



WEB COPY

W.P.No.25385 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.25385 of 2021
and W.M.P.Nos.26809 and 26810 of 2021

J.Govindarajan

... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
No.170, N.V.Natarasan Maaligai,
Periyar EVR High Road,
Kilapauk, Chennai – 600 010
2. The Joint Registrar of Co-operative Societies,
Tiruvarur Region,
Old Nagai Salai (Near Narayana Co-op Bank),
Tiruvarur – 610 001
3. The Deputy Registrar of Co-operative Societies,
Old Nagai Salai (Near Lakshmi Narayana Co-op Bank),
Tiruvarur – 610 001
4. The President,
No.Z-795, Pattam Primary Agricultural Co-operative,
Credit Society Limited,
Payari, Vilathur,
Valangaiman Taluk,
Tiruvarur District – 612 802

5. Mr.S.Sampathkumar

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records of the 3rd respondent in Na.Ka.No.739/2018 Tho.Vea.sa dated 28.03.2018 and in Na.Ka.No.781/2021-Sa.ba dated 17.08.2021 by insisting the 4th respondent to cancel the promotion of the petitioner as Clerk in the 4th respondent society and quash the same and further direct the respondents 1 to 3 to approve the promotion of the petitioner as Clerk in the 4th respondent society from 18.01.2018.

For Petitioner	: Mr.K.Vaishnavi for Mr.S.Parthsarathi
For Respondents	: Mr.S.Arumugam Government Advocate

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in Na.Ka.No.739/2018 Tho.Vea.sa dated 28.03.2018 and in Na.Ka.No.781/2021-Sa.ba dated 17.08.2021 by insisting the 4th respondent to cancel the promotion of the petitioner as Clerk in the 4th respondent society and to quash the same. Consequently, to direct the respondents 1 to 3 to approve the promotion of the petitioner as Clerk in the 4th respondent society from 18.01.2018.

2. Heard the learned counsel on either side and also perused the



materials available on record.

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3. The case of the petitioner herein is similar to that of the dispute which arose in the Writ Appeal No.1573 of 1998 (***K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal – 636 001 and another reported in 2006 (4) CTC 689***). In the said Writ Appeal, the Hon'ble Larger Bench of this Court has passed the following order:

“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



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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



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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 reference is answered accordingly. Registry is directed to place the paper before the appropriate bench for its disposal.

4. The subject matter in issue is also similar to that of the Writ Appeal filed in W.A.No.1573 of 1998 , in which the aforesaid order has been passed.

5. In the light of the order passed by the Hon'ble Larger Bench of this Court in the Writ Appeal as stated supra, this Writ Petition is dismissed. No costs. Consequently, connected Writ Miscellaneous Petition stands closed.

05.12.2024

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Index : Yes / No

Speaking order / Non-speaking order



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