310

W.P.Nos.34982 & 34986 of 2019

NRL(CO)  
CB(04/02/2020)

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