

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM

THE HONOURABLE Mr. JUSTICE M. DHANDAPANI

W.P.No.14231 of 2004
and
W.P.M.P.Nos.16821 & 2522 of 2004

S.Ramadevi Petitioner
vs.

The Special Officer,
The Ambur Co-operative Sugar Mills Limited,
Vadupudupet, 635 812,
Vellore District. Respondent

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari, to call for the records on the file of the respondent relating to the order passed by him in Ref.No.Na.Ka.4681/2004 Pa.A1 dated 22.04.2004 and quash the same.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.R.Gopinath

O R D E R

The petitioner has filed this writ petition to issue a writ of Certiorari, to call for the records on the file of the respondent relating to the order passed by him in Ref.No.Na.Ka.4681/2004 Pa.A1 dated 22.04.2004 and quash the same.

2. The brief facts of the case is as follows:

The petitioner has been served with the charge-memo on 20.07.2001 for misappropriation of funds to the tune of Rs.4,42,650.75/-. Against the charge memo, the petitioner submitted her explanation on 27.11.2001. Thereafter, the second show-cause notice was issued on 20.01.2003. After issuance of second show-cause notice, the petitioner submitted her further explanation on 27.02.2003. Not satisfied with the same, finally, the Special Officer imposed the punishment of stoppage of increment for a period of three years with cumulative effect. Aggrieved the same, the present writ petition has been filed.

3. Writ Petition will not lie against the order passed by the Special Officer since the Special Officer is not coming under the purview of the State. Accordingly, the 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), held that the writ petition is not maintainable against this Special Officer which reads 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. Learned counsel for the petitioner also fairly concedes the above proposition that writ is not maintainable against the Special Officer. However, he prays that liberty may be given to the petitioner to work out her remedy before the appropriate forum.

Accordingly, the writ petition is disposed of and liberty is granted to the petitioner to work out her remedy before the appropriate forum. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Special Officer,
The Ambur Co-operative Sugar Mills Limited,
Vadupudupet, 635 812,
Vellore District.

+1CC TO Mr.R.Gopinath, Advocate sr.60880

W.P.No.14231 of 2004 &
W.M.P.No.16821 of 2004
& W.V.M.P.No.2522 of 2004

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