

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. No.2575 of 2021

G.Thilagan

...Petitioner

vs.

The Managing Director
Coimbatore Agriculture Producers
Co-operative Society N.K.1948
Siruvani Main Road
Telugupalayam, Coimbatore - 641 039

...Respondent

Writ petition filed under Article 226 of the Constitution of India for a writ of mandamus directing the respondent to consider petitioner representation dated 12.12.2020 and to re-fix the salary from 26.7.2012 being the date of petitioner suspension till 30.12.2019 being the date of retirement with all attended benefits, increments and emoluments for which he is entitled to as per G.O. No.137 of 2015 dated 09.11.2015 issued by the Tamil Nadu Co-operative and Consumer Protection Department and consequently to re-fix the PF amount, gratuity and leave surrender amount and pensions based on petitioner revised salary.

For Petitioner : Mr.M.Naraayanaswamy

O R D E R

The petitioner has come forward with the present writ petition for a direction to the respondent to consider his representation dated 12.12.2020 and to re-fix his salary from 26.7.2012 being the date of his suspension till 30.12.2019 being the date of his retirement, with all attended benefits, increments and emoluments for which he is entitled to as per G.O. No.137 of 2015 dated 09.11.2015 issued by the Tamil Nadu Co-operative and Consumer Protection Department and consequently to re-fix the PF amount, gratuity and leave surrender amount and pension based on his revised salary.

2. This court in K.Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal and Another reported in 2006-4-L.W.-495, clearly held that no writ will lie against Co-operative Societies. But, at the same time, if there is any statutory violation, then the aforesaid case will not inure to the benefit of Co-operative Societies, which is evident from the reading of the following lines of the very same judgment, as non-payment of salary, etc., will amount to

violation of Articles 21 and 300A of the Constitution of India.

"13.....The Court also elaborately discussed the six factors which have been enumerated in the case of *Ajay Hasia* and held that such private companies would normally not 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 the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974, etc., or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such statutory provisions a writ may certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the services of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued writ to the private bodies and the companies in that regard. But, the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event, the writ may not be issued at all. Other remedies as may be available, may have to be resorted to.

In the said case, in paragraph 21, the Hon'ble Apex Court, has proposed the following:

(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.

3. In this case, there is no such plea of statutory violation taken and therefore, in the light of the judgment (referred to supra), this writ petition, being not maintainable, is dismissed, granting liberty to the petitioner to work out his remedy before the authority concerned. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

(Asr)

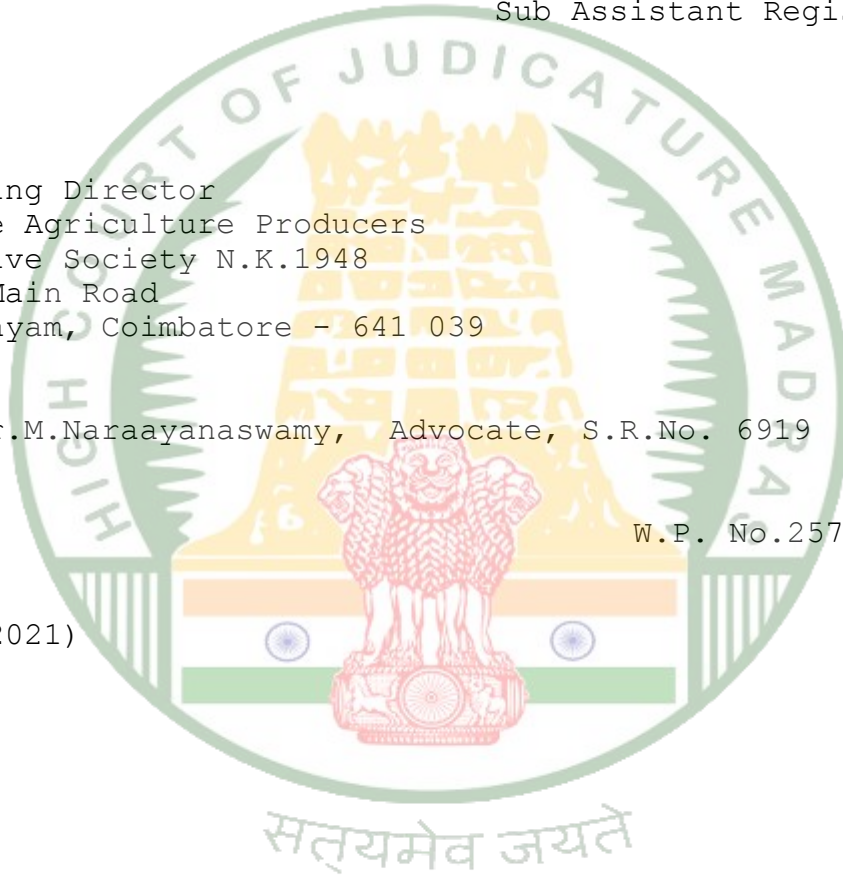
To

The Managing Director
Coimbatore Agriculture Producers
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+1cc to Mr.M.Naraayanaswamy, Advocate, S.R.No. 6919

W.P. No.2575 of 2021

GSM(CO)
GN(05/05/2021)



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