

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM

THE HON'BLE Mr. JUSTICE M. DHANDAPANI

W.P.No.20492 of 2004 &
W.M.P. Nos.24670 & 24671 of 2004

M.Joghee

... Petitioner

.VS..

1. The Deputy Registrar of
Co-operative Societies
NCMS Building, Uthagamandalam,
Nilgiris District.

2. The Special Officer,
Nilgiris District Central
Co-operative Bank Ltd.,
Charing Cross, Uthagamandalam,
Nilgiris District.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the order passed by the second respondent in his proceedings Rc.No.729/2004.E1 dated 31.05.2004 it so far as it withholds the retiral benefits and quash the same and consequently directing the respondents to disburse the retiral benefits to the petitioner with interest at the rate of 18% per annum.

For Petitioner : Mr.B.Saravanan

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader (Co-op)

ORDER

The petitioner has filed this Writ Petition challenging the Order of the Second Respondent dated 31.05.2004 wherein she was allowed to retire from Service on 31.05.2004, without prejudice to the right of the bank with regard to pending disposal of Criminal case filed by the CCIW Police, Udhagamandalam.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. A Larger Bench of this Court in its decision reported in 2006 (4) CTC 689 (K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal), has decided whether writ will lie against a Co-operative Society and has held as follows:

"21. From the above discussion, the following propositions emerge:-

(i) If a particular co-operative society can be characterised as a 'State' within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be 'an authority' within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition;

(ii) Applying the tests in *Ajay Hasia* it is held that a co-operative society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution;

(iii) Even if a society cannot be characterised as a 'State' within the meaning of Article 12 of the Constitution, a Writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person' or 'an authority' within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be

complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a 'State' a writ would lie when the case falls under Clauses (iii) and (iv) above.

(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a 'State', the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in M.Thanikkachalam v. Madhuranthagam Agricultural Co-operative Society, 2000 (4) CTC 556 is no longer good law, in view of the decision of the seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before."

4.As per the decision of the Larger Bench of this Court reported in the decision cited supra, writ petition is not maintainable against the Societies. Hence, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

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+1 CC to Mr.B. Saravanan, Advocate sr 52703.

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NM(CO)
sp(23/08/2017)



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