

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.37416 of 2004

and

W.P.M.P.No.44902 of 2004

M. Subramanian

... Petitioner

Vs.

1. The Special Officer,
TPD 224, Somanahalli Milk Producers,
Co-operative Society,
Somanahalli Village Palacode Taluk,
Dharmapuri District.

2.The Deputy Registrar Cooperative
Societies (Dairing) Dharmapuri Region,
Dharmapuri District.

... Respondents

Prayer:

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 impugned order of suspension dated 18.07.2002 passed by the first respondent and to quash the same as illegal and consequently direct the respondents to grant all service and monetary benefits including the subsistence allowance due and payable to the petitioner.

For Petitioner : Mr.Thamaraiselvan

For Respondent No.1: Mr.L.P.Shanmugasundaram
Special Government Pleader(Co-op)

O R D E R

The petitioner has filed this writ petition for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of suspension dated 18.07.2002 passed by the first respondent and to quash the same as illegal and consequently direct the respondents to grant all service and monetary benefits including the subsistence allowance due and payable to the petitioner.

2. The Special Officer/first respondent has placed the petitioner under suspension due to administrative reasons.

3.A Full 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 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."

The writ petition against the special officer will not lie since the Special Officer will not come under the purview of the state. Moreover, after a lapse of thirteen years, I do not find that anything would survive for adjudication at this stage in the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, it is open to the petitioner to workout his remedy before the appropriate forum.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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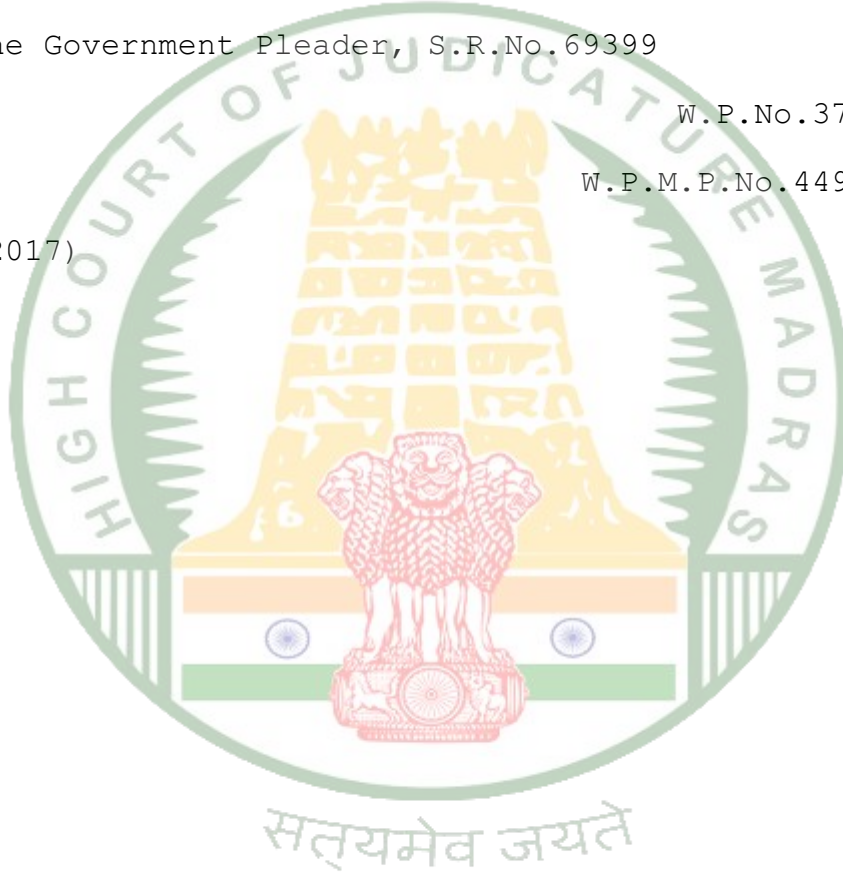
To

1. The Special Officer,
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Co-operative Society,
Somanahalli Village Palacode Taluk,
Dharmapuri District.
- 2.The Deputy Registrar Cooperative
Societies (Dairing) Dharmapuri Region,
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+1cc to the Government Pleader, S.R.No.69399

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GN(24/10/2017)



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