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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.10515 of 2022

and

W.M.P.Nos.10202 & 10203 of 2022

R.Murugan

...Petitioner

vs.

1. The Joint Registrar,
Co-operative Societies,
Dharmapuri.

2. The President/Special Officer,
5558, Vadugapatti Primary
Agricultural Co-operative Bank,
Harur Taluk,
Dharmapuri District.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent and quash the order of the 2nd respondent dated 21.01.2019 as illegal, arbitrary and contrary to law and consequently direct the respondents to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits.

For Petitioner : Mr.N.Desinghu

For R1 : Mrs.S.Anitha
Special Government Pleader

For R2 : Mr.V.Nanmaran
Additional Government Pleader

O R D E R

This writ petition has been filed seeking to quash the order of the 2nd respondent dated 21.01.2019 and consequently, direct the respondents to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits.

2.The President/Special Officer vide order dated 21.01.2019 has passed the impugned dismissal order against the petitioner.



That order is challenged in this writ petition.

3.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



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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."

4. As per the decision of the Larger Bench of this Court reported in the decision cited supra, writ petition is not maintainable against the Societies. Hence, this writ petition is dismissed. However, liberty is granted to the petitioner to seek his remedy before the authorities concerned. No costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Joint Registrar,
Co-operative Societies,
Dharmapuri.

2. The President/Special Officer,
5558, Vadugapatti Primary Agricultural Co-operative Bank,
Harur Taluk,
Dharmapuri District.

+1cc to Mr.J.Pradeep, Advocate, S.R.No.30815

+1cc to the Government Pleader, High Court, Madras S.R.No.30699

W.P.No.10515 of 2022
and
W.M.P Nos.10202 and 10203 of 2022

SS(CO)
RGA(27/05/2022)