

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.14621 of 2004

and

W.M.P.No.17333 of 2004

P.Israel Duraisingh

... Petitioner

/Vs/

- 1.The Registrar of Co-operative Societies (Housing),
I Main Road, Gandhi Nagar,
Adyar, Chennai - 600 020.
 - 2.The Deputy Registrar of Co-operative Societies (Housing),
O/o. The Deputy Registrar of Co-operative Societies,
Thiruvandram Raod,
Vannarpettai, Tirunelveli.
 - 3.The Special Officer,
O.2053 Gandhi Nagar Co-operative Housing Society,
Gandhi Nagar,
Tirunelveli - 627 008.
- ... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records in pursuant to the Impugned Order issued by the third respondent in proceedings dated 11.05.2004 and quash the same.

For Petitioner : Mr.R.Premnarayan for
Mr.Saravanakumar

For Respondents: Mr.L.P.Shanmugasundaram for R1 & R2
Mr.P.S.Sivashanmugasundaram for R3

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सत्यमेव जयते

O R D E R

Heard the learned counsel appearing for the petitioner as well as the respondent.

2.The brief facts are as follows: The learned counsel appearing for the petitioner submitted that the petitioner initially appointed as a clerk in the third respondent society through the District Employment Exchange on 01.09.1995. Subsequent to this appointment, the second respondent in its proceedings dated 30.04.1998 approved the cadre strength and his post was also included in the cadre strength with effect from 04.01.1995. Accordingly, the petitioner's service was

regularized in the post of clerk.

3. Thereafter, based on the Audit Objection, the third respondent, Special Officer issued an impugned order directed the Secretary to recover the amount of Rs.2,47,365.40/-. Aggrieved by the above impugned order, the petitioner filed this present writ petition.

4. Per contra, the learned counsel appearing for the respondents submitted that the society shall come under "E" Category of the five categories viz. Category A, B, C, D and "E" as per the Registrar of Co-operative Societies (Housing) in R.C.5465 of 1991 C4 dated 15.05.1991. The staff strength of the society shall be as that of "E" Category societies as prescribed Secretary (1 post), Office Assistant (1 post) total sanctioned strength is two. Contrary to the said direction, the petitioner was appointed without considering the financial position of the society and the post also not sanctioned by the Registrar. While being so, the Special Officer appointed the petitioner through Employment Exchange on his own decision without obtaining any sanction from the Registrar of Co-operative Societies. Hence, the Assistant Director of Audit conducted investigation under Section 102 of the Tamil Nadu Societies Rules, 1988 and filed a report and directed the authorities to recover the excess payment. Consequently upon the Audit objection, the Special Officer passed an impugned order directing the petitioner to pay a sum of Rs.2,47,365.40/-.

5. The learned counsel appearing for the respondent would also submit that the writ petitioner itself is not maintainable. In view of the Judgment rendered by the Larger Bench of this Court in the case of 2006 (4) CTC 689 (K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal), wherein the larger Bench 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."

6. 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. However, this order will not stand on the way of the petitioner to work out the remedy as per law before the appropriate forum.

7. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Registrar of Co-operative Societies (Housing),
I Main Road, Gandhi Nagar,
Adyar, Chennai - 600 020.
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+1 cc to the Government Pleader sr 52998

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