



W.P.Nos.721 of 2023 etc., batch cases

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.721, 725, 728, 733, 735, 738, 741, 745, 746, 789, 794, 797, 799, 800, 802, 805, 807, 809, 810, 812, 813, 814 to 819, 822, 823, 825, 827, 852, 856, 860, 868, 872, 1032, 1036, 1040, 1043, 1048, 1049 of 2023 and

W.M.P.Nos.656, 658, 663, 666, 667, 668, 675, 677, 679, 682, 683, 685, 688, 691, 695, 698, 699, 701, 733, 735, 738, 740, 742, 743, 746, 747, 748, 749, 750, 753, 756, 757, 759, 760, 761, 762, 763, 764, 766, 767, 768, 769, 770, 771, 772, 773, 775, 776, 778, 779, 783, 785, 787, 788, 780, 782, 789, 790, 791, 793, 794, 792, 842, 845, 848, 849, 850, 852, 855, 856, 858, 860, 1020, 1021, 1023, 1025, 1028, 1030, 1033, 1035, 1037, 1038, 1039, 1040, 5203, 5204, 5206, 5210, 5211, 5212, 5213, 5214, 5215, 5217, 5218, 5219, 5220, 5224, 5227, 5234, 5237, 7237, 7238, 7241, 7243, 7252, 7257, 7427, 7429, 7432, 7438, 7442, 7451, 7548, 7550, 7552, 7555, 7559, 7563, 7565, 7570, 7572, 7575, 7577, 7583, 7585 of 2023

W.P.No.721 of 2023

S.Ashok Kumar

...Petitioner

-Vs-

1.The Commissioner of Milk Production,
and Dairy Development Department,
Mathavaram Milk Colony,
Chennai-600 051.

2.The Chairman representing the board cum competent authority,



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Tirupur District Co-operative Milk Producers Union Ltd.,
Palladam Road, Virapandi Pirivu,
Tirupur.

3. The General Manager,
Tirupur District Co-operative Milk Producers Union Ltd.,
Palladam Road, Virapandi Pirivu,
Tirupur.

4. The Deputy Registrar (Dairying),
Dairy Development Department,
Collectorate, Tirupur.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records in connection with the impugned order passed by the 3rd respondent in Na.Ka.No.2077/TPR/ESTT/2020-2021/DMS dated 04.01.2023 and quash the same and further direct the respondents to permit the petitioner to continue in the post of DM (Systems) within a reasonable time with all attendant benefits.

For petitioner
(in all WPs')

: Mr.K.S.Viswanathan,
Senior counsel for
Mr.S.Sivakumar

For Respondents 1 & 4

: Mr.S.Silambanan,
Additional Advocate General
Assisted by
Mr.S.Arumugam,
Government Advocate

For Respondent 2 & 3

: Mr.J.Ravindran,
Additional Advocate General,



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Assisted by
Mr.I.John Arockiadas,
Standing counsel

COMMON ORDER

These writ petitions have been filed challenging the order passed by the 3rd respondent and thereby cancelling their appointment to their respective posts.

2. All the petitioners were appointed in various posts by General Manager, District Milk Producers Union Limited. All the writ petitioners were resigned out of Tirupur District Co-operative Milk Producers Union Limited and Namakkal District Co-operative Milk Producers Union Limited. All the petitioners appointed in various posts in both the District Co-operative Milk Producers Union Limited. They were appointed through direct recruitment and had joined in the respective services. The first respondent is a Head of the Diary Development Department, the Government department functioning at the administration control of Animal Husbandry, Dairying Fisheries and Fishermen Welfare Department in the secretariat and it is also exercising powers of the Registrar of Co-operative



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Societies as per the provisions of Tamil Nadu Co-operative Societies Act and Rules in the capacity of the functional Registrar in respect of Milk Co-operative Societies in the State of TamilNadu as per Section 3 of Tamil Nadu Co-operative Societies Act 1983. The President of the Board of Directors duly elected to the Board of District Co-operative Milk Producers Union, which is registered as a Central Scheduled Co-operative Society functioning at District level wherein the Primary Milk Producers Co-operative Societies functioning at village level in the area of operation for the purpose. The General Manager is the Chief Executive Officer of the District Co-operative Milk Producers Union. These are functioning within the frame work of TamilNadu Societies Act, 1983 and Tamil Nadu Co-operative Societies Rules, 1988 and by-laws. In the State of Tamil Nadu with the formation of the State level Federation during the year 1981, the Co-operative Dairy sector have become three tier system with Primary Milk Co-operative Societies at village level, Milk Union at district level and Tamil Nadu Co-operative Milk Producers' Federation and apex organization at the state level. The District Co-operative Milk Producers Union limited is one such district level Central Co-operative Society and it is governed by the provisions of



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Tamilnadu Co-operative Societies Act and Tamil Nadu Co-operative Societies Rules. The service conditions of the Co-operative Societies are stipulated in Rule 149 of Tamil Nadu Co-operative Societies Rules 1988. Accordingly, each society shall take into account its nature of business, volume of transaction and financial position, adopt, with the prior approval of the Registrar a special by-law covering the service conditions of its employees. The special by-law shall, inter-alia prescribe the following:

"a. Cadre strength and classification of various categories of posts and the qualifications

b. Provided also that the co-operative training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts.

(2) 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 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 society 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 State."

3. The Special By-laws of District Co-operative Milk Producers

Unions were duly approved by the Commissioner of Milk Production and



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Dairy Development and registered by the Deputy Registrar (Dairying)

concerned were came into effect from 01.04.2013. During the judgment of the Hon'ble Division Bench of this Court in W.A.No.1027 of 2013 dated 09.06.2014, circular instructions vide Ref.RC.No.4773/2015/N3 dated 24.02.2015 were issued by the Commissioner of Milk Production and Dairy Development prescribing the procedure to be followed in the recruitment process such as procedures to be followed in inviting applications through employment exchange as well as through advertisement in news papers, details to be furnished in the advertisement/notification calling applications, receipt and scrutiny of applications received, setting up of question papers and valuation of answer sheets, appointment of Certificate Verification Committee and assessment Committee (interview committee), awarding of marks and ranking were issued. These circular instructions were being issued as instructions under Section 181 of the Tamil Nadu Co-operative Societies Act 1983. Accordingly, the respondents had issued advertisement in the aavin website and also in Daily Thanthi news paper calling for applications from the eligible candidates for filling up the vacancies (43 in all) in various categories. In respect of Tirupur Co-operative Milk Producers



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Union limited and Namakkal Co-operative Milk Producers Union Limited are concerned for filling up of vacancies as 30 in various categories. In pursuant to the notification, the petitioners had applied for the respective posts enclosing all the relevant certificates such as degree certificates, experience certificate etc.,

4. On receipt of the said applications, they were called for written examination and they had appeared for written examination. Thereafter, they had received a call letter for certificate verification and oral test. They were also informed that they have been given provisional admission for certificate verification and for oral test for selection and appointment by direct recruitment for their respective posts. They were requested to appear the said purpose. They all appeared before the scrutinizing committee and their original certificates were scrutinized by the selection committee and conducted interview. Thereafter, they were issued appointment order to their respective posts. While being so, served with notice from the enquiry officer thereby screening them for enquiry under section 81 of the Tamil Nadu Co-operative Societies Act 1983, in so far as the Direct recruitment made in the



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year 2020-2021. They attended the enquiry and gave their statement. It was recorded by the enquiry officer. Further, another memo was issued to the petitioners to conduct enquiry as to whether original candidates were selected during the year 2019-2022 where the rules were violated in such selection process. The petitioners were directed to submit their explanation along with certificates relating to the questions i.e., whether rules were violated for their appointment and whether they have got prescribed qualification for their respective posts. The petitioners also submitted their explanation along with their educational qualification certificates. All of a sudden impugned orders of termination were passed thereby cancelling the appointment of the petitioners from their respective posts.

5. Mr.K.S.Viswanathan, learned Senior Counsel appearing for the petitioners submitted that the order of termination is arbitrary, illegal and non -est in the eye of law and clear violation of principles of natural justice. The petitioners were not served with any report for the enquiry conducted under Section 81 of TamilNadu Co-operative Societies Act. They were not served with any show cause notices. They have not given any opportunity for hearing and they were not served with any notice before passing the



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order of termination. In fact, they did not know the reason why the enquiry was conducted under Section 81 of Tamil Nadu Co-operative Societies Act.

Though conducted enquiry, no action has been taken as against the recruitment authority officers so far. No criminal complaint has been lodged and no FIR registered so far for the illegality committed in the recruitment of various posts. He further submitted that in so far as Madurai District, Virudhunagar District and Trichy District are concerned, the persons whose appointment were cancelled, approached the Hon'ble Madurai Bench of this Court in a batch of writ petitions in W.P.(MD).No.501 of 2023 etc., batch cases. The learned Single Judge of this court dismissed the writ petitions and they filed W.A.(MD).No.554 of 2023 etc., batch cases thereby this Court set aside the order of cancellation of their appointments and issued various directions. Insofar as Virudhunagar, Trichy and Madurai districts are concerned, the Hon'ble Division Bench of Madurai Bench of this Court dismissed the writ appeals by confirming the order passed by the learned Single Judge thereby upheld the order of cancellation of their appointments to various posts.



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6. The respondents filed their counter affidavit and the learned

Additional Advocate General submitted that while recruiting the petitioners to various posts in a hurried manner, they were recruited just before the issuance of election notification to the Tamil Nadu State Assembly in the year 2021. On receipt of various complaints, the respondents ordered to conduct enquiry under Section 81 of Co-operative Societies Act. Accordingly, the petitioners were given opportunity to participate in the enquiry. All the petitioners had knowledge about the enquiry and they were also directed to produce all their educational certificates and other documents for verification. Therefore, they very well know about the illegality, fraud committed in the recruitment process and their appointment. In fact, after enquiry, they were served with notice and called upon them to submit their explanation. After receipt of their explanation, without satisfying with the same, their appointments were cancelled. Even assuming that they were not given opportunity and they were not issued any notice before cancelling their appointment, when a fraud committed in all over Tamil Nadu while recruiting the petitioners and others, they do not require any opportunity of hearing while cancelling their appointment. No



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procedure was followed while recruiting them in various posts.

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7. He further contended that based on the report submitted by the enquiry officer under Section 81 of Tamil Nadu Co-operative Societies Act, the statutory action has been taken thereby cancelling the appointment orders to various posts. Enquiry was conducted properly and there was absolutely no violation or deviation of any rules. Already appropriate action has been taken by the disciplinary authorities to initiate disciplinary proceedings regarding any influence involved in the direct recruitment of various posts. That apart, as against the order of cancelling their appointment, there is appellate remedy is very much available. Therefore, the writ petitions itself is not maintainable and liable to be dismissed. If their appointment is illegal, no notice is necessary prior to the termination of their service. The Rule 21 of the Discipline and Appeal Rules, is applicable only to Regular/Temporary Employees and not to probationers. The petitioners are under probation and as such they need not to be served any notice and need not to conduct separate enquiry before passing the order of termination. All the petitioners are probationers and as such the question of



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violation of principles of natural justice does not arise. That apart, when large scale fraudulent malpractice has been committed in the recruitment process, since fraud vitiates everything, however the impugned cancellation order is non-stigmatic in nature and deserves to be upheld. When the petitioners are under probation, they did not acquire any right to hold or continue to hold such a post during the period of probation. The period of probation is intended to assess the work of probationers whether it is satisfactory and whether they are suitable for the said post. Therefore, he prayed to uphold the order of termination.

8. Heard, the learned counsel appearing on either side and perused the records.

9. This court consider the rival submissions made on either side and perused the documents. The following points arise for consideration of these writ petitions:



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"i) Whether the impugned order of termination is hit by principles of natural justice?

ii) Whether it is necessary to issue notice before passing the order of termination, when the petitioners were under probationary period?

iii) Whether the principles of natural justice to be followed when the entire process of appointment vitiates by fraud?

iv) Whether these writ petitions are maintainable without exhausting the statutory appeal remedy under Section 153 of Tamil Nadu Co-operative Societies Act 1983 by way of revision?"

All the petitioners are employees of the Co-operative Societies. Though as against the order of termination they can have alternative remedy of Revision under section 153 of Tamil Nadu Co-operative Societies Act, they were terminated without any enquiry and without affording any opportunity to submit their explanation and without any notice. Therefore, all the petitioners raised specific ground that the order of termination was passed without following the principles of natural justice. Therefore, all the writ petitions can be maintainable without exhausting the alternative remedy of revision as contemplated under Section 151 of Tamilnadu Co-operative Societies Act 1983.



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10. On perusal of records revealed that all the petitioners are qualified with their educational qualifications for their respective posts. As per the notification for direct recruitment of various posts, the petitioners had applied for their respective posts enclosing all the relevant documents including their educational certificates. They also submitted their experience certificates. On receipt of all the applications, they were issued hall tickets for their written examination. Accordingly, all the petitioners had appeared in the written examination and qualified for certificate verification and oral test. Accordingly, they were issued call letter stated that they were provisionally admitted for certificate verification and for oral test. All the petitioners had appeared before the scrutinizing committee and submitted their original certificates. The scrutinizing committee verified all the original certificates and petitioners had attended the interview. After the interview, they were issued order of appointment, thereby appointed them in their respective posts. Accordingly, all the petitioners had joined in their respective posts and they are working in their respective posts. All the appointments were made in the month of February 2021 in all over Tamil



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Nadu. Immediately after assembly election during the month of May 2022, the petitioners were served with notice and thereby they were summoned by the enquiry officer to attend enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act 1983. Some of the petitioners were appointed even in the year 2020 in their respective posts. All the selected candidates appeared for enquiry and their statements were duly recorded. In the meanwhile, another enquiry was conducted as to whether eligible candidates were selected during the year 2019-2022 to their respective posts. Further, whether rules were followed in such selection process and directed the petitioners to submit their explanation along with all certificates relating to the issues i.e., any rule was violated for the respective appointments, whether they have got prescribed qualification for their appointment. However, no reference made about the enquiry under Section 81 of the Tamilnadu Co-operative Societies Act in the said notice.

11. On receipt of the said notice, the petitioners had submitted their explanation along with all educational certificates. Immediately, they were served with impugned order of termination. Therefore, before issuance



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of termination order, they were not served with any report about the enquiry.

They were also not served with enquiry report for the enquiry conducted under Section 81 of the Tamilnadu Co-operative Societies Act 1983. On perusal of the impugned orders revealed that on the basis of the enquiry report conducted under Section 81 of Tamilnadu Co-operative Societies Act 1983 and also recommendations received from the Commissioner of Milk Production and Diary Department, Chennai, they were terminated from their respective service. The termination order also not whispered about the opportunity given to the petitioners before passing order of termination. In the counter affidavit filed by the respondents also not whispered about the serving of show cause notice and opportunity to submit their explanation. All the petitioners were appointed by special bye-laws duly approved by the State of Tamilnadu and Registrar of Co-operative Societies. Therefore, any recruitment or cancellation thereof shall stand the scrutiny of the principles/tenets as contained under Articles 14 and 16 of the Constitution of India. The principles of natural justice are facets of Articles 14, 16 and 21 of the Constitution of India and since the action is taken at the instance of the State, that too in the matter of employment which is governed by statutory



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rules in force, the same have to be followed. Further any order of non-employment or termination of service vitiates the employees with civil consequences and as such the same cannot be ordinarily made without compliance of the principles of natural justice and in the absence of the same, such actions would stand vitiated. Though, the learned Additional Advocate General vehemently contended that where the entire selection is tainted with fraud or serious irregularities, where the irregularity is on a mass scale so that it cannot be differentiated as to which of candidate's selection was vitiated or which candidate secured employment by fair means, wholesale cancellation of appointments is an option and in that case there is no question of compliance of principles of natural justice with reference to every person who is affected.

12. However, the respondents failed to prove the said contention in all the districts. Similar writ petitions were filed in respect of Madurai District Co-operative Milk Producers Union Limited, Virudhunagar District



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Co-operative Milk Producers Union Limited and Trichy District Co-operative Milk Producers Union Limited as against the order of termination.

The learned Single Judge of Madurai Bench of this Court dismissed the batch of writ petitions. Aggrieved by the same, batch of Writ Appeals were preferred and the Hon'ble Division Bench of Madurai Bench of this Court in W.A.(MD).Nos.554 of 2023 etc., batch cases, held that insofar as Madurai District Co-operative Milk Producers Union Limited is concerned, upheld the order of the learned Single Judge and the directions issued by the learned Single Judge for taking disciplinary action on all concerned officials is also affirmed. However, the Hon'ble Division Bench directed the Chief Secretary to Government of TamilNadu to co-ordinate with other departments and to frame appropriate charges and the proceedings have to be initiated primarily and complete the same without any delay. Further, directed the General Manager, Madurai District Co-operative Milk Producers Union Limited to forward the complaint within a period of two days from the date of the copy with reference to malpractice and offence committed in respect of recruitment before the Inspector of Police, District Crime Branch, Madurai. Further, directed the investigation officer to register a case and complete the



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investigation and file a final report in accordance with law as expeditiously as possible. In the very same judgement, Virudhunagar and Trichy Co-operative Milk Producers Union Limited are concerned, the Hon'ble Division Bench set aside the order passed by the learned Single Judge and allowed the Writ Appeals. Further, directed the respondents to reinstate the persons who were terminated from their service with all continuity of service and all other benefits except back wages. Further, directed the respondents to issue show cause notice in respect of individual employees, clearly and categorically pointing out the allegations if any warranting the cancellation of appointment that may be permissible in law and take further action after giving an opportunity to the appellants to offer their explanation and to consider the same in accordance with law.

13. In so far as Trichy Co-operative Milk Producers Union Limited is concerned, the following directions were issued after setting aside the order of the learned Single Judge and issued the following directions:

"i) The order of the learned single judge, dated 29.03.2023 in W.P.(MD).Nos.512, 515, 505, 516, 506, 528, 529, 531, 511, 541, 538,



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534, 525, 507, 540, 509, 504, 501, 503, 526, 510, 523, 539, 542, 519, 432, 517, 532, 527, 514, 520, 524, 513, 530, 533, 502, 518, 537, 521, 536 and 535 of 2023 are set aside in as much as it relates to the Trichy District Co-operative Milk Producers Union Limited:

(ii) The corresponding Writ Petitions filed by appellants/ selected candidates of the Tiruchirapalli District Co-operative Milk Producers Union Limited stand partly allowed by quashing the orders, dated 28.12.2022 of the first respondent and 03.01.2023 of the second respondent and consequently, the appellants / writ petitioners are directed to be reinstated into service with continuity of service. However, considering the overall facts and circumstances of the case, they will not be entitled to any backwages;

(iv) Since in this case, deliberately, the truth regarding selection and OMR sheets are tried to be distorted by all concerned, we direct the present General Manager of the second respondent Union to forward a complaint to the District Crime Branch, Tiruchirapalli. Upon receipt of the complaint, a case shall be registered and investigation be carried on in respect of OMR sheets as well as all aspects of selection. After the investigation and filing of Final Report, it will be open for the respondents to take a call once again regarding the fate of selection and if the investigation reveals that there is a wholesale fraud or absolute illegality in the selection and appointment of the candidates, they will be at liberty to redo the exercise afresh;

(v) In respect of any other irregularity such as qualification or want of post or communal rotation etc., it would be open for the respondents to issue a show-cause notice to the concerned employee by giving an opportunity of hearing and proceed with the matter in accordance with law;"

14. In so far as Namakkal District Co-operative Milk Producers Union Limited it is fulfilling the requirements and prior permission was



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accorded to fill up certain vacancies exercised in the cadre strength following due procedures. Accordingly, advertisement in the aavin website and also in the daily newspapers were issued on 18.12.2020, 19.12.2020 and 21.12.2020 thereby calling for applications from eligible candidates for filling up the 20 vacancies in various categories. On receipt of the applications, written examination was conducted, the petitioners herein had attended the written examinations. Therefore, they were served with call letter for certificate verification with oral test and stated that they have been provisionally admitted for certificate verification and for oral test for their respective posts. Thereafter, they appeared before scrutinizing committee and submitted their all original certificates. After verification of all original certificates and the selection committee had conducted interview. Thereafter, they were issued appointment order and accordingly they had joined in the respective service. In fact, after obtaining concurrence from the Commissioner of Milk Production and Dairy Development Department, Chennai, the appointment orders were issued by the General Manager of the respective District Co-operative Milk Producers Union Limited. Accordingly, the petitioners had joined in their respective posts as stated



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supra. In the counter affidavit filed by the respondents, common allegation is that in all the districts in respect of the petitioners' recruitment to various posts, officials have not followed the rules as prescribed in the Special Bye-laws. There were irregularities in their appointments. Therefore, all the allegations are bald and vague. In order to substantiate those allegations, the respondents failed to produce any record before this Court. Those allegations are made to justify the order of termination by dispense with the principles of natural justice. Therefore, selection of the petitioners are satisfied with the process of recruitment. The respondents failed to point out any egregious illegality, corruption, nepotism so as to terminate the petitioners without even issuance of show cause notice. Therefore, the order of termination vitiates on the sole ground that violation of principles of natural justice. Admittedly, the petitioners were not served with any enquiry report and they were not given opportunity to submit their explanation and they were not served with any notice for individual enquiry. On the basis of enquiry report under Section 81 of Tamilnadu Co-operative Societies Act, the petitioners were removed from their service. The learned Additional Advocate General also vehemently contended that all the petitioners were



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under probation and as such no need to conduct any enquiry to terminate them from their service. In this regard Mr.K.Viswanathan, learned senior counsel relied upon the judgement in the case of ***State of Punjab and others vs Jaswant Singh*** reported in **2023 (9) SCC 150** is extracted hereunder:

"17. Similarly, this Court in Ravindra Kumar Miera V. UP. State Handloom Corpn. Ltd., while dealing with the case of termination of a temporary employee, made a distinction between simpliciter termination and punitive termination applying the test of motive and foundation. This Court clarified the said distinction and observed as under:

6. As we have already observed, though the provisions of Article 311(2) of the Constitution do not apply, the service Rules which are almost on a par make the decisions of this Court relevant in disposing of the present appeal. In several authoritative pronouncements of this Court, the concept of "motive" and "foundation" has been brought in for finding out the effect of the order of termination. If the delinquency of the officer in temporary service is taken as the operating motive in terminating the service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. This is so on account of the fact that it is necessary for every employer to assess the service of the temporary incumbent



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in order to find out as to whether he should be confirmed in his appointment or his services should be terminated. It may also be necessary to find out whether the officer should be tried for some more time on temporary basis. Since both in regard to a temporary employee or an officiating employee in a higher post such an assessment would be necessary merely because the appropriate authority proceeds to make an assessment and leaves a record of its views the same would not be available to be utilised to make the order of termination following such assessment punitive in character. In a large democracy as ours, administration is bound to be impersonal and in regard to public officers whether in government or public corporations, assessments have got to be in writing for purposes of record. We do not think there is any justification in the contention of the appellant that once such an assessment is recorded, the order of termination made soon thereafter must take the punitive character."

Thus, termination was not simpliciter termination and it was punitive in nature. The petitioners were not given any opportunity to submit their explanation and no enquiry was conducted where the termination is preceded by an enquiry, evidence is received and findings as to misconduct of a definite nature are arrived at behind the back of the officer and where on the basis of such a report the termination order is issued, such an order



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would be violative of the principles of natural justice. Further holding that the decisive factor in the context of the discharge of a probationer from service is the substance of the order and not the form in determining whether the order of discharge is stigmatic or not or whether the same formed the motive for or foundation of the order. Though, the respondents came to conclusion that opinions were expressed and definite conclusions relating to the petitioner's culpability were reached by the respondents who had convinced themselves in that regard, the impugned order of termination was passed behind back of the petitioners. Therefore it is clear violation of principles of natural justice. If the order of termination of probationer is passed as a punitive measure without giving opportunity of defending himself, the same would be invalid and liable to be quashed. The Hon'ble Supreme Court of India held in the case of ***Union of India vs Mahaveer C.Singhvi*** reported in ***2010 (8) SCC*** as follows:-

"45. Since the High Court has gone into the matter in depth after perusing the relevant records and the learned Additional Solicitor General has not been able to persuade us to take a different view, we see no reason to interfere with the judgment and order of the High Court impugned in the special leave petition. Not



only is it clear from the materials on record, but even in their pleadings the petitioners have themselves admitted that the Order of 13-6-2002, had been issued on account of the respondent's misconduct and that misconduct was the very basis of the said order. That being so, having regard to the consistent view taken by this Court that if an order of discharge of a probationer is passed as a punitive measure, without giving him an opportunity of defending himself, the same would be invalid and liable to be quashed, and the same finding would also apply to the respondent's case.

46. As has also been held in some of the cases cited before us, if a finding against a probationer is arrived at behind his back on the basis of the enquiry conducted into the allegations made against him/her and if the same formed the foundation of the order of discharge, the same would be bad and liable to be set aside. On the other hand, if no enquiry was held or contemplated and the allegations were merely a motive for the passing of an order of discharge of a probationer without giving him a hearing, the same would be valid. However, the latter view is not attracted to the facts of this case."

15. The above judgements are squarely applicable to the case on hand and the impugned order of termination issued to the petitioners cannot be sustained and liable to be quashed. On perusal of the counter affidavit



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the respondents had stated so many reasons in order to justify the impugned order of termination, whereas on perusal of the impugned order revealed that as per the enquiry report of Section 81 of Tamilnadu Co-operative Societies Act found that without following the special bye-laws and without following the instructions, the petitioners were appointed and as such they were terminated from their respective posts. It is a settled law that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. When a statutory provision passed with certain grounds, its validity must be judged by the writ petitions so mentioned and cannot be supplemented by fresh writ petitions in the shape of counter affidavit or otherwise. While pending writ petitions, the enquiry report was filed before this court. On perusal of the report, there is no specified allegations against the petitioners. The findings revealed that the communal



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reservation has not been followed and non-validity has not been obtained.

Insofar as Tirupur Co-operative Milk Producers Union is concerned, it is a newly formed union and as such there is no question on wrong fixation of quota and or marked their post as per the roster and advise of the Commissioner of Milk Production and Dairy Development Department, Chennai. The Hon'ble Division Bench of Madurai Bench of this Court also held that the allegations regarding the communal reservation is concerned, it is not the case as if communal reservation at all followed so as to en-masse reject the selection. However, what is pointed out is an error in applying the rotation of vacancies as per roster in respect of one or two vacancies. Similarly, the other allegations regarding non-obtaining of approval, prior approval etc., point out only the procedural lapse and does not point towards a case of wholesale malpractice or egregious fraud.

16. In view of the above the impugned orders in all the writ petitions are quashed and all the writ petitions are allowed with the following directions:

(i) The respondents are directed to reinstate the petitioners into service with all continuity of service and all other attendant benefits. In view



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of the interim order passed by this court, all the petitioners are continuing in their respective posts on receiving salary, therefore no question of imparting backwages.

ii) The respondents are at liberty to initiate disciplinary proceedings as against the petitioners, if any, by issuing show cause notice along with enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act. It is also made clear that the petitioners must be given opportunity to submit their explanations and given opportunity to participate in the enquiry, if any, and orders shall be passed on merits in accordance with law.

iii) During enquiry, if any irregularity or illegality found, the respondents are at liberty to lodge complaint on the basis of enquiry report before the concerned jurisdictional police station for appropriate action as against the erred officials.

There shall be no order as to costs. Consequently, connected miscellaneous petitioners are closed.



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Index : Yes/No

Internet: Yes/No

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To

1.The Commissioner of Milk Production,
and Dairy Development Department,
Mathavaram Milk Colony,
Chennai-600 051.

2.The Chairman representing the board cum competent authority,
Tirupur District Co-operative Milk Producers Union Ltd.,
Palladam Road, Virapandi Pirivu,
Tirupur.

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3. The General Manager,
Tirupur District Co-operative Milk Producers Union Ltd.,
Palladam Road, Virapandi Pirivu,
Tirupur.

4. The Deputy Registrar (Dairying),
Dairy Development Department,
Collectorate, Tirupur.

G.K.ILANTHIRAIYAN,J.
gvn



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