

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 29.08.2017
CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.36963 of 2004

S.Mohan

... Petitioner

Vs.

The Special Officer,
Salem District Co-operative Agro Service
Society Ltd., S.S.61,
L-6, Industrial Estate,
Five Roads, Salem-636 004.

.... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the retrenchment passed by the respondent herein in No.46/81-82[4] dated 31.08.2004, quash the same as illegal and consequently direct the respondent to reinstate the petitioner in service with all backwages.

For Petitioner : Mr.R.Thamaraiselvan
For Respondent : Mr.V.Selvaraj,
Addl. Govt. Pleader

O R D E R

The petitioner has filed this writ petition challenging the proceedings dated 31.08.2004 issued by the respondent.

2. In view of the decision of 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 Vs. 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."

3. As per the decision of the Larger Bench of this Court reported in the decision cited supra, writ petition is not maintainable against the Special Officer. Hence, this writ petition is dismissed with liberty to the petitioner to workout his remedy in the manner known to law. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gya

To

The Special Officer,
Salem District Co-operative Agro Service
Society Ltd., S.S.61,
L-6, Industrial Estate,
Five Roads, Salem-636 004.

+1 cc to Mr.R.Thamarai selvan Advocate sr 62284
+1 cc to the Government Pleader sr 62590

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