

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

W.P.No.22147 of 2004

and

W.P.M.P.Nos.26804 & 26805 of 2004

R.Dasarathan

Junior Clerk

Kandili Co-operative Primary Agricultural and

Rural Development Bank Ltd.,

Vellore District

... Petitioner

Vs.

1. The Joint Registrar of Cooperative Societies

Vellore Region

Vellore - 1

2. The Deputy Registrar of Cooperative Societies

Tirupathur Division

Tirupathur

Vellore District.

3.The Special Officer

Kandili Cooperative Primary Agricultural

and Rural Development Bank Ltd.

DRL, (V) 7, Kejalnaickanpatti Village

Kandili Post

Tirupathur Taluk

Vellore District

... Respondents

Prayer : Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorarified Mandamus, to call for all relevant records relating to the impugned order issued in proceedings No. Nil dated 11.05.2004 passed by the Special Officer, Kandili Cooperative Primary Agricultural and Rural Development Bank Ltd., DRL, (V) 7, Kejalnaickanpatti Village, Kandili Post, Tirupathur Vattam, Vellore District, the 3rd respondent herein and quash the same as arbitrary, unreasonable, improper, illegal, against the established rules and regulations of the respondents violating

the principles of natural justice and thereby direct the respondents herein to pay the salary to the petitioner continuously pursuant to his pay fixation orders issued in proceedings dated 02.05.2001, 03.08.2002 and 13.02.2004 with all consequential with other monetary benefits.

For Petitioner : Mr.S.Srinivasan

For Respondents: Mr.L.P.Shanmugasundaram (Co-op)
for R1 & 2
Mrs.S.Gomathinayagam for R3

ORDER

The writ petition has been filed by the petitioner to quash the order dated 11.05.2004 passed by the 3rd respondent.

2.The petitioner has challenged the impugned order passed by the Special Officer dated 11.05.2004, wherein the petitioner was informed that his salary has been fixed by the Special Officer without the permission of the Department and the salary for the month of January 2004 as per pay fixation has been disbursed in the pay bill of February 2004 has been objected and directed the petitioner to repay the excess payment of Rs.4,804/-.

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 be 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. Accordingly, the writ petition stands dismissed with liberty to the petitioner to work out his remedy the manner known to law . Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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Vellore - 1
2. The Deputy Registrar of Cooperative Societies
Tirupathur Division
Tirupathur
Vellore District.

3.The Special Officer

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ss(3/10/2017)



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