

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.1106 of 2018

JUDGMENT: {Per Hon'ble Sri Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in I.A.No.1 of 2016 (WVMP.No.4756 of 2016) in W.P.M.P.No.41246 of 2016 in W.P.No.33377 of 2016 dated 17.07.2018. The appellants herein are respondents 4 and 5 in W.P.No.33377 of 2016. The 1st respondent herein filed the writ petition seeking a mandamus to declare the order passed by the appellants dated 21.09.2016, terminating his services, as arbitrary, illegal, unjust and without jurisdiction.

An interim order was passed in W.P.M.P.No.41246 of 2016 in W.P.No.33377 of 2016 dated 31.10.2016 granting interim suspension of the order dated 21.09.2016, passed by the appellants herein, removing the 1st respondent-writ petitioner from service. A vacate stay petition was filed by the appellants herein which was dismissed by the order under appeal.

Sri M.Surender Rao, learned Senior Counsel appearing on behalf of the appellants (respondents 4 and 5 in the writ petition), would draw our attention to the additional counter-affidavit, filed by the appellants before the Learned Single Judge, wherein they have stated that no financial aid or assistance was extended to the 1st appellant-society either by the State or the Central Government or any of its agencies; no share was allotted either to the Government or to its agencies; share capital and deposits were made only by the members, and no single rupee was invested by any Government or Governmental agencies; the society had its own autonomy, and neither the Government nor the Reserve Bank of India had any control over the 1st appellant-society; the 1st appellant-society

was running its affairs in terms of its bye-Laws, and was fulfilling its objects from out the funds collected from its members; the bye-Laws were in the nature of a contract between the 1st appellant-society and its members and/or its employees; it had no statutory force; and, therefore, the 1st appellant-society cannot be treated as a “State” to maintain the writ petition against it.

A writ of mandamus may be issued for violation of any statutory duty, even against an individual. However, in the absence of any statutory violation, a writ would lie only if the respondent is a “State” within the meaning of Article 12 of the Constitution of India. While the appellants have specifically contended, in their additional counter-affidavit, that the 1st appellant-society is not a “State” within the meaning of Article 12 of the Constitution of India, this question has not been examined, in the order under appeal, while dismissing the vacate stay petition filed by the appellants herein. No finding has been recorded, in the order under appeal, that the appellants have violated any statutory provision, either plenary or subordinate. It was incumbent, therefore, for the Learned Single Judge to examine whether or not the 1st appellant-society is a “State” within the meaning of Article 12 of the Constitution of India, for it is only then would a writ lie against the appellants herein.

We consider it appropriate, in such circumstances, to set aside the order under appeal and restore I.A.No.1 of 2016 (WVMP.No.4756 of 2016) to file. The Learned Single Judge shall consider the maintainability of the writ petition, along with the other contentions urged in the writ petition regarding the validity of the order impugned in the writ petition. Needless to state that, since we have only interfered with the order passed by the Learned Single Judge in I.A.No.1 of 2016 (WVMP.No.4756 of 2016) dated 17.07.2018, the order passed earlier in W.P.M.P.No.41246 of 2016 in W.P.No.33377 of 2016 dated 31.10.2016 shall continue to

remain in force till I.A.No.1 of 2016 (WVMP.No.4756 of 2016) is heard and disposed of.

The Writ Appeal is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

05th September, 2018
JSU



**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
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Date: 05.09.2018

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