

W.P.(MD) Nos.22401 of 2017 and 7082 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 24.07.2025

Pronounced On : 08.08.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P. (MD) Nos.22401 of 2017 and 7082 of 2018

P.Manikandan
S/o.Pandian,
D.No.7-6-43, South Street,
Batlagundu,
Nilakottai Taluk,
Dindigul District.

... Petitioner in both Writ Petitions

Vs.

1. The Secretary,
A 1493 Pattiveeranpatti Primary Agriculture
Cooperative Credit Society,
Patteveeranpatty – 624 211,
Nilakottai Taluk,
Dindigul District. .. 1st Respondent in W.P.(MD)No.22401/2017
and
2nd Respondent in W.P.(MD)No.7082/2018

2. The Deputy Registrar,
Deputy Registrar of Cooperative Societies,
Dindigul. ... 2nd Respondent in W.P.(MD)No.22401/ 2017
and
3rd Respondent in W.P.(MD)No.7082/2018



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3. The President,

A 1493 Pattiveeranpatti Primary Agriculture
Cooperative Credit Society,
Patteveeranpatty – 624 211,
Nilakottai Taluk,
Dindigul District.

... 1st Respondent in W.P.(MD)No.7082/2018

4. The Joint Registrar,

Registrar of Cooperative Societies,
Dindigul.

... 4th Respondent in W.P.(MD)No.7082/2018

5. B.Srileka,

Junior Assistant,
A 1493 Pattiveeranpatti Primary Agriculture
Cooperative Credit Society,
Patteveeranpatty – 624 211,
Nilakottai Taluk,
Dindigul District.

... 5th Respondent in W.P.(MD)No.7082/2018

PRAYER in W.P.(MD)No.22401 of 2017:

To issue a Writ of Mandamus or any other appropriate Writ or Order or Direction in the nature of Writ, to direct the 2nd respondent to consider the petitioner's representation on 30.09.2017 and pass an order to give the job of Junior Assistant and subsequently to sanction the basic pay scale from the day of deduct the petitioner's job from Junior Assistant to Office Assistant and consequently give the arrears amount of the same to the petitioner and to pass as such further order or other order as this Hon'ble Court may deem fit and proper in the circumstance of the case and thus render justice.



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PRAYER in W.P.(MD)No.7028 of 2018:

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To issue a Writ of Certiorarified Mandamus or any other appropriate Writ or Order or Direction, calling for the records in A 1493 Pattiveeranpatti Primary Agriculture Cooperative Credit Society's order passed by the 1st respondent on 23.02.2018 and quash the same and pass an order to give the earlier post of Junior Assistant along with the sanction of earlier pay scale to the petitioner and such further order or other orders as this Hon'ble Court may deem fit and proper in the circumstance of the case and thus render justice.

APPEARANCE OF PARTIES:

For Petitioner : Mr.G.Karthik, Advocate,
for M/s.Lajapathi Roy Associates
in both Writ Petitions

For Respondents : Mr.V.O.S.Kalaiselvam, Advocate,
for R1 in both Writ Petitions
for R2 in W.P.(MD)No.7082/2018

: Mr.J.Ashok
Additional Government Pleader
for R2 in W.P.(MD)No.22401/2017 and
for R3 & R4 in W.P.(MD)No.7082/2018

: Mr.S.T.Sasidharan Tamilkani, Advocate
Ms.ST.Kanimozhi &
Ms.BA.Harsinee, Advocates
for R5 in W.P.(MD)No.7082/2018



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COMMON JUDGMENT

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Heard.

2. The petitioner is the same in both writ petitions. In the first writ petition, W.P.(MD) No. 22401 of 2017, the petitioner, an employee of the respondent Cooperative Society, sought a direction to the Society to consider his representation dated 30.09.2017 and to appoint him as Junior Assistant with salary benefits from 03.07.1999. According to the petitioner, he had been working as a Junior Assistant in the Cooperative Society since 06.02.1992 and his services had been regularised. However, on 29.11.1998, he met with an accident resulting in the amputation of his right hand. Thereafter, when he reported for duty, the Society offered him only the post of Office Assistant and, by letter dated 01.07.1999, called upon him to convey his willingness to accept the said post.

3. According to the petitioner, he was entitled to protection under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996). Section 47 of the said Act provides as follows:-



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“47. Non-discrimination in Government Employment - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

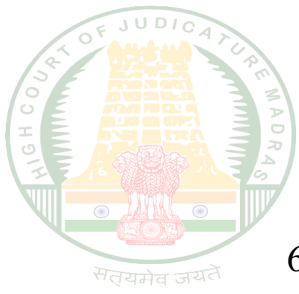
Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

4. However, the establishments to which the Act applies are defined under Section 2(k) of the Act, which reads as follows:-

"establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section



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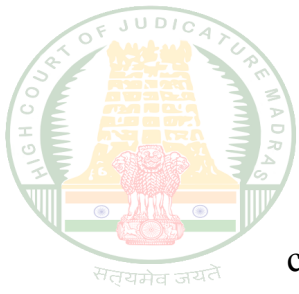


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617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government;

5. The Hon'ble Supreme Court, after examining Section 2(k) of the Act, held that its provisions are applicable only to Government and Government-controlled establishments, and not to private bodies, in its decision ***Dalco Engineering Pvt. Ltd. v. Satish Prabhakar Padhye & Ors.***, reported in **2010 (4) SCC 378** . The relevant passage from paragraphs 15 and 16 of the judgment reads as follows:-

“15. We agree that the socio-economic legislations should be interpreted liberally. It is also true that Courts should adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal statutes, and taxing statutes. But a caveat. The courts cannot obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute, that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of 'state' under Article 12. Express limitations placed by the socio-economic statute can not be ignored, so as to include in its application, those who are clearly excluded by such statute itself. We should not lose sight of the fact that the words "corporation established by or under a Central, Provincial or State Act" is a term used in several enactments, intended to



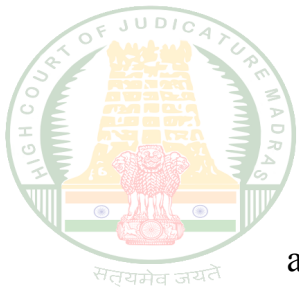
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convey a standard meaning. It is not a term which has any special significance or meaning in the context of the Disabilities Act or any other socio-economic legislations. It is a term used in various enactments, to refer to statutory corporations as contrasted from non-statutory companies. Any interpretation of the said term, to include private sector, will not only amount to overruling the clear enunciation in Dhanoa which has held the field for nearly three decades, but more importantly lead to the erasure of the distinction maintained in the Constitution between statutory corporations which are 'state' and non-statutory bodies and corporations, for purposes of enforcement of fundamental rights. The interpretation put forth by the employee would make employees of all companies, public servants, amenable to punishment under the provisions of Indian Penal Code and Prevention of Corruption Act; and would also result in all non-statutory companies and private sector companies being included in the definition of 'State' thereby requiring them to comply with the requirements of non- discrimination, equality in employment, reservations etc.

16. The appellant next contended that the scheme of the Act, does not confine its applicability to government or statutory corporations. Reference is invited to some provisions of the Act to contend that obligations/duties/responsibilities are fixed with reference to persons with disabilities, on establishments other than those falling under Section 2 (k) of the Act. It was submitted that Section 39 an obligation on all educational institutions, to reserve not less than three percent of the seats for persons with disabilities. In fact, it is not so. Though, the marginal note of Section 29 the words 'all educational institutions' with reference to reservation of seats for persons with disabilities, the section makes it clear that only government educational institutions



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and educational institutions receiving aid from the government shall reserve not less than three percent seats for persons with disabilities. It is well recognized that an aided private school would be included within the definition of 'State' in regard to its acts and functions as an instrumentality of the State. Therefore, care is taken to apply the provisions of the Act to only educational institutions belonging to the government or receiving aid from the government and not to unaided private educational institutions. Further, Section 39 of the Act, does not use the word 'establishment'. Reference is next made to the Section 44 which requires non-discrimination in transport. This section requires establishments in the transport sector to take special measures (within the limits of their economic capacity) to permit easy access to persons with disabilities. The employee contends that this would mean that all establishments whether statutory corporations falling under the definition of Section 2(k) of the Act or non- statutory corporations, or even individuals operating in the transport sector should comply with Section 44 of the Act. We do not propose to consider whether Section 44 to non-statutory corporations in the transport sector, as that issue does not arise in this case. Further the use of the words "within the limits of their economic capacity" makes it virtually directory. Be that as it may."

6. It is pertinent to note that, although the petitioner's case was originally governed by the 1995 Act, by the time he filed the writ petition in 2017, that enactment had been repealed and replaced by the *Rights of Persons with Disabilities Act, 2016*. Under the new Act, the earlier Section 47 of the 1995 Act has been substantially incorporated as Section



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20, which reads as follows:-

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“ 20. Non-discrimination in employment.—(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

7. Under the 2016 Act, the term “Government Establishment” is defined as follows:-



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“2(k). “Government establishment” means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 (18 of 2013) and includes a Department of the Government;”

8. The “private establishment,” as defined under Section 2(v), is as follows:-

“2(v). “private establishment” means a company, firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate Government may, by notification, specify;”

9. Thus, the new enactment did not address the limitation highlighted by the Supreme Court under the repealed Act, as private establishments continue to remain outside its mandatory purview. However, under the 2016 Act, a new provision, Section 35, has been introduced to provide special incentives to private sector employers who recruit persons with disabilities. Section 35 reads as follows:-

“35. Incentives to employers in private sector.—
The appropriate Government and the local authorities shall, within the limit of their economic capacity and



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development, provide incentives to employer in private sector to ensure that at least five per cent. of their work force is composed of persons with benchmark disability”

10. In light of these developments, the first respondent Society filed a counter affidavit dated 30.08.2021, objecting to the maintainability of the writ petition against a cooperative society and contending that the provisions of the Disabilities Act are inapplicable to such societies. In paragraphs 5 to 7 of the said counter affidavit, the following averments were made:-

“5. It is further submitted that though the Disabilities Act 1995 is not applicable to the cooperative societies, considering his family background and at his request and with his consent, he was given the post of Office Assistant even though he cannot do the said work also effectively. When he met with an accident during his personal work, the entire right hand of the petitioner was amputated. Hence he could not able to lift the Ledgers and could not do other heavy works which are the work of the Office Assistant. However out of sympathy he was engaged and paid salary to the said post. Even otherwise he was given medical leave with salary to the entire period of his medical leave for 162 days.

6. It is further submitted that while engaging him as an Office Assistant, he was given 7 increments and merged with the basic pay and fixed the scale of pay and paid to him. Therefore he is receiving wages equivalent to the Junior Assistant post.



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7. It is most respectfully submitted that the cooperative societies recently computerized and entire work are performed through computer instead of recording in the registers and ledgers. Therefore the basic qualification to the post of Junior Assistant is basic diploma in computer and experience in it. For which also both the hands are required. The petitioner does not have the said qualification and experience in the computer and he has no knowledge in it. The petitioner does not have minimum required qualification to the post of Junior Assistant. Therefore he cannot do the office work. Therefore, he is not qualified to the post of Junior Assistant."

11. The second respondent, Deputy Registrar, filed a counter affidavit dated 03.02.2025, wherein it was stated that the petitioner does not possess the requisite qualifications prescribed for the post of Junior Assistant, which include knowledge of computer applications. It was further pointed out that the petitioner has been working as an Office Assistant for the past 25 years. Paragraph 8 of the counter affidavit reads as follows:-

“ 8. ... though the petitioner cannot do the work of office assistant work also since it requires physical work, on humanitarian grounds he was given the office assistant work. Apart from this in order to compensate the wages, he was given 7 increments and merged with the basic pay and fixed the scale of pay and paid to



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him. Now the petitioner is receiving the total wages of Rs.39,985/-. Whereas the junior assistant as on today is receiving Rs.40,040/- only. Therefore the petitioner is receiving the wages equivalent to the junior assistant. The junior assistant viz., V.Pandiyarajan is 3 years senior and so is receiving additional increments. As otherwise the petitioner is receiving the wages on par with the junior assistant.”

12. Notwithstanding the pendency of the first writ petition, the petitioner filed a second writ petition, W.P.(MD) No. 7082 of 2018, challenging the order dated 23.02.2018, whereby the fifth respondent in that writ petition was entrusted with the duties of Junior Assistant in charge of cash and jewel loans, while the petitioner was assigned to work in the agriculture loan section alongside the fifth respondent.

13. Upon notice from this Court, the second respondent Cooperative Society and the third respondent Deputy Registrar filed their respective counter affidavits. In paragraph 14 of the counter affidavit submitted by the Cooperative Society, it was averred as follows:-

“14. It is respectfully submitted that our Government already decided to computerized the co-operative society in the state. Hence there is an effective steps to implementing a computerized works in the co-operative society in all over the districts.



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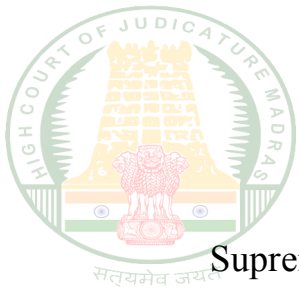


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Many of the districts, the co-operative society are all computerized. In our society also implement the computerized work. Many of the staffs including this petitioner doesn't knowledge about the computer works. When the person who holds the post of junior assistant, the computer works is necessary to known and handle the works. Due to the petitioner's physical disability, he could not able to operate the computer and other related works. Hence in our society has rightly decided to rejected the petitioner's claim for appointment to the post of junior Assistant and further also provide alternative employment to the petitioner as a office assistant.”

14. It is pertinent to note that, unlike the 1995 Act, the 2016 Act expressly confines the relief under Section 20 (corresponding to Section 47 of the 1995 Act) to Government establishments alone. Furthermore, Section 2(v) of the 2016 Act, while defining the term “private establishment,” explicitly includes cooperative societies within its ambit, thereby making it clear that the benefits available under Section 20 are not extended to private establishments, including cooperative societies.

15. Anticipating this legal hurdle, the petitioner has sought relief from the year 1999 so as to claim the benefit of the repealed 1995 enactment. In support, reliance was placed on the judgment of the



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Supreme Court in *Ravinder Kumar Dhariwal v. Union of India*,

reported in **2023 (2) SCC 209**. In that case, a CRPF constable invoked the protection of the 1995 Act by relying on Section 6 of the General Clauses Act. The Supreme Court accepted the contention that the benefits under the 1995 Act would accrue to a person possessing a vested, non-conditional abstract privilege. However, in that case, the affected individual was a government servant, leaving no ambiguity regarding the applicability of the statute.

16. Even so, the Supreme Court, in paragraph 141 of the said judgment, extended the benefit of Section 20(4) of the new Act and granted the following relief:-

“ In light of Section 20 (4) and the general guarantee of reasonable accommodation that accrues to persons with disabilities, the appellant is entitled to be reassigned to a suitable post having the same pay scale and benefits. The CRPF may choose to assign him a post taking into consideration his current mental health condition. The suitability of the post is to be examined based on an individualised assessment of the reasonable accommodation that the appellant needs. The authorities can ensure that the post to which the appellant is accommodated does not entail handling or control over firearms or equipment which can pose a danger to himself or to others in or around the workplace.”



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17. The aforesaid decision has no application to the present case of the petitioner. Both writ petitions filed by the petitioner are liable to be dismissed in view of the authoritative pronouncement of the Five-Judge Bench of this Court in ***K. Marappan v. The Deputy Registrar of Co-operative Societies***, reported in ***2006 (4) CTC 689***, wherein it was categorically held that a co-operative society does not fall within the definition of “State” under Article 12 of the Constitution, and consequently, no writ petition is maintainable against such a society.

18. In view of the fact that the petitioner was seeking relief under the category of a person with disability, this Court undertook the present exercise. However, even under the 1995 Act, a co-operative society cannot be considered an “establishment” within the meaning of Section 2(k) of that Act. Though not directly applicable, reference may be made to the decision of the Hon’ble Supreme Court in ***Thalappalam Ser. Coop. Bank Ltd. & Ors. v. State of Kerala***, reported in ***2013 (16) SCC 82***, where, in the context of a similar contention regarding the applicability of the Right to Information Act to cooperative societies, the Court held as follows:-

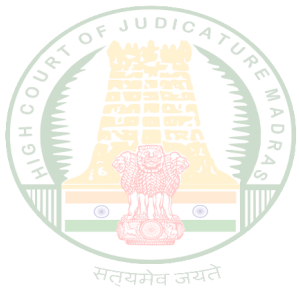


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“43. We are of the view that the High Court has given a complete go-bye to the above-mentioned statutory principles and gone at a tangent by mis- interpreting the meaning and content of Section 2(h) of the RTI Act. Court has given a liberal construction to expression “public authority” under Section 2(h) of the Act, bearing in mind the “transformation of law” and its “ultimate object” i.e. to achieve “transparency and accountability”, which according to the court could alone advance the objective of the Act. Further, the High Court has also opined that RTI Act will certainly help as a protection against the mismanagement of the society by the managing committee and the society’s liabilities and that vigilant members of the public body by obtaining information through the RTI Act, will be able to detect and prevent mismanagement in time. In our view, the categories mentioned in Section 2(h) of the Act exhaust themselves, hence, there is no question of adopting a liberal construction to the expression “public authority” to bring in other categories into its fold, which do not satisfy the tests we have laid down. Court cannot, when language is clear and unambiguous, adopt such a construction which, according to the Court, would only advance the objective of the Act. We are also aware of the opening part of the definition clause which states “unless the context otherwise requires”. No materials have been made available to show that the cooperative societies, with which we are concerned, in the context of the Act, would fall within the definition of Section 2(h) of the Act.”

19. It is significant to note that the expression “public authority” under Section 2(h) of the RTI Act is considerably wider in scope than the term “establishment” under Section 2(k) of the 1995 Disability Act. Section 2(h) of the RTI Act reads as follows:-



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“2(h). "public authority" means any authority or body or institution of self- government established or constituted--
(a) by or under the Constitution;
(b) by any other law made by Parliament;
(c) by any other law made by State Legislature;
(d) by notification issued or order made by the appropriate Government, and includes any--
(i) body owned, controlled or substantially financed;
(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;”

20. Even with the exhaustive definition provided under Section 2(h) of the RTI Act, a co-operative society has been held to fall outside its ambit. Consequently, the narrower definition of “establishment” under Section 2(k) of the 1995 Disability Act would, a fortiori, not encompass a co-operative society.

21. In view of the foregoing discussion, both the writ petitions are liable to fail and are accordingly dismissed. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.

08.08.2025

Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation : Yes / No
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18/20



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To

1. The Deputy Registrar,
Deputy Registrar of Cooperative Societies,
Dindigul.
2. The Joint Registrar,
Registrar of Cooperative Societies,
Dindigul.



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DR. A.D. MARIA CLETE, J.

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Pre-delivery Judgments made in
W.P. (MD) Nos.22401 of 2017 and 7082 of 2018

08.08.2025