BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders reserved on 30.08.2022	Orders pronounced on 02.09.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.15250 of 2016
and
W.M.P(MD)No.10428 of 2017

G.Subbuthai ... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   Office of the Registrar of Co-operative Societies,
   170, EVR High Road,
   Kilpauk,
   Chennai - 600 010.

2. The Joint Registrar of Co-operative Societies,
   (Finance and Banking),
   Office of the Registrar of Co-operative Societies,
   170, EVR High Road,
   Kilpauk,
   Chennai - 600 010.

3. The Managing Director,
   Ramanathapuram Central Co-operative Bank,
   265-E, Vandikara Theru,
   Ramanathapuram - 623 501. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents relating to the impugned order of the third respondent in Na.Ka.No.001808/2010-2011/E4, dated 12.07.2016 and quash the same insofar as the rejection of the family pension and direct the respondents herein to grant ex-gratia pension amount of the petitioner's late husband R.Gurusamy of Rs. 3500/- per month for the period from 31.01.1987 (date of Superannuation) to 09.09.2011 (date of death) and to grant family pension of Rs.1,750/- per month to the petitioner from 09.09.2011 as per G.O(MS)No.133, Co-operative Food and Consumer Protection (CC1) Department, dated 05.12.2014 and pay the said amount to the petitioner as early as possible.

For Petitioner : Mr.S.Natarajan

For Respondents : Mr.M.Senthil Ayyanar
Government Advocate for R1&R2
Mr.D.Shanmugaraja Sethupathy
for R3

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash impugned order of the third respondent in Na.Ka.No.001808/2010-2011/E4, dated 12.07.2016 insofar as the rejection of the family pension and direct the respondents to grant ex-gratia pension amount of the petitioner's late husband R.Gurusamy of Rs.3500/- per month for the period from 31.01.1987 (date of

Superannuation) to 09.09.2011 (date of death) and to grant family pension of Rs.1,750/- per month to the petitioner from 09.09.2011 as per G.O(MS)No.133, Co-operative Food and Consumer Protection (CC1) Department, dated 05.12.2014 and pay the said amount to the petitioner as early as possible.

2. The learned counsel for the petitioner submitted that the petitioner is the wife of late Gurusamy, who was appointed as Supervisor in Ramanathapuram District Co-operative Central Bank Limited, Madurai on 13.09.1955. He expired on 09.09.2011 leaving behind the petitioner and three daughters. Originally, the employees of the Central Co-operative Banks are not getting pension. By virtue of Section 6A of the Employees Provident Funds and Miscellaneous Provision Act, 1952, the Central Government brought a scheme called "Employees Pension Scheme 1995" which came into force on 16.11.1995. The Tamil Nadu Government passed G.O.(Ms)No.132, Co-operative Food and Consumer Protection (CC1) Department, dated 20.09.2010 and ordered that 935 District Central Co-operative Bank employees who are not coming under "Employees Pension Scheme 1995" and who retired during the period 1987-1988 to 1994-1995 will be granted Rs.2,500/- per month as

ex-gratia payment and the legal heirs of the expired employees will be granted family pension of Rs.1,250/-. The employees coming under "Employees Pension Scheme 1995" will continue to get payment and family pension through Future Deposit Fund Commission and the differential amount would be paid by the respective Banks. By G.O.(Ms).No.160, Co-operative Food and Consumer Protection (CC1) Department, dated 11.11.2010, the Tamil Nadu Government extended the said benefit to the employees who retired after 15.11.1995 and who are not coming under "Employees Pension Scheme 1995" also. Then, by G.O.(Ms)No.133, Co-operative Food and Consumer Protection (CC1) Department dated 05.12.2014, the Government ordered that the employees of the District Central Co-operative Banks who retired before 01.04.1985 and who retired from 01.04.1985 to 31.03.1987 will be given Rs.3,500/- per month as ex-gratia pension amount and family pension of Rs.1,750/- will be given to the families of the expired employees. As per these Government Orders, the petitioner's husband was not granted ex-gratia payment. Therefore, the petitioner submitted a representation dated 22.12.2015 followed by remainders and another representation dated 04.07.2016. Through the impugned order, dated 12.07.2016, the petitioner was informed that her husband retired on 31.01.1987 and there is no direction to give family pension to the legal heirs of the deceased employees. Therefore, this petition.

3. In response, the learned counsel for the third respondent submitted that this Writ Petition is not maintainable against the third respondent. As per G.O.(Ms)No.133, Co-operative Food and Consumer Protection (CC1) Department, dated 05.12.2014, the pension scheme would be operative only from the date of issuance of the Government Order, i.e., only from 05.12.2014. Therefore, the petitioner's husband is not entitled for receiving ex-gratia pension. There is no specific direction given to grant family pension to the deceased employees. Therefore, the petitioner is not entitled for seeking ex-gratia pension to her husband or family pension to herself. In support of his submission that the Writ Petition is not maintainable against the Co-operative Society, he pressed into service the judgment of this Court in the case of ***K.Marappan Vs. The Deputy Registrar of Cooperative societies*** reported in ***2006 (4) CTC 689*** and the relevant paragraph is extracted hereunder:

"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 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 Cooperative 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. He also relied on the judgment of this Court in the case of ***T.K Ananda Sayanan Vs. The Joint Registrar and other*** reported in ***2007 (5) CTC 1*** and the relevant paragraphs are extracted hereunder:

> *"12………….. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. ……….*
>
> *14. But every case of suspension or deprivation of wages for a period or termination will not entitle the employee of a co-operative society to move the writ Court and contend that the right of protection under Article 21 has been violated. The employees have adequate statutory protection in law.*
>
> *16………… an employee of a co-operative society cannot move the writ court on the ground that his rights under Article 21 have been infringed…………….*
>
> *18. …………Therefore, every order affecting the service of a workman would not automatically amount to an infringement of his right under Article 21 enabling him to move the writ court. We cannot ignore the settled position that applications to secure performance of obligations owed by a Government or a society towards its employees or to*

resolve any private dispute cannot be decided on the basis of the Article 21............ It must be seen whether the invocation of Article 21 is justified in the particular case and whether the order challenged by a workman of a co-operative society is of such a nature that it would truly take away his right under Article 21 of the Constitution and that it is taken away otherwise than by due process of law."

5. The learned counsel for the third respondent also relied on the judgment of this Court in the case of "**P. Manimaran ..vs. The Joint Registrar and Another - W.A. (MD) No. 431 of 2011 dated 29.04.2022** to support his submission that Co-operative society cannot be treated as a state or public authority. The relevant portion reads as follows:-

"9. ... Subsequently, a Division Bench of this court in P.Eswaramoorthy and Others v. R.J.B. Leoraj and Others reported in (2008) 5 MLJ 238, held that when the service rules of the Act and the provisions of the Act provide for a remedy under Section 153 of the Act, a writ court will not entertain a writ petition challenging the orders relating to service of employees in co-operative societies…

12. In view of the said judgment of the Hon-ble Supreme Court, the position that emerges is that the right to *form a Co~operative Society has been recognised as a fundamental right and nothing more.* ***The striking down of 243~ZH to 243~ZT excluding Article 243ZR and 243ZS would lead to a situation where a Co~operative Society cannot be treated as a State or a public authority. In view of this judgment of the Hon-ble Supreme Court, in our considered opinion, the position that prevailed when the Larger Bench of this Court decided in Marappan's case, stands restored and there was no change in law in order to render the Larger Bench judgment in Marappan case as no longer good law."***

6. In reply to the submission by the learned counsel for the third respondent with regard to not maintainability of the Writ Petition against the Co-operative Society, the learned counsel for the petitioner submitted that it is true that the aforesaid judgments state that the Writ Petition is not maintainable against the Co-operative Society. However, the Writ Petition can lie against the violation of the fundamental right under Article 226 of the Constitution of India. The petitioner seeking family pension is her fundamental right. But denial of family pension and pension to her husband is violation of Articles 21 and 300(A) of the

Constitution of India. Denial of pension and family pension would amount to denial of her life and it would also amount to denial of her property.

7. The learned counsel for the petitioner relied on the following judgments in support of his submissions:-

"State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another
(AIR 2013 SUPREME COURT 3383)

"11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the government to withhold pension etc. Only when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the Rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending."

K.Elango VS. The Secretary, Barcouncil of TamilNadu
(2015 (6) CTC 90)

"Therefore, without even drawing any inspiration from the decisions cited across the Bar, it could be concluded that a Writ can be issued against any person."

N. Udayappan Vs. R.Ramar

(2021 CTC 369)

"42. There can be no doubt that the exercise of the jurisdiction under Article 226 is the widest import. Even though the remedy under Article 226 is, ordinarily, regarded as a public law remedy, in extraordinary situations such provision may be invoked to address any injustice subject to territorial considerations."

The Organizer, Dehri C.D. and C.M. Union Limited, Fazalganj, Sasaram, Distt. Rohtas Vs. State of Bihar and others

(2014 (4) CTC 481)

"47. Thus, from the plethora of case laws on the subject as to when an authority or person would become a "State" within the meaning of Article 12 of the Constitution, briefly, though not exhaustively, the following principles and rationale are deducible:

(i) The authority created by a Statute under control of Government, hence a statutory corporate entity; and/or

(ii) Even a body corporate as distinct from statutory Corporation could be "State", if there was a deep and pervasive control of the Government; and/or

(iii) Independent body corporate formed by the Government to perform Governmental duties or duties of public nature for Government; and/or

(iv) Authority functioning as an instrumentality or agency of Government, the functionality test; and/or

(v) Unusual degree of control of Government and

rendering public service; and/or

(vi) Authority works as an adjunct of and for the purpose of Government and Governmental purposes and/or public function; and/or

(vii) Authority performing monopolistic functions reserved by State; and/or

(viii) Cumulative effect of various relevant facets have to be seen and not one stray facet; and/or

(ix) The authority may itself not be State, but a person therein is controlled by and supervised by the State/Government, then he becomes a "State" because of the control.

48. In fairness to Amicus Curiae Shri Abhay Singh, Senior Advocate, I must notice one pointed argument. He stated that 'State' as contemplated under Article 12 is a concept, which works or performs duty, Governmental in nature. This is exemplified by cases noted above. He rightly pointed out that when a person being an officer of Government is appointed or a person appointed by Statutory Authority to act under his authority and supervision/superintendence such a person would be State representative and 'State' under Article 12. The distinction between public function and private function would be of no consequence in such a case.

49. The other important issue, which is apparent from the decisions noted above, is that even though an authority or a body may not be 'State' for the purposes of Article 12 and, thus, not amenable to Writ jurisdiction of the Apex Court under

Article 32, yet it could be amenable to Writ jurisdiction of the High Court under Article 226 of the Constitution, whose scope and jurisdiction is much wider.

50. One of the facets where the High Court could exercise its Writ jurisdiction under Article 226 against an authority, which is not 'State' within the meaning of Article 12, is where the authority or person performs duties akin to public duties or public functions even though independent of a Government."

G.Ashokan vs. District Collector
(2014 (1) CWC 877)

"17. It is settled proposition of law that right to get actual salary/leave salary and retirement benefits are right to property as per Article 300A of the Constitution of India. The Supreme Court in the judgment reported in AIR 2013 SC 3383 (State of Jharkand v. Jitendra Kumar Srivastava) held that such benefits cannot be deprived to person or legal heirs, who are eligible to receive the same. Hence, the appellant and other legal heirs of the appellant's father are bound to get the benefits. The learned counsel for the appellant fairly stated that appellant is not entitled to get compassionate appointment due to the regularisation granted to the appellant's father from 1.1.2006 as the appellant's father reached the age of superannuation i.e, 60 years of age on 31.3.2010 and thereafter only he died, thaT was on 3.3.2011."

U.P.State Cooperative Land Development Bank
Ltd. Vs. Chandra Bhan Dubey and others

((1999) 1 SCC 741)

"24. In Andi Mukta S.M.V.S.V.J.M.S. Trust & Ors. v. V.R. Rudani & Ors. [(1989) 2 SCC 691] a two Judge Bench of this Court was considering the question of "issue of a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or direction or order directing the appellant trust and its trustees to pay to the respondents their due salary and allowances etc. in accordance with the Rules framed by the University and to pay them compensation under certain Ordinance of the University"……………… The question thus was whether the trust could be compelled to pay by writ of mandamus. The Court noted the observations of Subba Rao, J. in Dwarkanath, H.U.E. vs. ITO, Special Circle Kappur & Anr. [(1965) 3 SCR 5536] as under:

> *"This article is couched in comprehensive phraseology and it exfacie confers a wide power on the High Courts to reach injustice wherever it is found…*

The Court also noted the observations of this Court in Praga Tools Corporation vs. Sh. C.A. Imanual [(1969) 1 SCC 585} as under :

> *"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body".*

The Court then said :

> *"The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article*

12. Article 12 is relevant only for the purpose of enforcement of fundamental rights as well as non-fundamental rights…"

And finally it said as under:

……. "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract."………

25. In Air India Statutory Corporation and others vs. United Labour Union and others (1997 (9) SCC 377) this Court Speaking through a Bench of three Judges said :

"The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose"…………

10. In the compass of the arguments placing reliance on the binding and authoritative pronouncements of the Apex Court the two issues which we are called upon to decide can be distinctly formulated as:

(a) whether the GSCB is a 'State' or an instrumentality thereof under Article 12 of the Constitution of India.

(b) whether the GSCB discharge any public function so as to make it amenable to exercise of writ jurisdiction under Article 226 and in particular for the purpose of issuance of writ in the nature of mandamus.

…….The entities which were entitled to be included by the

framers of the Constitution are specifically incorporated and leave no ground and scope for its expansion and the term which call for an interpretation and by authoritative pronouncements has received an extended meaning is "Other Authorities". The entire spectrum of the decisions from the Constitutional Courts has bounded itself and revolved around the said terminology. The divergence of the authoritative pronouncements is dependent on the manner of interpretation of the said term, either restricting itself by applying the rule of ejusdem generis or interpreting the same by ignoring the said principle and adopting an expansive approach. The said aspect is however only limited for the purpose of enforcement of the fundamental right of an individual/citizen as against the duty of a State to enforce the said right enlisted under Chapter III…………The power of the High Court to issue a writ would extend to any person or "authority" for enforcement of not only the rights enshrined in part III but for any other purpose. Thus, even though the entity may not be a 'State' for the purpose of Article 12, a writ under Article 226 may lie against it and in what circumstance the writ would be issued against the entity, is a field governed by plethora of decisions in form of authoritative pronouncements of the Constitutional Court. Similarly, in what circumstance an authority would answer the definition of 'State' under Article 12 has also been judicially determined in a series of judgments, setting out the test, it being financially, functionally and administratively dominated by or under the pervasive control of the Government.

11. ……….In United Towns Electric Co., Ltd. v. Attorney-General for Newfoundland (1939) 1 All E.R. 423)the doctrine was held to be not applicable. Paragraph 5 and 6 of the said decision which is relevant is reproduced as under:

'5. The meaning of the word "authority" given in Webster's Third New International Dictionary, which can be applicable, is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. This dictionary meaning of the word"authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Article 12 of the Constitution.

6. In Smt Ujjam Bai v. State of Uttar Pradesh,…………... There is no characterisation of the nature of the 'authority' in this residuary clause and consequently it must include every type of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in order to implement those laws". In K.S. Ramamurthi Reddiar v. Chief Commissioner, Pondicherry, this Court, dealing with Article 12, held: "Further, all local or other authorities within the *territory of India include all authorities within the territory of India whether under the control of the Government of India or the Governments of various States and even autonomous authorities which may not be under the control of the Government at all". These decisions of the Court support our view that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law."*

Vassudev Madkaikar and Ors. vs. State of Goa and Ors. MANU/MH/0683/2021

"40. It is trite position of law that the power of the High Court conferred under Article 226 of the Constitution to issue writs, for enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose can be directed to any person or authority. But it is well understood that a mandamus would lie to secure the performance of a public or statutory duty in the performance of which, the person who seek such a writ has a sufficient legal interest. The writ, in form of a command directing particular act to be done would lie against a nature of public duty, though the person or authority on whom the statutory duty is imposed need not be a public official or an official body. A writ in the nature of mandamus would also lie against a private body, but only when such body performs any public function. The commercial business of banking, though is a function of public importance is not a public function and this position, succinctly flow from the

decision of the Apex Court in case of Federal Bank Ltd. (supra). Merely because the Reserved Bank of India prescribe the banking policy for the sound economic growth and any particular bank function under the Banking Regulation Act, a private company carrying on business or commercial activity of banking do not conclusively establish that it discharge any public function or public duty. The Regulations are to be ranked not more than regulatory measures and if there is a failure to adhere to the said regulations, certain consequences are visited, is also not an indication to categorize the functioning as public duty. Similarly, merely because an organisation carries on function of public importance which are akin to or closely related to government functions, it would be no reason to hold that it discharge public functions.

Another important aspect which has to be borne in mind is that a writ can be issued for the discharge of only that public function if at all a body performs a public function and not any other function performed by it in the course of its business. Even if a body is performing public duty and amenable to writ jurisdiction, as a necessary sequel, all its decisions are not subject to judicial review but only those decisions which have public element therein can be judicially reviewed in exercise of writ jurisdiction. A fine line needs to be drawn between the contract of service by bearing its connection to the nature of contract and a contract of personnel service cannot be enforced with the exception when the employee is a public servant working under the Union of India or State, or an *employee who is employed by any authority which is recognised as 'State' within the meaning of Article 12 and when such an employee fall within the ambit of "workman" within the meaning of Section 2(s) of the Industrial Dispute Act, 1947. There cannot be any dispute that writ is maintainable under Article 226 of Constitution of India even against a private management for enforcing the 'public duty' cast upon them, but it cannot be said that the same is available also for enforcing the terms and conditions of service in every situation..."*

8. I have considered the rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

9. G.O.(Ms)No.132, Co-operative, Food and Consumer Protection (CC1) Department, dated 20.09.2010 was issued with regard to (i) forming of 'Corpus Fund' by the respective District Co-operative Banks (ii) payment of ex-gratia amount of Rs.2500/- per month to the employees who retired during 1987-1988 to 1994-1995 (iii) payment of pension of Rs.2500/- to the employees who are covered under "Employees Pension Scheme 1995" (iv) payment of family pension of Rs.1250/- to the legal heirs of deceased employees who are covered under "Employees Pension Scheme 1995", on the following conditions:-

(i) 935 employees who retired during 1987-1988 to 1994-1995 and are not covered under "Employees Pension Scheme 1995, would be paid the ex-gratia amount of Rs.2500/- by their respective District Co-operative Banks.

(ii) The employees, who are covered under "Employees Pension Scheme 1995" would receive the pension, as already they received, from the Employees Provident Fund Organisation. Out of the pension amount of Rs.2,500/-, the difference amount between Rs.2,500/- and the pension already received under "Employees Pension Scheme 1995" would be paid by their respective District Co-operative Banks.

(iii) The legal heirs of the deceased employees, who were covered under "Employees Pension Scheme 1995" would receive the pension, as already they received, from the Employees Provident Fund Organisation. Out of the family pension amount of Rs.1,250/-, the difference amount between Rs.1,250/- and the family pension already received under "Employees Pension Scheme 1995" would be paid by their respective District Co-operative Banks.

10. Through G.O.(Ms).No.160, Co-operative Food and Consumer Protection (CC1) Department, dated 11.11.2010, the scheme was

extended to the employees who retired after 15.11.1995 and not opted/covered under "Employees Pension Scheme 1995". In this G.O. (Ms). No.160, it is stated that "the employees who retired after 15.11.1995 and not opted/ covered under "Employees Pension Scheme 1995", are also entitled to get the ex-gratia amount, which is equivalent to the difference amount arrived after deducting the pension amount they are eligible to receive if they have opted for "Employees Pension Scheme 1995 from Rs.2,500/-.

11. G.O.(Ms)No.133, Co-operative Food and Consumer Protection (CC1) Department dated 05.12.2014 was issued considering the proposal to enhance ex-gratia pension of Rs.2,500/- to Rs.3,500/- and family pension of Rs.1,250/- to 1,750/- and the following directions were issued:

(1) It was decided to pay ex-gratia pension of Rs.3,500/- to 104 employees who retired before 01.04.1985 and 30 employees who retired between 01.04.1985 to 31.03.1987;

(2) Ex-gratia payment of Rs.2,500/- was increased to Rs.3,500/- for the employees who did not come under "Employees Pension Scheme 1995" and retired between

1987-1988 and 1994-1995;

(3) Out of the enhanced pension amount of Rs.3,500/-, the difference amount between Rs.3,500/- and the pension already received under "Employees Pension Scheme 1995" would be paid by their respective District Co-operative Banks to the employees, who are covered under "Employees Pension Scheme 1995".

(4) Out of enhanced pension amount of Rs.3,500/-, the difference amount arrived after deducting the pension amount they are eligible to receive if they have opted for the "Employees Pension Scheme 1995, would be paid by their respective District Co-operative Banks to the employees, who retired between 15.11.1995 to 20.09.2010 and not opted "Employees Pension Scheme 1995".

(5) The legal heirs of the deceased employees, who were covered under "Employees Pension Scheme 1995" are entitled to get the enhanced family pension amount of Rs.1,750/-. The difference amount between Rs.1,750/- and the family pension already received under "Employees Pension Scheme 1995" would be paid by their respective District Co-operative Banks.

(6) The legal heirs of the deceased employees, who were

not covered under "Employees Pension Scheme 1995" are also included in this scheme. The difference amount between Rs. 1,750/- and the pension amount they are eligible to receive if the deceased employees have opted for the "Employees Pension Scheme 1995, would be paid by their respective District Co-operative Banks.

The important condition in this Government Order is that the pension scheme would be effective only from the date of G.O.(Ms)No.133, dated 05.12.2014.

12. Admittedly, the petitioner's husband died on 09.09.2011. Therefore, this Court is of the view that the petitioner's husband is not entitled for getting ex-gratia pension of Rs.3,500/- as per the aforesaid G.O.(Ms)No.133, dated 05.12.2014. However, he is entitled for ex-gratia payment of Rs.2,500/- from the date of G.O.(Ms)No.132, Co-operative, Food and Consumer Protection (CC1) Department ie., from 20.09.2010 till the date of his death ie., 09.09.2011. Since he is no more, his wife/petitioner can receive the arrears of ex-gratia amount of Rs.2,500/-. As per condition-6 of the G.O.Ms.No.133, dated 05.12.2014, the legal heirs of the deceased employees, who were not covered under

"Employees Pension Scheme 1995" are also included in the scheme and they are eligible to receive family pension. Thus, the Petitioner is also entitled to get family pension as per condition-6 of the G.O.Ms.No.133, dated 05.12.2014. However, this Court finds that through the impugned proceedings, the petitioner's claim for family pension was also rejected. *Prima facie,* it is a wrong order.

13. The question seriously canvassed by the learned counsel for the third respondent is that this Writ Petition is not maintainable. There are judgments cited by the learned counsel appearing for the petitioner as well as the learned counsel appearing for the third respondent. Though there are contrary views with regard to maintainability of this Writ Petition against the Co-operative Society, in W.A(MD)No.431 of 2011, this Court after considering the various legal propositions held as follows:

> *"12. In view of the said judgment of the Hon-ble Supreme Court, the position that emerges is that the right to form a Co~operative Society has been recognised as a fundamental right and nothing more. The striking down of 243-ZH to 243-ZT excluding Article 243ZR and 243ZS would lead to a situation where a Co~operative Society*

cannot be treated as a State or a public authority. In view of this judgment of the Hon-ble Supreme Court, in our considered opinion, the position that prevailed when the Larger Bench of this Court decided in Marappan's case, stands restored and there was no change in law in order to render the Larger Bench judgment in ***Marappan case*** *as no longer good law."*

13. We are, therefore, of the considered opinion that three Division Bench judgments cited above which take a view that the Larger Bench judgment of this Court in Marappan's case is no longer a good law, will have to be held to be no longer a good law, in view of the recent pronouncement of the Supreme Court in ***Union of India vs. Rajendra N.Shah and another [Civil Appeal Nos.9108-9109 of 2014, dated 20.07.2021]****, wherein, the Hon'ble Supreme Court had struck down the majority of the provisions, Article 243-ZH to 243-ZT of the Constitution of India.*

15. We place on record our sincere gratitude and appreciation to Mr.M.Mahaboob Athiff, Amicus Curiae, who appeared at our instance and ably assisted us in deciding the matter where there was some kind of a cloud caused because of the conflicting views expressed by the Three Division Benches which had come into existence between the 97th amendment and the judgment of the Supreme Court in ***Rajendra N.Shah's case*** *(supra). The test laid down for maintaining a writ petition against a*

Co-operative Society by the Larger Bench in Marappan's case will continue to govern the field.”

This judgment is squarely applicable to the facts and circumstances of this case.

14. The Judgment in ***2014 (4) CTC 481*** (cited supra) deals with the thin line of distinction that exists between Article 12 and Article 226 and also with respect to its applicability to Government being an instrumentality of State. However, the tests laid out in the cited cases have been rigorously applied and observed in detail with respect to Tamil Nadu Co-operative Societies Bank in the case of ***2006 (4) CTC 689*** (cited supra), and in result, it did not qualify in any of the above tests to confine itself under Article 12 of the Constitution of India. It is also peculiar to note, the powers of Registrar under the Society is only regulatory in nature and thus, leaves out the scope for deep and persuasive control of Government over the Society. The Judgment in ***2021 (3) CTC 9*** (cited supra), though at first blush, seems to serve the petitioner’s case, the findings are adverse to what the petitioner is trying to establish. In Para 40, the court observed as follows, *“mere service dispute in terms of non-statutory service rules does not permit the*

petitioner to take recourse to Article 226 of the Constitution of India.". Further, in that case, the court eventually found that Goa Co-operative Societies Bank is not a State under Article 12 of the Constitution of India and thus, not amenable to Writ Jurisdiction.

15. In addition to the above, there is no special circumstances exist in the present case on hand, warranting exercise of discretion of this court. It has been observed in Para-7 in ***W.A.(MD) No. 431 of 2011*** (P.Manimaran's case cited supra) that every order affecting the service of a workman would not automatically amount to an infringement of his right under Article 21 of Constitution of India, enabling him to move to court. It further observed that, when there exist an alternative remedy under Section 153 of the Act, writ petition is not maintainable. In light of the above observations, it is concluded that, the petitioner's citations have no applicability to the present case. Therefore, this Court finds that this Writ Petition filed against the third respondent for the relief sought for in this Writ Petition is not maintainable and is liable to be dismissed.

16. However, in the light of the observation above made, this Court gives liberty to the petitioner to proceed in the manner known to law, including by giving representation to the concerned authorities, to receive the arrears of ex-gratia pension amount payable to her husband from 20.09.2010 till the date of his death ie., 09.09.2011 as per G.O.(Ms)No.132, Co-operative, Food and Consumer Protection (CC1) Department dated 20.09.2010 and also to get the right available to her ie., to receive family pension from 05.12.2014 as per G.O.(Ms)No.133, Co-operative Food and Consumer Protection (CC1) Department dated 05.12.2014.

17. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

02 .09.2022

Index :Yes
Internet :Yes / No

vji

To

1.The Registrar of Co-operative Societies,
Office of the Registrar of Co-operative Societies,
170, EVR High Road,
Kilpauk,
Chennai - 600 010.

2.The Joint Registrar of Co-operative Societies,
(Finance and Banking),
Office of the Registrar of Co-operative Societies,
170, EVR High Road,
Kilpauk,
Chennai - 600 010.

3.The Managing Director,
Ramanathapuram Central Co-operative Bank,
265-E, Vandikara Theru,
Ramanathapuram - 623 501.

G.CHANDRASEKHARAN, J.

vji

W.P(MD)No.15250 of 2016
and
W.M.P(MD)No.10428 of 2017

02.09.2022