



W.P.(MD)No.1309 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.1309 of 2016

and

W.M.P(MD)No.1080 of 2016

S.Raja

... Petitioner

Vs.

The General Manager,
The Tirunelveli District Co-operative Milk
Producers Union Limited,
Tirunelveli – 627 007.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records relating to the impugned Proceedings in Na.Ka.No.01662/Administration.1/2014-4, dated 29.10.2015 passed by the respondent and quash the same.

For Petitioner : Mr.S.Louis

For Respondent : Mr.P.Balamurugan, for
Mr.J.Ashok



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ORDER

This writ petition is filed challenging the impugned recovery order, dated 29.10.2015.

2. The contention of the petitioner is that he was working as Selection Grade Industrial Assistant/Milk Recorder (In-charge) in the respondent Office. He was granted “In-charge” post of Milk Recorder. On 17.07.2013, a charge memo was issued to the petitioner, wherein, it was alleged that on 16.07.2013 milk measuring 6900 liters was transferred from Milk Cooling Plant, Kovilpatti to Central Unit, Tirunelveli, in a vehicle bearing registration No.TN-30B-1177, wherein the petitioner has noted the quality of the milk was Fat/Nutrition as 3.9% /8.0%. Whereas the surprise check by the Vigilance officials of the Central Unit, it was found that the quality of the milk was only 3.7%/ 7.5%. After receiving the memo, dated 01.07.2013, the petitioner has submitted his reply, dated 24.07.2013, stating that he was only holding a post of Selection Grade Industrial Assistant/Milk Recorder (in-charge). The quantity of the milk and quality of the milk was recorded by the “Milk Quality Recorder”



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and the same was entered by the petitioner, as recorded by the Milk Quality Recorder. The petitioner is not empowered to say anything with regard to the quality of the milk. This would be proved through the duty Roster that was issued by the respondent. After receiving the reply from the petitioner, the aforesaid charge memo was kept in abeyance.

3. Again, another charge memo, dated 09.05.2014 containing five charges against the petitioner was issued by the respondent, wherein it is stated that as a Milk Recorder, the petitioner's duty is to check the quality and quantity of the milk and to record the same in the Daily Maintenance Register. But the petitioner has failed to do so on 16.07.2013, by adulterating the milk received from the Milk Producers Cooperative Society, therefore, the petitioner has cheated the Union. The petitioner has conspired with two other co-workers and managed to get the signature of K.Kumarasamy, in the Dispatch Register, so as to prevent the petitioner's fraud. The petitioner has caused loss to the tune of Rs.80,521.92 to the Society on 16.07.2013. Thus, the petitioner had caused loss to the tune of Rs.3,51,67,206/- to the society, by manipulating the Daily Maintenance Register showing adulterated Milk as good one. The petitioner has



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submitted a detailed reply, dated 12.06.2014 to the subsequent charge memo, dated 09.05.2014 denied the charges and prayed to drop the same. But the respondent has appointed a retired District Registrar as an enquiry officer. The respondent has not conducted the enquiry properly and proper opportunity was not granted to the petitioner. The respondent did not supply any documents and list of witnesses to the petitioner, before commencement of the enquiry. The respondent did not supply the basic report of the Vigilance Officer, which form basis for framing the charges against the petitioner. It is the duty of the respondent to supply all documents which would be relied on, as well as the list of witnesses and the statement of witnesses before commencing the proceedings. Since the respondents did not supply the 25 exhibits marked on the side of the respondent, thereby due to non-supply of necessary documents is clearly violation of principles of natural justice. After the enquiry, the enquiry officer found guilty of charge Nos.2, 3 & 4 and submitted enquiry report, dated 16.03.2015. Thereafter, the respondent has issued a show cause notice, dated 03.07.2015 to the petitioner and imposed punishment of stoppage of increment for one year without cumulative effect and further directed to collect the loss by granting 10 installments. The further contention of the petitioner is that, even



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though the petitioner has submitted subsequent explanation to the enquiry report, the respondent has passed the impugned order. Aggrieved over the impugned recovery order, the petitioner is before this Court.

4. The respondents have filed counter stating that the petitioner is having alternative remedy to prefer a review application before the appropriate Forum. Based on the order of the Larger Bench comprising of 5 Judges of this Court in the case *Marappan Vs Deputy Registrar of Cooperative Societies, Namakkal, reported in 2006(6) CTC 689*, the writ petition is not maintainable. The Aavin Vigilance team has conducted a surprise check at Tirunelveli Dairy on 16.07.2013. The vigilance report suggested to take departmental action against the employees of the Kovilpatti Milk Chilling Centre i.e., **1.Muthukumar** **2.C.Samsathiydoss** (Lab Technician) **3.S.Raja** (SFA/Milk Recorder) and **4.K.Kumarasamy** (SFA), for sending 6900 liters of sub-standardized milk and further directed to recover the difference cost from them, as per norms. Based on the vigilance report, the Milk Union has initiated disciplinary proceedings against the concerned employees and framed charges and received explanations from them. As the explanation was not satisfactory, a domestic enquiry was ordered.



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The respondent has granted natural justice and all papers were served to the petitioner. The petitioner was allowed to cross examine the management witnesses and thereafter only, the punishment was imposed. In the domestic enquiry, five charges were framed against the petitioner, S.Raja, among the five charges, only three charges were held to be proved. Based on the enquiry report, punishment was imposed. Therefore, respondents prayed to dismiss the writ petition.

5. Heard Mr.S.Louis, learned counsel appearing for the petitioner and Mr.P.Balamurugan, for Mr.J.Ashok, learned counsel appearing for the respondent. Perused the material documents available on record.

6. It is seen from the records that the petitioner is having alternative remedy to file a review application under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983. However, the petitioner has raised a plea of violation of principles of natural justice. Therefore, this Court is entertaining this writ petition.



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7. The allegation against the petitioner is that, he has not checked the quality of the milk and colluded with the other co-employees has made the quality of the milk as sub-standardized milk. In other words, the petitioner has mixed water in the milk, thereby the quality of the milk was sub-standardized. But, the contention of the petitioner is that, he was holding the post of Milk Recorder and duty Roster would indicate the petitioner is not assigned the work of quality. As far as the quality of the milk the same ought to be recorded by the “Milk Quality Recorder” and his co-worker is assigned to carry on the work. The said co-worker would check the quality, report the same to the petitioner and on receipt of the report the petitioner would entry it in the Daily Maintenance Register. Since the petitioner is only assigned the work of quantity of the milk, the petitioner cannot be punished for the sub-standardized quality of milk. Therefore, the petitioner has nothing to do with the checking of quality of the milk and hence, the charge against the petitioner is erroneous. Since the petitioner was not assigned with the work of quality manager, the respondent cannot allege that the petitioner is one of the reasons to send sub-standardized milk. Therefore, this Court is inclined to entertain this writ petition.



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8. The next contention of the petitioner is that the respondent should not impose recovery on the petitioner. Since the vigilance has initiated proceeding against all employees in the Unit, this Court is not inclined to modify the punishment. But is inclined to interfere with the recovery alone. Since the petitioner is not in-charge of the quality of the milk the punishment of recovery cannot be imposed. The respondent has imposed punishment of stoppage of increment for one year without cumulative effect which is proportionate punishment and moreover, this punishment will not affect the petitioner's future increments.

9. Accordingly, the impugned recovery order, dated 29.10.2015 alone is hereby quashed. The modified order shall be implemented within a period of six weeks, from the date of receipt of a copy of the order. If the respondent has recovered the amount the same shall be paid back to the petitioner, forthwith.



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10. With these observations and directions, this Writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

The General Manager,
The Tirunelveli District Co-operative Milk
Producers Union Limited,
Tirunelveli – 627 007.



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S.SRIMATHY, J

ksa

**Order made in
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