

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.26233 of 2004
and W.P.M.P.No.31880 of 2004 and W.V.M.P.No.783 of 2005

S.Vijayan

... Petitioner

Vs.

The Special Officer,
No.H.H.500, Sathanur Primary
Agricultural Co-op Bank Ltd,
Sathanur Post, Chengam Taluk,
Thiruvannamalai District.

... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the entire records relating to the impugned orders of suspension of service of the petitioner passed by the respondent in his proceedings No.Nil, dated 07.02.2004 and quash the same.

For Petitioner : No Appearance

For Respondent : Mr.M.S.Palaniswamy

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records relating to the impugned orders of suspension of service of the petitioner passed by the respondent in his proceedings No. Nil, dated 07.02.2004 and quash the same.

2. Heard the learned counsel appearing for the respondent.

3. The petitioner was appointed as a Sales Man in the respondent Bank on 06.05.1995. While he was working, the respondent/Special Officer passed a Suspension Order on 07.02.2004 without assigning any reasons, against which, the present writ petition is filed.

4. This Writ Petition is not maintainable against the Special Officer, who is not coming under purview of the 'State'. In view of the Larger Bench of this Court, in the case of

K.Marappan vs The Deputy Registrar Of Co-operative Societies on 29 September, 2006, the relevant portions of which are extracted hereunder:

"(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 the respondent 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, even so 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."

5. In view of the above, this writ petition is dismissed. However, it is open to the petitioner to work out his remedy in the manner known to law. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Asst.Registrar (CCC)

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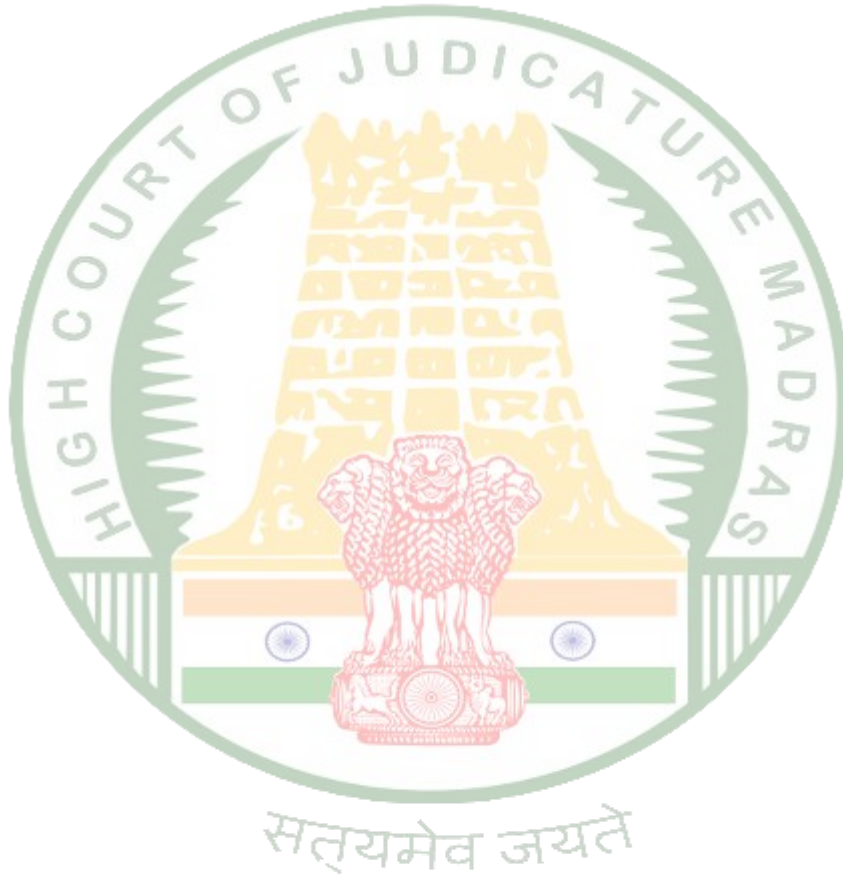
Sub Asst. Registrar

To

The Special Officer,
No.H.H.500, Sathanur Primary
Agricultural Co-op Bank Ltd,
Sathanur Post, Chengam Taluk,
Thiruvannamalai District.

W.P.No.26233 of 2004

GP (CO)
NR 08/09/2017



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